

From Colonial Legacy to Modern Clarity: Big Changes in Succession Law

Simplifying Estate Planning for a Modern India

Background

The Latin phrase 'Mors certa est, vita non est' meaning 'Death is Certain, Life is Not' sums up the reality of life. An unexpected demise of a loved one often leaves families grappling with succession issues such as execution of Wills, probate, and transmission formalities.

Succession in India is typically of two types: testamentary (person dies with a Will) and intestate (person dies without a Will). Given India does not have a Uniform Civil Code, different communities are governed by their respective personal laws. For intestate cases, Hindus, Sikhs, Jains, Buddhists follow the Hindu Succession Act, 1956; Muslims follow uncodified personal laws; Christians, Parsis, and Jews follow the Indian Succession Act, 1925.

Where a person has made a Will (governed by the Indian Succession Act, 1925), historically, probate was mandatory for Wills executed within the original civil jurisdiction of the High Courts at Kolkata, Madras, and Bombay or relating to immovable property within those limits—a process considered time-consuming and costly.

The provisions under these laws were very onerous especially in terms of Probate for Wills for relatives of the deceased person. Thus, to resolve this issue, the Parliament recently passed a new Bill i.e. The Repealing and Amending Bill, 2025 (Bill) proposes to **omit/ amend certain provisions of the Indian Succession Act, 1925**, which previously required certain communities (Hindus, Buddhists, Sikhs, Jains, and Parsis) to obtain probate or letters of administration for Wills executed within the original civil jurisdiction of the High Courts at Kolkata, Madras, and Bombay, or relating to immovable property within those limits.

Key Changes under the Repealing and Amending Bill, 2025

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| 01 | Omission of Section 213 of the Indian Succession Act, 1925 (removes mandatory probate for certain communities). |
| 02 | Deletion of references to Section 213 in Section 3(1). |
| 03 | Amendment to Section 370(1) to remove linkage with Section 213. |
| 04 | Deletion of obsolete clause (b) in Section 370(2). |

These amendments would be prospective in nature as they would apply for instances/ situations recorded post the enactment of the legislation. The Bill is now awaiting Presidential assent to be codified into the law.

Practical Implications

Uniformity Across Communities

- ▶ Removes discriminatory provisions applying only to certain religious groups.
- ▶ All individuals now have similar requirements for proving Wills.

Simplified Estate Planning

- ▶ No need for probate solely due to geography or community restrictions.
- ▶ Reduces procedural complexity and legal costs.

Faster Settlement of Estates

- ▶ Succession processes become quicker, especially for immovable property in major metros.
- ▶ Beneficiaries can establish rights without lengthy court procedures.

Impact on Legal Practice

- ▶ Probate remains optional unless disputes or institutional requirements exist.

Colonial-Era Rules Removed

- ▶ Modernizes succession law, aligning with equality and efficiency.

Why This Matters

These changes simplify estate planning, reduce delays, and lower costs for families. Institutions such as banks and insurers may revise internal policies to adopt risk-based criteria for requiring probate. Clients should maintain clear, updated Wills and consider registration to minimize future disputes.

Old vs. New Provisions

Topic	Old Position	New Position	Practical Effect
Section 213	Mandatory probate for certain communities in specific jurisdictions	Section 213 omitted	Removes community/geography-based mandatory probate.
Section 3(1)	Reference to Section 213	Reference deleted	Aligns exemption provision with omission
Section 370(1)	Succession certificate not granted where rights required by Section 213	Reference to 213 removed	Clarifies availability of succession certificates
Section 370(2)(b)	Included colonial-era instruments	Clause deleted	Removes obsolete definitions

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