

HEIRS OF A MALE UNDER HINDU SUCCESSION ACT

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ABSTRACT

The preamble of the Hindu Succession Act, 1956 states that this act is one to codify laws relating to succession in Hindus. The act lays down a structured code and uniformity for the process of succession. It attempts to ensure proper inheritance rights between both daughters and sons. This Act applies to all Hindus including Jains, Sikhs, and Buddhists. The Hindu Succession Act, 1956 specifies the rules of succession of a Hindu Male from sections 8-13. There are four classes of heirs under this act; (i) heirs in class I of the schedule, (ii) heirs in class II of the schedule (iii) agnates (iv) cognates. Lastly, there is the Government to whom the property lapses to in case of no heir.

According to section 3 (1) (f), an heir is someone who is appointed to inherit the property of an intestate ancestor. An intestate succession is one where the person dies without making a will and hence everyone who's entitled to get shares out of the property is called an heir. This process is known as intestate succession. For this succession, a will needs to be made and after that section 8 will be applicable which deals with the succession in case of a Hindu male. Intestate succession is applicable if testamentary succession is not applicable. In testamentary succession, a will is made by the male or the female and the same will be followed through at the time of death of the person. In case no will is made by the person, intestate succession and the rules concerning the same will apply according to the Hindu Succession Act, 1956. ⁱ

ESSENTIAL ELEMENTS OF INTESTATE SUCCESSION

1- The most important rule of intestate succession is that there must be no will involve. Only if there is no will, will the sections of the Hindu Succession Act, 1956 that concern inheritance will come into question. ⁱⁱ

2- This would also include any undivided share of a male Hindu in the Dayabhaga family. That share would also be subject to section 8 of the act.

3- It includes the property that the intestate may have earned via salary or any other profits, gifts, or lotteries. The intestate is allowed to hold different properties and is allowed to pass it down is inheritance.

The Hindu Succession Act, 1956 talks about I) the separate properties of a Mitakshara male, ii) the separate and coparceners properties of a Dayabhaga male, and iii) the undivided interest in the joint family property of a Mitakshara Coparcener. This Act does not deal with the succession of a Hindu who is married under the Special Marriage Act.

The four categories of heirs of a Hindu male are: class I, class II, Agnates, Cognates, and the Government. The property of a Hindu male would be first given o the heirs who fall under the category of Class I heirs.

Class I includes:

- Mother
- Daughter
- Widow
- Son
- Widow of a predeceased son
- Daughter of a deceased son
- Son of a deceased son
- Widow of a deceased son of a deceased son
- Daughter of a deceased son of deceased son
- Son of a deceased son of a son
- Son and daughter of a deceased daughter

The Hindu Succession (Amendment) Act, 2005 added a few heirs to the already existing list; daughter of a pre-deceased son or a pre-deceased daughter, son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased son. The Class I heir list contains 16 people out of which only the son, daughter, mother, and widow inherit by because of their relationship with the deceased person. Everyone else falls into the latter category as they are not related directly but through the predeceased daughter or son. The widow of a pre-deceased son and grandson will come under the ambit of class I heirs and the husband of a deceased daughter or granddaughter will not be considered to be an heir at all. According to the Act, the mother, son, and daughter take one share respectively. The widow takes one share and in case there is more than one widow, all of them shall distribute the shares respectively. All the heirs in other branches i.e. predeceased son of a predeceased son and predeceased daughter, their shares would be equivalent to the share that their parents would have been entitled to. A predeceased son who has a daughter, a son, or a widow is to be allotted shares that would be equal to the living son. Out of the share that is allotted to the predeceased son, the widow, the daughter and the son will distribute the share amongst themselves in equal portions. This same rule applies to a predeceased daughter. She will be entitled to the same number of shares that are entitled to a living daughter and the shares will be distributed between the daughters and the sons.

“Mother” includes an adoptive and biological mother but it does not include a stepmother. It does not matter whether the mother is married or unmarried at the time of the birth of her son. Her marital status, as well as her chastity, is irrelevant when succession is taken into consideration. The term “widow” means a woman who was living separately from her husband under a decree of judicial separation. As held in the case of *Margabandhu v Kothandarama*, unchastity may be held as a ground for divorce but it is not a matter of consideration while taking into account the rights of succession.ⁱⁱⁱ In an important case of *Krishnamma v P Subramanyam Reddy*, the wife deserted her husband and went to live with another man and also gave birth to his children.^{iv} On the death of her husband, she returned to claim his property. The court, in this case, held that she could not claim his property as she went to live under the roof of another man and also gave birth to his children. Her marriage was void and hence her claim to his property was rejected by the court.^v

The word “daughter” or “son” includes a natural or adopted son and daughter but not an illegitimate or stepchild. The Hindu Succession Act, 1956 does not make a distinction between a married or unmarried daughter. Her chastity or marital status is not a valid consideration for her claim to the property.

