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Testamentary Succession: Property and Will

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ABSTRACT

The term “succession” describes a circumstance in which a person receives a title or property from his ancestors. When there is an intestate transaction, or a transfer of property by application of law, succession rules are relevant. Different personal laws govern succession in India. These laws include the Indian Succession Act of 1925, Muslim law that applies exclusively to Muslims, and Hindu law that applies only to Hindus.

The word “intestate transaction” refers to succession laws, which take effect upon the death of the last property holder without a will, gift, or other arrangement directing how the property is to be executed. In the event that the final holder leaves a will, that will govern how the property is divided.

In India, it is assumed that whatever laws are followed for marriage purposes would also apply for property distribution, maintenance, and divorce. For example, if the Hindu Marriage Act, 1956 is used for marriage, then Hindu Laws will also rule divorce, maintenance, and property division. The Hindu Succession Act, 1956 would also govern these matters.

India's succession laws have changed throughout time. Before 1956, many schools of Hindu law followed customary rules. These laws were codified as Hindu rules in 1956 and covered regulations pertaining to marriage, divorce, maintenance, adoption, and succession. Over time, these laws were amended to reflect changes in society.

In particular, the legislative body changed several clauses of the Hindu Succession Act, 1956 in 2005. Before the 2005 amendment, daughters were not regarded as coparceners and were not awarded property during the division of the property or during intestate transfers because the act only allowed sons to inherit the property, not daughters, a provision that changed over time. Daughters are now deemed coparceners, just like boys, and are entitled to inheritance according to the 2005 amendment.

Not only has the Hindu Succession Act evolved, but the Indian Succession Act has also seen amendments that favor daughters and sons equally rather than giving sons the whole advantage. This study also attempts to evaluate the Indian succession rules as they are now in effect.

Keywords: Testament, inheritance, successor, dissolution.

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I. INTRODUCTION

Succession is a form of acquisition in which, following the death of a person, either by his will or by operation of law, the property, rights, and obligations of that person up to the amount of his inheritance are passed to another individual or individuals. The Hindu Succession Act of 1956, often known as the law of succession, governs the transfer of property. There are several inheritance laws in place in India and the way they are implemented depends on a number of different factors, including the parties' marital status, their religious convictions, their tribe, their community, and the sects or communities within those communities to which they belong. Many people put off making a will for a variety of reasons, and by the time they do, it might already be too late.

Making a will is not a practise that is highly prevalent in India, in contrast to the western world. Even in the absence of a will, can a child inherit property from a deceased person? Is it feasible to give everything in a will to only one individual? Can any legitimate heirs be disinherited? Is it ever possible to revoke a will that has already been proclaimed? The blog is intended to address such relevant concerns on testamentary succession. It aims to offer a thorough analysis of the regulations and fundamental principles governing testamentary and intestate succession in each of these religions. It additionally aims towards giving a summary of the provisions and pointing out any discrepancies.

II. RIGHT OF INHERITANCE

The first challenge that emerges when discussing the idea of testamentary succession is what a testament actually entails. Ergo, a will or testament is a legal document that states the wishes of a person i.e., the testator, who may be a Hindu man or woman, about the management of their property after their passing. Furthermore, it is defined in **Section 2(h) of the Indian Succession Act of 1925**.² As the act of forging the will is strictly private, it cannot be left entirely in the hands of a third party or be claimed through an agent or attorney.

It is referred to as a testamentary succession when a property is regulated by a testament or a will. If there is a testamentary succession, the property will be distributed in accordance with the terms of the will rather than the laws of inheritance. When a will is not legally binding or legitimate, the property may pass through the rules of inheritance. According to **Section 30 of Chapter III of the Hindu Succession Act, 1956**, any Hindu, whether male or female, may dispose of any property by will or by other testamentary disposition that is capable of being so

² Indian Succession Act, 1925, § 2, cl. h, No. 39, Acts of Parliament, 1925 (India).

and in accordance with the laws that are now in effect and applicable to Hindus.³

A portion of the decedent's estate is set aside by law to be followed by the compulsory heirs i.e., legitimate children or descendants, legitimate parents or ascendants, widow or widower, illegitimate children, so a person cannot bequeath everything to single individual. Legitime refers to the aforementioned reserved fraction. Legitime, as defined by the law, is that portion of the testator's property that he is not permitted to dispose of because the law has reserved it for the mandatory heirs.⁴ The "free portion" refers to the portion of the decedent's estate that the decedent may freely dispose of through a will.

III. INTESTATE SUCCESSION

When a person passes away leaving behind property without leaving a succession plan, such as a will, or when the bequest of property is for unlawful or immoral objectives, this circumstance is commonly referred to as an intestate succession. In such cases, the deceased's property is distributed in accordance with the rules governing the succession of the deceased's property, which in India are based on the deceased's chosen religion at the time of death.

Section 3(g) of the Hindu Succession Act, 1956 defines the word "intestate" as a person who passes away without making a testamentary disposition that is capable of taking effect with respect to property. Likewise, intestate succession is dealt under Chapter II of the Hindu Succession Act, 1956.⁵

IV. IMPORTANT CONCEPTS – TESTAMENTARY SUCCESSION

Under Part VI of the Indian Succession Act, 1925, Sections 57 to 391 include detailed definitions of laws governing the design of wills, the validity of wills, ideas of capacity and constraints, clauses for revocation and revival of wills, among other key concepts. Some of those are referred further –

(A) People eligible to make wills

According to **Section 59** of the Indian Succession Act of 1925, a major, or someone who is over the age of 18, and is of sound mind may transfer his property by will.⁶ A married woman, a person who is blind, deaf, or dumb, or a person who comprehends the consequences of making a will, are not prohibited from doing so. Consequently, only those who are incapable of creating

³ Hindu Succession Act, 1956, § 30, No. 30, Acts of Parliament, 1956 (India).

