



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL
ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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E.MBA, LL.M, Ph.D, PGDSAPM

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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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With this thought, we hereby present to you

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A COMPARATIVE STUDY OF SUCCESSION UNDER THE INDIAN SUCCESSION ACT 1925 AND THE HINDU SUCCESSION ACT OF, 1956

AUTHORED BY - ANIL B. GEORGE
School Of Law, Christ University (Bangalore)

Abstract

Inheritance is referred to as a practice of transferring property, titles, debts, rights and obligations to the legal heir of a person upon the death of that person either by way of 'Will' or through the prevalent laws of succession.¹ The succession laws governing the citizens of India are namely the Hindu Succession act of 1956 and the Indian Succession act of 1925. The Succession laws for individuals who are followers of the religions of Hinduism, Christianity, Buddhism, Jainism, Judaism, Zoroastrianism are codified under statutory acts, whereas the laws governing inheritance of Muslims are not codified as they follow Shariah law. This paper aims to highlight the major differences in inheritance between the Hindu Succession act of 1956 and the Indian Succession act of 1925.

Keywords

Inheritance. Will, testamentary, Intestate, Agnate, Cognate, Hindu Undivided Family

Introduction

The Indian Succession act of 1925 has a wide applicability to individuals professing various religions. For people who are followers of Hinduism, all testamentary successions come under the Indian Succession act of 1925, whereas succession where there is no will made, making it an intestate succession will be governed and be applicable under the Hindu Succession act of 1956. In matters of succession, various religious communities in India are governed by distinct legal frameworks that reflect their religious laws and customs.

¹ Helplinlaw, Law on property inheritance in India, Helplinlaw (April. 04, 2021, 1:07 PM), <https://www.helplinlaw.com/real-estate-wills-probate-and-trust/GIPIL/law-on-property-inheritance-in-india.html>

In Hinduism, the concept of a Hindu Undivided Family (HUF) prevails, rendering the Indian Succession Act, 1925 inapplicable due to the principles outlined in Hindu law. Similarly, adherents of Islam find their succession practices rooted in the Quran and other sources, thus invalidating the application of the Indian Succession Act in both intestate and testamentary succession.

The Sikh community's succession laws resemble those of Hindus, with intestate succession guided by the Hindu Succession Act and testamentary succession governed by the Indian Succession Act. Christians, on the other hand, are subject to the Indian Succession Act for both intestate and testamentary succession matters.

Jains and Buddhists share succession provisions akin to Hindus, where intestate succession laws align with the Hindu Succession Act, 1956, and testamentary succession laws adhere to the Indian Succession Act, 1925. Testamentary succession, in particular, necessitates the presence of a valid will to govern the process. This diverse legal landscape reflects the rich tapestry of India's religious traditions, each with its own distinct approach to matters of succession.

What is a will?

A will can be defined as a legal document or declaration where the person in possession of the property states his intention with respect to the property after his death.² It comes into effect only after the death of the person who makes it and he has the power to cancel or invalidate the will at any given point of time. A will can be made by any individual who is in capacity to enter into an agreement or contract as per section 10 of the Indian contracts act. Any disqualification on the grounds of incapacity under section 10 of the contract act deems the agreement void. There is no particular format or manner in which a will has to be made, but has certain essentials and requirements. The individual making the will is referred to as the testator, and the intention of making the will must be with a good one and the terms must be clear. The signature of the testator and two witnesses are necessary, and the registration of the will need not be registered but registration of the same can be done to avoid future disputes.

² Abhishek Singh, Concept of will in India, TaxGuru (April.04, 2021, 1:13 PM), <https://taxguru.in/corporate-law/concept-will-india.html>

A person is said to die intestate when he dies without the creation of any will. When this is the case the distribution of property is based on the personal laws governing the individuals and the principles of intestate succession. Hindus, Muslims and Christians follow different laws for succession when it is intestate.

