

CONCEPTUAL UNDERPINNINGS OF INHERITANCE LAW: A DOCTRINAL REVIEW OF THE INDIAN SUCCESSION ACT, 1925

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Abstract

*The Indian Succession Act, 1925 (ISA) is a comprehensive legislation governing inheritance (succession) in India for persons not covered by separate personal laws. Enacted during British colonial rule, the ISA consolidates earlier laws and provides rules for **intestate succession** (when a person dies without a will) and **testamentary succession** (when a person leaves behind a valid will). It serves as the primary inheritance law for Indian Christians, Parsis, Jews, and others, while Hindus, Buddhists, Sikhs, and Jains have their own codified law (the Hindu Succession Act, 1956) and Muslims are governed by Muslim personal law (Shariat) for inheritance. The Act's applicability is thus determined largely by the religion or community of the deceased, making it a key piece of legislation in India's plural legal system. This report provides a historical background of the ISA, defines key terms, explains in detail the Act's provisions on intestate and testamentary succession, examines its applicability across religious communities, and outlines major amendments that have shaped the inheritance law under the Act.*

Keywords: Intestate succession, testamentary succession, will, probate, personal laws.

Introduction

The Indian Succession Act, 1925, serves as a comprehensive legal framework governing inheritance in India, addressing both testamentary and intestate succession for individuals not covered by specific personal laws like the Hindu Succession Act, 1956, or Muslim personal law. It applies primarily to Christians, Parsis, and others, including Hindus, Sikhs, Jains, and Buddhists in certain testamentary matters, ensuring systematic property distribution upon a person's death. Testamentary succession, detailed in Sections 59-191, allows individuals of sound mind and above minority age to create a will, specifying how their property should be distributed, with clear rules for execution, attestation, and revocation. Intestate

succession, covered under Sections 29–56, comes into play when a person dies without a valid will, providing community-specific rules for Christians, Parsis, and others, prioritizing close relatives like spouses, children, and parents based on kindred and consanguinity. The Act emphasizes equal distribution among heirs of the same class and includes provisions for escheat, where property reverts to the government if no heirs exist. Special provisions cater to religious communities, such as unique share allocations for Parsi widows and children or detailed hierarchies for Christians, while the deceased's domicile influences rules for movable and immovable property. By balancing universal principles with community-specific customs, the Act ensures a fair and predictable inheritance process, forming a cornerstone of succession law in India.

HISTORICAL BACKGROUND

Pre-codification (Before 1865): Prior to statutory codification, inheritance in British India was governed by a mix of personal laws and English principles. Hindus and Muslims were governed by their **personal laws** (Hindu customary law and Islamic law) in matters of succession. Other communities (including Indian Christians, Anglo-Indians, Parsis outside certain areas, Jews, and others) did not have a clear indigenous code, and the law applied to them varied. In the Presidency towns (Bombay, Calcutta, Madras), British courts often applied **English law** of succession (as a form of ecclesiastical jurisdiction), whereas in the rural “mofussil” areas, courts resorted to principles of “justice, equity and good conscience,” which often meant applying either English law or the personal law of the parties by analogy. This patchwork system led to uncertainty and confusion, especially for communities not strictly under Hindu or Muslim law.

Indian Succession Act of 1865: A major step toward uniformity came with the Indian Succession Act, 1865. Drafted by the Third Law Commission under Sir Henry Maine, this Act was intended as a “general law of testate and intestate succession governing all who were not expressly exempted”. The 1865 Act codified inheritance rules for “**other persons,**” specifically applying to Europeans, Indian Christians, Jews, Armenians, Anglo-Indians etc., while **explicitly exempting Hindus, Mohammedans (Muslims) and Buddhists** from its operation. (Parsis were brought under the 1865 Act for **testamentary succession** (wills), but their intestate succession was governed by a separate Parsi Intestate Succession Act of 1865.) The Act of 1865 thus marked the first general codification of succession law in India for non-Hindu, non-Muslim populations, largely inspired by English law but adapted to Indian conditions. It introduced simple and layman-intelligible rules for inheritance and wills.

Consolidation in 1925: Between 1865 and 1925, numerous separate Acts were passed dealing with various aspects of succession and estate administration including the **Probate and Administration Acts** (several enactments from 1881 to 1903), the **Succession Certificate Act, 1889**, the **Hindu Wills Act, 1870** (which extended the 1865 Act's will provisions to Hindus in certain provinces), and others. To streamline and modernize the law, the Indian Succession Act, 1925 was enacted as a **consolidating statute**. It **unified the law of inheritance and wills** under one umbrella for British India, incorporating the provisions of no fewer than a dozen prior Acts. The ISA 1925 retained the policy of excluding communities with their own personal laws (Hindus, Muslims, etc.) from its intestacy provisions, but otherwise served as a **self-contained**

code for succession law. This Act came into force on 30th September 1925 and has, with amendments, remained in force since then.

KEY DEFINITIONS AND CONCEPTS

Understanding the ISA requires familiarity with certain key terms defined in the Act:

- **Will:** “*The legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death*”. In simple terms, a will (or testament) is a document by which a person (the testator) directs how his or her property shall be distributed upon death. A **codicil** is a supplementary instrument that explains, alters, or adds to the dispositions in a will, and is deemed to form part of the will.
- **Intestate:** A person is said to die *intestate* if he or she dies without leaving behind a valid will covering (entirely or partly) the property in question. Section 30 of the Act clarifies that one may be intestate as to property which has not been disposed of by a will. **Intestate succession** thus refers to the devolution of an estate in the absence of a will, following the default rules laid down by law.
- **Testator/Testatrix:** The person who makes a will. (The Act uses “testator” generally; “testatrix” is sometimes used for a female testator.)
- **Heirs:** Individuals entitled to succeed to the property of a deceased under intestacy rules. The Act categorizes heirs broadly into **lineal descendants** (children, grandchildren, etc.), the **spouse**, and **kindred (collateral relatives)** in the case of Indian Christians.
- **Executor:** A person named in a will to carry out (execute) the testator’s intentions. The executor administers the estate as per the will. If no executor is named or available, the court may appoint an **administrator** to manage the estate.
- **Probate:** The judicial certification of a will’s authenticity by a competent court. A **probate** is a copy of the will, officially sealed and endorsed by the court, granting the executor authority to administer the estate. If a person dies intestate or without naming an executor, the court can grant **Letters of Administration** to an appropriate person to administer the estate.
- **Domicile:** The Act contains provisions on domicile (Part II) to determine which succession law applies in cases with cross-border elements. For instance, Section 5 provides that succession to immovable property in India is governed by the **law of India (lex situs)** regardless of the deceased’s domicile, whereas succession to moveable property is governed by the law of the country in which the deceased was domiciled at death. These rules are pertinent in probate matters involving foreign nationals or Indians domiciled abroad, but they do not override the exclusion of certain communities from the Act’s scope (e.g. a Muslim’s immovable property in India is still governed by Muslim law, not the ISA, due to the personal law exclusion).
- **Kindred or Consanguinity:** The Act defines degrees of blood relationship for the purpose of determining heirs. “Kindred” means persons related by blood or adoption. The Act (Part IV)

