



## INDIAN SUCCESSION ACT, 1925

*An Act to consolidate the law applicable to intestate and testamentary succession <sup>2</sup> [\* \* \*].*

Whereas it is expedient to consolidate the law applicable to intestate and testamentary succession <sup>2</sup> [\* \* \*]. It is hereby enacted as follows:-

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1. The Act has been extended to Berar by the Berar Laws Act, 1941 (4 Of 1941) and to Manipur by the Union Territories (Laws) Amendment Act, 1956 (68 of 1956).
  2. The words "in the Provinces of India" omitted by the A.O. 1950.

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### Section 1 - Short title

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

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### Section 2 - Definitions

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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;

<sup>1</sup> [(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;

<sup>2</sup> [(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;

<sup>3</sup> [(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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1. Inserted by Act 18 of 1929, section 2.
  2. Inserted by Act 3 of 1951, section 3 and Schedule.
  3. Substituted by Act 3 of 1951, section 3 and Schedule, for the original clause.

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### **Section 3 - Power of State Government to exempt any race, sect or tribe in the State from operation of Act**

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( 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<sup>1</sup>(10 of 1865), under section 332 of that Act are in this Act referred to as "exempted persons".

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1. Repealed by this Act.

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### **Section 4 - Application of Part**

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

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### **Section 5 - Law regulating succession to deceased person's immovable and movable property, respectively**

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(1) Succession to the immovable property in<sup>1</sup>[India] of a person deceased shall be regulated by the law of<sup>2</sup>[India], wherever such person may have had his domicile at the time of his death.

(2) Succession to the movable 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<sup>1</sup>[India], dies in France, leaving movable property in France, movable property in England and property, both movable and immovable, in<sup>1</sup>[India]. The succession to the whole is regulated by the law of<sup>2</sup>[India],

(ii) A, an Englishman, having his domicile in France, dies in<sup>1</sup>[India] and leaves property both movable and immovable, in<sup>1</sup>[India]. The succession to the movable property is regulated by the rules which govern, in France, the succession to the movable property of an Englishman dying domiciles in France, and the succession to the immovable property is regulated by law of<sup>2</sup>[India].

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

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### Section 6 - One domicile only affects succession to movables

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

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### Section 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 in England, whatever may be the country in which he was born.

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### Section 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.

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### Section 9 - Continuance of domicile of origin

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

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## Section 10 - Acquisition of new domicile

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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<sup>1</sup>[India] merely by reason of his residing therein<sup>2</sup>[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<sup>1</sup>[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<sup>1</sup>[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<sup>1</sup>[India].

(iv) A, whose domicile is in England, goes to reside in<sup>1</sup>[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 does not by such residence acquire a domicile in<sup>1</sup>[India], however, long the residence may last.

(v) A, having gone to reside in<sup>1</sup>[India] in the circumstances mentioned in the last preceding illustration, afterwards alters his intention, and takes up his fixed habitation in<sup>1</sup>[India]. A has acquired a domicile in<sup>1</sup>[India].

(vi) A, whose domicile is in the French Settlement of Chandernagore<sup>3</sup>, 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<sup>1</sup>[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<sup>1</sup>[India].

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

2. Substituted by the A.O. 1950, for "His Majesty's civil, military, naval or air force service".

3. Now Chandernagore (formerly a French settlement) is a part of India.

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## Section 11 - Special mode of acquiring domicile in India

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Any person may acquire a domicile in<sup>1</sup>[India] by making and depositing in some office in<sup>1</sup>[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<sup>1</sup>[India] for one year immediately preceding the time of his making such declaration.

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

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## **Section 12 - Domicile not acquired by residence as representative of foreign Government, or as part of his family**

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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.

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## **Section 13 - Continuance of new domicile**

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

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## **Section 14 - Minor's domicile**

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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.

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## **Section 15 - Domicile acquired by woman on marriage**

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

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## **Section 16 - Wife's domicile during marriage**

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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.

