
A STUDY ON PROBATE AND ITS FILING PROCEDURE WITH REFERENCE TO INDIAN SUCCESSION ACT, 1925

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ABSTRACT

Probate is a crucial legal procedure that grants the designated executor official authority to manage the estate and court recognition of the deceased person's will. It acts as a crucial instrument to guarantee that the assets of the deceased are distributed in line with their testamentary intentions. In India, probate is governed by a comprehensive legal framework laid down primarily under the Indian Succession Act, 1925, supplemented by procedural rules of the Civil Procedure Code, 1908, and High Court Rules, particularly in metropolitan jurisdictions such as Mumbai, Kolkata, and Chennai. This research paper undertakes a doctrinal analysis of the probate process, focusing on its legal basis, institutional structures, and practical implementation. It looks at the reach and relevance of Part IX of the Indian Succession Act, 1925, which focuses on letters of administration, probate, and estate administration. The study also analyses relevant provisions, including Sections 217–370, with special reference to Sections 264 to 289, which detail the jurisdiction of courts, procedures for filing probate petitions, caveats, notice requirements, grant of probate, and revocation mechanisms. The function and duties of executors, the standards of proof required by Sections 63 of the Indian Succession Act and 68 of the Indian Evidence Act, 1872, and the judicial interpretation of terms like testamentary capacity, undue influence, and due execution of wills are also examined in this paper.

Keywords: Probate, Indian Succession Act, 1925, Grant of Probate, Probate petition, Judicial Interpretation, testamentary succession, legal validity of Will.

Introduction:-

The process of proving a deceased person's will in a court of law and having it recognized as a legitimate public document is known as probate. This procedure gives the executor designated in the will the legal right to gather, administer, and divide the decedent's property in accordance with the testator's final desires. The word "probate" comes from the Latin word *probare*, which also means "to test" or "prove" something's validity¹. In essence, probate serves as a legal assurance that a will is authentic, voluntarily made, and complies with all procedural requirements. The law of testamentary and intestate succession in India is governed by the Indian Succession Act, 1925, and probate is an essential component of this legal framework². The relevant provisions are contained under Part IX of the Act, from Sections 217 to 369, with probate procedures specifically detailed between Sections 264 to 289. These parts describe the courts' jurisdiction, the petition filing process, notices, executor or administrator appointments, and probate revocation.

In India, not all cases call for probate. Nonetheless, in accordance with Section 213 of the Indian Succession Act, 1925, all wills made by Hindus, Buddhists, Sikhs, and Jains that pertain to real estate located in the three former Presidency Towns of Chennai (Madras), Mumbai (Bombay), and Kolkata (Calcutta) must be probated. In order to maintain legal formality and certainty in high-value estate disputes, this unique requirement—a colonial legacy—is still in place, especially in urban regions where property fraud and contested inheritances are common³. The probate process remains underutilized in rural India, where land records are often incomplete and awareness of succession laws is limited. The procedural rigidity, cost of litigation, and delays in civil courts also deter many from pursuing probate unless mandated by law. Recognizing these challenges, legal reform discussions have advocated for digitization of succession records, simplified probate procedures in subordinate courts, and awareness campaigns to educate citizens about the necessity of securing probate in certain cases.

The Indian judiciary has reiterated the importance of probate in several decisions. For example, in *Kanta Yadav v. Om Prakash Yadav*,⁴ the Delhi High Court emphasized that probate grants finality to a will and bars subsequent challenges unless granted by fraud or misrepresentation.

¹ *Black's Law Dictionary*, (10th ed., 2014), p. 1397

² The Indian Succession Act, 1925, No. 39, Acts of Parliament, 1925

³ *Id.*, s. 213 & *Clarence Pais v. Union of India*, AIR 2001 SC 1151

⁴ 2010 SCC OnLine Del 2878

Moreover, the judiciary has clarified that the jurisdictional requirements under Section 213 must be strictly construed in accordance with the residence of the testator and the situs of the immovable property⁵. Probate not only ensures the formal validation of a will, but also upholds the sanctity of testamentary freedom, balances the interests of beneficiaries and creditors, and provides legal certainty to successors. As India moves toward modernization of its judicial and land record systems, simplifying and encouraging probate may prove pivotal in reducing property-related litigation and ensuring orderly inheritance practices.