classifies relatives into lineal (direct descendants/ancestors) and collateral kindred, and provides rules like **per stirpes** distribution (by branch of the family) in certain cases.

These definitions set the groundwork for understanding how the Act deals with inheritance in both intestate and testamentary scenarios.

INTESTATE SUCCESSION UNDER THE INDIAN SUCCESSION ACT, 1925

When a person governed by the ISA dies without leaving a will, Part V of the Act lays out how the estate will be distributed among the surviving heirs. Intestate succession rules under the Act differ for **Parsis** and **non-Parsis**, so the Act creates separate chapters for each. The rules are also subject to the Act's **applicability provisions**, notably, Section 29(1) categorically states that the intestacy provisions "*shall not apply... to the property of any Hindu, Muhammadan, Buddhist, Sikh or Jaina*". In other words, the following intestate rules apply principally to Indian Christians (and others such as Jews or persons who choose to be governed by this Act), and a modified scheme applies to Parsis, whereas Hindus and Muslims follow their own succession laws for intestacy.

Intestate Succession for Non-Parsis (General Rules)

For persons (other than Parsis) governed by the ISA, the Act recognizes three primary classes of heirs: **the spouse, lineal descendants, and kindred (other blood relatives)**. The estate of an intestate devolves in a specific order of priority defined by the Act's rules (Sections 31-49). Broadly, the distribution is as follows:

- **Spouse and Lineal Descendants:** If the deceased leaves behind a surviving **widow** or **widower** and also **lineal descendants** (children, grandchildren, etc.), the spouse and the children will share the estate. The law provides that the **spouse receives one-third** of the property and the remaining **two-thirds go to the lineal descendants** collectively. The children (or their representatives, if a child died leaving offspring) will take their two-thirds share **per stirpes**, meaning each branch of the family inherits their deceased parent's share. If the spouse is alive, the children essentially get two-thirds split equally among them (if in the same degree). If there is no surviving spouse, the children inherit the entire estate in equal shares. If a child of the deceased had died before the deceased, leaving children of their own, those grandchildren represent their parent and inherit that parent's share (this representation continues down the line of descent). Notably, Christian law (unlike old Hindu law) makes **no distinction between sons and daughters** in intestate succession – all children inherit as equals. Furthermore, all heirs under the ISA inherit as **tenants-in-common**, not as joint tenants, meaning each heir's share is separate (there is no concept of survivorship or joint family property).
- **Spouse and No Lineal Descendants (but Kindred):** If the intestate leaves a surviving spouse **but no children or other lineal descendant**, then the spouse's share increases. In such a case, **one-half of the estate goes to the surviving spouse** and the other half goes to the "kindred," i.e. the nearest blood relatives such as the deceased's parents, siblings, etc., according to the order of

succession set out in the Act. For example, if the deceased is survived by a wife and, say, siblings (but no children/issue or parents), the wife takes 50% and the remainder is distributed among the siblings (and any children of predeceased siblings, by representation) in accordance with Sections 42–48. Section 42 onwards specifies the priority among kindred: parents, siblings, and their children, etc. (e.g. the father takes in preference to siblings; if father is deceased but mother and siblings survive, mother and siblings share, and so on).

- **Spouse as Sole Heir:** If the intestate leaves **no lineal descendants and no kindred** (no other living relatives), the surviving spouse inherits **the entire estate**. The Act thus ensures the spouse's rights are paramount in the absence of other close relatives.
- **No Surviving Spouse:** If the deceased leaves **no surviving spouse**, the estate simply goes to the heirs in the order of proximity set out in the Act. **Lineal descendants** (children, grandchildren, etc.) have first priority and inherit the whole estate among themselves (typically in equal shares if at the same degree, or by representation down the line). If there are no lineal descendants, then the estate goes to the deceased's **parents** (the father or if he is not alive, the mother). If no parent is alive, then **siblings** (brothers and sisters) and the children of any predeceased siblings share the estate. In the absence of siblings and their issue, the next category would be **half-siblings**, then **grandparents**, then **uncles, aunts and their children**, and so on, per the degrees of kindred defined (these detailed rules are in Sections 42–48). Eventually, if **no relatives at all** can be found, the estate **escheats** to the government (meaning the property reverts to the state as owner of last resort).
- **Special provision for small estates:** The Act (Section 33A, inserted in 1926) provided that if a person died leaving a widow but no lineal descendants, and the net value of his property did not exceed a small threshold (originally ₹5,000), the **widow would inherit the whole estate**. This was a humanitarian provision to protect a surviving spouse in cases of very small estates. However, this **Section 33A does not apply to Indian Christians**, it was mainly intended for others, and in any case the monetary limit is now obsolete.
- **Widower's rights:** The Act ensures that a **widower** (a husband surviving his wife) has the same inheritance rights in his deceased wife's estate as a widow would have in her deceased husband's estate. Section 35 simply states that the husband of an intestate woman inherits as if their positions were reversed – effectively giving the widower a share equal to what a widow would get (i.e. the entire estate if no children, half if no children but other relatives, one-third if there are children, mirroring the rules above).
- **Other general principles:** The distribution among descendants is **per capita** within the same generation, for example, if only children survive, each gets an equal share. If children and descendants of a predeceased child survive, then the children take their share and the descendants of the predeceased child share that child's portion (per stirpes). The Act also clarifies that an heir's **religion is irrelevant** to their right to inherit – even if, say, a Christian dies intestate leaving a Hindu

relative as next of kin, that Hindu relative can inherit; there is no bar based on differing religion of heirs. Finally, the **doctrine of escheat** applies if no legal heir at all is available – the property then goes to the government as bona vacantia.

