

## Provisions of Law regarding Legal heirs

### 1. Hindu

- If the deceased is a male Hindu, dying in testate, it must be ascertained whether there are one or more Class-I legal heirs.
- The following are called Class-I legal heirs: mother, widow, son, daughter, son of a predeceased son, son/daughter of a predeceased daughter, son or daughter or widow of a predeceased son of a predeceased son, widow of a predeceased son, son / daughter of predeceased daughter of predeceased daughter, daughter of predeceased son of a predeceased daughter, daughter of predeceased daughter of predeceased son also. All Class-I legal heirs take simultaneously to the exclusion of any other legal heir and no one takes precedence over the other.
- **The Class-II** legal heirs are classified in different Entries and legal heirs belonging to Entry-I will be preferred to the second entry and so on in succession. But there is no preference among these falling in the same entry and they take their share simultaneously
  - Entry-I - Father
  - Entry-II - (a) Son's daughter's son, (b) Son's daughter's daughter (c) Daughter's Daughter's son, (d) Daughter's daughter's daughter (e) brother and sister.
  - Entry-III - Son/ daughter of daughter's son and son /daughter of daughter's daughter.
  - Entry -IV - Gives son/daughter of brother or sister as the heirs and many more.
- In case, the deceased is a married female Hindu, who died intestate, the following are her legal heirs. (a) Sons & daughters (including the children of any predeceased son) & the husband; (b) Heirs of husband; (c) Mother & Father, (d) Heirs of father; (e) Heirs of Mother.
- If a female Hindu who dies intestate does not have son/daughter, the property inherited from her parents goes to heirs of father whereas if the same is inherited from husband or parents-in-law, heirs of husband will inherit the property.

### 2. Christian

- Where the deceased is a Christian, Indian Succession Act governs the intestate succession.
- As per the provision of this Act, the widow of the male intestate is entitled to one-third of the property while the remaining two-third goes to lineal descendants (i.e. sons & daughters) in equal shares. If he has none, whole property passes to his widow.
- If the male intestate has left no lineal descendant, one half goes to the widow and other half to the kindred (i.e., father, mother, brother, sister).
- In case a Christian female dies intestate, husband has the same right.

### 3. Mohammedan

Inheritance in the case of Muslims is governed by the Sunni or shia law depending upon the sect in which they belong to.

According to **Sunni law** the classes of heirs are

#### **Sharers ---**

Heirs by consanguinity

1. Ascendants : Father, True grandfather, Mother, True grandmother
2. Descendants: Daughter, Son's daughter,
3. Collateral : Full/consanguine sister, uterine brother/sister

Heirs by affinity - husband, wife

But these 12 sharers will inherit fixed shares subject to conditions. A sharer may be excluded by many reasons such as nearer in blood will exclude remote one in one class. Sometimes sharer may be converted as residuary or otherwise one sharer may be partly sharer and partly residuary.

#### 4. Residuary category:

After fixed share is allotted to the sharers the residue left is devolving upon the residuary:

Children male or female of deceased, of son of deceased, or father of deceased, male descendents of true grandfather.

Son is always a residuary. Daughter with son becomes residuary. Among these, descendents exclude all others. Ascendants exclude all others except descendents and descendents of nearer ascendants exclude those in remote. In each class of residuary nearer blood excludes remote one. Division among these is according to the rule of double share to the male and if only one sex is there then equally divided.

In the absence of sharers and residuary estate devolves upon his other blood relations i.e., **distant kindred**

According to **Shia law** the heirs are

- Heirs by consanguinity I (i) Parents
- (ii) Children & descendents
- II (i) Grand parents (true/false)
- (ii) Brother or sister and descendents
- III Paternal or maternal uncle of him or his parents and grandparents

Heirs by Marriage : Husband, wife

Heirs by consanguinity and heirs by affinity succeed simultaneously. Among heirs by consanguinity those in class I exclude those in class II. The heirs in two sections of class I succeeds together. In each section nearer in degree exclude the remote. The son always takes as a residuary.

A certificate from Muslim Jama-I-eth in the letterhead signed by the head of the institution to which the deceased was affiliated should be obtained giving details of legal heirs with their age. In case of male deceased, a categorical certificate to the effect that the deceased had not married any woman other than the one named in the list is to be insisted upon.

#### 5. Minor's Interest and Guardianship

- Where the legal heir is a minor, his lawful guardian will represent his interest.
- For Hindus and Christians, minor's father is the natural guardian and after him the mother. Regarding the guardianship of a minor (Hindu) it has been decided by the Supreme Court that even mother can be a natural guardian even during the life time of father since the welfare of child is of utmost importance.
- For a minor, who is a Muslim, father, then person appointed by father's will, then father's father and then person appointed by father's father will be guardian in order.

A list of legal heirs under various personal laws is as under:

## **Legal heirs under various personal laws (summary)**

### **i) Hindus**

a) Primary heirs of a Hindu male are:

- i. Son(s)
- ii. Daughter(s)
- iii. Wife
- iv. Mother
- v. Children of Predeceased children
- vi. Widow of predeceased son
- vii. Children of predeceased grand children

b) Primary heir(s) of a Hindu female are:

- i. Son(s)
- ii. Daughter(s)
- iii. Husband
- iv. Children of predeceased children

### **ii) Muslims**

a) Primary heirs of a Sunni Muslim are:

- i. Son(s)
- ii. Daughter(s)
- iii. Father
- iv. Mother
- v. Spouse (Husband/Wife)

b) Primary heirs of a Shia Muslim are:

- i. Spouse (Husband/Wife)
- ii. Mother
- iii. Father
- iv. Son(s)
- v. Daughter(s)

### **iii) Christians**

a) Primary heirs of a Christian are:

- i. Spouse (Husband/Wife)
- ii. Son(s)
- iii. Daughter(s)

### **iv) Parsis**

a) Primary heirs of a Parsi male are:

- i. Wife (Widow)
- ii. Son(s)
- iii. Daughter(s)
- iv. Mother

- v. Father
- vi. Children of predeceased children

b) Primary heirs of a Parsi female are:

- i. Husband
- ii. Son(s)
- iii. Daughter(s)
- iv. Children of predeceased children