Historical Evolution:-

The Indian law of succession is a product of codification influenced by English common law. Before the 1925 Act, succession was governed by multiple enactments such as the Indian Succession Act, 1865, and the Probate and Administration Act, 1881. These were unified into the Indian Succession Act, 1925 to create a consistent legal system.⁶

This Act aims to consolidate the laws relating to intestate and testamentary succession. It applies uniformly to Christians, Parsis, Jews, and those Hindus whose wills fall under specific jurisdictions⁷. However, the Act does not apply to Muslim personal law, unless expressly provided, preserving religious autonomy.

English ecclesiastical courts, which were in charge of managing wills and estates, are where probate's historical origins may be found⁸. This legacy was transplanted to colonial India, where similar legal procedures evolved under British rule. Post-independence, the legal structure has been retained and adapted to suit contemporary Indian realities.

The Probate Filing Procedure:-

The procedure for obtaining probate in India is governed by Sections 276 to 289 of the Indian Succession Act, 1925⁹. These provisions collectively lay down the procedural steps, documentary requirements, and judicial processes to be followed by an executor seeking probate of a will. The purpose of this statutory framework is to ensure that the testamentary

⁵ *Ganpatrai v. Kailash Narain*, AIR 1980 All 122

⁶ Indian Succession Act, 1925, s. 57

⁷ Mulla, *Hindu Law*, Vol. II, (LexisNexis 2020).

⁸ Ratna Mukherjee, "Testamentary Succession in India," (2009) 45 JILI 354

⁹ The Indian Succession Act, 1925, ss. 276–289

disposition of the deceased is duly verified and legally validated before the estate is administered.

Under Section 276, an application for probate must be filed by the executor named in the will. This petition must be submitted to a court with testamentary jurisdiction, which would either be the District Court or the High Court with original civil jurisdiction, depending on the territorial and pecuniary context¹⁰. In the metropolitan cities of Kolkata, Mumbai, and Chennai, only the respective High Courts have original jurisdiction to entertain such petitions in accordance with Section 213 read with State amendments and High Court Original Side Rules.

The probate petition must contain key details, including:

- Time and place of the testator's death
- Full particulars of the executor(s)
- Names and addresses of legal heirs and beneficiaries
- Affirmation of the testator's capacity and due execution of the will

The petition needs to be appended with the following documents:

- Original will (duly signed and attested)
- Death certificate of the testator (issued by the local municipal authority)
- Affidavit of the executor confirming the genuineness of the will and willingness to act
- Schedule of assets and liabilities forming part of the estate
- Requisite court fee, payable under the relevant Court Fees Act (as amended by states)

Upon satisfaction of procedural compliance, the court orders the issuance of a general citation under Section 283, to be published in a widely circulated local newspaper, calling upon

¹⁰ Id., s. 264; see also Civil Procedure Code, 1908, s. 15

interested parties to file objections or caveats if any¹¹. This step is essential to alert any potential objectors or disinherited heirs.

If no caveat is filed within the prescribed period (usually 30 days), and the petition is uncontested, the court may grant probate summarily, based on affidavit evidence and documentary proof¹². However, in the event a caveat or objection is filed, the matter becomes contentious, and is converted into a regular testamentary suit under civil procedure.

In such contentious probate proceedings, the following steps are followed:

- Framing of issues regarding the validity of the will
- Examination of witnesses, including attesting witnesses under Section 68 of the Indian Evidence Act, 1872
- Cross-examination of parties and evidentiary challenges
- Consideration of forensic or expert evidence (if allegations of forgery or undue influence are raised)
- Final judgment determining the enforceability and validity of the will

It is notable that probate decisions are considered to have in rem effect, meaning they are binding not only on the parties involved but also on the general public, with respect to the genuineness of the will¹³.

Recent Developments and Practical Insights:-

In recent years, probate filing has undergone some modernization in urban jurisdictions. High Courts like those of Delhi, Bombay, and Calcutta have introduced online probate filing portals and e-Notices, and have issued practice directions encouraging digitized record-keeping and fast-tracking of uncontested matters.

¹¹ The Indian Succession Act, 1925, s. 283

¹² *Kamla Devi v. State*, 2001 SCC OnLine Del 827

¹³ *Krishna Kumar Birla v. Rajendra Singh Lodha*, AIR 2008 SC 1786

However, challenges remain, particularly in smaller districts and rural courts, where delays in verification of property documents, lack of digitized death records, and poor legal literacy can prolong probate matters. Additionally, the requirement of newspaper publication for citation, although necessary, adds to the cost and delays, especially where notices are repeatedly returned or improperly published.