In summary, for non-Parsi intestates, the Indian Succession Act provides a fairly straightforward scheme prioritizing spouse and children, then parents, then more remote kin. It is gender-neutral with respect to offspring, and since amendments in 2002 (discussed later) it has removed an old discriminatory provision that could contractually bar a widow's share. The framework ensures a surviving spouse always receives a substantial portion or entirety of the estate depending on the presence of other heirs.

Special Intestate Rules for Parsis

For Parsi Zoroastrians, who form a distinct community, the ISA contains a separate set of intestate succession rules in **Sections 50–56 (Chapter III of Part V)**. Parsi personal law had its own unique features, and even under the consolidated Act of 1925, their intestate succession is governed by these special provisions. Notably, Parsi intestate law was significantly reformed by a 1991 amendment to make it more gender-equal; prior to 1991 it had allotted unequal shares to male and female heirs. The key features of Parsi intestate succession under the current Act are:

- **Widow/Widower and Children:** If a Parsi dies leaving a spouse and children, the **widow or widower and each child each take equal shares** of the property. This means, for example, if a Parsi man dies leaving a wife, one son and one daughter, the estate is divided into three equal parts, one for the wife, one for the son, and one for the daughter (now daughters are on par with sons). This reflects the post-1991 rule. (Before the 1991 amendment, Parsi law gave the widow a share equal to a child, but **sons received double the share of daughters**; that discrimination was removed to give daughters and sons equal shares).
- **Children Only:** If there are children but **no surviving spouse**, all children inherit equally (same as above, just without a spousal share).
- **Parents as Heirs:** If the deceased Parsi leaves **one or both parents in addition to a spouse and/or children**, the parents are also entitled to a share. In that scenario, each parent will receive a share **equal to half of what each child receives**. For example, if a Parsi woman dies leaving her husband, her son, and her mother, then first allocate equal shares to the husband and son, and the mother gets a share half as large as the son's share. In effect, the parents together receive a portion of the estate, but each parent's portion is half of a child's portion. This provision ensures parents are not left out, while still giving priority to the nuclear family of spouse and kids.
- **No Lineal Descendants:** If a Parsi dies without any children or remoter lineal descendants, but is survived by a spouse and/or some widows/widowers of predeceased children, Section 54 governs distribution. In general, if there is a surviving **spouse but no lineal descendants**, the spouse takes **half** the estate (and the other half goes to other heirs as per a prescribed order). If the deceased also leaves widows or widowers of any predeceased children, those individuals may share in the remaining half.

The rules then provide for distribution among the deceased's extended family (next-of-kin) in certain proportions, ensuring that **each male and female relative in the same degree now get equal shares** (the clause that once gave males double share was removed in 1991).

- **No Spouse, No Issue:** If a Parsi dies leaving **no spouse and no lineal descendants**, the property passes to the nearest kin as listed in **Schedules** to the Act (for Parsis). Typically, the hierarchy is: parents, siblings, and children of predeceased siblings; if none, then grandparents; if none, then uncles, aunts and their children, etc. The Act contains schedules that enumerate the order of succession for Parsis in such cases, with the fundamental principle (after 1991) that within each category, males and females are treated equally (for instance, a deceased Parsi's brother and sister would now each get the same share). Prior to the 1991 amendment, **female heirs in the same degree took half the share of male heirs** (e.g. a sister got half of a brother's share), and a widow of a predeceased son was also limited to a half share compared to what a widower of a predeceased daughter might get. These disparities were eliminated to make the scheme gender-equal. Now, **surviving spouse and children all receive equal shares, and the mother and father (if surviving) each receive a share equal to half that of a child** (when sharing with children). Thus, the current law for Parsis is much more equitable than the pre-1991 version, though it retains some unique features such as including the spouses of predeceased children as potential beneficiaries in certain scenarios.
- **Escheat for Parsis:** Similar to the general rule, if a Parsi dies leaving no heir at all as per the order of succession, the estate would escheat to the Government.

In summary, while the structure of **who inherits first** is similar (spouse and children, then parents, then collaterals), the Parsi intestacy rules are distinct in giving specified fractional shares to various relatives when multiple classes of relatives coexist. Over time, amendments (notably in **1937 and 1991**) have updated Parsi succession law to increase the shares of widows and daughters from mere maintenance to full ownership and to remove unequal treatment of female heirs. The **Indian Succession (Amendment) Act, 1991** was a landmark reform making Parsi inheritance "**more equitable and gender-just**", ensuring daughters now inherit the same as sons, and a deceased's parents also have a defined share in the presence of children.

TESTAMENTARY SUCCESSION (WILLS) UNDER THE ACT

Part VI of the Indian Succession Act, 1925 (Sections 57–191) deals with **testamentary succession**, i.e. succession as governed by the deceased's will. A **will** allows an individual to direct how his or her property should devolve upon death, offering flexibility in distribution as opposed to the fixed rules of intestacy. The ISA's testamentary provisions apply to a wide range of communities, with only a few exceptions or modifications (for example, **Muslims** in India are largely *not* governed by the ISA's will provisions, as they follow Islamic law of wills, and the Act's applicability to **Hindu, Sikh, Jain, or Buddhist wills** was historically limited to certain regions and later expanded, more on this under community

applicability). The Act sets out the **capacity to make a will, the form and execution of wills, the interpretation of wills, and the processes for probate**. Key aspects include:

