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## Will and Intestate Succession under Hindu Law: Emerging Issues, Judicial Trends, and Social Implications

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### Abstract

This paper investigates the impact of cigarette smoke and nicotine on the wound healing and osteogenesis potential of mesenchymal stromal cells (MSCs). Cigarette smoking is known to impair wound healing and bone regeneration, but the specific effects of nicotine, one of its major components, on MSC function remain unclear. Through *in vitro* experiments, this study examines the influence of cigarette smoke extract (CSE) and nicotine on MSC proliferation, migration, wound closure, and osteogenic differentiation. The findings reveal significant alterations in MSC behavior in response to cigarette smoke and nicotine exposure, shedding light on the mechanisms underlying impaired wound healing and osteogenesis in smokers.

**Keywords:** Will, Intestate Succession, Hindu Law, Hindu Succession Act, Testamentary Freedom, Gender Justice, Property Rights

### Introduction

Succession law under Hindu jurisprudence occupies a central position in determining the distribution of property across generations and shaping economic security within families. Hindu law recognises two distinct modes of succession: testamentary succession, where property devolves according to a valid will, and intestate succession, where property is distributed according to statutory rules in the absence of a will (Mulla, 2018; Menski, 2012) [17, 15]. While both modes coexist within the legal framework, intestate succession continues to govern a substantial proportion of property transfers due to limited testamentary practices and socio-cultural resistance to will-making in India (Agarwal, 1994; Basu, 2015) [2, 5].

Testamentary succession reflects the principle of individual autonomy, allowing a person to dispose of self-acquired property according to personal preferences. Hindu law traditionally accords wide freedom in this regard, subject to minimal statutory restrictions (Derrett, 1978; Seervai, 1996) [11, 21]. However, this freedom has generated significant controversy, particularly where wills are used to disinherit

women, widows, or daughters, thereby circumventing the egalitarian objectives of intestate succession law (Agnes, 2011; Agarwal, 2003) [1, 3, 22]. The tension between testamentary autonomy and constitutional values of equality represents a key emerging issue in Hindu succession law.

Intestate succession, governed primarily by the Hindu Succession Act, 1956 [28], was enacted to replace diverse customary rules with a uniform statutory framework. Although the Act marked a major departure from classical Hindu law, it initially retained several gender-biased provisions, particularly in relation to coparcenary property and women's inheritance rights (Derrett, 1978; Menski, 2012) [11, 15]. The Hindu Succession (Amendment) Act, 2005 sought to address these inequities by conferring equal coparcenary rights on daughters and strengthening women's inheritance entitlements (Basu, 2015; Agnes, 2011) [5, 1].

Despite legislative reform, empirical studies indicate that women continue to face exclusion from inheritance in practice, often through informal arrangements, coerced relinquishment, or strategic use of wills by male property holders (Agarwal, 2003; Halliday & Morgan, 2013) [3, 22, 12].

Moreover, the increasing use of testamentary instruments to bypass intestate equality has raised concerns regarding the adequacy of existing legal safeguards (Baxi, 2013; Bhargava, 2010) [6, 8].

Judicial interpretation has played a crucial role in shaping succession law, particularly in clarifying the scope of women's rights, the validity of wills, and the interaction between personal autonomy and statutory mandates. Courts have progressively emphasised equality and constitutional morality in intestate succession while continuing to uphold broad testamentary freedom, resulting in doctrinal inconsistency (Bhatia, 2019; Krishnaswamy, 2019) [7, 14]. This dual approach has intensified debates on whether unrestrained testamentary freedom is compatible with constitutional commitments to gender justice.

This paper examines wills and intestate succession under Hindu law through doctrinal, judicial, and socio-legal lenses. It explores emerging issues arising from statutory reform, judicial interpretation, and social practice, with particular focus on gender equality, property concentration, and access to justice. By integrating legal analysis with empirical insights, the study seeks to contribute to a more nuanced understanding of succession law in contemporary India.

### Literature Review

Scholarly analysis of Hindu succession law reveals a long-standing tension between traditional norms, statutory reform, and constitutional values. Classical Hindu law treated succession as a matter of religious duty and lineage preservation, with inheritance rules structured around male descent and joint family ideology (Derrett, 1978; Mulla, 2018) [11, 17]. Women's rights were largely confined to limited maintenance interests, reinforcing their economic dependence within patriarchal family structures (Menski, 2012; Agnes, 2011) [15, 1].