There has also been increasing judicial emphasis on ensuring strict compliance with evidentiary standards, especially in cases where the will is disputed. Courts are vigilant about undue influence, suspicious circumstances, or inconsistencies in attestation. In *Janki Narayan Bhoir v. Narayan Namdeo Kadam*¹⁴, the Supreme Court emphasized that mere registration of a will does not by itself prove its due execution, and attestation must be proved independently.

To reduce procedural backlog and delays, scholars and practitioners have suggested procedural amendments allowing summary verification of uncontested wills before judicial officers or registrars (as is practiced in countries like the UK and Canada), with full trials reserved only for contested cases.

Jurisdiction and Role of Courts in Probate Proceedings:-

The jurisdiction and role of courts in probate matters are critical to ensuring the authenticity and enforceability of a testator's will. The primary source of law on jurisdiction is Section 264 of the Indian Succession Act, 1925, which states that the District Judge shall have jurisdiction over all testamentary matters within his district¹⁵. Further, the statute and judicial precedent clarify that either the District Court or the High Court having original civil jurisdiction may entertain a probate petition depending on the location and class of property and the residence of the testator at the time of death.

However, in the three erstwhile Presidency Towns—Chennai (Madras), Mumbai (Bombay), and Kolkata (Calcutta)—only the respective High Courts are competent to grant probate in cases involving wills made by Hindus, Buddhists, Sikhs, or Jains, when such wills relate to immovable property situated within the territorial jurisdiction of the High Court. This

¹⁴ (2003) 2 SCC 91

¹⁵ The Indian Succession Act, 1925, s. 264

requirement arises from the combined reading of Section 213(1) and Section 264, along with applicable Original Side Rules of the respective High Courts.

Determination of Jurisdiction:-

In determining jurisdiction, courts consider the following:

- Domicile or last residence of the deceased
- Location of the immovable property mentioned in the will
- Where the will was executed and where it is to be administered
- Whether the probate application involves personal or immovable property

Testamentary jurisdiction is strictly territorial, according to recent case law, and any procedural infraction (such as filing in an incompetent court) could lead to the matter being dismissed or transferred. In *Anil Behari Ghosh v. Latika Bala Dassi*¹⁶, the Supreme Court reaffirmed that testamentary jurisdiction must be determined based on the testator's residence and situs of the property.

Court's Role in Probate Matters:-

The role of the court in probate matters is not merely administrative; it is quasi-judicial in nature. The court must evaluate:

- Due execution of the will (under Section 63 of the Indian Succession Act)
- Compliance with evidentiary standards under Section 68 of the Indian Evidence Act, 1872
- Testamentary capacity of the testator
- Absence of undue influence, coercion, fraud, or suspicious circumstances

¹⁶ AIR 1955 SC 566

- Authenticity of the attesting witnesses' signatures

Where necessary, courts have broad powers to:

- Summon witnesses
- Issue commissions
- Appoint an administrator pendente lite under Section 247 of the Indian Succession Act
- Order forensic examination of disputed wills to assess handwriting, signature authenticity, or signs of tampering

In the case of *Krishna Kumar Birla v. Rajendra Singh Lodha*¹⁷, the Supreme Court reiterated the significance of strict judicial scrutiny in granting probate, especially where large estates and high-value immovable property are involved.

Contested Probate Proceedings:-

When a will is disputed—typically on grounds such as forgery, coercion, or lack of testamentary capacity—the probate proceedings are converted into a contentious cause. In accordance with the 1908 Code of Civil Procedure, the court holds a comprehensive trial that includes:

Filing of written statements and framing of issues

- Examination and cross-examination of witnesses
- Admission of expert and documentary evidence
- Final adjudication on the validity and enforceability of the will

The court may also reject probate if it finds the will to be forged, improperly executed, or made under suspicious circumstances. In *S.R. Srinivasa v. S. Padmavathamma*¹⁸, the court

¹⁷ (2008) 4 SCC 300

¹⁸ (2010) 5 SCC 274

emphasized that where suspicious circumstances exist, the burden lies heavily on the propounder to dispel them with cogent and credible evidence.

