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## Inheritance Laws: An Analysis

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*Inheritance law is a law and regulation that regulates how an individual receives property from the property of a deceased family member. These laws guarantee that the beneficiary will be able to obtain some form of inheritance if the will is not written or does not cover all of the deceased's assets. In some cases, these laws grant the right to inheritance to certain relatives and may exercise the right to inheritance regardless of the particular form of the testator's will.*

**Keywords:** *inherit, property, testator, deceased family.*

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### INTRODUCTION

Inheritance is an agreement to assign or transfer property, ownership, debt, rights, and obligations to a statutory heir after the death of a person. This can be done through a will or inheritance law. Inheritance regulations vary by religion, society, and community. It is believed that losing a family is not as painful as it is, but also that dealing with all kinds of family disputes over property inheritance is more painful. But this is happening in India due to a lack of knowledge about the inheritance of wealth. In inflation, the real state price will be inherited by legal heirs automatically to touch the price of the real state and to secure the

property of the property's legitimate owner.<sup>1</sup> Legal owners must perform legal procedures to get their property ownership. Legal procedures and privileges may vary depending on the type of property to get the property.

## GENERAL PRINCIPLES OF INHERITANCE

### *HINDU LAW*

Manu's<sup>2</sup> text, "The son brings his fortune to the next Sapinda, and the inheritance belongs to the following," is the basis of the inheritance rules among Hindus. Prior to the enactment of the **Hindu Inheritance Act of 1956**, proximity was the predominant norm in deciding the success of the Mitakshara system, but in the Dayabhaga system, it was religious effectiveness. In matriarchy, it was intimacy. There are separate successor regulations for male and female legs and are planned. A unit led by the eldest male family named "**Karta**," the formation of a mixed Hindu family, including all his male descendants, his wife, and unmarried daughter, was of utmost importance. In addition, the general family institution "Coparcenary" included him as its member, the last owner of the property, and the direct descendants of his male up to four generations. Until 1985, Coparcenary did not accept women as members. For Hindu men, various rules apply to the inheritance of self-acquired property and common family or common property, and survival is the basic criterion for gaining the latter share.

Under classical law, the main heirs of a man's estate were his son, the son of a deceased son, and the son of a deceased son. In the case of inheritance, the rights of the heir were valid and equal throughout the life of the father. However, in the case of self-acquired property, their rights were unequal and subordinate, even if they were valid without the disposition of the father. Inheritance priorities were determined by the community of family relationships and body parts. Agnate was generally preferred over relatives, as male strains were preferred over female strains, based on ancient standards of proximity. Since the days of YajnavalkyaSmriti, relatives and women have been recognized as heirs, contrary to the general myth that women are forbidden to inherit. Whole-blood relatives were preferred over half-blood relatives.

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<sup>1</sup> Dr. Poonam Pradhan Saxena, *Family Law Lectures, Family Law II* (3<sup>rd</sup> edition, LexisNexis 2014)

<sup>2</sup> John D. Mayne, *Treaties on Hindu Law and Usage* (12<sup>th</sup> edition, Bharat Law House Pvt. Ltd. 1986) 740

Substitution rules were allowed except for the son of a boy and the son of a deceased son. If two or more heirs are co-inherited, they will be inherited as a co-tenant rather than a co-tenant. The doctrine of survival was limited to non-opposed inheritance or shared ownership. In the case of the inheritance of a woman's absolute property (Stridhan), the rules were different and the exact opposite of the case of a male executor. Women were preferred over men as well. Men inherited the property completely, but women had only a lifelong interest in the property. When inheriting two or more heirs at the same time, the renter was the principle. Also, the categories of heirs and the order of inheritance depended on the marriage status of the woman.