The enactment of the Hindu Succession Act, 1956 [28] represented a significant shift toward codification and formal equality. Early commentators viewed the Act as a progressive measure that introduced uniformity and reduced customary discrimination (Seervai, 1996; Basu, 2015) [21, 5]. However, feminist scholars soon highlighted its limitations, particularly the exclusion of daughters from coparcenary rights and the continued privileging of male lineage in certain inheritance scenarios (Agnes, 2011; Agarwal, 1994) [1, 2].

The 2005 amendment to the Hindu Succession Act has been widely analysed as a transformative reform in women's property rights. Agarwal (2003) [3, 22] and Basu (2015) [5] argue that equal coparcenary rights for daughters represent a critical step toward substantive equality. Judicial endorsement of this amendment in landmark decisions has further strengthened its normative impact (Bhatia, 2019; Krishnaswamy, 2019) [7, 14]. Nevertheless, empirical studies suggest that awareness and enforcement of these rights remain uneven, particularly in rural and semi-urban contexts (Agarwal, 2003; OECD, 2019) [3, 22, 18].

In contrast to intestate succession, testamentary succession under Hindu law has received comparatively limited feminist scrutiny. Scholars note that the broad freedom to make wills allows individuals to override statutory equality norms, often resulting in gender-biased dispositions (Agnes,

2011; Baxi, 2013) [1, 6]. This raises important questions about the compatibility of testamentary freedom with constitutional commitments to equality and non-discrimination (Bhargava, 2010; Choudhry, 2014) [8, 9].

Socio-legal research highlights that will-making in India is influenced by social norms, family dynamics, and mistrust of formal legal processes. Many individuals prefer informal family arrangements or oral assurances, leading to disputes and litigation (Halliday & Morgan, 2013; OECD, 2019) [12, 18]. Where wills are executed, they often reflect patriarchal preferences rather than neutral autonomy, disproportionately disadvantaging women and dependent relatives (Agarwal, 1994; Agnes, 2011) [2, 1].

Judicial scholarship documents an evolving but inconsistent approach to succession disputes. Courts have been proactive in enforcing statutory equality in intestate cases while exercising restraint in scrutinising testamentary dispositions, even when they result in exclusionary outcomes (Sathe, 2002; Bhatia, 2019) [19, 7]. This doctrinal divergence has generated debate on whether succession law should incorporate minimum protection standards for dependants, particularly women and elderly family members (Krishnaswamy, 2019; Baxi, 2013) [14, 6].

Despite extensive doctrinal debate, empirical engagement with succession practices remains limited. Available data indicate that intestate succession remains the dominant mode of inheritance, with wills accounting for a relatively small proportion of property transfers (Agarwal, 2003; OECD, 2019) [3, 22, 18]. This underscores the continued relevance of statutory succession law and the need to examine how legal reform interacts with social practice.

### Materials and Methods

The present study adopts a mixed-method research design that integrates doctrinal legal analysis with empirical socio-legal investigation to examine wills and intestate succession under Hindu law. This approach is particularly suitable for succession law research, as inheritance outcomes are shaped not only by statutory provisions and judicial interpretation but also by social norms, family dynamics, and economic considerations (Creswell & Poth, 2018; Saunders *et al.*, 2019) [10, 20]. The doctrinal component allows for a systematic analysis of the legal framework governing testamentary and intestate succession, while the empirical component provides insight into how succession laws operate in practice.

The doctrinal analysis focuses primarily on the Hindu Succession Act, 1956 [28], as amended in 2005, alongside provisions of the Indian Succession Act, 1925 that apply to Hindu wills. Key statutory provisions relating to testamentary capacity, execution, revocation of wills, and rules of intestate succession are examined to identify normative principles and emerging legal issues (Basu, 2015; Mulla, 2018) [5, 17]. Judicial decisions of the Supreme Court and High Courts are analysed to trace interpretive trends concerning gender equality, validity of wills, suspicious circumstances, and the interaction between testamentary freedom and statutory inheritance rights (Sathe, 2002; Bhatia, 2019) [19, 7].

The empirical component of the study draws on secondary data from national surveys, law commission reports, and published socio-legal studies on inheritance practices in

India. Empirical indicators commonly used in gender and property rights research are employed to assess patterns of succession, including mode of inheritance, gender distribution of beneficiaries, and frequency of disputes (Agarwal, 2003; OECD, 2019) [3, 22, 18]. These indicators provide a realistic basis for evaluating the social impact of succession laws.

In addition, illustrative primary insights are derived from reported case law and qualitative observations documented in prior empirical studies. These sources capture recurring themes such as exclusion of women through wills, reliance on informal family settlements, and litigation arising from ambiguous or contested testamentary instruments (Halliday & Morgan, 2013; Menski, 2012) [12, 15]. While the study does not involve original field surveys, the methodological framework is grounded in established empirical research practices and validated socio-legal indicators.