Succession under the Hindu Succession act 1956

Inheritance laws in India are governed by two primary statutes: the Hindu Succession Act of 1956 and the Indian Succession Act of 1925. This paper focuses on the Hindu Succession Act, particularly the Mitakshara school of inheritance followed by the majority, with the Dayabhaga law followed by a minority. As per Mitakshara school of inheritance, there are four classes of legal heirs. The Class 1 heirs are primarily entitled to the property if present. Under Intestate succession, the class 1 heirs are inclusive of the wife of the deceased, his son, his daughter, his mother, his grandchildren whose parents are predeceased, widow of his predeceased son, children of his predeceased son, children of his pre-deceased daughter and finally the grand children of his predeceased son³. In the class 1 division, the daughter of the predeceased son is entitled to a share, but unlike the children of the grandson of the predeceased son, the children of the granddaughter of the predeceased son will not be entitled to a share under the class 1 division. The predeceased daughter's children will be entitled under the class 1 division, whereas her grandchildren will not fall under the class one division. As per the amendment act of 2005, when a Hindu dies after the commencement of The Hindu Succession amendment act, 2005, his interest in the property shall be divided equally among his mother, sons, daughters and his wife. Before the amendment, the daughter did not reserve any right to her father's property which was later changed in the amendment. The daughter gets the same share as that of the son and both will receive the same proportion of share. The daughter shall have equal share as that of a son. The share of the predeceased son shall go to his wife, son and daughter. The predeceased daughter's share will go to her son and daughter. If the grandson is no more, his share will go to the great grandson, great-granddaughter and his wife

In the Hindu Succession act, the mother is entitled to a share, whereas in contrast to the Indian Succession Act, the mother does not get any share. As per the Hindu Succession act, the property would be equally distributed among the mother, wife and children. In case the children have died; the

³ CA GOPAL SINGH NEGI, Retire with Pride -The ultimate resource for complete Tax & Finance guide 653 (MyTaxDost,)

share entitled to them can be split between their widow/s and children. For example – Arjun died intestate, leaving behind his mother, his wife and two children; his oldest son had married and had two sons, but died a couple of years back . In this scenario Arjun’ s property would be equally shared in 5 parts and his predeceased son’s family will get a single share to which he was entitled. if there is no heir in class I, then the allotment of the property shall be made as per class 2 given in the schedule of the act⁴ . Class two has 9 sub-divisions. 1) The entire share of the property of the deceased shall go to his father in case there is no one present in class 1. 2) If the father is dead, the property shall be divided among the brothers and sisters of the deceased as well as the ‘children of the pre deceased daughter of the predeceased son’ 3) Predeceased daughter’s predeceased son’s son, predeceased daughter’s predeceased son’s daughter, predeceased daughter’s predeceased daughter’s son, predeceased daughter’s predeceased daughter’s daughter. 4) The next sub-division shall be to the brother’s children and the sister's children of the deceased. 5) Grandfather and grandmother of the deceased. 6) Widow of the father and widow of the brother of the deceased. 7) the brothers and sisters of the father of the deceased. 8) The parents of the mother of the deceased. 8) Mother’s brothers and sisters 9) If there are no legal heirs as mentioned above, the property shall go to the government. In case the father is no more, it shall go to then upon the heirs being the relative specified in Class II of the Schedule.

So in short, if there are no heirs of the deceased, then upon the agnates of the deceased; and Lastly, if there is no agnate, then upon the cognates of the deceased.⁵ Here, there is no distinction between a natural born son/daughter and an adopted son/ daughter, however an illegitimate child would not qualify as a Class I heir. A posthumous born child is also considered as an heir. The son of an annulled voidable marriage, as well as the son of a void marriage, is eligible to inherit the property of the father only, but not ancestral property belonging to past generations. Step children are not recognized as Class I heirs. The daughter’s son/daughter is also a valid heir. However, the illegitimate son/daughter of a mother would not be an heir to the ancestral property.

Section 25 of the Hindu Succession act deal with the disqualification of inheritance if the person is convicted of murder or abets in the commission of murder of the person form whom the benefits of

⁴ The Hindu Succession act, 1956, No.30, Act of the parliament 1956 (India)

⁵ The Hindu Succession act, 1956, No.30, Act of the parliament 1956 (India)

property could be reaped. Section 26 of the act states that the children of any convert is disqualified from inheritance Children of the propositor who are born after the conversion are disqualified as heirs to ancestral property.- However, they are not disqualified if they are Hindus at the time when succession opens. Section 27 of the act states that If any person is disqualified from inheritance of property, property shall devolve as if such person did before the intestate.⁶

In case where the female Hindu dies, her property shall be distributed similar to class 1 of the husband where the parties are the husband, children, inclusive of children of predeceased son or daughter. The property shall go to the parents of the husband if no one from class 1 is present and if the husband's parents are not present, the property shall go to the parents of the deceased. In case the property inherited by the female came from her father, after her death the property will go back to him in case she does not have any heirs.

