

Ad. Deepak M. Tiwari
Advocate, High Court & Subordinate Courts

PRACTICE NOTE — SUCCESSION, WILLS & ESTATE PLANNING

The Indian Succession Act, 1925

Who it governs, intestate shares (Christians & Parsis), wills and their execution, probate / letters of administration, and succession certificates

Important change — S.213 omitted. The Repealing and Amending Act, 2025 (assent 20 Dec 2025; reported in force 21 Dec 2025) omitted **S.213**, which had barred establishing a right as executor/legatee without probate or letters of administration for wills of Hindus, Jains, Sikhs, Buddhists and Parsis made in Bombay, Calcutta or Madras (or covering immovables there). Probate is **no longer a mandatory precondition** in those cases, but remains available and advisable for disputed wills, banks/registries that insist on it, and foreign assets. Pending probate matters are reported to be protected by the Act's savings clause. **Verify the Gazette text, savings clause and High Court / Registry practice notes before advising.**

STRUCTURE	Parts I–X; 391 Sections (S.213 now omitted)
INTESTATE — WHO	Christians, Parsis, Jews & others; <u>not</u> Hindus (HSA 1956) or Muslims (personal law)
TESTAMENTARY — WHO	Wills of Hindus, Buddhists, Sikhs, Jains, Christians, Parsis (Muslims excluded — S.58)
WILL EXECUTION — S.63	Signed by testator + 2 attesting witnesses, each signing in testator's presence
LIMITATION — PROBATE / LoA	Art. 137, Limitation Act (3 yrs) applied — check current authority on accrual

APPLICABILITY & DOMICILE

INTESTATE SUCCESSION — PART V	TESTAMENTARY SUCCESSION — PART VI
- Governs intestate estates of Christians, Parsis, Jews and persons outside Hindu/Muslim law; Hindus, Buddhists, Sikhs, Jains intestate fall under the Hindu Succession Act, 1956 (see separate note). Domicile (Part II, Ss.5–19) decides the law for movables; immovables follow <i>lex situs</i> (S.5).	- Part VI (Ss.57–191) is the general law of wills for all except Muslims (S.58); Hindu wills are brought in through S.57 (Schedule III) — so a Hindu's will is read under this Act. - Wills are revocable at will (S.62); a will speaks from the testator's death.

INTESTATE SHARES — CHRISTIANS & PARSIS

CASE	DISTRIBUTION
Non-Parsi: widow + lineal descendants (S.33(a))	Widow one-third ; lineal descendants two-thirds (per stirpes within the class — Ss.36–38).
Non-Parsi: widow, no lineal descendants but kindred (S.33(b))	Widow one-half ; remaining half to kindred (Ss.38–48).
Non-Parsi: widow, no kindred (S.33(c))	Entire estate to the widow. A widower takes the wife's estate as the widow takes the husband's (S.35).
Parsi intestate (Ss.50–56)	Widow/widower and each child take equal shares ; each surviving parent takes a share equal to half a child's share — verify the full table in S.51–53 for children's widows/predeceased cases.

WILLS — MAKING, PROVING & CONTESTING

TOPIC	KEY POINTS
S.59 — Capacity	Testator must be of sound mind and a major; a married woman, deaf/dumb/blind person may make a will if they know what they are doing. Not valid if induced by fraud, coercion or importunity (S.61).

S.63 — Execution	(a) testator signs or affixes mark (or another signs at direction and in presence); (b) signature placed so it appears intended to give effect to the writing; (c) two or more witnesses , each having seen the testator sign and each signing in the testator's presence . Attestation by a legatee does not invalidate the will but voids that legacy (S.67).
Proof in court	S.63 read with S.68, Evidence Act: at least one attesting witness must be examined to prove execution; the propounder must also dispel suspicious circumstances (active role of beneficiary, unnatural disposition, shaky signature).
S.70 — Revocation	By later will/codicil, by writing declaring intention executed as a will, or by burning/tearing with intent to revoke.

