

LEGALFOXES LAW TIMES

INHERITANCE WITH REGARDS TO HINDU MALE AND FEMALE DYING INTESTATE

By Sanika Javdekar

Abstract:

Hindu family law has been into existence for decades now and one of the crucial parts of a Hindu family is Property. Property is flowed down upon heirs of family members through the rules of inheritance. This paper talks about rules in case of Hindu Male and Female dying intestate, that is, without a will. When the deceased dies without making a will, the property is bestowed upon heirs through rules laid down in Hindu Succession Act, 1956 originally and then amended in Hindu Succession Act, 2019.

What is Succession under Hindu Succession Act, 1956?

Succession prima facie means, "the action or process of inheriting a title, office, property, etc." Every person has certain rights under different religions regarding inheritance. In Hindu Law specifically, succession theory has been laid down precisely to incorporate the Succession system evidently. Hindu Succession Act, 1956 applies to, "any person, who is a Hindu by religion in any of its forms or developments."

Basic terms to understand-

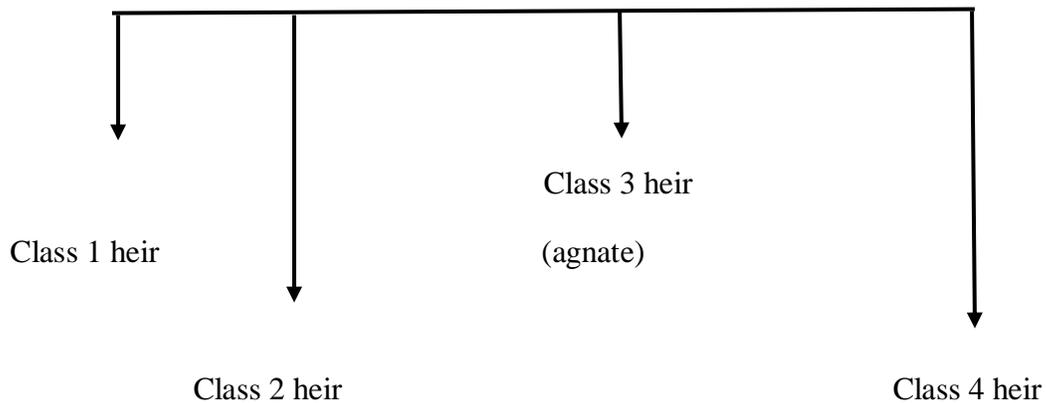
To under how the Hindu succession system functions it is crucial to know the legal terms such as-

- a) "agnate": one person is said to be an "agnate" of another is if the two are related by blood or adoption wholly through males.
- b) "cognate": one person is said to be a "cognate" of another if the two are related by blood or adoption but not wholly through males

- c) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family
- d) two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife, and by half-blood when they are descended from a common ancestor but by different wives
- e) two persons are said to be related to each other by uterine blood when they are descended from a common ancestress but by different husbands
- f) "heir" means any person, male or female, who is entitled to succeed to the property of an intestate under this Act;
- g) "intestate": a person is deemed to die intestate in respect of property of which he or she has not made a testamentary disposition capable of taking effect

Types of Succession-

There are 2 types of successions namely Testamentary succession and Intestate succession. Testamentary Succession means when there is a presence of will laying down the distribution of property and Intestate means when a person dies with leaving behind any will or testament. Under this situation the proper of that person is divided amongst the heirs. Section 8 of Hindu Succession Act states the rules of succession and it applicable to succession taking place after the enactment of this Act. The heirs are classified into-



(cognate)

❖ HINDU MALE DYING INTESTATE-**• Class 1 Heirs:**

- 1) Sons
- 2) Daughters
- 3) Widows
- 4) Mothers
- 5) Sons of a predeceased son
- 6) Widows of a predeceased son
- 7) Son of a predeceased son of a predeceased son
- 8) Widows of a predeceased son of a predeceased son
- 9) Daughter of a predeceased son
- 10) Daughter of a predeceased daughter
- 11) Daughter of a predeceased son of a predeceased son
- 12) Son of a predeceased daughter
- 13) Daughter of a predeceased daughter of a predeceased daughter
- 14) Son of a predeceased daughter
- 15) Son of a predeceased daughter of a predeceased daughter
- 16) Daughter of a predeceased daughter of a predeceased son
- 17) Daughter of a predeceased son of a predeceased daughter

Class 1 heirs inherit the property of deceased simultaneously and if any of the Class 1 heirs are present then the property will not be given to class 2 heirs. Remarriage or conversion play no role in changing the share of Class 1 heirs. Before Hindu Succession (Amendment) Act, 2005 there were 12 heirs out of which 8 were males and 4 were females but after the commencement of the amendment 4 new heirs were added in Class 1 heirs category where 11 were females and 5 were males. The three closest relations of a deceased male will consist of his widow, daughter and a son. All the 3 will have a right in the property in the following way-

- 1) Widow- widow gets the same amount of share as that of the son. If there is more than one widow then they all will get equal amount of share as that of the son, collectively.