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## **Section 17 - Minor's acquisition of new domicile**

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

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## Section 18 - Lunatic's acquisition of new domicile

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

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## Section 19 - Succession to movable property in India in absence of proof of domicile elsewhere

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

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

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## Section 20 - Interests and powers not acquired nor lost by marriage

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(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—

(a) shall not apply to any marriage contracted before the first day of January, 1866;

(b) 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 Jaina religion.

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## Section 21 - Effect of marriage between person domiciled and one not domiciled in India

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If a person whose domicile is not in<sup>1</sup> [India] marries in <sup>1</sup> [India] a person whose domicile is in <sup>1</sup> [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<sup>1</sup> [India] at the time of the marriage.

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

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## Section 22 - Settlement of minor's property in contemplation of marriage

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(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 <sup>1</sup> [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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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "the States".

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### **Section 23 - Application of Part**

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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.

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### **Section 24 - Kindred or consanguinity**

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

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### **Section 25 - Lineal consanguinity**

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(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 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.

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### **Section 26 - Collateral consanguinity**

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(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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### **Section 27 - Persons held for purpose of succession to be similarly related to deceased**

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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.

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## Section 28 - Mode of computing of degrees of kindred

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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 ascent 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 degree 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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## Section 29 - Application of Part

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(1) This Part shall not apply to any intestacy occurring before the firstday of January, 1866, or to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina.

(2) Save as provided in sub-section (1) or by any otherlaw for the time being in force, the provisions of this Part shall constitute the law of<sup>f1</sup> [India] in all cases of intestacy.

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1. Substituted by Act 3 of 1951, section 3 and Schedule, for "theStates".

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## Section 30 - As to what property deceased considered to have died intestate

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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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### Section 31 - Chapter not to apply to Parsis

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Nothing in this Chapter shall apply to Parsis.

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### Section 32 - Devolution of such property

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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.

<sup>1</sup> [\*\*\*]

1. Explanation omitted by Act 26 of 2002, section 2.

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### Section 33 - Where intestate has left widow and lineal descendants, or widow and kindred only, or widow and no kindred

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Where the intestate has left a widow-

- (a) if he has also left any lineal descendants, one-thirds 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) <sup>1</sup> [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.

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1. Inserted by Act 40 of 1926, section 2.

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### Section 33A - Special provision where intestate has left widow and no lineal descendants

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<sup>1</sup> **[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 net value of his property does not exceed five thousand rupees, the whole of his property shall belong to the widow.
- (2) Where the net 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.
- (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 net 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 Jaina 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.]

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1. Inserted by Act 40 of 1926, section 3.

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**Section 34 - Where intestate has left no widow, and where he has left no kindred**

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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.

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**Section 35 - Rights of widower**

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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.

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**Section 36 - Rules of distribution**

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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.

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### **Section 37 - Where intestate has left child or children only**

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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.

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### **Section 38 - Where intestate has left no child, but grand-child or grand-children**

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

#### **Illustrations**

(i) A has three children, and no more, John, Mary and Henry. They all die before the father, John leaving two children, Mary three and Henry four. Afterwards A dies intestate, leaving those nine grandchildren and no descendant of any deceased grand-child. Each of his grand-children will have one-ninth.

(ii) But if Henry has died, leaving no child, then the whole is equally divided between the intestate's five grand-children, the children of John and Mary.

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### **Section 39 - Where intestate has left only great-grand-children or remoter lineal descendants**

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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.

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### **Section 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**

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(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 parents would have been entitled to respectively if such parent or parents had survived the intestate.

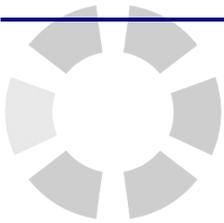
### Illustrations

(i) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(ii) A left no child, but left eight grand-children, and two children of a deceased grand-child. The property is divided into nine parts, one of which is allotted to each grand-child, and the remaining one-ninth is equally divided between the two great-grand-children.

(iii) A has three children, John, Mary and Henry; John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child, A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grand-children.

(iv) A has two children, and no more, John and Mary. John dies before his father, leaving his wife pregnant. Then A dies leaving Mary surviving him, and in due time a child of John is born, A's property is to be equally divided between Mary and the posthumous child.



W I L L J I N I