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Daughters need a will survive

Despite equality written into succession laws, most Indian women are not given a right to property on the same terms as men, finds
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K L Nair was thrilled to share his 75th birthday with all his children who had flown in from across the country. He was especially delighted to see Anuradha, arguably his favourite child. Even though he depended on his sons to carry forward the family flag, Anuradha had always been his darling. Three days after his birthday, Nair had a heart attack. It was a wake up call that reminded him that the time had come to create a will.

But when Nair decided to share the tenets of his will with his children, family cordiality suddenly turned into sibling conflict. Anuradha transformed overnight from Daddy's sweet baby girl to a roaring tigress, hungry for his assets. Nair was heart-broken. In his eyes, he had more than taken care of her, with a plentiful dowry of jewellery and a flat.

But Anuradha was of a different opinion. In her eyes, she had been shafted.

The law: The general law relating to inheritance and succession is governed by the Indian Succession Act of 1925, under which sons and daughters are equally entitled to their father's property upon his demise. However, it is not so simple, because of the different personal laws. Hindus follow the Hindu Succession Act; Under Muslim Personal Law (Shariat) Application Act, 1937, daughters are not excluded from inheritance, but their shares are clearly lower than those of their brothers. Christian women in the state of Travancore are required to abide by the Travancore Christian Succession Act, 1916, which states that the daughter of a person dying intestate would be entitled only to one-fourth of the son's share or Rs 5,000—whichever is lesser.

Under Hindu law, daughters and sons inherit equal shares of their fa-



ther's property however daughters lose, out when it comes to ancestral property that is part of the joint family system. Despite the enactment of the Hindu Succession Act, 1956, establishing equal inheritance, the truth is that in the case of a joint family, a daughter gets a smaller share than the son.

The reality: What is the outcome of the various laws of succession? Simply that Indian women in general are not given a right to property on the same

terms as men. Even where law has given a right, conventions see to it that women themselves relinquish their rights.

According to lawyer Pradeep Khaitan, who recently gave a lecture on inheritance, "Daughters are entitled under the Indian succession act as well as under local religious laws to inherit an equal share of their father's estate, as compared to sons, however many fathers, especially those that own businesses, choose not to give businesses to their daughters so they write wills to disinherit their daughters."

Many young women are pre-conditioned to believe that justice has prevailed because they grow up with the understanding that dowry officially represents a daughter's share of her family's wealth.

"My father always made it clear that he did not want either alien family to inherit his business," says Ruchika, the younger daughter of a successful Mumbai-based industrialist, referring to herself and her sister. "But that is okay because right from

TOOL KIT

There are various web resources available that provide a comprehensive outline of the laws associated with Indian inheritance:

- **Helpline Law.** www.helpinelaw.com
- **NRI Legal Services:** www.nrilegalservices.com
- **Global Property Guide:** www.globalpropertyguide.com

not only separate or self-acquired properties of the deceased male but, but also of undivided interests in coparcenary property."

Thus far, women can smile about the fact that some progressive states—namely Maharashtra, Tamil Nadu, Andhra Pradesh and Kerala—have made state amendments to the national law that entitle women to be part of the coparcenary.

But will an amendment to the law truly solve all of our problems? Dividing family assets equally is easier said than done, especially when it comes to agricultural land and, especially, business.

"The key lies in unbundling hard assets from the running business," says Pradeep Khaitan. This way, even if a father intends to hand over the business to his sons, he can compensate his daughter with a fair value of assets.

Finally, there is the issue of a will, which in theory disburses inheritance according to a father's wishes, regardless of inheritance laws. The good news is that according to legal expert Razack, "aside from Christians, the law of Succession mandates wills to be compulsorily probated." This means that even in the case of a will that disinherits the daughter either wholly or partially, for good reason the will can be challenged. The bad news, of course, is that it is likely to take a long time—anywhere from four to six years. Some cases have been known to go up to two decades.

So what can daughters do to protect themselves? Firstly it is essential to understand succession law as it is applicable to you.

All succession law entitles daughters to some share of their father's assets even if it is not an equal share to that of their brothers. This includes both movable assets such as gold, jewellery, stocks, shares as well as immovable assets such as land and property. It is always a good idea to negotiate with Dad and stay on good terms with your brothers but bear in mind that you do not have to be shafted on the grounds of family harmony. By exercising your legal rights to succession, you can be a happier beneficiary, but also a source of inspiration to your own daughters. After all isn't it time we taught them to wake up and smell the coffee?

the beginning, we knew that he would compensate us with some property and jewellery." Although Ruchika and Radhika had been brainwashed by their family to accept their fate, as per most inheritance laws, neither daughter would receive her legal share.

The Hindu joint family has a strong gender bias. The obvious objection to this proposition comes from a long standing socio-cultural bias: as managers of their fathers' joint family they could be susceptible to the influence of their husbands or husbands' families, the inevitable aliens!

Javed Razack, a Hyderabad-based advocate, tells us that "In order to set at rest the long drawn out legal battles and animosity among the heirs of the deceased, the law of succession should be emphatically amended to provide and give equal inheritance to all, irrespective of gender discrimination and bias. Special emphasis to property distribution among Hindus, and the Mitakshara coparcenary should be converted into Dayabaha-ga, which means equal distribution of

RULES OF INHERITANCE

Who gets what under intestate succession (succession without a will)

- **If the Deceased is a Hindu male (including Buddhists, Sikh, Jain, and all those who are not Christian, Muslim or Parsi):** Class I heirs of a male Hindu who shall simultaneously inherit are: mother being alive (1 share); widow (1 share); living sons (1 share each); living daughters (1 share each); predeceased son having the following relations (1 share)—(a) widow, (b) sons, (c) daughters - each to be equally divided; predeceased daughter (1 share) to be equally shared by sons and daughters of the predeceased daughter
- **If the deceased is a Hindu female:** Sons (1 share each), daughters (1 share each), husband (1 share), son and daughter of predeceased son (equally together 1 share), son and daughter of predeceased daughter (equally together 1 share); heirs of husband; father and mother; father's heir; mother's heirs
- **If the deceased is a Christian, or married under the Special Marriage Act (for inter-religious marriage)**

Where lineal descendant is present:

widow/widower (1/3) of the property; lineal descendants (equally to share 2/3); in the absence of lineal descendant, to all grand children (equally); in the absence of grandchildren, to great grandchildren (equally); lineal descendant of a predeceased child or lineal descendant of a predeceased child of a predeceased child if present (division is based on equal shares, taking the predeceased child to be alive, and a downward distribution amongst the lineal descendants).

With no lineal descendant:

Widow/widower (1/3); father (balance entire); if father is dead, to mother, to mother, sisters and brothers (equally); if father is dead, to mother, living sisters and brothers, and children of a predeceased sister or brother (equally so that one share to be taken for the predeceased sister or brother to pass through the lineal descendant to such predeceased).