Current Status and Judicial Trends:-

In contemporary practice, courts are increasingly using technology-enabled services, such as e-filing portals, video conferencing for witness testimony, and online publication of citations to expedite the probate process, especially in the High Courts of Bombay and Delhi. Moreover, courts are encouraging litigants to file probate petitions within a reasonable time after the testator's death to avoid delays and legal complications.

Nevertheless, the workload on probate courts remains significant, particularly in metropolitan cities, where large estates and frequent disputes over property ownership necessitate thorough judicial scrutiny. Delays in court processes, non-availability of attesting witnesses, and the complexity of verifying estate details continue to hinder swift resolution.

Urban vs Rural Procedural Difficulties in Probate Proceedings:-

Probate procedures in India reflect a wide rural–urban divide, shaped by disparities in access to legal resources, public awareness, documentation practices, and judicial infrastructure. While urban areas benefit from better legal accessibility and technological advancements, rural regions are often hampered by traditional practices, legal illiteracy, and infrastructural constraints.

Urban Context: Accessibility with Delays:-

In urban settings, individuals typically have access to:

- Legal professionals and drafting services
- Sub-registrar offices for will registration under Section 18(e) of the Registration Act, 1908¹⁹
- Digital facilities, including e-court portals and online citation publications

¹⁹ The Registration Act, 1908, s. 18(e); registration of wills is optional but advised for legal certainty

- Estate planners and trust services offering comprehensive succession solutions

As a result, urban wills are more likely to be:

- Formally drafted and attested
- Registered, offering an additional layer of authenticity
- Securely stored in legal offices or digital depositories

However, despite these advantages, probate in urban areas is often delayed due to:

- Overburdened courts and high pendency of civil cases
- Technical objections raised by registry departments
- Cumbersome procedures for verification of property and asset details
- Disputes among affluent heirs, particularly in cases of high-value estates or multiple immovable properties

Even in cities like Mumbai and Delhi, obtaining probate can take several months to years, especially when the will is challenged. High Courts often function with limited benches on the testamentary side, adding to delays.

Rural Context: Procedural Gaps and Legal Illiteracy:-

In contrast, rural India faces a distinct set of challenges, including:

- Informal, handwritten, or oral wills that often fail to meet the requirements of Section 63 of the Indian Succession Act, 1925, which mandates due execution and attestation²⁰
- Non-registration of wills, making it easier to challenge their authenticity
- Lack of access to qualified lawyers, notaries, and court officials

²⁰ The Indian Succession Act, 1925, s. 63; requires that the will must be signed by the testator and attested by two witnesses

- Illiteracy, poor record-keeping, and reliance on untrained document writers or village elders

Further procedural barriers include:

- Confusion over legal terminology and probate process steps
- Gender discrimination, where women, particularly widows and daughters, are excluded from property rights despite being named beneficiaries
- Geographical remoteness, making it difficult for executors or beneficiaries to travel to district courts or High Courts with testamentary jurisdiction
- Cultural reluctance to approach courts or litigate within families

In many rural districts, this leads to widespread non-probate of wills, resulting in:

- Unclaimed or disputed property
- Fraudulent transfers by stronger heirs or outsiders
- Injustice to rightful but unaware beneficiaries

These practical obstacles mean that the letter of the law is often not translated into justice on the ground, especially for vulnerable groups like rural women and elderly dependents.

Current Status and Policy Initiatives:-

While judicial and administrative reforms have brought some improvement, the rural–urban probate gap remains a structural issue. Notably:

- The National Legal Services Authority (NALSA) has introduced Lok Adalats and legal awareness camps in villages, but these rarely address succession law specifically.
- Digital India initiatives have led to the digitization of land records, which aids in establishing property linkage during probate, but awareness of how to use these systems remains low in rural areas.

- Gram Nyayalayas Act, 2008, though promising in decentralizing justice, does not cover testamentary jurisdiction, limiting its role in probate matters²¹.

Civil society organisations and NGOs working in legal literacy are now pushing for:

- Legal aid cells dedicated to inheritance and probate issues
- Awareness programs in Panchayats and schools on writing wills and initiating probate
- Simplified will formats and multilingual templates
- Training for paralegal volunteers in testamentary law and documentation

In states like Tamil Nadu and Maharashtra, pilot projects have been initiated by district legal services authorities (DLSAs) to help rural citizens with will registration and probate filing. However, these efforts require nationwide scaling and sustained governmental support.

