

Testamentary Succession

Testamentary Succession means succession of property by a WILL or TESTAMENT. As per Hindu Law, any male or female can make a Will to transfer his or her property or assets to anyone. The Will is treated as valid and enforceable by law.

An important point to note here is that the transfer of property happens as per provisions mentioned in the Will and not as per the inheritance law. However, if the Will is invalid or illegal then the transfer or devolution of property happens as per the law of inheritance. Alternatively, Testamentary succession is also referred to as right of inheritance.

Proof of Death

Death must be proved in order to permit inheritance; the executor must ever precisely the date and place of death to obtain confirmation, and must prove this if challenged under the Registration of Births, Deaths and Marriages Act 1965 an extract from the Register of deaths is sufficient evidence of the death, but is not conclusive proof.

Unworthy Heirs

An unworthy heir is a person who has killed another, from whom the killer would stand to receive a right of succession. The unworthy heir will not be able to inherit from the estate if they are proven guilty of either murder or culpable homicide in a court of law. The case of *Re Cripeen* concerned a husband who, after killing his wife, was set to inherit her legacy which he would in turn bequeath to his mistress. The wife's family naturally objected and took the case to court, where it was ruled that the husband would be said to predecease the wife. Consequently her estate fell into intestacy and her family then succeeded her. The same shall apply in cases where the accused has been convicted of culpable homicide, for in the case of *Smith Petitioner* a wife was convicted of the culpable homicide of her husband, from whose estate the court ruled she should not benefit.

Common Terms related to Testamentary Succession under Hindu Law

It is important to understand the frequently used terms that might sound complicated but are easy to interpret. They are:

- Will – A legal declaration created by a person expressing clear intention or wish with regards to how his or her property and assets Will be transferred after death.
- Testator – A person who creates his or her Will.
- Executor – A person appointed by the Testator for executing the Will.

- Administrator – A person appointed by the Court for executing the Will.
- Attestation of Will – It is the process of signing the Will by two witnesses to verify the signatures of the executant.
- Codicil – A legal document made by Testator and signed by two witnesses for making minor changes in the Will that has already been executed.
- Probate – It is a documentary evidence of the appointment of the Executor and establishes the validity of the Will.
- Letter of Administration – A certificate granted by the Court for appointing an Administrator of the Will.

Why is having a Will Important?

Each person wishes that his legal heirs stay a part of the cohesive family even after his or her death and that there are no fights over property matters. After all, fair division of property is a sensitive matter. In today's times, if it is done properly, it can make long lasting relationships and if done otherwise, it breaks relations forever.

It is for this purpose, making a fair Will comes very handy. The testator must clearly document his or her desires with respect to the assets that his legal heirs would carry out after his or her death. The Will must clearly state how the testator's property Will be transferred, to whom it Will be transferred, how much share of property Will be transferred to different heirs and so on.

Generally, a very common question arises here as to what happens if a person dies without leaving a Will behind? In such cases, the division and transfer of property happens by way of law. This is called intestate succession.