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All about property rights in India

We examine the property rights of daughters, of daughters-in-law, abandoned first wife, second-wife, converts, adopted children, widows, mothers, etc., under the Hindu Succession Act

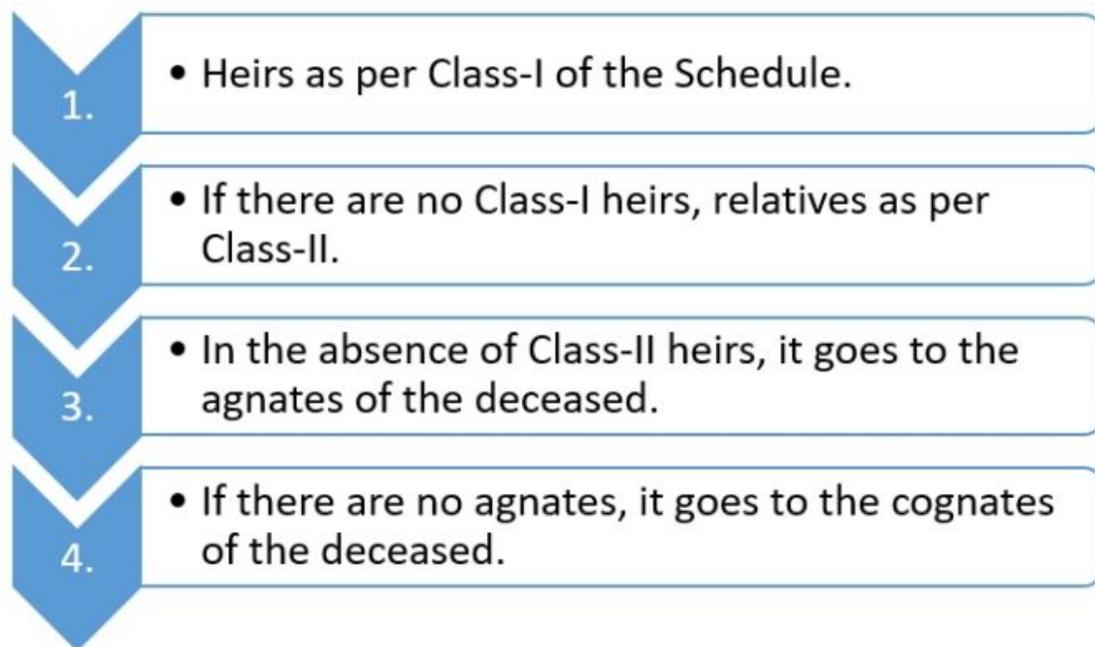
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Two-thirds of all the cases pending in Indian courts pertain to property or related frauds. There is no end to family scuffles when it comes to property. Recently, the Supreme Court (SC) ruled that owning a property is a human right. By an amendment to the Constitution Act, 1978, right to property ceased to be a fundamental right but in a welfare state property ownership rights (<https://housing.com/news/rights-father-sell-ancestral-property/>) is still a human right and nobody can dispossess the other without a strong basis. Let us examine the property rights of Indian individuals as per the Hindu Succession Act 1956.

What is the Hindu Succession Act?

The Hindu Succession Act (HSA) applies to all Hindus, Buddhist, Jain and Sikhs. It even applies to those who have converted to any of these religions or are born out of wedlock. The Hindu Succession Act does not apply to Indian Muslims and Christians since they have their personal law to determine how property would be inherited by their legal heirs. In this article, we examine the property rights of all those on whom the HSA applies. The HSA comes into question when a Hindu dies intestate (without leaving a will). Thereafter, succession depends upon the rules as carried in the HSA. In case of a Hindu man dying intestate, his property goes to the following and in this order of preference. The following chart shows the rightful heirs as per HSA.



**Note: Agnates are relations through the males but not by blood or adoption. These can be relations through marriages. Cognates are relations through the females.*

Class-I heirs	Class-II heirs	Agnates	Cognates
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<p>i. Son ii. Daughter iii. Widow iv. Mother v. Son of a predeceased son vi. Daughter of predeceased son vii. Widow of predeceased son viii. Son of a predeceased daughter ix. Daughter of predeceased daughter x. Son of predeceased son of predeceased son xi. Daughter of predeceased son of a predeceased son xii. Widow of predeceased son of a predeceased son</p>	<p>i. Father ii. (1) Son's daughter's son, (2) son's daughter's daughter, (3) brother, (4) sister iii. (1) Daughter's son's son, (2) daughter's son's daughter, (3) daughter' daughter's son, (4) daughter's daughter's daughter. iv. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter. v. Father's father; father's mother. vi. Father's widow; brother's widow. vii. Father's brother; father's sister. viii. Mother's father; mother's mother ix. Mother's brother; mother's sister.</p>	<p>Example: Father's brother's son or even father's brother's widow. Rule 1: Of two heirs, the one who is in nearer line is preferred. Rule 2: Where the number of degrees of ascent is the same or none, that heir is preferred who is closer to the common ancestor. Rule 3: Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.</p>	<p>Example: Father's sister's son or brother's daughter's son Rule 1: Of two heirs, the one who is in nearer line is preferred. Rule 2: Where the number of degrees of ascent is the same or none, that heir is preferred who is closer to the common ancestor. Rule 3: Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously</p>
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Property rights of daughters