- **Testamentary Capacity (Section 59):** Every person of sound mind and not a minor has the legal capacity to make a will. This means any adult (18 or above, in general) who is mentally sound can dispose of his property by will. The Act explicitly clarifies through explanations that **being deaf, dumb, or blind does not in itself incapacitate a person** from making a will, as long as they understand what they are doing. Also, a married woman has full capacity to make a will of her own property (this was significant at the time of enactment, ensuring wives could control their stridhan or self-acquired property by will). The crucial requirement is that the testator must know what he is doing, thus, if at the time of making the will the person is intoxicated or ill to the point of not understanding the consequences, or under duress/undue influence, the will could be invalidated. **Soundness of mind** at the time of executing the will and **freedom from coercion or fraud** are essential for validity.
- **Applicable Law for Wills (Section 57):** Section 57 of the Act delineates to whom the Act's provisions on wills apply. It states that the provisions of Part VI (wills) "which are set out in Schedule III" apply to certain classes of wills made by Hindus, Buddhists, Sikhs, or Jains, subject to specified restrictions. Historically, the ISA did not universally govern the wills of Hindus and other Indic religions until certain dates. Clauses (a), (b), and (c) of Section 57 effectively extended the ISA's will provisions to: **(a)** wills made by Hindus etc. on or after September 1, 1870 within the Bengal, Madras, and Bombay jurisdictions (this was the old Hindu Wills Act, 1870 area); **(b)** wills made outside those areas but relating to immovable property within those areas; and **(c)** *all* wills made by Hindus, Buddhists, Sikhs, or Jains on or after January 1, 1927, regardless of location. In practice, this means that since 1927, virtually all wills by non-Muslims in India are governed by the Indian Succession Act's provisions (with some minor exceptions in Schedule III, such as the rule about revocation by marriage which does not apply to Hindus, etc.). Muslims are expressly excluded – Muslim wills are governed by Islamic law and the limited testamentary power it confers (generally up to one-third of the estate without consent of heirs).
- **Form and Execution of Wills (Sections 63–64):** For an ordinary (**unprivileged**) will, the Act prescribes certain formalities for it to be valid. Section 63 requires that a will be **in writing and signed by the testator** (or by someone at the testator's direction and in his presence), and that it be **attested by at least two witnesses** who saw the testator sign (and each other sign) the will. Each witness must either see the testator sign the will or have it acknowledged by the testator as his signature, and each witness must sign the will in the presence of the testator. These formal requirements are akin to those in English law, meant to ensure authenticity and that the will truly represents the testator's intent. An **attesting witness** should ideally be a disinterested person; while the Act (Section 67) doesn't invalidate a will for having a beneficiary as a witness, it voids any beneficial bequest to such witnessing beneficiary (to remove incentive for manipulation)

- **Privileged Wills (Section 65 & 66):** The Act recognizes **privileged wills** for certain persons in exceptional circumstances. Soldiers engaged in warfare, airmen, or mariners at sea can make valid wills with far fewer formalities (even an oral declaration can be a valid privileged will). **Section 65** describes that a soldier, airman or sailor may even convey his testamentary wishes orally before witnesses, or if written by him it need not be attested. These privileged wills are a carryover of historical necessity, acknowledging that those in active service might not have the luxury of drafting a formally attested will. A privileged will, however, expires after one month of the person ceasing to be in the position that allowed it (if they survive that long, the privileged will is void thereafter).
- **Alteration and Revocation:** A will is by nature **ambulatory** (having no effect until death) and can be changed or revoked by the testator at any time before death. The Act dedicates several sections to how wills can be altered or revoked. **Section 62** establishes that a will is revocable or alterable any time during the testator's life. **Section 70** provides that a will is **revoked by the marriage** of the maker (for non-Hindus), marriage invalidates a prior will automatically (this rule, derived from English law, is based on the rationale that marriage changes obligations significantly; however, this provision does *not* apply to Hindus, Sikhs, Jains, or Buddhists by virtue of Schedule III, recognizing different customs). A will can also be revoked by an explicit act of the testator: for instance, by making a later will or codicil that explicitly revokes the prior one, or by destroying the will with intent to revoke (tearing or burning it, as per Section 70). **Section 71–72** discusses the effect of changes like obliterations or interlineations on a will: material changes made after execution will invalidate those altered parts unless properly re-executed and attested. A later will or codicil that is inconsistent with an earlier will can impliedly revoke the earlier to the extent of inconsistency. Additionally, if the testator **writes a new will**, it typically contains a revocation clause revoking all prior wills.
- **Construction and Interpretation:** The Act provides guidance on how wills should be interpreted (Sections 74–111). These sections address common issues such as what happens if the language is unclear or if the testator misdescribed an asset or an heir ("**misnomer or misdescription**", the will does not fail if the intention can be understood), the principle that a will speaks from the time of death (so it includes all property the testator owns at death, even if acquired after making the will), and rules for resolving ambiguities. For example, **Section 80** states that meaning should be given to every expression of the will if possible (avoiding intestacy if the will can be reasonably construed to cover the assets).
- **Permissible Bequests:** Part VI also spells out what kind of bequests are valid or void. For instance, **Section 113** and **114** prevent perpetuities by voiding bequests that create an indefinite succession of life interests. **Sections 118** (now repealed) once placed restrictions on charitable bequests by certain religious testators (that was a contentious clause applying to Indian Christians, repealed in the 1960s). In general, the Act allows full freedom of disposition (unlike some civil law

jurisdictions or personal laws that mandate forced shares to family), except that **Muslims are limited by their personal law** (a Muslim can generally bequeath only up to one-third of his estate without consent of heirs). But since Muslim wills are not governed by the ISA, that restriction is not in the Act itself but from Shariat.

- **Administration of Wills and Estates:** After a person's death, even if a will exists, it often must be authenticated and executed. The ISA (in Part VII and VIII) also covers the procedural aspects: **probate** (for wills) and **letters of administration** (for intestacy or when no executor is named) and **succession certificates** for debts and securities. **Section 213** of the Act historically required that an executor or legatee obtain probate or letters of administration from a court before establishing any right under a will in court. However, this requirement applies only to certain communities and areas. Notably, **Section 213(2)** exempts **Muhammadans** from this probate requirement and (after a 2002 amendment) also **Indian Christians**. This means Indian Christians are no longer compelled to get a probate in order to claim property under a will, a change aimed at removing a discriminatory burden that was earlier not placed on, say, Hindu or Muslim wills. For Hindus, the probate requirement of Section 213 applies only if the will is made in the specific territories and classes mentioned in Section 57(a) and (b) (essentially the old Presidency towns and related immovable property). In sum, **probate is mandatory** for wills of Hindus (and others) if they fall under those historical categories (e.g., a will made in Kolkata or relating to property there), and for all **Parsi wills**, but **not mandatory for Muslim or Indian Christian wills** since the amendment. Once probate is granted, the will's provisions are given effect, and the executor distributes the estate to the beneficiaries as directed in the will.

