
The Freedom to Bequeath: An Analysis of Testamentary Succession and the Repeal of Mandatory Probate in India

Abstract

For over a century, the laws governing how Indians pass on their property through wills were divided by religion and geography. While some citizens could simply hand over a will to transfer assets, others, specifically Christians, Parsis, and residents of major metropolitan cities, were forced to go through a costly and time-consuming court process called probate. This legal requirement was born during the British colonial era and remained in the *Indian Succession Act, 1925*. However, in a major legal reform, the *Repealing and Amending Act, 2025* has removed this mandatory requirement. This article explores the meaning of testamentary succession, traces its complex history, and explains how the 2025 amendment has modernized the law to treat every Indian citizen equally.

I. Understanding Succession

To understand the recent changes in the law, we must first understand the basics of Succession. In legal terms, succession is simply the method by which property, rights, and obligations of a deceased person are passed on to a living person. When a person dies, their assets, like a house, bank accounts, or shares, cannot remain ownerless. The law provides a structure to move these assets to the next generation.¹

There are two ways this transfer happens in India: First is Intestate Succession. This happens when a person dies *without* leaving a Will. In this scenario, the law decides who gets the property. The distribution is based on the religion of the deceased. For example, if a Hindu man dies without a will, the *Hindu Succession Act* determines that his wife, mother, and children get equal shares. The person has no say in this; the state imposes its own rules based on kinship.² Second is Testamentary Succession. This is the focus of our study. This type of succession happens when a person dies *after making a valid Will*. A Will is defined under Section 2(h) of the *Indian Succession Act, 1925*³ as 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.⁴

Testamentary succession is essentially an act of freedom. It allows a person to divide the property according to his own determination rather than through mandate of law. Through a

¹ Arindam Mukherjee, "Intricacies in Intestate and Testamentary Succession under Personal Laws and Succession Act, 1925."

² Ibid.

³ Indian Succession Act 1925, s 2(h)

⁴ Dolly Bharti, "Testamentary Succession (Part 1)."

will, a person can leave everything to a friend, a charity, or a specific family member, bypassing the standard rules of religion. However, because a will is so powerful as it relates to devolution of property and because the person who wrote it is no longer alive to explain it, the law has always been very strict about how wills are proved in court.

II. The History of Wills in India

The laws we follow today did not appear overnight. They are the result of centuries of history, mixing ancient religious customs with British colonial regulations.

Long before the British arrived, succession in India was governed by religious texts.

- **Hindu Law:** Historically, the concept of a Will was unknown to Hindu law. Ancient Hindu society was based on the Joint Family system, where property belonged to the family unit, not the individual. A father could not just give away family property to a stranger. However, as society changed and people began acquiring their own self-earned property, the need to make wills arose. Eventually, courts and new laws recognized that Hindus could make wills for their separate property.⁵
- **Muslim Law:** Muslims have always had the concept of a will, known as *Wasiyat*. However, Islam places a strict limit on this power to protect the heirs. A Muslim generally cannot give away more than one-third of their property through a will. The remaining two-thirds must go to the family members according to the shares defined in the Quran. This rule ensures that a family is not disinherited.⁶

When the British established rule in India, they faced a problem, there were many people in India, who were neither Hindu nor Muslim, like Europeans, Eurasians, Armenians, Jews, and Parsis. They needed a law to govern how these communities passed on their property. To solve this, the British government passed the Indian Succession Act of 1865. This law was based on English law. It introduced formal rules: a will had to be in writing, signed, and attested by two witnesses. Most importantly, it introduced the concept of Probate.⁷

A Probate is a certificate granted by a court. When a person dies leaving a will, the executor (the person named to manage the property) takes the will to court. The court checks if the will is valid and officially certifies it. This certificate is called Probate. Under the old English rules, you could not handle the deceased person's property without this certificate.

⁵ Suriyashasti TV, "Testamentary Succession in Hindus" (2024) 6 Indian Journal of Law and Legal Research.

⁶ Dolly Bharti, "Testamentary Succession (Part 1)."

⁷ Arindam Mukherjee, "Intricacies in Intestate and Testamentary Succession under Personal Laws and Succession Act, 1925."

III. The Indian Succession Act, 1925

In 1925, the government consolidated all the different laws into one big code: the Indian Succession Act, 1925. This Act is still the primary law for wills in India today. However, it contained a major flaw that caused problems for past several decades. The 1925 Act included Section 213, which set up a rule about when Probate was mandatory. The rule was not the same for everyone. It discriminated on the basis of religion and geography.

Here is how the unfair system worked under Section 213: If you were a Christian or a Parsi, you were forced by law to get Probate. It didn't matter where you lived or what property you owned. If you wanted to claim your rights under a will in court, you *had* to have that court certificate. If you were a Hindu, Buddhist, Sikh, or Jain, you were forced to get Probate *only if* your will was made in Mumbai (Bombay), Kolkata (Calcutta), or Chennai (Madras), or if the will covered immovable property (like land or a house) inside these cities. Muslims were completely exempt. They never needed probate. Similarly, a Hindu living in Delhi, Bangalore, or a village in Punjab did not need probate. They could just use the will directly.⁸

This system created a huge burden for the people mentioned in the first two categories. Getting probate is expensive. You have to hire a lawyer and pay court fees. In some states, the court fee is a percentage of the value of the property. If a middle-class family inherited an apartment in Mumbai worth ₹2 Crores, they might have to pay lakhs of rupees just to get the legal paper to own it. Indian courts are overburdened. A probate case, even if no one is fighting it, takes many months or even years. During this time, the assets are frozen. The family cannot sell the house or access the bank accounts.⁹ This led to a feeling of discrimination. Why should a Christian family in Kerala have to go to court to prove a will, while a Hindu family next door did not? Why should a person in Mumbai face hurdles that a person in Delhi does not?