The old law has been significantly amended, but it has not been completely abolished. The basic framework remains the same. The **Hindu Inheritance Act of 1956** retains the principle of proximity as the basis for determining the legal qualifications of inheritance. Basic rules of separate systems for male and female heirs, separate rules for the transfer of common self-acquired property, and the general preference of Agnate over relatives for male descendants of male heirs. Deprivation of the principle of expression more than three times and linear descendants in the case of female will, preferring full-blood relatives to half-blood relatives, and admitting adoptive relatives on an equal footing with natural relatives That is some of the principles that have been left untouched. The difference lies in the area of transferring undivided profits to Mitakshara-Coparcenary. The earlier rule of survivorship stands qualified. Till 2005, the presence of any class female heir or a class male heir claiming through a female caused devolution of the interest in an undivided coparcenary by intestate succession and not by survivorship. Since the amendment of the Hindu Succession Act in 2005, the doctrine of survivorship has been abolished in the case of male coparceners but has been expressly retained in the case of female coparceners. Disqualification on the grounds of difference in religion again stands qualified so as to exclude from this disqualification Descendents of a convert born before his conversion. Following the rule of public policy, the murderer of an intestate is disqualified from inheriting his property if the murder was caused in furtherance of succession.

All other disqualifications that were earlier operative have now been done away with. Delete Sec. 24, and a noticeable lack of guidance beyond that has created further confusion with the 2005 amendments. Legitimate children are only approved for the purpose of inheriting the mother's property. However, regardless of the revocation of the marriage or a child born of the revocation of the marriage revoked by the court, the property of either parent may be inherited. Under ancient law interpreted by Mitakshara and Dayabhaga, patrilineality expanded to 14 degrees. Current legislation does not provide for the degree of limitation of disability associated with patrilineality.<sup>3</sup> This is a retrograde measure in that the law overlooks the rights of closer relatives in order to take over more distant relatives. Regarding the inheritance of women's inheritance property, individual rules are set according to the source of the property that can be used for inheritance. In the absence of children or grandchildren, the property inherited by a woman from one of her parents in the position of a daughter is passed on to her father's heir, and the property inherited from her deceased husband or father-in-law is inherited by her husband. It's clear that the old concept of Stridhan is still lurking in the background. Moreover, even in her self-acquired possessions, her husband's entire family and her relatives are preferred over all her own relatives except her children and grandchildren, even if they are far apart.

### **MUSLIM LAW**

To determine the basic concept of kinship (intimacy) that underlies Islamic inheritance law, we need to look at the customary inheritance rules prevailing in pre-revelation Arabia. The norm of the rule for determining inheritance in pre-Islamic Arabia was armed brotherhood, and as a result, blood ties played a subordinate role. The male patrilineality was very important. The revelation of the Holy Qur'an replaced the basic principle of brotherhood in the arm instead of the blood connection. Relatives have become a general principle, and no bond is as strong as the right to inheritance is extended to all relatives in the broadest sense. As a result, relatives who were previously excluded but now include relatives, known as the Koran's dividers,

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<sup>3</sup> Shekhar Agarwal, 'Succession laws in India in a nutshell' (*Mondaq*, 24 June 2020) <<https://www.mondaq.com/india/wills-intestacy-estate-planning/957940/succession-laws-in-india-in-a-nutshell>> accessed 17 April 2022

received half the share of the latter compared to the already established Agnate. Therefore, the rules do not state that each female relative receives half the share of a male relative, but newly qualified heirs, whether male or female, are established as heirs. You will receive half the share. Therefore, if the newly introduced heir is also male, he is no better than the female heir. Parents as shareholders each take one-sixth. Similarly, siblings of the womb share equally. The interpretation of these Quranic clauses and their incorporation into the existing system led to a disagreement between Shias and Sunnis. The Sunnis held the old framework of favoring Agnate over relatives but overlaid the Koran's structure on top of the old framework. Shia, on the other hand, mixed old and new rules. In light of the newly established principles, this revised scheme was significantly different from that proposed by the Sunnis. Both denominations determine kinship, regardless of the deceased's gender or marriage status, according to the principle of giving newly qualified heirs half the share that results from an already established lethargic heir. As a basis for doing so, we provide a unified scheme for the transfer of property. Part of the inheritance forms the right to a successor. In addition, male men's non-important children, non-lamrim, and the murderer of the intestine are disqualified by male men's illegal kids, and disqualification of the murderer of the decimal death corners maybe. In the context of the Sea A-Results, she disqualified inferior interrupters from inheriting her widow husband's real estate. Although the principle of the representative is not used by Shias, Sunnis have decided the stock of various heirs. Under SHIA LAW, while Sunnis recognize several exceptions, a more distant control is not applied strictly, and closer rules are close to the extent. The claims of the buyer with fixed shares are first satisfied. After that, the residue of the character goes to the residue. If there is no lawyer, the property will return to the damage that will also be impaired to the residual. The principles of properties returned to stock are called "RADD." In the presence of other heirs, surviving spouses are not "RADD," but only three categories in which spouse can claim their assets. Under Shia Law, the 'radd' doctrine has a further exception.

