



Ayana Legal

THE BUZZ

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Rights of an unborn child

A child who was in the womb at the time of the death of an intestate and who is subsequently born alive shall have the same right to inherit the estate as if he or she had been born before the death of the intestate.

Who are disqualified?

As per the Act, certain people are disqualified from inheriting property. These are

- A person who commits murder or abets the commission of murder in order to inherit the property
- A Hindu is no longer a Hindu or has converted.

THE HINDU

SUCCESSION ACT, 1956

The Hindu Succession Act 1956 deals with matters of succession when a Hindu person dies intestate. The Act explains how the property will devolve over the legal heirs of the intestate deceased. An important feature of the Act is the difference in devolution of a male and female intestate's property.

THE 2005 AMENDMENT

Through the Hindu Succession (Amendment) Act, 2005 daughters were given equal coparcenary rights as that of sons.

A coparcenary is a smaller unit of the family that jointly owns property. A coparcenary consists of a person who is at the top of the line of descent called the 'propositus', and his three lineal descendants. A coparcenary previously only included individuals of male descent in a family.

As per the amended Section 6 of the Act, the daughter of a coparcener shall by birth become a coparcener in the same manner as the son and shall be allotted the same share as is allotted to a son.

Further, the daughter shall have the same rights in the coparcenary property as she would have had if she had been a son. The daughter shall be subject to the same liability in the said coparcenary property as that of a son.

Landmark Judgements

Channabasappa Hosmani AND Parvatevva alias Kasturevva & Others, Karnataka High Court, 2024

It was held that legal heirs of a daughter are entitled to equal share in the family properties, even if the daughters had passed away before the amendment to the Hindu Succession Act, came into force in 2005.

Mukatal v. Kailash Chand (D) Through LRS. & Ors., SC

The Court opined that the essential ingredient of Section 14 (1) of Hindu Succession Act is possession over the property.

Thank You

We at Ayana Legal thank you for your continued support and patronage. We look forward to being back with our next edition soon.

Disclaimer

This newsletter is solely for the purpose of providing information and the content provided is not and should not be construed as legal advice.

WHEN A HINDU MALE DIES INTESTATE

When a Hindu male dies intestate, the property first devolves simultaneously upon the heirs specified under Class I, to the exclusion of all other heirs. The Class I heirs of the deceased include: the children of the deceased, his widow, his mother, his grand-children where his children have predeceased him, the widow of his pre-deceased son etc.

As per Section 10, the property is divided among the Class I heirs according to particular rules. The intestate's widow shall take one share. The surviving sons and daughters and the mother of the intestate shall each take one share. The heirs in the branch of the pre-deceased children of the intestate shall take between them one share, where the surviving sons and daughters get equal portions.

In the absence of any Class I heirs, the property shall be divided between the heirs specified in any one entry in Class II who are the relatives of the deceased intestate. In the absence of any of the aforementioned classes of heirs, then upon the agnates and cognates of the deceased respectively.

WHEN A HINDU FEMALE DIES INTESTATE

As per Section 14 of the Act, property held by a female Hindu is considered her absolute property.

Upon dying intestate, the property devolves first, upon the sons and daughters; including the children of any pre-deceased son or daughter; and the husband. In the absence of any of the aforementioned, upon the heirs of the husband. If the husband has no heirs, then upon the mother and father of the deceased. The heirs of the father of the deceased are preferred in the absence of the deceased's parents and then finally upon the heirs of the mother.

Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the father.

Any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased, upon the heirs of the husband.