

# LEGALFOXES LAW TIMES

## RIGHT OF INHERITANCE UNDER PERSONAL LAWS

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### ABSTRACT

On the death of a person his/her descendant can inherit the property which may involve either movable or immovable property. Right of inheritance also includes devolution of the property, titles, debts, rights, and obligations to another person on the death of an individual. In India lack of knowledge about inheritance rights is one of the main reason for family partition during a person has been living and it becomes important to understand what the right of inheritance of legal heirs in India is. Actually in two ways a person can succeed to or inherit one's property: **by a will (Testamentary Succession) and through laws of Intestate Succession** - The person who makes the will is known as the testator and the person in whose favor the will is made is called the legatee. In case a person dies without making a will then his property is devolved among his heirs through the laws of intestate succession.

### INTRODUCTION

Across virtually all the communities, women are discriminated in the area of inheritance, since they are heavily shaped by the assumptions of patriliney and patrilocality. Though there have been legal provisions for inheritance laid out among different personal laws for Hindu, Muslim, Christian and Parsi communities and some of the legal obstacles have been removed, these assumptions continue to operate and undermine women's ability to claim their property rights and reinforce women's economic dependency on men across different regions and religions. Inheritance can be claimed by two ways: by will (when a person is alive) and without will(after death of a person). Here the property may be self acquired property or ancestral property.

**Under Personal inheritance laws which have a religious undertone:** most probably it will be applicable on succession without a will (intestate succession). Under the Personal Laws, we have the Hindu Succession Act, 1956 and the Muslim Personal Laws (Shariat) Application Act.

**Under the Indian Succession Act, 1925:** A person can transfer his own property to any person he wants by getting a will made. It applies to testamentary succession of Hindus, which is a transfer of property by a will.

### **HINDUS:**

According to the **Hindu Succession Act (1956)**, the intestate property of the deceased man is divided among the class 1 heirs. The deceased person's widow or if there are more widows than one, then all the widows together shall take one share. The surviving sons and daughters and the mother of the deceased person shall each take one share. Though this Act tried to ensure the rights of Hindu women, it has its share of patriarchal interest retained in the law. The Act promised an absolute right to a woman over her share of the property. However, a man can create a will for his wife to use the property only for her lifetime, and not for transfer or sale. This law continued to retain the Mitakshara Coparcenary without including the rights of women. This means that each coparcener gets double share, while the women get only the father's share. In 2004, the Union Cabinet cleared the Law Commission proposal to amend the Hindu Succession Act, 1956 where the daughters will also have the same co-parcenary rights in the ancestral property (Times of India 2004). The Hindu Succession Act is applicable to any person belonging to Buddhist, Jaina and Sikh communities.

### **Inheritance under Hindu Personal Laws**

When a deceased had different class of heirs it shall have different stakes over the property. These classes are

#### **Class I Heirs:**

1. Widow
2. Son
3. Daughter

4. Mother of the intestate
5. The heirs of pre-deceased children of the intestate (which shall include the widow, sons, daughters of the predeceased children as well)

**Class II Heirs:**

1. Father
2. Grand Parents
3. Grand Children
4. Brother
5. Sister
6. Other relatives

**Agnates:** They are the blood relations to the deceased through males. For example brother's son, brother's daughter, son's son, etc.

**Cognates:** They are the blood relations to the deceased through females. For example sister's son, sister's daughter, daughter's son, etc.



**The followings shall take place in the case where a Hindu male passes away,**

1. The Class I heirs get equal shares
2. In case of no Class I heirs it shall be equally divided amongst Class II heirs
3. In case of no Class I or Class II Heirs the property shall be divided amongst the Agnates and then the Cognates.
4. If none of the above-mentioned heirs exist then the property shall pass on to the Government and this is known as Escheat.