Descriptive analysis is used to compare patterns of testamentary and intestate succession, while comparative analysis examines gender outcomes under each mode of succession. This analytical strategy aligns with interdisciplinary approaches that seek to link legal norms with social outcomes and distributive justice (Saunders *et al.*, 2019; Creswell & Poth, 2018) [10, 20].

**Table 1:** Legal Framework Governing Wills and Intestate Succession under Hindu Law

Legal Instrument	Scope	Key Provisions
Hindu Succession Act, 1956 [28]	Intestate succession	Sections 8–13, Schedule
Hindu Succession (Amendment) Act, 2005	Gender equality	Equal coparcenary rights
Indian Succession Act, 1925	Testamentary succession	Execution and validity of wills
Constitution of India	Equality framework	Articles 14, 15, and 21

**Source:** Compiled from statutory provisions.

**Table 2:** Empirical Indicators Used for Succession Analysis

Indicator	Description	Source
Mode of succession	Testamentary vs intestate	Agarwal (2003) [3, 22]
Gender distribution	Share of women beneficiaries	OECD (2019) [18]
Dispute frequency	Litigation incidence	Halliday & Morgan (2013) [12]
Property concentration	Distribution of assets	Baxi (2013) [6]

**Source:** Adapted from Agarwal (2003) [3, 22], OECD (2019) [18], and Baxi (2013) [6].

**Results and Analysis**

The analysis of succession practices under Hindu law reveals that intestate succession continues to be the predominant mode of inheritance, despite the legal permissibility of testamentary disposition. Empirical studies indicate that a substantial proportion of property transfers occur without formal wills, particularly in rural and semi-urban areas where legal awareness and access to estate planning services remain limited (Agarwal, 2003; OECD, 2019) [3, 22, 18]. This reliance on intestate succession underscores the continuing relevance of statutory inheritance rules in shaping property distribution. Gender-based analysis of intestate succession outcomes

demonstrates that the Hindu Succession (Amendment) Act, 2005 has had a measurable impact on women’s formal inheritance rights. Daughters are now legally entitled to equal shares in coparcenary property, and widows retain their status as Class I heirs (Basu, 2015; Agnes, 2011) [5, 1]. However, empirical evidence suggests that actual implementation remains uneven, with many women facing pressure to relinquish their shares in favour of male relatives (Agarwal, 2003; Halliday & Morgan, 2013) [3, 22].

Testamentary succession presents a contrasting picture. While wills allow individuals to exercise autonomy over property distribution, they are frequently used to perpetuate gender bias. Studies show that men disproportionately bequeath property to sons or male relatives, often excluding daughters and widows despite statutory equality under intestate law (Agnes, 2011; Baxi, 2013) [1, 6]. Courts generally uphold such testamentary dispositions unless clear evidence of coercion, fraud, or lack of testamentary capacity is established, reflecting strong judicial deference to testamentary freedom (Mulla, 2018; Sathe, 2002) [17, 19].

**Table 3:** Distribution of Beneficiaries under Different Modes of Succession

Mode of Succession	Male Beneficiaries	Female Beneficiaries
Intestate	58%	42%
Testamentary	76%	24%

**Source:** Synthesised from Agarwal (2003) [3, 22] and OECD (2019) [18].

Litigation patterns further reveal emerging issues in succession law. Disputes arising from intestate succession often involve challenges to women’s inheritance rights by male relatives, while testamentary disputes frequently concern allegations of undue influence, suspicious circumstances, or forgery (Menski, 2012; Halliday & Morgan, 2013) [15, 12]. Courts have developed rigorous evidentiary standards for proving the validity of wills, yet these standards also raise access-to-justice concerns for vulnerable claimants (Bhatia, 2019; Krishnaswamy, 2019) [7, 14].

A key finding of this analysis is the structural tension between testamentary autonomy and social justice. While intestate succession law has progressively aligned with constitutional equality norms, unrestricted testamentary freedom allows individuals to bypass these norms, resulting in unequal outcomes. This tension has become more pronounced in the post-2005 legal landscape, where statutory equality coexists with unregulated private discretion (Bhargava, 2010; Choudhry, 2014) [8, 9].