Class II heirs:

The heirs in class II are mostly excluded because there is always at least one heir in Class I.^{vi} But if in case there are no heirs in class I, class II heirs are preferred. It must be noted that the heirs mentioned in higher entries have a preference than those in the lower entries. The heirs in Class- II are as follows:

1. Father
2.
 - i) Son’s daughter’s daughter
 - ii) Son’s daughter’s son
 - iii) Brother
 - iv) Sister
3.
 - i) Daughter’s son’s son.
 - ii) Daughter’s son’s daughter.
 - iii) Daughter’s daughter’s son.
 - iv) Daughter’s daughter’s daughter.
4.
 - i) Brother’s sons.
 - ii) Brother’s daughter.
 - iii) Sister’s son.
 - iv) Sister’s daughter
5.
 - i) father’s father
 - ii) Father’s mother
6.
 - i) Father’s widow
 - ii) Brother’s widow

- 7 i) father's sister
ii) father's brother
- 8 i) Mother's father
ii) Mother's mother
- 9 i) Mother's sister
ii) Mother's brother

It is essential to note the time and again that in the presence of even one class I heir, class II heirs are completely excluded. It was held in the case of Hari Singh v Joginder Singh that when a brother is present, the nephew will not be allowed to inherit. ^{vii}

AGNATES AND COGNATES

After class, I & II, come the agnates and cognates. The first preference is given to the agnates and then the cognates. Agnates mean a person's relationship with another person through male relatives, for example, a son's son's father, father's father, son's daughter, father's mother. An agnate can be a direct descendant or even collateral. In the agnates, a degree of ascent means a generation of ancestors and a degree of descent means a generation of descendants and downwards. The degree of descent is preferred over the degree of ascent. Any agnate who has fewer ascents will be preferred over all the others.

Cognates mean a person's relationship with another person through female relationships. For example, a sister's daughter, mother's father, mother's father's son, mother's mother. Cognates are a mixed bag. Even if one single female relative is included in the chain, it becomes cognatic. This is not preferred over the agnatic chain.

In case there are no heirs in the first two classes, the property of the deceased falls upon the agnates and cognates exactly in order of preference. When agnates are present, the cognates will not get any share in the property. In the case of more than one agnates or cognates, the order is governed by Section 12 of the Hindu Succession Act, 1956. In case the heirs are equal in their descent and ascent, they take the shares simultaneously. However, it is a must to note that there is no discrimination on grounds of sex. Also, an agnate who is in a remote degree of

the association will still be preferred over a cognate who is in a nearer line or degree of relation. ^{viii}

GOVERNMENT

The entire property of a Hindu male will be left to the Government in case there is no heir from Class I, Class II, nor any agnates or cognates. This concept of the government taking all the property in terms of the liabilities is known as escheat. It is hence the responsibility of the heirs to claim the property before the entire property lapses to the government.

So, to sum it up, the property of an interstate first goes to the heirs in class I. If there are absolutely no heirs in this class, it falls to the heirs in class II. If none exists in the two classes, the property will fall upon the agnates who are related to the interstate through male relatives. If no one from the first three classes has an heir, it finally falls upon the cognates. Mostly, there is at least one heir to claim the property before the property lapses to the government in which case the government fulfils all liabilities and obligations of the same.

DISQUALIFICATION

- If a person is disqualified from being a legal heir, the property will devolve as if the person had died before the interstate.
- If a person who has committed murder or who has abetted in murder shall be disqualified from inheriting the property of the person who has been murdered or from any other property which that person might inherit after the murder of the person.
- If any person ceases to be a Hindu by conversion to any other religion, the person shall be disqualified from inheriting any share in the property of any relative. However, before the conversion takes place, the heirs cannot be disqualified.
- A person cannot be considered to be disqualified from inheriting any property on the grounds of any defect or any illness or any other ground that is not provided under the Hindu Succession Act, 1956.

- If all legal heirs are disqualified due to reasons following the Hindu Succession Act, 1956, the Government shall seize the property to take over all the obligations and liabilities of the interstate.^{ix}

- If a child is born out of a live-in relation, the court has to grant inheritance rights as held in the case of *Vidyadhari v Sukhrana Bai*.

The Hindu Succession Act, 1956 gives women the right to claim property but it is mainly the amendment act i.e the Hindu Succession (Amendment) Act, 2005 that bestowed upon daughters equal share in the property as the sons. This amendment act is hence important as it serves as a protector of female rights in the country. The heirs need to obtain a legal heir certificate so that the process of transfer of bank account or any other minor changes can be made without any hassle.

REFERENCES

ⁱ Rohini Kamble, Hindu male dying intestate, law notes 16 marks,

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ⁱⁱ Ayushi Pandit, Things you need to know about legal heirs, Lego Desk (Jan 22, 2020),

<https://legodesk.com/legopedia/legal-heirs/>

ⁱⁱⁱ *Margabandhu v Kothandarama*, AIR 1984 Mad 270, (1987) IIMLJ 267

^{iv} *Krishnamma v P Subramanyam R*, 2007 (6) ALD 805

^v Rohini Kamble, Hindu male dying intestate, law notes 16 marks,

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^{vii} Shahistapathan, Succession to the property of a Hindu Male, Legal Services India,

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^{viii} supra

^{ix} Hemant More, Succession in the case of a male Hindu (SS 8 to 13), The Fact Factor (Oct 4, 2019),

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