⁴ *Legitime*, Merriam-Webster Dictionary (accessed June 19, 2023), <https://www.merriam-webster.com/legal/legitime>.

⁵ Hindu Succession Act, 1956, § 3, No. 30, Acts of Parliament, 1956 (India).

⁶ Indian Succession Act, 1925, § 59, No. 39, Acts of Parliament, 1925 (India).

a will are those who are mentally impaired due to alcoholism, disease, etc. Moreover, it will be sufficient if the testator had the capacity to understand the nature of the estate to be bequeathed, the suitable beneficiaries of his bounty, and the nature of the testamentary act at the time the will was made.

(B) Testamentary Guardian

Section 60 of the Indian Succession Act, 1925 elaborates the concept of a testamentary guardian as a guardian or guardians, who may be named by a father in his will for each of his minor children.⁷

(C) Disinheritance of a legal heir

A compulsory heir may be disinherited, but only under certain conditions: the disinheritance must be made expressly in a will, be complete and unconditional; the disinherited heir must be identified in such a way that there can be no doubt as to his identity; the disinheritance must only be for legal reasons which must be stated in the will itself; and the other heirs must prove the disinheritance if the disinherited heir disputes.

(D) Probate

According to **Section 2(f)** of the Indian Succession Act, 1925, 'probate' is defined as a copy of the will that has been certified under the seal of a court having jurisdiction and has been granted administration to the testator's estate.⁸ The executor must commence the probate procedure at a High Court or a District Court with the requisite jurisdiction, regardless of whether a Will is registered or not. In the absence of an executor, the court may appoint an estate administrator.

The powers related to the administration of the estate are granted to the beneficiary of the will through a probate, which is requested before a court of law by the executor named in the will. The procedure calls for the state to perform the valuation of the estate being bequeathed under the will. The State is thus added as a party to the lawsuit. The value of the assets that are the subject of the petition determines the amount of the court fee that must be paid for probate. Nonetheless, a minor or a person who lacks mental capacity cannot be granted probate.

V. CLASSIFICATION – PRIVILEGED AND UNPRIVILEGED WILLS

(A) Unprivileged Wills

Unprivileged wills can be drafted by anyone, with the primary requirement being to be put in writing. It needs the affixing of the testator's signature and at least two witnesses. The essential

⁷ Indian Succession Act, 1925, § 60, No. 39, Acts of Parliament, 1925 (India).

⁸ Indian Succession Act, 1925, § 2, cl. f, No. 39, Acts of Parliament, 1925 (India).

need for this kind of will is that the language be understandable and straightforward. Furthermore, in accordance with **Section 63**, the testator must clarify his intentions for the property distribution.⁹ An executor, ideally a lawyer, must be chosen to carry out the will and divide the assets following the death.

(B) Privileged Wills

Privileged wills are unofficial testaments with the same characteristics and status in the law as any other testament. According to **Section 65** of the Indian Succession Act, one must be serving in the military on active duty in order to establish a privileged will such as a soldier engaged in warfare or an expedition, an airman, or a mariner at sea may make a privileged will.¹⁰ These wills may be either oral or written and are created in accordance with **Section 66 of the Indian Succession Act of 1925**.¹¹ The testator's own handwriting must appear on the will. Those in the military have the option to testate an informal will with less procedures due to the inherent hazards in their line of work so the privileged will must be signed by the testator, but it is not necessary to be attested.

VI. REVOCATION OF THE WILL

A will may indeed be revoked in the following ways:

- Revocation by the signing of a new will.
- Revocation by a written declaration of desire to revoke the will.
- Revocation by igniting the papers.
- Revocation by shredding the documents.
- Revocation by destroying the will documents in any other way.

Until the testator's death, a will may be revoked at any moment. In actuality, the testator cannot forgo his right to revoke his will according to the law. The will must also be destroyed by the testator personally, or by another person with the testator's express permission and in his or her presence. Without the testator's express permission, the will may be destroyed; however, if its contents and proper execution, as well as the fact of its unauthorised destruction, are established and proven before the court, the will may still be recognised, and the estate may be distributed in accordance with it. It is important to remember that if a will is revoked through any of the methods, it will no longer be valid.

⁹ Indian Succession Act, 1925, § 63, No. 39, Acts of Parliament, 1925 (India).

¹⁰ Indian Succession Act, 1925, § 65, No. 39, Acts of Parliament, 1925 (India).

¹¹ Indian Succession Act, 1925, § 66, No. 39, Acts of Parliament, 1925 (India).

VII. CONCLUSION

An inference that could possibly be derived from the blog is that the inheritance regulations that must be obeyed greatly rely on the religion that the decedent's intestate claimed to profess at the time of death. India has many different succession rules since there are many different faiths prevalent there, which has added to the complexity of the succession laws. Yet regardless of the religion, it is apparent that the primary goal of intestate succession rules is the peaceful transfer of property to the legitimate successors. The succession rules of the person who passed away intestate, however, determine who all individuals are entitled to be as legal heirs and their choice. In order to comprehend the rules that apply to someone writing a will or organising the succession of his property, it is important to comprehend the religion of the intestate.

India is a multireligious nation, and our constitution guarantees each faith the same rights. Nonetheless, both the general public and law enforcement may find it difficult and confusing to keep up with the variety of succession rules. Similar to how every Indian citizen, regardless of religion, caste, or culture, is accorded equal recognition in terms of fundamental rights, a uniform code of succession laws across all religions would make it easier for both the common citizen and law enforcement officials to comprehend and uphold the law.