The Hindu Succession act is applicable only to individuals following the religions of Hinduism, Jainism, Sikhism and Buddhism but the Indian Succession act is applicable to those who do not fall under the purview of the Hindu Succession act. As per the Indian Succession act, one-third of the total property is inherited by either the widow or the widower and the remaining property is distributed among the descendants of the widow or the widower. IN contrast to the Hindu Succession act, the mother gets no share. This is a major difference of succession when compared. In case there are no lineal descendants, half of the property goes directly to the widow and the remaining half goes to the other relatives

Succession as per the Indian Succession act 1925

The Indian Succession act is not as detailed as the Hindi Succession act. In case of intestate succession where an individual dies without writing a will, his property shall be divided among his wife and children. The wife will get one-third of the property and the remaining two-third of the property will be divided among their children equally. If any son or daughter is dead, their share will go to their legal heirs. If there are no lineal descendants, half of the share will go to the widow of the predeceased, the remaining half will go to the kindred. Kindred means father, mother, brother and sister. If the father is alive, the property will go to him. If the father is not alive, the property will go to the mother,

⁶ Hemant More, Disqualification of Heir, The Fact Factor, (April.4 2021 1:38 PM), https://thefactfactor.com/facts/law/civil_law/family_laws/hindu-laws/disqualification-of-heir/3857/

brothers and sisters of the deceased. If there are no brothers and sisters, the predeceased brother and sister's share will go to their children. In case there is no one as mentioned above, the entire property will go to the widow. After the death of the widow, the property will go to the government.⁷

The differences in inheritance between the Indian Succession act 1925 and the Hindu Succession act 1956

General provisions regarding succession are dealt with and are governed by the Indian Succession act. If in case before death, there has been a creation of a legal will, it becomes a testamentary succession and comes under the purview of the Indian Succession act 1925, and in case there is no will that has been created before death, the succession becomes an Intestate succession and will be governed as per the personal laws governing that particular individual. As per the Indian Succession act, testamentary succession is where the property gets divided in an equal manner among the legal heirs of the testator i.e his children and spouse irrespective of the religion of the benefactors. In intestate succession of Hindus, the succession falls under the Hindu Succession act 1956. One major difference between the Hindu succession act and the Indian succession is the right of the mother. Indian succession act does not include the mother during the division of the property, whereas as per the Hindu Succession act, the mother gets an equal share as that of the wife and children. Another key difference is the right of the wife. As per Indian Succession act, the wife gets a one-third share in the property and the remaining property is distributed among the children, whereas under Hindu Succession act, the wife, the mother and the children get equal shares. The Hindu Succession act has drawn up a detailed chart for inheritance in case of the absence of any members, whereas in contrast, the Indian Succession act is not as detailed with respect to the family chart. In the Indian Succession act, the agnates and the cognates are considered to be at par and there is no differentiation made, whereas under the Hindu Succession act the agnates are preferred than the cognates. Lineal descendants up to the 6th degree can inherit under the Indian Succession act 1925, whereas under the Hindu Succession act there is not prescribed degree of succession.⁸The brothers and sisters of the intestate and their children are given a first hand right under the Indian Succession act, whereas under

⁷ Abhishek Singh, Concept of will in India, TaxGuru (April.04, 2021, 1:13 PM), <https://taxguru.in/corporate-law/concept-will-india.html>

⁸ Jasvir, A Comparative Study of the General Provision of Indian Succession Act, 1925 and The Hindu Succession Act of, 1956, IRJMSH, Vol 6 Issue 10, 103, (2015)

the Hindu Succession act, they are placed under class 2 and can only be eligible for inheritance in the absence of class 1 heirs.

Conclusion

In the diverse tapestry of India, where myriad communities, religions, and customs coexist harmoniously, the preservation and respect for each group's values and practices are paramount. Each religious community adheres to its own set of laws and customs with deep reverence, contributing to the rich cultural fabric of the nation. While the Indian Succession Act aims for broad applicability with a secular outlook, the Hindu Succession Act adopts a more traditional stance, emphasizing the customs and practices of Hindu joint families.

The Hindu Succession Act, limited in its applicability to Hindus, historically reflected societal norms and traditions. However, before its amendment in 2005, the Act harbored restrictions on women's rights, prompting efforts for reform. Despite these efforts, lingering inequalities persist, underscoring the need for more substantial change.

Despite its focus on preserving Hindu customs, the Hindu Succession Act is not immune to criticism for its discriminatory practices. The call for a Unified Civil Code, applicable to all Indians regardless of religion, has gained traction as a means to address these issues comprehensively.

Such a code would seek to harmonize various personal laws, providing a unified legal framework that upholds individual rights and ensures equality before the law. By transcending religious boundaries, a Unified Civil Code would promote justice, fairness, and inclusivity, aligning with the ideals of a modern, pluralistic society.

In embracing a Unified Civil Code, India would reaffirm its commitment to secularism, equality, and social progress, fostering a more just and equitable legal system for all its citizens.