PROBATE & LETTERS OF ADMINISTRATION — PART IX

PROVISION	EFFECT
Probate vs. LoA	Probate (S.222) — only to an executor named in the will, certifies the will and confers authority. Letters of Administration (S.218, S.234) — where no executor is named / intestate; with will annexed where will exists.
S.270, 276 — Forum & petition	Application to the District Judge (in Mumbai, the High Court on its Original/Testamentary side or City Civil Court as per valuation — verify current pecuniary jurisdiction). Petition (S.276) states date and time of death, will, family, assets/valuation, and is supported by affidavit and the will; court fee ad valorem on estate value.
Caveat & contest	Any interested person may lodge a caveat (S.284) before grant; an uncontested petition proceeds on citation/notice, a contested one is converted into a suit with issues on due execution, capacity and undue influence.
S.273 — Conclusiveness	Probate/LoA is conclusive proof of the will's validity and the executor's authority, until revoked (S.263 — revocation for just cause, e.g. fraud, defective grant).
Post-S.213 position	Rights under a will can be asserted without prior probate, but a probate order gives conclusive evidentiary protection and satisfies third parties. Practice should now weigh cost / delay vs. certainty in each estate.

SUCCESSION CERTIFICATE — PART X

S.370–372 — SCOPE & APPLICATION

- Certificate empowers an heir/legatee to **collect debts and securities** (bank deposits, shares, bonds, dues, insurance not nominated) — **not immovable property**.
- Application to the District Judge where the deceased ordinarily resided or held property (S.371); petition particulars per S.372; notice, hearing and **security / indemnity bond** (S.375–376).

S.379, 381, 383 — FEES, EFFECT, REVOCATION

- Court fee** is ad valorem on the debts/securities (S.379, read with the applicable Court Fees Act — Bombay Court Fees Act in Maharashtra).
- Certificate gives a **debtor full discharge** on payment (S.381); revocable on grounds including fraud or concealment (S.383).
- S.370 was amended by the 2025 Act to remove its linkage to S. 213.

EXECUTORS & ADMINISTRATION OF ESTATE

DUTIES & POWERS

- An executor/administrator **represents the estate**: collects assets, pays funeral expenses, debts and legacies (in the order of priority in Part IX), and files the inventory and accounts if directed. Powers of a sole executor extend to sale and mortgage of the estate subject to the Act.
- Executors **cannot be minors or persons of unsound mind** (S.236); where there are several, acts of one generally bind the estate.

PRACTICE NOTES

Do Not Assume Probate Is Dead

Even after S.213's omission, banks, depositories, housing societies and the Registrar often insist on probate/LoA/succession certificate by internal policy. Advise the client on both the legal position and the institutional reality, and record the advice in writing.

Pick the Right Remedy by Asset Type

Movable debts/securities → **succession certificate**. Immovable property or full administration of a will → **probate / LoA**. Nominated assets (insurance, MF, bank) may pass on nomination alone — check nomination before filing.

Draft Wills to Survive a Contest

Use two independent witnesses (not beneficiaries), record the testator's capacity (medical certificate where aged/ill), register the will (not mandatory but evidentially strong) and avoid beneficiary-led instructions — these are the facts courts test under S.63 and Evidence Act S.68.

Cross-Check Companion Statutes

Hindu intestate → Hindu Succession Act, 1956; Muslim wills/inheritance → personal law; court fee → Bombay Court Fees Act; proof of execution → Evidence Act (BSA, 2023 for new proceedings); will registration → Registration Act, 1908.

For internal practice reference only — highlights select provisions of the Indian Succession Act, 1925. Intestate share tables are summarised from Part V and should be verified against the bare Act; the effect of the Repealing and Amending Act, 2025 on pending and future matters should be confirmed against the Gazette text and current High Court practice. Prepared 6 October 2026.

Sources: Indian Succession Act, 1925 (indiacode.nic.in); Repealing and Amending Act, 2025; commentary via Bar & Bench, SCC Times, S.S. Rana & Co., Khaitan & Co., Bhatt & Joshi Associates, Casemine, Advocatekhaj.