This issue was fought in the Supreme Court in the case of *Clarence Pais vs. Union of India* (2001). The petitioners argued that Section 213 violated the Constitutional right to equality. However, the Supreme Court at that time decided not to strike down the law, saying that the difference was based on history. They left it to the Parliament to change the law if they wanted to.¹⁰

IV. The Repealing and Amending Act, 2025

⁸ Siddhant Kuwad, "Revolutionary Shift in Inheritance Law How the 2025 Amendment Transforms Probate and Succession Rights" *EDU LAW* (2026).

⁹ *Ibid.*

¹⁰ Divyanshi Bhardwaj and Karan Kaul, "Clarence Pais & Ors. Etc. v. Union of India (AIR 2001 SC 1151)" (2022) *IV Indian Journal of Law and Legal Research*.

After decades of demands from legal experts and the affected communities, the Indian Parliament finally took action. On December 20, 2025, the President gave assent to the *Repealing and Amending Act, 2025*. This new law is short, but its impact is massive. It specifically targets the unfair sections of the 1925 Act. According to the official Gazette notification, the Act makes the following specific changes to the *Indian Succession Act, 1925*:

1. It deletes Section 213: This is the most important change. The section that said “No right can be established without probate” is completely removed.¹¹
2. It amends Section 370: This section used to refer to the mandatory probate rules. The references have been cleaned up to match the deletion of Section 213.¹²

By removing Section 213, the law has moved from a mandatory system to an optional system. Before 2025, if you were a Christian or a Mumbai resident, you *had* to get probate. It was not a choice. After 2025, you *can* get probate if you want to, but you don’t *have* to.

V. The Impact

The repeal of Section 213 is a much-needed shift in Indian inheritance law. Here is a detailed look at how it helps ordinary citizens.

1. Massive Savings in Time and Money: This is the most direct benefit. Families no longer have to pay the Probate Tax (the high court fees and lawyer fees). For example, previously, a Parsi family inheriting a house would have to file a petition, pay a lawyer, pay court fees, and wait for the Court to issue a grant. Now, they can simply take the original Will and the death certificate to the Registrar of Assurances or the Housing Society to transfer the home. The process that took years can now happen in weeks.¹³

2. Equality and Secularism: The amendment finally treats all Indians equally. The law no longer looks at your religion or your city to decide how difficult your inheritance process should be. A Christian in Goa, a Hindu in Mumbai, and a Muslim in Lucknow now follow the same basic procedure. This removes the colonial baggage where the British government kept stricter controls on the presidency towns.¹⁴

3. A Shift in Responsibility: With freedom comes responsibility. Under the old mandatory system, the Court acted as a gatekeeper. It checked every will (for specific communities) before the property could be touched. Now, the gatekeeper is gone. This means the Legal

¹¹ The Repealing And Amending Act 2025.

¹² Ibid.

¹³ Siddhant Kuwad, “Revolutionary Shift in Inheritance Law How the 2025 Amendment Transforms Probate and Succession Rights” *EDU LAW* (2026).

¹⁴ Ibid.

Heirs must be more alert. If a brother produces a will that looks suspicious, the sister cannot just wait for the court to catch it. She must actively go to court and file a suit to challenge it. The burden of being vigilant has shifted from the State to the Citizen.¹⁵

4. Changes for Banks and Property Registrars: Institutions like Banks, Housing Societies, and Land Record offices will have to change their rulebooks. Previously, if a Christian approached a bank to claim a deceased person's large fixed deposit, the Bank Manager would blindly ask for Probate. Now, the Manager cannot demand that, because the law does not require it. Banks will likely start asking for other documents to protect themselves.¹⁶

VI. Conclusion

The *Repealing and Amending Act, 2025* is a victory for the common citizen. It is a rare example of a law that makes life simpler rather than more complicated. By removing Section 213 of the *Indian Succession Act, 1925*, the government has acknowledged that the old colonial distinctions of religion and geography have no place in a modern India.

Testamentary succession, the right to leave a legacy, is now a truly free right. It is no longer burdened by the heavy tax of mandatory litigation. While families must remain vigilant to ensure wills are genuine, the removal of the probate hurdle means that for the vast majority of honest, peaceful families, the transfer of love and legacy will be faster, cheaper, and more dignified.

¹⁵ Preeti Motiani, "When Can a Legal Heir Challenge a Will as per Indian Succession Laws" *Economic Times* (November 29, 2023) <<https://economictimes.indiatimes.com/wealth/legal/will/when-can-a-legal-heir-challenge-a-will-as-per-indian-succession-laws/articleshow/105581197.cms?from=mdr>> accessed February 13, 2026.

¹⁶ Siddhant Kuwad, "Revolutionary Shift in Inheritance Law How the 2025 Amendment Transforms Probate and Succession Rights" *EDU LAW* (2026).