The HSA was amended in 2005, and it gave equal rights to the daughter (<https://housing.com/news/these-are-the-property-rights-of-a-daughter-in-a-hindu-family/>) in terms of property. Prior to 2005, sons enjoyed rights over the deceased father's property whereas daughters could do so only till she was unmarried. It was understood that post-marriage, a woman attaches herself to the husband's family and is, therefore, a rightful in another Hindu Undivided Family (HUF) altogether. Now, married and unmarried daughters have the same rights on their father's property as their brothers. They are also entitled to equal duties, liabilities as their brothers. In 2005, it was also ruled that a daughter has the same rights provided that both father and daughter were alive on September 9, 2005. In 2018, the SC stated that a daughter can inherit her deceased father's property no matter whether the father was alive on this date or not. Hereon, women were also accepted as coparceners. They can demand a share in the father's property.

Property rights of mother on son's property

A mother is a legal heir to her deceased son's property. Therefore, if a man leaves behind his mother, wife and children, all of them have an equal right on his property. Do note that if the mother passes away without creating a will, her share in her son's property will devolve upon her legal heirs, including her other children.

Property rights of an adopted child

An adopted child is also a Class-I heir and enjoys all the rights that a biological child is entitled to. However, an adopted child cannot stake claim to his adoptive father's property in case this father was disqualified from succeeding to any property because of a crime that he might have committed. If the father had converted to any other religion and the adopted child is practising the same religion as well, even in this case, the adopted child cannot inherit the ancestral property.

Property rights of an abandoned first wife

Suppose a Hindu man leaves his wife without a divorce and marries another. In this case, his first marriage has not been annulled by law and the first wife and their children are lawful heirs. If the two are divorced, the first wife cannot stake any claim in the property and all her belongings are solely hers. Even in the case where the husband and wife may have contributed towards the purchase of a property, it is important to have documented proof of percentage of monetary contribution of each in case of a divorce. This is important especially in case you want to file a property eviction suit.

Property rights of second wife

A second wife has all the legal rights on her husband's property, provided her husband's first wife had already passed away or divorced before the husband remarried. Her children have equal rights on their father's share as do the children borne of the first marriage. In case the second marriage is not legal, neither the second wife nor her children enjoys the privilege of being legal heirs in the ancestral property of the husband.

Impact of religious conversion on property rights

The HSA holds that anybody who has converted to another religion can still inherit property. The law in India doesn't disqualify a person succeeding to a property because they decided to change their faith. The Caste Disabilities Removal Act states that anybody who has renounced his/her religion can inherit property. However, the heirs of the convert do not enjoy the same rights. If the son or daughter of a convert practices any other religion other than Hinduism, they can be disqualified from inheriting the ancestral property.

Property rights of a man on deceased wife's property

During the wife's lifetime, the husband has no right over her property. If the wife passes away, her share will devolve upon her husband and children alike. Kolkata-based advocate Devajyoti Barman says, "If the wife gets her share in her lifetime, the husband can inherit the same. If she hasn't

inherited from her parents or ancestors during her lifetime, the husband cannot claim it.” If a man has bought property in the name of his wife with his own finances, he can retain the ownership even after her death.

Property rights of widows in India

A widow who remarries will have no right in the property of her deceased husband or his ancestry.

Property rights of criminals

The HSA states that those who have been proved guilty of serious crimes will not be allowed to inherit property.

Property rights of half-blood children

Half-blood children are born of those where one child is born of the father with another wife/partner and the second child might be born of the wife with another husband/partner. In short, when there is one common parent (happens in case of remarriage or divorce), the child closer to the one whom he/she's inheriting from will be preferred. Example: A marries B. C is A's son from A's first wife. D is B's son with D's first husband. If A's property were to be divided, preference would be given to C.

Property rights of live-in couples and their children

In 2015, the SC ruled that couples in a domestic partnership for a long time will be treated as married. While no religion in India accepts live-in relationships as legal, the law provides for some relief. Under the Criminal Procedure Code Section 125, women in live-in relationships are eligible for legal rights and maintenance. Children born of live-in relationships are also entitled to the parents' self-acquired property as per the Hindu Marriage Act Section 16. Children can also claim maintenance. Do note that as per its ruling, the SC stated that it does not consider “walk-in and walk-out” relationships as live-in relationships. The rules are valid if the partners have cohabited for a long time.

FAQs

Is right to property a legal right?

Owning a property is no longer a fundamental right because of an amendment to the Constitution Act 1978. However, it is very much a legal, human and constitutional right.

Can daughter claim father's property after marriage?

Yes, as per law, a married daughter has every right to claim a share in her father's property. She has as much right as her brother or unmarried sister.

What does the right to property include?

All Indians have the right to own property. They also have rights to acquire, manage, administrate, enjoy and dispose of their property. Unless any of this is in conflict with the law of the land, the person cannot be held guilty.

Does son have right on father's property?

Yes, a son is a Class I heir and has right on the father's property.

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