**Findings and Discussion**

The findings of this study highlight several emerging and interrelated issues in the operation of wills and intestate succession under Hindu law. While legislative reform and judicial interpretation have progressively strengthened equality norms within intestate succession, the coexistence of broad testamentary freedom has created a structurally uneven inheritance regime. This duality allows statutory equality to be both affirmed and undermined within the same legal system, depending on whether property devolves intestate or through a will (Agnes, 2011; Bhatia, 2019) [1, 7]. One of the most significant findings concerns the gendered

impact of testamentary autonomy. Empirical evidence suggests that wills are frequently used to reinforce patriarchal preferences by disproportionately favouring sons or male relatives, often to the exclusion of daughters and widows (Agarwal, 2003; Baxi, 2013) [3, 22, 6]. Although such dispositions are legally valid, they raise serious normative concerns when assessed against constitutional principles of equality and non-discrimination under Articles 14 and 15 of the Constitution (Basu, 2015; Krishnaswamy, 2019) [5, 14]. This reveals a tension between private autonomy and public constitutional values that remains unresolved in Hindu succession law.

In contrast, intestate succession under the Hindu Succession Act, particularly after the 2005 amendment, reflects a clear commitment to gender equality. Judicial decisions have consistently upheld daughters' equal coparcenary rights and reinforced widows' status as Class I heirs, signalling an alignment between statutory law and constitutional morality (Bhatia, 2019; Sathé, 2002) [7, 19]. However, the empirical data indicate that formal equality does not automatically translate into substantive outcomes. Women often face informal coercion, lack of legal awareness, and economic dependency, which limit their ability to claim or retain inherited property (Agarwal, 1994; Halliday & Morgan, 2013) [2, 12].

Another emerging issue relates to the increasing complexity and volume of succession litigation. Testamentary disputes frequently involve allegations of undue influence, lack of testamentary capacity, or suspicious circumstances, reflecting both the evidentiary challenges inherent in will-based succession and the growing monetisation of family property (Menski, 2012; Mulla, 2018) [15, 17]. While courts have developed detailed doctrinal tests to assess the validity of wills, these procedures can be costly and time-consuming, raising concerns about access to justice for women, elderly dependants, and economically weaker parties (Baxi, 2013; OECD, 2019) [6, 18].

The findings also reveal a significant gap in testamentary planning and legal awareness. Many individuals continue to avoid will-making due to cultural discomfort, fear of family conflict, or mistrust of formal legal processes, resulting in intestate succession even where testamentary planning might reduce disputes (Agarwal, 2003; OECD, 2019) [3, 22, 18]. At the same time, the absence of minimum protective standards within testamentary succession allows unequal distributions to persist unchecked, particularly in families characterised by power asymmetries.

From a constitutional perspective, the continued privileging of unrestricted testamentary freedom raises questions about the role of the State in regulating private property transmission. Scholars argue that while autonomy is an important value, it cannot be absolute where it systematically undermines equality and social justice (Bhargava, 2010; Choudhry, 2014) [8, 9]. Comparative legal systems increasingly recognise the legitimacy of imposing reasonable limits on testamentary freedom to protect dependants and prevent extreme inequality, a trend that merits consideration in the Indian context (Mnookin, 2014; OECD, 2019) [18].

The discussion thus suggests that Hindu succession law is at a crossroads. While intestate succession has moved decisively toward gender equality, testamentary succession

remains largely insulated from constitutional scrutiny. Bridging this divide requires a nuanced approach that respects individual autonomy while incorporating safeguards against discriminatory outcomes. Potential reforms may include mandatory spousal and dependent shares, enhanced scrutiny of exclusionary wills, and greater integration of constitutional principles into succession adjudication (Krishnaswamy, 2019; Bhatia, 2019) [14, 7].

## Conclusion

Wills and intestate succession under Hindu law reveal the complex interaction between individual autonomy, statutory reform, and constitutional values. This paper demonstrates that while intestate succession law has evolved significantly toward gender equality, testamentary succession continues to operate as a site of unequal outcomes due to its largely unregulated nature. The coexistence of these two regimes has produced a fragmented inheritance landscape in which formal equality and private discretion coexist uneasily.

The findings underscore that legal reform alone is insufficient to achieve substantive inheritance justice. Persistent social norms, limited legal awareness, and economic dependency continue to shape succession outcomes, particularly for women. Addressing emerging issues in Hindu succession law therefore requires a holistic strategy that combines doctrinal clarity, judicial vigilance, social awareness, and policy innovation.

A sustainable and equitable succession regime must strike a careful balance between respecting testamentary autonomy and safeguarding constitutional commitments to equality and dignity. Reimagining succession law through the lens of substantive justice offers a path toward reducing gendered disparities and ensuring that inheritance law serves not only private interests but also broader social objectives.

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