In practice, the testamentary succession provisions of the ISA provide a robust framework for making and enforcing wills. The Act strikes a balance by allowing testamentary freedom while imposing reasonable formalities to safeguard authenticity. Because the Act covers issues from **who can make a will** to **how a will is executed and interpreted**, it serves as a complete code for wills among communities it governs. As a result, writing a will under the Act gives one considerable control over the disposition of property, which is particularly important in a country with diverse personal laws, as those who might otherwise be subject to rigid intestate rules (e.g., under Hindu or Parsi law) can choose to distribute assets differently by making a will.

APPLICABILITY ACROSS DIFFERENT RELIGIOUS COMMUNITIES

India's legal framework for inheritance is pluralistic, and the Indian Succession Act, 1925 does not uniformly apply to all citizens. Its applicability is circumscribed by religious personal laws and certain regional exceptions. Understanding **who is governed by the ISA** and who is not is crucial:

- **Hindus, Buddhists, Sikhs, and Jains:** For intestate succession (death without a will), these communities are **not governed by the ISA**, they are covered by the **Hindu Succession Act, 1956 (HSA)** and its amendments. Indeed, Section 29(1) of the ISA explicitly excludes these communities

from its intestacy provisions. The HSA is a separate codified law that overhauled Hindu customary law in 1956, granting equal inheritance rights to sons and daughters (as further reformed in 2005). Prior to 1956, Hindus followed shastric laws (or customary laws) which varied by region and caste; they were never subject to the Indian Succession Act's intestacy rules. **Testamentary succession** for Hindus, however, was influenced by the Indian Succession Act. Historically, by virtue of the **Hindu Wills Act, 1870** (now integrated into ISA), Hindus in certain areas could make wills under the same formal rules as the ISA. **Section 57** of the ISA, as noted, extends certain provisions of the Act to wills made by Hindus, Sikhs, Jains, or Buddhists. In effect, since 1927, almost all Hindus in India can make wills and are governed by the general law of wills in the ISA (with some modifications in Schedule III). Importantly, **Hindus have full testamentary freedom**, unlike Muslims, there is no legal restriction on the portion of property they can bequeath by will. Thus, a Hindu's will is valid to dispose of the entire estate per the ISA's rules. One caveat was probate: Hindu wills in the old Presidency towns (Mumbai, Kolkata, Chennai) or relating to certain properties require probate to be effective in court. Otherwise, a Hindu will is effective upon death and can be executed by the named executor. In summary, Hindus (as well as Jains, Sikhs, Buddhists) use **their own Succession Act for intestacy (not the ISA)**, but rely on the **Indian Succession Act for wills**, except where modified by historical conditions.

- **Muslims:** Succession for Indian Muslims is governed by **Muslim Personal Law (Shariat)**, not by the Indian Succession Act. The **Muslim Personal Law (Shariat) Application Act, 1937** ensured that in matters of intestate succession, Muslims would follow Islamic law principles (which are markedly different, involving fixed Quranic shares for certain relatives, exclusion of others, etc.). Accordingly, **Section 29** of the ISA excludes Muslims from intestate succession under the Act. Likewise, Muslim wills are governed by Islamic law – notably, under Sunni Islamic law a Muslim can only bequeath up to one-third of his property by will (unless other heirs consent to additional bequests). The ISA's provisions on wills do **not** generally apply to Muslims. One quirky historical exception is that if a Muslim's will relates to **immovable property in certain former Presidency areas (West Bengal, Mumbai or Chennai)**, it may require probate under the ISA. This stems from old legal provisions predating the Shariat Act, which the Shariat Act did not entirely displace in those specific cases. Thus, as various sources note, *“if the property is immovable and situated in the states of West Bengal, Chennai (Madras), or Bombay (Mumbai), the Muslims shall be bound by the Indian Succession Act of 1925 for testamentary succession.”* This is a narrow exception and can be seen as a historical anomaly. In general, a Muslim estate (whether with or without a will) is handled per Muslim law, the ISA is **secular legislation but is expressly inapplicable to Muslims** as a community in deference to their personal law.
- **Indian Christians:** Christians in India overwhelmingly fall under the Indian Succession Act for both intestate and testamentary succession. The Act was originally enacted largely to govern Christian succession, and indeed is often referred to as the **Christian law of inheritance** in India.

There were, however, regional variations: up until the mid-20th century, Christian communities in **Travancore and Cochin (in present-day Kerala)** had their own local succession laws (Travancore Christian Succession Act, 1916 and Cochin Christian Succession Act, 1921). These were repealed in the 1980s, bringing those Christians fully under the ISA. Even prior to repeal, the **Supreme Court's decision in Mary Roy (1986)** had made the ISA applicable to Syrian Christians of Travancore, striking down the old law. Today, all Indian Christians (except in a couple of union territories noted below) are governed by the inheritance scheme of the ISA described above. The Act's definition of "Indian Christian" includes any person domiciled in India who is of (at least in part) Asiatic descent and professes Christianity. After a 2002 amendment, Indian Christian wills were exempted from mandatory probate (so they are on par with Hindu and Muslim wills in that respect). In essence, for an Indian Christian, whether they die intestate or leave a will, the substantive rules in the ISA apply (intestate distribution as per Sections 31-49, or will execution as per Part VI). A noteworthy regional exception: **Christians in Goa and Daman & Diu** are governed by the **Portuguese Civil Code of 1867** (a uniform civil code inherited from Portuguese rule). And **Christians in Pondicherry** may be governed by the **French Civil Code (Code Napoléon)** if they have the status of "renoncants" (those who opted to retain French law after merger). These are pockets where the ISA is not applied due to historical uniform civil code regimes. Outside those, the ISA serves as the default law for Christians.

