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SUCCESSION LAW



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THE INDIAN SUCCESSION ACT, 1925

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- a) The Indian Succession Act, 1925 came into force on 30th September 1925 and it seeks to consolidate all Indian laws relating to Succession.
- b) “Succession” means capable of comprehending every kind of passing property.
- c) The Indian Succession Act, 1925 can be broadly be divided into two categories, testamentary succession and intestate succession.
- d) Testamentary succession is applicable when a written Will has been created.
- e) Intestate succession is applicable when a Will has not been created.



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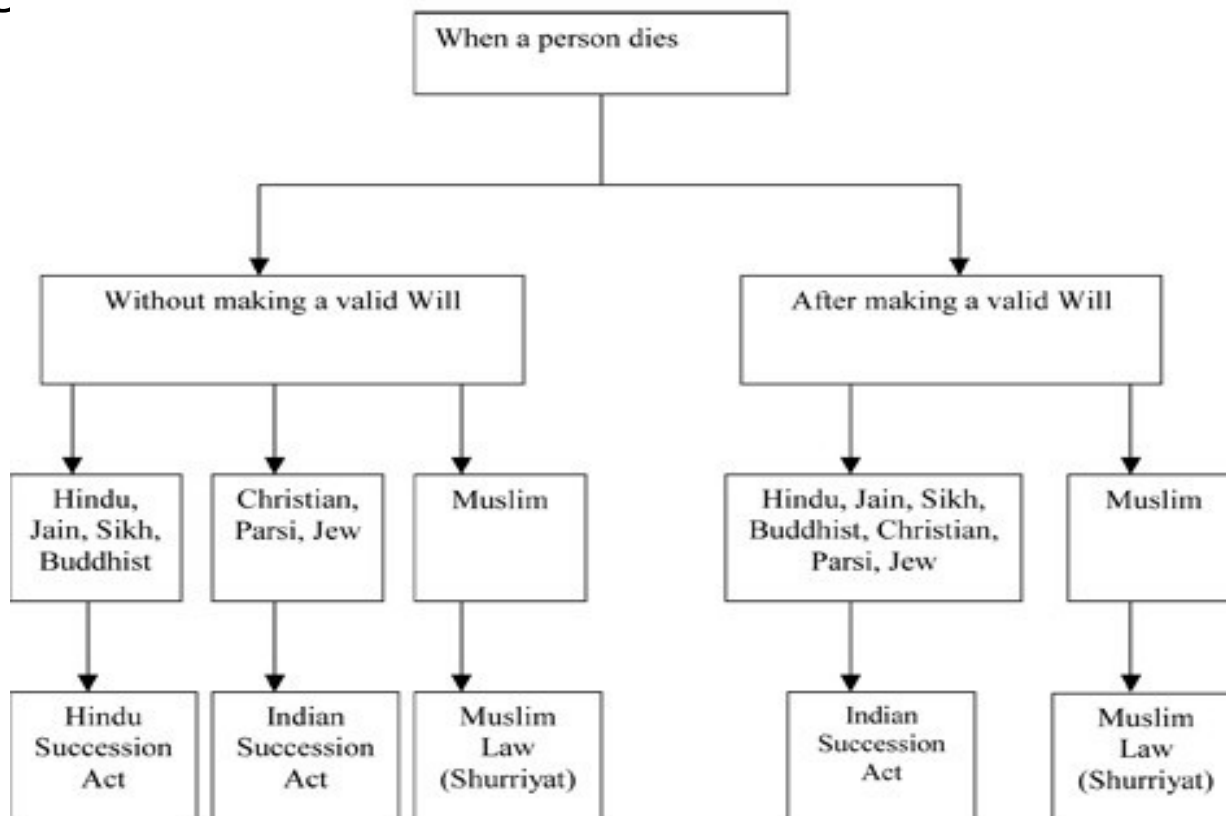
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APPLICABILITY TO COMMUNITIES





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WILL

- Will means the legal declaration of the intention of a person with respect to his property, which he desires to take effect after his death. It is a unilateral document and takes effect after the death of the person making it. It can be revoked or altered by the maker of it at any time he is competent to dispose of his property.