Recommendations and Conclusion:-

The process of probate, though vital for ensuring the legal transfer of assets according to a testator's will, continues to be fraught with procedural delays, legal ambiguities, and access barriers—particularly in rural and lower-income contexts. To address these systemic gaps and modernize the probate process under the Indian Succession Act, 1925, the following reforms and policy interventions are recommended.

Recommendations for Reform:-

1. Introduction of E-Filing and Digital Probate Certificates

The digitization of court procedures under the e-Courts Mission Mode Project must be extended to probate filings. Presently, many High Courts still require physical submission of probate petitions and supporting documents, causing unnecessary delays and logistical challenges.

²¹ The Gram Nyayalayas Act, 2008, s. 5; excludes jurisdiction in testamentary and succession matters

A centralised online probate application portal, modeled on e-filing systems used in civil litigation, should be introduced. Probate certificates must also be made available in digitally signed PDF format with QR codes to prevent forgery and facilitate verification by land and revenue authorities.

2. Simplified Procedure for Low-Value Estates

For estates of nominal value (e.g., below ₹10 lakhs), a summary probate process should be introduced. This could include:

- Relaxed evidentiary standards
- Exemption from mandatory newspaper citation
- One-time hearing model for uncontested wills

This would benefit widows, pensioners, and lower-income heirs, who currently struggle with both time and financial costs of traditional probate litigation.

3. Mandatory Registration of Wills with Biometric Authentication

Although registration of wills is currently optional under Section 18(e) of the Registration Act, 1908, making it mandatory—at least in urban and semi-urban areas—would greatly enhance the authenticity and enforceability of wills.

The integration of Aadhaar-based biometric verification at the time of registration can prevent fraud and impersonation, particularly in cases involving elderly or vulnerable testators.

4. Establishment of Fast-Track Testamentary Courts

Given the rising number of probate cases in metropolitan areas, dedicated testamentary benches or probate divisions within civil courts should be instituted. These courts should:

- Be empowered under Section 265 of the Indian Succession Act to exercise concurrent jurisdiction
- Operate with fixed timelines for disposal

- Follow a less adversarial approach in uncontested matters

Modelled on commercial courts and family courts, these fast-track courts could significantly reduce the pendency of probate petitions²².

5. Awareness Programs in Regional Languages

Legal literacy around will-making and probate is extremely low, particularly in non-urban communities. Awareness initiatives should include:

- Community outreach by District Legal Services Authorities (DLSAs)
- Regional-language handbooks and video content explaining succession rights and procedures
- Mobile legal aid vans in collaboration with NGOs and law colleges

Special focus must be given to women's inheritance rights, which are often ignored or suppressed despite legal entitlements under the Hindu Succession Act, 1956 and Indian Succession Act.²³

6. Periodic Judicial Training and Sensitization

Probate law, though procedural in nature, involves complex issues of testamentary intent, capacity, fraud, and undue influence. Training programs for judges must be conducted by the National Judicial Academy and State Judicial Academies to address:

- Evolving jurisprudence in succession law
- Forensic document analysis
- Comparative international practices in will verification and probate

Such training can improve consistency in rulings and procedural innovation in testamentary

²² Indian Succession Act, 1925, s. 265; see also High Court of Delhi, Testamentary Jurisdiction Rules (Amended 2023)

²³ Hindu Succession Act, 1956, as amended in 2005; Indian Succession Act, 1925, s. 57-59.

matters.

Conclusion:-

In order to ensure legal continuity following a testator's death, probate is essential.

It validates the testator's intent, protects the rights of beneficiaries, and safeguards against fraudulent claims. The Indian Succession Act, 1925, in conjunction with related procedural and evidentiary statutes, provides a solid legislative framework for this process.

Yet, the implementation of probate procedures remains uneven across jurisdictions. Urban congestion in courts, rural illiteracy, procedural rigidity, and lack of technology integration continue to undermine the objectives of the Act. Moreover, socio-cultural factors such as patriarchal inheritance customs and distrust of formal legal systems create additional barriers.

To truly democratize access to justice in succession, the legal system must adopt administrative simplification, digital modernization, and extensive public outreach. The future of probate law lies in a hybrid model that combines the procedural safeguards of formal litigation with the speed, accessibility, and user-centric design of technology platforms.

Strengthening the probate system will not only protect the testator's wishes but also instill greater trust in the judiciary and estate planning processes, ultimately fostering a more just and orderly system of inheritance in India.

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