- **Parsis:** Zoroastrian Parsis are explicitly covered by the Indian Succession Act for both intestate and testamentary succession, with modifications. The intestate provisions for Parsis are in the Act itself (Sections 50-56, as detailed earlier). Parsis were included from the beginning (the Parsi Intestate Succession Act, 1865 was merged into the ISA). For wills, Parsis have always been under the same general law of wills in the ISA, and they usually undergo probate in the event of a dispute. The only distinctions in application might be some procedural aspects (for example, historically, a Parsi's will did require probate to be acted upon by an executor, similar to Indian Christians before 2002). To this day, if a Parsi makes a will, Section 213 still necessitates probate for it to be fully effective in court (since Parsis are not exempted by Section 213(2)). In summary, Parsis are firmly within the ambit of the ISA, save for their specially tailored intestacy rules.
- **Jews and Others:** Indian Jews, Baha'is, and persons of non-specified or no religion are generally governed by the ISA by default, as they are not "Hindu" or "Muslim" etc. There is no separate codified personal law for Indian Jews, so they follow the general intestate scheme of the ISA (similar to Christians) and can make wills under the ISA. Similarly, those who marry under the **Special Marriage Act, 1954** (if they come from different communities or choose to opt out of personal law) have their succession governed by the ISA by virtue of that Act. The Special Marriage Act provides that if two Hindus (or other persons who would normally have Hindu law) marry civilly under that Act, they can elect for the ISA to govern their succession rather than the Hindu Succession Act, treating them as if they were not Hindus for inheritance purposes. This is to ensure a secular inheritance regime for those who choose a civil marriage outside the fold of religious personal laws.

- **State/Tribal Exemptions:** The Act also empowers state governments to exempt certain **scheduled tribes or specific communities** from its provisions (Section 3). This recognizes that various tribes in India have their own customary laws of inheritance. For example, many tribes in northeastern states (Nagaland, Mizoram, etc.) are exempt from the ISA and continue to follow customary matrilineal or patrilineal inheritance practices. Such exemptions are notified in gazettes and mean the ISA does not override customary law for those groups.

In summary, the **Indian Succession Act, 1925 is a secular law of general application, but with significant carve-outs**. Hindus and other Indians of related faiths use their own 1956 Act for intestacy (though they use ISA for wills formalities); Muslims are entirely outside ISA (except a few technical exceptions), following Shariat; Parsis and Christians are primarily within ISA (with some community-specific tweaks for Parsis). Regionally, Goa, Daman & Diu, and Pondicherry present exceptions due to their unique civil codes from European rule. The Act thus applies across communities in a patchwork manner consistent with India's personal law system. Over time, however, there has been a trend toward **expanding the Act's reach** (for instance, repealing divergent Christian laws in Kerala, bringing those Christians under ISA) and removing discriminatory distinctions in its applicability (e.g., the 2002 amendment ending the differential treatment of Christian wills).

MAJOR AMENDMENTS AND REFORMS TO THE ACT

Since its enactment in 1925, the Indian Succession Act has been amended on multiple occasions. Some amendments were **technical or administrative**, while others **substantively changed the inheritance law** to make it more equitable or in tune with the times. The major amendments impacting the law of inheritance under the ISA include:

- **Indian Succession (Amendment) Act, 1926:** This early amendment, just a year after the Act came into force, introduced Section 33A (the special provision for small estates passing entirely to the widow) and possibly adjusted Section 57 and Schedule III regarding the application of will provisions to Hindus. It effectively paved the way for **all Hindus, Jains, Sikhs, and Buddhists to be able to make wills governed by the Act from 1927 onward** (clause (c) of Section 57, concerning wills made after 1st January 1927, was inserted in 1926). This ensured uniform testamentary law for these communities in British India.
- **Muslim Personal Law (Shariat) Act, 1937:** While not an amendment to the ISA per se, this legislation had a significant impact by **withdrawing Muslim intestate succession and wills from the ambit of any secular or customary laws** and firmly placing them under Islamic law. Before 1937, customs in certain regions or the ISA could govern some Muslims (e.g., those under the jurisdiction of courts applying "justice, equity, good conscience"). The 1937 Act declared that in all questions of intestate succession (and other family matters) the rule of decision for Muslims shall be Islamic law. This essentially confirmed the exclusion of Muslims from the ISA regime, an exclusion already stated in Section 29(1) of the Act.

- **Indian Independence & Adaptation (1950-51):** After independence, the Act was adapted to the new political situation. The **Adaptation of Laws Order, 1950** and the **Act 3 of 1951** removed imperial references (like “Province” vs “State”, references to the King/Queen, etc.). These changes did not alter inheritance rights but modernized the language and extended the Act’s applicability to newly integrated parts of India (for example, Part B states like former princely states were brought under the ISA by extension in 1951, unless they had their own laws).
- **Hindu Succession Act, 1956:** Again, a separate law rather than an ISA amendment, but a milestone in Indian inheritance law. The HSA 1956 took Hindu intestate succession (for Hindus, Sikhs, Jains, Buddhists) entirely out of the ISA framework, giving a new scheme that, for instance, abolished the old Hindu joint family coparcenary’s primacy for separate property and gave women significant rights (e.g. a daughter’s right to inherit father’s separate property). The ISA’s Section 29 already excluded Hindus, so this didn’t require an ISA textual change, but it **significantly impacted the demographics governed by the ISA** – leaving mainly Christians, Parsis, and others under it for intestacy. The enactment of HSA also did not disturb the fact that Hindus could make wills, and those wills would be probated under ISA rules if in certain areas; thus the dual system continued: HSA for Hindu intestacy, ISA Part VI for their wills (with modifications).
- **Indian Succession (Amendment) Act, 1991 (Act 51 of 1991):** This was a **major amendment benefiting Parsi women**. It overhauled Sections 50 to 56 – the intestate succession rules for Parsis – to remove gender inequities. Prior to 1991, **Parsi female heirs (daughters, sisters, etc.) received only half the share of their male counterparts** in the same category, and certain widows had curtailed rights. The 1991 amendment ensured that henceforth **Parsi sons and daughters inherit equal shares**, as do male and female siblings and other relatives. It also clarified shares of parents in case children are present (each parent = half of a child’s share) and treated a deceased son’s widow more equitably. In effect, by 1991 the Parsi intestacy scheme became gender-neutral (except for the parent’s half-share nuance). This amendment was a response to long-standing demands from the Parsi community to update archaic provisions. As a result, the law for Parsis now reflects modern principles of equality, a daughter is just as much an heir as a son, which was not the case before 1991.
- **Indian Succession (Amendment) Act, 2002 (Act 26 of 2002):** This amendment addressed two issues primarily affecting Indian Christians, thereby making the Act more equitable and removing provisions seen as discriminatory. First, it **deleted the Explanation to Section 32**, which had allowed a strange pre-marriage contract to bar a widow’s interest. That explanation (a relic of colonial law) provided that if a Christian man had, before marriage, contracted with his wife-to-be that she shall have no rights in his estate, then Section 32 (which gives widows a share) would not apply. This was seen as a discriminatory provision against Christian widows. The 2002 amendment removed this Explanation, **ensuring a Christian widow cannot be deprived of her**