**The followings shall take place in the case where a Hindu female passes away,**

1. First her children and husband
2. Then among her husband's heirs
3. Then among her father and mother
4. Then among her father's heirs

5. Then among her mother's heirs

### **Class I Heirs Division:**

- 1) Son, Daughter, and Mother have one share each
- 2) Widower one share
- 3) Heirs of the predeceased son or predeceased daughter Same share that their parent would've received

### **Class II Heirs Division**

It is important to know that Class II Heirs do not get equal representation and that the heir in an earlier category shall exclude the heirs in the subsequent category. All the persons in one category shall have equal representation.

- I. Father
- II. Son's Daughter's Son, Son's Daughter's Daughter, Sister, Brother
- III. Daughter's Son's Son, Daughter's Son's Daughter, Daughter's Daughter's Son, Daughter's Daughter's Daughter
- IV. Brother's Son. Brother's Daughter. Sister's Son. Sister's Daughter
- V. Father's Father. Father's Mother
- VI. Father's Widow [Step Mother] Brother's Widow
- VII. Father's Brother. Father's Sister
- VIII. Mother's Father. Mother's Mother
- IX. Mother's Brother. Mother's Sister

### **Division of Property in case of death of a coparcener of a Hindu Undivided Family**

According to Section 6 of the Hindu Succession Act, 1956, upon the death of a coparcener, there is no automatic partition but the same can be brought in terms of a deemed partition for the purpose of succession. Such a division can be called in by any *Coparcener*. It is pertinent to note that in terms of Section 6 of the Hindu Succession Act, there shall be the distribution of property

to the heirs via succession and not to the Coparceners of a Hindu Undivided Family if there exists a surviving male or female relative who is a Class I heir.

- In Ancestral/joint family property wife has no right where as daughter and son have equal right
- Father's separate/self-acquired property while he is living, father can bequeath the property by will or gift and nobody has right over it.
- Father's separate/self-acquired property after death, all the three have equal rights if the father had not written a will

### MUSIMS:

**Islamic law** has been unique compare to other personal laws in the sense that, the Koran acknowledged the succession right of Muslim women. According to the Koran, Islam gave women the right to property like that of men. Under Muslim law, all properties devolved by succession. However, the primary principle of Muslim law is that, if there are male heirs and female heirs of the same degree, the share of a female member is half of that of the male, but the woman had the absolute ownership over her share. The Muslim community falls into two schools of thought, namely, the *Sunni* or the *Hanafi* school and the *Shiah* school.

As per the *Sunni* law, when a Muslim male dies leaving behind a widow and children, then the widow takes the share of one-eighth of the estate, and the residue, that is seven-eighth goes to the children. By virtue of the double portion, the son will take seven-twelfths and the daughter will take seven-twenty-fourths. Only in the absence of a son, will a daughter be taken as a sharer in estate.

As per the Shia law, when a Muslim dies, the wife receives half the share of a man, that is, one-fourth of the estate if there are no children, and one-eighth if there are issues. A daughter is entitled to have one-half of the estate if there is no son. If a man has only daughters and no sons, then the daughters would inherit more than they would under the Sunni law. That is, they get two-thirds of the estate.

There is no differentiation between Self Acquired and Ancestral Property under Muslim Inheritance. This can be better understood here

- a) Widow (if children are there) can get 1/8th share
- b) Childless Widow can get 1/4th share
- c) Son can get double the share of the daughters
- d) Only one daughter can get ½ of the property
- e) Widower (If there are no children) can get 1/2 share
- f) Widower (if there are children) can get 1/4th share
- g) Share of daughters if more than one daughter can get 2/3rd of the property

### CHRISTIANS:

The British rule in India had a significant role in enacting the **Indian Succession Act, 1925** for Christians. When the British settled down to govern India, they found that there was no ascertainable law in the matter of succession for communities other than Hindus and Muslims. These lacunae came to be noticed when a Hindu renouncing his religion got converted to Christianity could still choose to be governed by Hindu law in matters of succession. It was to fill this gap that the Indian Succession Act of 1865 was enacted. Later on the codification of the law was carried out and the Indian Succession Act, 1865 was repealed and the Indian Succession Act, 1925 was enacted, consolidating various other enactments in the matter of intestate and testamentary succession among the Indian Christians.