There is no "RADD" in the presence of a mother's father, daughter, two or more whole brothers, two sisters, two sisters (all or Kunrash), or four such sisters. In addition, uterine brothers and sisters have no right to return in the presence of a complete sister. Shias do not

recognize remote children's categories. For them, apart from the thread, the remaining heir is the residue. Since the total of the total common shares, which is successful to exceeds the unit, shares according to the "AUL" education are proportionally deducted (increasing), so the stock reduction is obtained. Shias do not recognize the "AUL" doctrine.<sup>4</sup> If the total of shares assigned to stock exceeds units, the division that protrudes here is to be deducted from the percentage of daughters and sisters (full or Hakone). Both Sunnis and Shiites recognize the law of inheritance without limiting the number of times heirs can be removed from real estate.

### **PARSI LAW**

India's Parsi community initially did not have its own law. They were protecting their separate identities, but they accepted the residents of the region that were first protected. Although the current law is significantly adopted from the early traditional law, this still shows the problems with the inheritance Parsi system and the serious impact of Muslim law. According to the principle of Muslim, I was able to double the part of the woman standing in the same degree of proper until all children changed in 1991. Like Hindus, Parsis also include affinity as well as kinship as a determinant of inheritance eligibility. As a result, the Parsis Act recognizes the widow of descendants and the widow of the brothers of the estate as heirs. A unique feature of the Parsis law is the recognition of the widow and heir sisters as the direct descendants of a woman, which is unmatched in any other system. Agnate is preferred to relatives, and blood in the uterus is driven to a subordinate position. The widow's illegitimate and remarriage prior to the death of the deceased is considered disqualified, and inheritance rights are granted up to unlimited kinship. Adoption is not permitted for inheritance purposes, but the principle of representation is permitted indefinitely for all heirs. Indian Inheritance Law, 1925 incorporates the principles of Roman and British inheritance. Uniform regulations are provided regardless of the gender of the deceased. Kinship is a determinant of successor ownership, and family ties are exempt from the list of heirs. The law does not allow adoption for the purpose of inheritance, and the religious differences between heirs and testators are irrelevant. Inheritance is determined by the proximity of the testator. Therefore,

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<sup>4</sup> 'Law on property inheritance in India' (*Help Line Law*, 16 January 2021) <<https://www.helpinelaw.com/real-estate-wills-probate-and-trust/GIPII/law-on-property-inheritance-in-india.html>> accessed 17 April 2022

the surviving spouse and direct descendants are called the main heirs. The principle of representation applies fully to direct descendants and has some restrictions on the deceased and the siblings of their descendants. In all other cases, as a general rule, the closer the degree, the farther it is excluded. The law treats relatives and relatives, as well as male and female heirs, equally. Between whole blood, FullBlood, Halfblood, or uterine blood, the only gain healing measurement on par is the removal of mothers in the presence of a father. The law focuses on securing the rights of exiles with special provisions for small products. By supporting collateral, up to 6 degrees increase and descent D. In the second place. The collateral restrictions that were standing in the degree of remorator do not have successful rights according to this limit.

## CONCLUSION

Immediately after the death of a person, before the deceased's property is split, potential heirs must ensure that there is no debt associated with the deceased's property. Once the legal heir of the deceased's property has been identified, the legal heir must register a mutation (change of ownership) in his property in his name. The mutation process revises the state record by transferring the title. After acquiring the property, the statutory heir can live, rent, or sell the property as he wishes.