Women, know your inheritance rights

Whether you are a wife, daughter or mother, find out about your succession and property rights, and what to do if they are denied

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It has never been a good time to be a woman, especially when it comes to inheritance and property rights. “Till as late as the formulation of the Hindu Succession Act, 1956, the law was blatantly biased against women,” says Rohan Mahajan, Founder & CEO, LawRato.com. “It was only after the amendment in the Hindu Succession Act in 2005 that it became more balanced,” says Raj Lakhotia, Founder & Director, Dilsewill.com, an online will-maker. Since gender neutral inheritance laws and increase in awareness among women are the need of the hour, we list here the inheritance rights of women, be it a wife, daughter or mother.

WHAT ARE YOUR RIGHTS?

HINDUS

The Hindu Succession Act, 1956, governs the succession and inheritance laws for Hindus, along with Buddhists, Jains and Sikhs. The Act makes no distinction between movable and immovable property. It only applies to intestate succession (where there is no will) and to anyone who converts to Hinduism. It has no application in case of testamentary succession (where there is a will).

“The property owned by a person can be classified only as ancestral or self-acquired. Ancestral property is one that is inherited up to four generations of male lineage without any division, and the right to share in it is accrued by birth,” says Rajesh Narain Gupta, Managing Partner, SNG & Partners, Advocates & Solicitors. Self-acquired property is bought by the person with his own resources or through property acquired from his share in an ancestral property. “For self-acquired property, the father enjoys unfettered discretion to will it to anyone he wishes,” says Lakhotia.

When a man dies without a will, it devolves to four categories of heirs—Class I, Class II, Agnates (if two people are related by blood or adoption wholly through males) and Cognates (related to the intestate by blood or adoption but not wholly through males). The first preference is to Class I heirs.
**Wives:** A wife is entitled to an equal share of her husband’s property like other entitled heirs. If there are no sharers, she has full right to the entire property. A married Hindu woman is the sole owner and manager of her assets whether earned, inherited or gifted. She is also entitled to maintenance, support and shelter from husband, and if staying in a joint family, from the family.

If the couple is divorced, all issues related to maintenance and alimony are ordinarily decided at the time of divorce, and the wife does not have any right in husband’s estate if he dies intestate. “If during the lifetime of the first wife, the husband remarries without a divorce, the second marriage will be void. The second wife will not inherit anything and rights of the first wife will not be affected. However, kids from second marriage will get a share along with other legal heirs,” says Rajesh Mahindru, Advocate, Delhi High Court. In case of an inter-faith marriage, the wife is entitled to inheritance as per the personal laws of the husband’s religion.

**Daughters:** “Section 6 of the Hindu Succession Act, 1956, was amended in 2005 to end discrimination against women,” says Mahajan. As a result of this amendment, a daughter has an equal right to ancestral property as a son and her share in it accrues by birth. Before 2005, only sons had a share in such property. So, a father cannot will such property to anyone he wants to, or deprive a daughter of her share in it.

If the father dies intestate, all legal heirs have an equal right to the property. Class I heirs have the first right and these include the widow, daughters and sons, among others. Each heir is entitled to one part of the property, which means that a daughter has a right to it too.

Before 2005, the Hindu Succession Act considered daughters only as members of the Hindu Undivided Family (HUF), not coparceners. The latter are the lineal descendants of a common ancestor, with the first four generations having a birthright to ancestral or self-acquired property. However, after marriage, she was not considered a member of HUF. After the amendment, the daughter has been recognised as a coparcener and her marital status makes no difference to her right.

A daughter also has the same rights as a son to the father’s property irrespective of her date of birth, that is, before or after 9 September 2005. On the other hand, the father should have been alive on 9 September 2005 for the daughter to stake a claim over his property. If he had died before 2005, she will have no right over the ancestral property, and self-acquired property will be distributed as per the father’s will.

**Mothers:** As a mother is a Class I heir, she is entitled to an equal share of property of her predeceased son. A widowed mother is entitled to maintenance from her children who are not dependants.
MUSLIMS

For Muslims, inheritance laws are governed by personal law. There are four sources of Islamic law governing this area—the Quran, the Sunna, the Ijma and the Qiya. When a man dies, both males and females become legal heirs, but the share of a female heir is typically half of that of male heirs. While two-thirds share of the property devolves equally among legal heirs, one-third can be bequeathed as per his own wish.

Wives: A wife without kids is entitled to one-fourth the share of property of her deceased husband, but those with kids get one-eighth share. If there is more than one wife, the share may reduce. In case of divorce, her parental family has to provide maintenance after the iddat period (about three months).

Daughters: “A son always takes double the share of a daughter, but the latter is the absolute owner of inherited property,” says Lakhotia. In the absence of a son, the daughter gets half the share of inheritance. If there is more than one daughter, they collectively receive two-thirds of the inheritance.

Mothers: A mother is entitled to onethird share of her son’s property if the latter dies without any children, but will get a one-sixth share if he has children.

CHRISTIANS

Christians are governed by the Indian Succession Act, 1925, specifically by Sections 31-49. Under this, the heirs inherit equally, irrespective of the gender.