lawful share by any prior agreement. Second, the 2002 Act amended Section 213(2) to include **“Indian Christians” among those exempt from the probate requirement.** Prior to this, only “Muhammadans” were exempt in that clause, meaning that while, say, a Hindu could establish rights under a will without probate (unless in certain cities), an Indian Christian technically had to get probate to assert rights as an executor or legatee. This was viewed as an unfair requirement singling out Christians. After the amendment, Section 213(2) reads: *“This section shall not apply in the case of wills made by Muhammadans or Indian Christians...”*, thereby **placing Christians on the same footing as Muslims and others with regard to probate.** The combined effect of the 2002 changes was to **enhance the property rights of Christian widows** and to **simplify the procedure for Christian wills**, reflecting a more secular and equality-oriented approach in the inheritance law.

- **Other Amendments:** Other changes to the Act have been relatively minor or specific. For example, **Act 18 of 1929** had inserted a definition of “District Judge” in Section 2; **Act 37 of 1929** and **Act 13 of 1929** made some adjustments (possibly to guardianship provisions and Schedule III) – these were part of a wave of social reform laws in 1929. The **Indian Succession (Amendment) Act, 1939** (if any) is sometimes mentioned in context of aligning the Act after the parsing of personal laws, but the big change in late 1930s was actually the enforcement of Shariat Act and the addition of **Section 30 of the Hindu Succession Act in 1956**, which allowed Hindus to will away coparcenary interest (again not ISA, but relevant to succession overall). In **2001**, there was an amendment (Act 30 of 2001) which substituted certain entries in the schedules (for example, changing the term “grandparents’ children” to a clearer description, as indicated by the footnote in the Act), but these did not materially change inheritance shares. Also, **Act 17 of 1931** had added a provision in the Act ensuring that even a married woman could be granted letters of administration (earlier law had a restriction that was removed), a progressive step for women’s rights in estate administration.
- **Repeal of Discriminatory Local Laws:** Though not amendments to the ISA text, it’s worth noting legislative actions like the **Indian Succession (Amendment) Act, 1986** which repealed the Travancore and Cochin Christian Succession Acts, thus **extending the ISA to all Kerala Christians**. This was a significant change in application, prompted by judicial pronouncements (the Mary Roy case) and advocacy for a uniform succession law for Christians. Similarly, the absorption of French and Portuguese territories came with preservation of their civil codes unless changed; there are ongoing discussions and suggestions (including by the Law Commission) to **extend the Indian Succession Act to Goa and Puducherry** to replace those old codes, but as of 2025 those remain as special cases.

Historical and Structural Significance

The ISA’s origins trace back to the colonial need for a uniform succession law for communities lacking codified personal laws, culminating in the 1865 Act and its consolidation in 1925. By unifying

disparate statutes into a single code, the ISA addressed the legal uncertainties that plagued British India's patchwork system of inheritance. Its enduring relevance lies in its ability to provide a secular framework for communities such as Indian Christians and Parsis, while respecting the personal laws of Hindus, Muslims, Sikhs, Jains, and Buddhists. The Act's dual structure separate rules for intestate and testamentary succession ensures comprehensive coverage, from default distributions in the absence of a will to the enforcement of a testator's wishes through a valid will. Key definitions like "will," "intestate," "executor," and "probate" provide clarity, while concepts like domicile and consanguinity address cross-border and relational complexities, making the ISA a self-contained code for succession.

The Act's historical significance is further underscored by its adaptability. From its inception, it was designed to accommodate India's religious diversity by excluding communities with established personal laws and tailoring specific provisions, such as those for Parsi intestate succession. Over time, amendments have refined its scope and equity, ensuring that it remains relevant in a post-independence, constitutionally driven India. The ISA's ability to evolve while maintaining its core framework demonstrates its strength as a legal instrument that bridges colonial legacy with modern egalitarian principles.

Strengths of the ISA

The ISA's primary strength lies in its clarity and accessibility. The Act's intestate succession rules (Sections 31–56) provide a predictable hierarchy of heirs, prioritizing spouses, lineal descendants, and kindred in a manner that is straightforward and equitable. For non-Parsis, the gender-neutral distribution where sons and daughters inherit equally and widows and widowers have symmetrical rights reflects a progressive approach, especially when compared to pre-reform Hindu or Muslim personal laws. The special provisions for Parsis, post-1991, further enhance this equity by eliminating gender disparities, ensuring daughters and sons inherit equally and granting parents defined shares. This clarity extends to testamentary succession (Sections 57–191), where the Act outlines precise formalities for will execution, safeguards against fraud or coercion, and robust mechanisms for probate and estate administration.

Another strength is the Act's flexibility in testamentary succession. By allowing individuals to dictate the distribution of their estate through a will, the ISA empowers testators to override rigid intestate rules, which is particularly valuable in a society with diverse family structures and economic priorities. The provisions for privileged wills, though niche, demonstrate sensitivity to exceptional circumstances, such as those faced by soldiers or mariners. The Act's applicability to wills of Hindus, Sikhs, Jains, and Buddhists since 1927 (with minor modifications) has further standardized testamentary practices across a significant portion of the population, fostering legal uniformity in this sphere.