According to the Indian Succession Act, 1925 when the husband dies without leaving a will, that is, intestate, then his property is distributed in the following manner. The share of the lineal descendants comprising the widow, children, the grandchildren and great-grandchildren is that, the widow gets one-third of the property and the remaining two-thirds will be divided equally between the children. If there is only one child, then he or she will take the whole of two-thirds. If there are grandchildren and no living children, then the grandchildren will divide the two-thirds equally among them. The same rule applies to great grandchildren also.

When the deceased husband has no children, then the widow gets half the property and the other half goes to his father excluding the mother. When the deceased husband is not survived by a widow or children, but only his parents, then his father inherits all the property. However, if the father is dead, then his mother has to share the property along with his brothers and sisters. Thus, the father of the deceased husband inherits the property in exclusion of all other kindred. If the

deceased husband has no father and is survived by the widow, his mother, brothers and sisters, the widow gets one-half of the estate and the remaining one-half is shared equally among the mother, brothers and sisters. When the deceased is not survived by the widow, children, his father, or siblings, then his mother takes the whole of the estate. In the absence of any lineal descendants and parents, then the property is shared equally between the brothers and sisters.

If only the deceased husband's mother and children of any deceased brothers or sisters are living, then they are entitled to the property in equal shares. When the intestate has not left a lineal descendant, parents, and siblings, then his property is divided equally among those of his relatives who are in the nearest degree of kindred to him. There is a special provision where the intestate is left only the widow and no other lineal descendants. If the net value of the deceased husband's assets does not exceed Rs.5000, the widow is entitled to the entire property. If the net value exceeds Rs.5000, the widow is entitled to Rs.5000, thereof and shall have a charge upon the whole of such property for such sum of five thousand rupees with interest at four per cent per annum, until paid. 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.

Under the Indian Succession Act, inheritance is dealt with for the Christians under section 31 to 49. Quick review for **Christian Inheritance (Non-Testamentary):**

- Widow or Widower with lineal descendants can get 1/3rd share
- Widow or Widower without Lineal Descendants but with other of kin can get ½ share
- Widow or Widower without Lineal Descendants and without other of kin can get full share
- Linear Descendants while widow or widower is alive can get 2/3rd share with equal distribution
- Linear Descendant while widow or widower is not alive can get full share with equal distribution
- Relatives if no lineal descendant or parents or siblings can get full share

#### **PARSIS:**

The succession among the Parsi community was governed by the rules laid down according to Sections 50 to 56 of the Indian Succession Act 1925. Accordingly, the son got double of the daughter's share. As per the Amendment Act 1991, when a Parsi male dies without a will, leaving behind a widow and children, then each of them will get an equal share of the property. The daughter shares equally with the son. When the male dies leaving behind only children and no widow, then the children will divide the property equally among them. Other

sections of this Act contains gender discriminatory provisions similar to the rules governing the Indian Christians.

The Indian Succession Act was also made applicable to two Muslims marrying under the Special Marriage Act and also for inter-community marriages under the Special Marriage Act.

## **CONCLUSION**

Under the seal of a competent court a probate which is a copy of the will can be certified with a grant of administration of the estate to the executor/ legatee of the testator. It acts as official evidence of an executor's authority. A proceeding may be initiated in court after the death of the person who made the will, to determine the validity of the will that the testator may have created. This called as probate proceedings. During the proceedings, the witnesses are called upon to testify upon the validity of the will. The person making the will should be a competent individual, that is, he must not be a minor and should be a person with a sound mind. The special thing on probate court is, it only decides upon the validity of the will and does not deal with the case on merits. Upon the death of a person, before dividing the property, the successors must be sure that no debt is attached to the property. Once succession to the property is confirmed, the heir must apply for mutation of property in his own name. Mutation updates the government records and doesn't act as a transfer of title. Once the property has acquired, the concerned person can reside in, lend or sell the property.