Wives: If the husband leaves behind both a widow and lineal descendants, she will get one-third share of his property, while the remaining two-thirds will go to the descendants. If there are no lineal descendants, but other relatives are alive, half the property will go to the widow and the rest to the kindred. If there are no relatives, the entire property goes to the wife. A man can legally marry a second time only after the death of the first wife or after divorcing her. If he has a second wife even as his first wife is alive or not divorced, the second wife or kids have no right over his property. However, the kids of a legally divorced wife have an equal share in the property as that of the second wife and her kids.

Daughters: A daughter has an equal right as her brother to father’s property. She also has full right over her personal property upon attaining majority.

Mothers: “If a person dies without a will and has no lineal descendants, then after deducting his widow’s share, the mother is entitled to an equal share as other surviving entitled sharers,” says Lakhotia. These sharers could be the brother, sister, or the widow of such sibling, or the children of any predeceased siblings.
HOW IS INHERITANCE TAXED?

“There is no inheritance or gift tax if the property is inherited from a relative or is acquired through a will. On sale of property that has been inherited, capital gains tax is applicable,” says Lakhota. “Once inherited, any source of income, such as rent or interest, is transferred to the new owner and he must pay tax on it,” says Mahajan. Tax is levied on capital gains on the sale of inherited property. The gain is based on the period for which the property is held by the owner. If held for more than 24 months, it is treated as a long-term gain. This also includes the period for which it was held by the previous owners. If it is less than 24 months, the actual cost of acquisition and improvement are deducted and the balance is treated as a short-term gain and taxed as per the tax slab applicable to the owner or transferer. If the combined holding period exceeds 24 months, the transferer has the right to deduct the cost of acquiring and improvement, while adding the rate of inflation to cost for the holding period. Then the tax is levied as per the applicable rate.

IF YOUR RIGHTS ARE DENIED

If a woman does not get her due share in ancestral property, she can send a legal notice to the party denying her the right. If restrained from seeking her claim, she can file a suit for partition in a civil court. She can also seek partition of properties occupied by other legal heirs. “If physical partition is not possible, the court can auction the properties to give the woman her share,” says Mahindru. “To ensure the property is not sold during the pendency of the suit, she can seek a court injunction,” says Mahajan. If it is sold without her consent, she can add the buyer as a party in suit if she has not instituted a suit yet, or can request the court to add the buyer as a party if the suit has been filed.
Who inherits a woman’s property?

Here’s how the property of a Hindu woman devolves if she dies without a will.

**HINDU WOMAN**

Whether she is married or unmarried
Sections 14, 15 & 16 of the Hindu Succession Act, 1956, govern the manner in which her property is inherited.

Section 14 describes what constitutes a woman’s property—both moveable and immovable, owned and acquired by her. It does not distinguish between inherited and self-acquired property. It includes all the property obtained by the woman through inheritance, partition, maintenance, gift or by her effort or purchase or in any other manner, and also any such property held by her as스트레스나.

Section 15, sub-section 1
Explains the devolution of the woman’s property as per the following priority:
- **Heirs of the husband**

Property distribution depends on whether she has inherited it from her parents, husband or in-laws.
- If inherited from father/mother, it devolves in absence of son or daughter (including kids of predeceased son or daughter) upon the heirs of the husband.
- If inherited from husband or father-in-law, it devolves in the absence of any son or daughter (including kids of predeceased son or daughter) upon the heirs of the husband.

**MUSLIM WOMAN**

If a Muslim woman inherits property from any relation (husband, son, father, mother), she becomes the absolute owner of her share and can dispose of it. If a Muslim woman wants to make a will, she cannot give away more than one-third share of her property, and if her husband is the only heir, she can give two-thirds of the property through the will.

**OTHER RELIGIONS**

The distribution of women’s inheritance, other than those who are Hindus, Buddhists, Sikhs, Jains and Muslims, is governed by the Indian Succession Act, 1925. The blood relatives of a woman inherit even in the presence of husband and husband’s relatives.

Take these steps if your father or husband dies...

Women should take the necessary steps to safeguard their inheritance.

**STEP 1**
Get multiple copies of death certificate and get them attested, if needed. It is required to transfer assets or investments, make a claim or sell assets. It is issued by the zonal office of the local municipal body. For multiple copies, simply download from the municipal website.

**STEP 2**
Seek out the will, if any, as it is the best way to pass on assets. While nominations help transfer moveable assets, a will takes legal precedence over a nomination. Get a probate, if required, as it’s needed in some states.

**STEP 3**
If there is no nominee or will, get a succession certificate, which will be needed to transfer moveable property. In case of immovable property, it will be divided as per the succession laws among all the legal heirs.

**STEP 4**
For property, transfer it in your name or the sub-registrar’s office. You will need the will (with probate) or a succession certificate. Also apply for mutation of property, which means transferring the title in land revenue records.

**STEP 5**
Inform banks so that no one can withdraw money from accounts. Also file a petition for succession certificate to claim your share. In case of any apprehension, file an injunction suit to prevent other legal heirs from denying you your share or other properties of your father or husband.