The ISA's amendments, notably in 1991 and 2002, highlight its responsiveness to social change. The 1991 amendment rectified gender inequities in Parsi intestate succession, aligning the law with constitutional principles of equality under Article 14. Similarly, the 2002 amendment bolstered the rights of Indian Christian widows by eliminating discriminatory pre-marriage contract provisions and exempting Christian wills from mandatory probate, thus reducing procedural burdens. These reforms underscore the Act's

capacity to address historical injustices and adapt to modern values, ensuring that inheritance rights reflect contemporary notions of fairness.

Limitations and Challenges

Despite its strengths, the ISA is not without limitations, many of which stem from India's plural legal system and the Act's selective applicability. The exclusion of Hindus, Muslims, Sikhs, Jains, and Buddhists from its intestate provisions (Section 29) creates a fragmented inheritance regime, where different communities are governed by distinct laws. This pluralism, while respectful of religious diversity, can lead to inconsistencies and complexities, particularly in interfaith families or civil marriages under the Special Marriage Act, 1954. For instance, a Hindu-Muslim couple married under the Special Marriage Act may face confusion over whether the ISA or personal laws apply to their estate, depending on their election. The Act's limited applicability to Muslims, except in rare cases involving immovable property in former Presidency towns, further complicates its scope, perpetuating historical anomalies that lack modern justification.

The Act's regional variations also pose challenges. The continued operation of the Portuguese Civil Code in Goa, Daman, and Diu, and the French Civil Code in parts of Pondicherry, creates pockets where the ISA does not apply, even to Christians. These exceptions, rooted in colonial legacies, undermine the Act's potential as a uniform succession law and highlight the need for a more cohesive legal framework. Similarly, the exemption of scheduled tribes under Section 3, while necessary to preserve customary laws, adds to the legal mosaic, making it difficult for laypersons to navigate inheritance rules without expert guidance.

Another limitation is the Act's silence on certain modern issues, such as the inheritance rights of non-traditional family structures (e.g., live-in partners or adopted children in non-formal settings). While the Act recognizes adoption for determining kindred, its provisions are geared toward conventional family units, potentially leaving gaps in addressing contemporary social realities. Additionally, the doctrine of escheat, where property reverts to the state in the absence of heirs, may seem outdated in an era where extended family networks or charitable dispositions could be prioritized.

The probate requirement, though relaxed for Indian Christians and Muslims, remains a procedural hurdle for Parsis and Hindus in certain jurisdictions (e.g., former Presidency towns). This can delay estate administration and increase costs, particularly for small estates. The Act's reliance on formalities for wills, while necessary to prevent fraud, may also exclude less literate or resource-constrained individuals from making valid wills, inadvertently favoring intestate succession in such cases.

Societal Impact and Equity

The ISA has had a profound impact on Indian society, particularly for communities like Indian Christians and Parsis, who rely on it as their primary inheritance law. By providing a secular and equitable framework, the Act has empowered individuals to plan their estates and ensured that surviving spouses and children receive fair shares. The gender-neutral provisions for non-Parsi intestate succession and the post-1991 Parsi rules have advanced women's property rights, aligning with India's constitutional commitment to

gender equality. The 2002 reforms for Indian Christians further reinforced this by protecting widows from contractual disenfranchisement and simplifying access to testamentary bequests.

However, the Act's impact is uneven due to its limited scope. Communities governed by personal laws, such as Hindus under the Hindu Succession Act, 1956, or Muslims under Shariat, may face different inheritance outcomes, some of which retain patriarchal elements (e.g., Muslim law's fixed shares favor male heirs in certain scenarios). The ISA's secular model could serve as a template for broader reform, but its community-specific application limits its transformative potential. The Act's procedural aspects, such as probate and estate administration, also require greater accessibility to ensure that marginalized groups can fully benefit from its protections.

Future Directions and the Case for Reform

Looking ahead, the ISA remains a cornerstone of India's inheritance law, but its future hinges on addressing its limitations and aligning with India's evolving legal and social landscape. One potential direction is the move toward a uniform civil code (UCC), as envisaged under Article 44 of the Constitution. A UCC could integrate the ISA's secular principles with elements of personal laws to create a single inheritance regime applicable to all Indians, regardless of religion. Such a reform would eliminate the current fragmentation, simplify legal processes, and promote equality across communities. However, implementing a UCC would require navigating sensitive religious and cultural considerations, as personal laws are deeply tied to identity.

Short of a UCC, targeted amendments to the ISA could enhance its efficacy. For instance, extending the Act to Goa, Daman, Diu, and Pondicherry would harmonize inheritance laws for Christians and others in these regions. Simplifying probate procedures, perhaps by introducing a small estate exemption or online processes, could reduce barriers for low-income families. The Act could also be updated to address modern family structures, such as recognizing the inheritance rights of partners in long-term cohabitation or clarifying the status of children from assisted reproductive technologies.

Another area for reform is limiting testamentary freedom to protect vulnerable heirs, similar to Muslim law's one-third restriction or civil law systems' forced heirship rules. While the ISA's unrestricted testamentary power is a strength, it can lead to disputes or disinheritance of dependents, particularly in blended families. Introducing a minimum share for spouses or minor children could balance individual autonomy with familial obligations.

Finally, public awareness and legal literacy are critical to maximizing the ISA's impact. Many Indians, especially in rural areas, are unaware of their rights under the Act or the benefits of making a will. Government initiatives, such as legal aid programs or simplified will-drafting templates, could encourage estate planning and reduce intestate disputes.

CONCLUSION

The Indian Succession Act, 1925 (ISA) stands as a pivotal piece of legislation in India's complex and pluralistic legal framework, governing the law of inheritance for communities not covered by distinct

personal laws. Enacted to consolidate and modernize the inheritance rules applicable to Indian Christians, Parsis, Jews, and others, the ISA has served as a robust and adaptable code for nearly a century. Its provisions on intestate and testamentary succession provide a structured yet flexible mechanism to ensure the orderly devolution of property, balancing individual testamentary freedom with statutory protections for heirs. Through its historical evolution, carefully defined concepts, community-specific applications, and significant amendments, the ISA reflects both the challenges of governing a diverse society and the progressive strides toward equality and fairness in inheritance law. This conclusion synthesizes the Act's significance, evaluates its strengths and limitations, and considers its future in the context of India's ongoing legal and social transformations.

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