Case law- [Ramkali v. Mahila Shyamwati AIR 2000 MP 288](#), In this case it was held that if the marriage between the wife and husband has been nullified by the Court with death of deceased then the wife will not be termed as a widow.

- 2) Son- The ambit of Son is extended to biological son or adopted son but this is not inclusive of illegitimate or step son.

Case law- In [Kanagavalli v. Saroja AIR 2002 Mad 73](#), the court held that if a son is born out of a void or voidable marriage that has been annulled by the Court then this son will be a legitimate child and will have the right to inherit the property of the deceased male. A son has an absolute interest in the property.

- 3) Daughter- Same as the son, a daughter includes, biological or adopted daughter. A daughter born out of void or voidable marriage will be termed as a legitimate child will have a right to inherit the property. Her martial, financial, etc. status will be not taken into consideration and will be equal to the son.

It can be said that all 3 relations will have a right in the property of the deceased equally and absolutely.

Class 2 Heirs-

Class 2 heirs are not immediate relatives and they do not have an absolute right. They can be classified as following-

- 
- Father
 - Son's Daughter's son
 - Son's daughter's daughter
 - Brother
 - Sister
 - Daughter's son's son, daughter's son's daughter, daughter's son, daughter's daughter's daughter
 - Brother's son, sister's son, brother's daughter, sister's daughter
 - Father's father, father's mother

- Father's widow, brother's widow
- Father's brother, father's sister
- Mother's father, mother's mother
- Mother's brother, mother's sister

If no one from Class 1 heirs inherit the property then the property will be inherited by Class 2 heirs.

Case law- In [Kalyan Kumar Bhattacharjee v. Pratibha Chakraborty AIR 2010 \(NOC\) 646 \(Gau\)](#), the court held that if a Hindu male is unmarried and dies alone without any Class 1 heirs present then Class 2 heirs will get his property.

Class 3 Heirs-

Class 3 heirs are known as agnates. Agnates are person/persons who are related to the deceased only through male relatives, though, agnates can be male or female. If class 2 heirs are not present then agnates will get the property.

Class 4 heirs-

There are termed as cognates. Cognates are people who are related to the deceased in a way that they cannot be classified in the first 3 classes of heirs.

❖ HINDU FEMALE DYING INTESTATE-

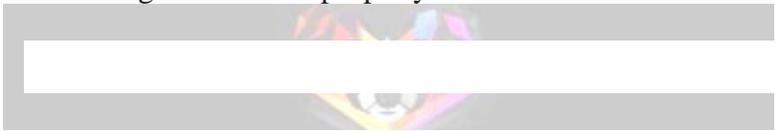
After the Hindu Succession Act, 1956 came into existence women were granted the right of ownership on property irrespective of its acquiring period. But it was only after the Hindu Succession Amendment Act, 2005 that daughters could have the same amount of share as that of the son in property. Thus, it can be said that the amendment was liberal and protected women's rights to certain extent.

When a Hindu female dies intestate, the following will be her property distribution-

- a) through the sons and daughters, which would also include the children of a predeceased son or a predeceased daughter and the husband.
- b) on the heirs of the husband.
- c) upon the mother or the father.
- d) on the father's heirs.
- e) on the heirs of the mother.

In case there is no son present in the scenario and Hindu female is inheriting the property through her father or mother then the property will devolve in favour of heirs of father.

In case of a Hindu female inheriting the property through her husband or father-in-law and there is a absence of son or a daughter then the property will be in favour of heirs of husband.



Conclusion-

The Hindu Succession Act, 1956 when first came into existence was rigid and not extended to changing conditions and situations. Though it laid down the inheritance criteria's precisely it lacked liberalism. After the enactment of Hindu Succession Amendment act,2005, women and men were given equal status not only making the distribution process easy and clear but also protecting women's rights.