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Essential Features of a Will

- **Legal declaration:** The documents purporting to be a Will or a testament must be legal, i.e. in conformity with the law and must be executed by a person legally competent to make it. Further the declaration of intention must be with respect to the testator's property. It is a legal document, which has a binding force upon the family.
- **Disposition of property:** In a Will, the testator bequeaths or leaves his property to the person or people he chooses to leave his assets/belongings. A Hindu person by way of his Will can bequeath all his property. However, a member of an undivided family cannot bequeath his coparcenary interest in the family property.



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- Takes effect after death: The Will is enforceable only after the death of the testator.
- Under section 18 of the Registration Act the registration of a Will is not compulsory. Also, the SC in Narain Singh v. Kamla Devi has held that mere non-registration of the Will an inference cannot be drawn against the genuines of the Will. However it is advisable to register it as it provides strong legal evidence about the validity of the Will. Once a Will is registered, it is placed in the safe custody of the Registrar and therefore cannot be tampered with, destroyed, mutilated or stolen. It is to be released only to the testator himself or, after his death, to an authorized person who produces the Death Certificate .
- Since a testamentary disposition always speaks from the grave of the testator, the required standard of proof is very high. The initial burden of proof is always on the person who propounds the Will.



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PERSONS COMPETENT TO MAKE A WILL

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- According to Section 59 of the Indian Succession Act,
 - Any person of sound mind
 - Who has reached the age of majority
- * The following persons cannot make a will:
 - Lunatics, insane persons.
 - Minors i.e. below 18 years of age. In case a guardian is appointed to a minor, ;such minor reaches age of maturity only at the age of 21 years.



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EXECUTOR OF A WILL

- An executor is the person appointed ordinarily by the testator's by his will or codicil
- * To administer testator's property and
- * To carry into effect the provision of the will.



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When no executor is mentioned.

- Letter of Administration: Letter of Administration is a certificate granted by the competent court to an administrator where there exists a Will authorizing him to administer the estate of the deceased in accordance with the Will.



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EXECUTION OF A WILL

- On the death of the testator, an executor of the will or an heir of the deceased testator can apply for probate.
- The court will ask the other heirs of the deceased if they have any objections to the will.
- If there are no objections, the court will grant probate.



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PROBATE

- A probate is a copy of a will, certified by the court. A probate is to be treated as conclusive evidence of the genuineness of a will.
 - In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent.
 - This has to be displayed prominently in the court.
 - Thereafter, if no objection is received, the probate will be granted.
- It is only after this that the will comes into effect.



PROCEDURE FOR REGISTRATION

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- A Will is to be registered with the registrar/sub-registrar with a nominal registration fee.
- The testator must be personally present at the registrar's office along with witnesses.
- Signature of registrar : The endorsement of the register is sufficient to prove the execution of the will, if at all the testators of the will are dead and if the testator affirms the contents of the will and put his thumb impression on the endorsement in



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- the presence of the sub-registrar, the sub-registrar could also be considered to be an attesting witness.
- * Stamping of will : A will or codicil is not requires to be stamped at all.



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REVOCABILITY

- S. 62 of the Indian Succession Act deals with the characteristic of a Will being revocable or altered anytime during the lifetime of the testator. S. 70 of ISA provides the manner in which it can be revoked
- A mere intention to revoke is not an effective revocation. The revocation of the Will should be in writing and an express revocation clause would revoke all the prior Wills and codicils.



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- Revocation can also be made in writing through declaring an intention to revoke and the writing must be signed by the testator and attested by two witnesses. The deed of revocation has to be executed in the same way as the Will itself.
- The Will maybe burnt or torn by the testator or by some other person in his presence and by his direction with the intention of revoking the same.



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