

Probate no longer mandatory:

Impact of the Repealing and Amending Act, 2025 on Testamentary Succession

26 December 2025

Introduction

On 20 December 2025, The Repealing and Amending Act, 2025 (Act) received assent of the President and was enacted into law. The Statement of Objects and Reasons to the Bill presented to Parliament indicates that the intention of the Act is to repeal enactments that are no longer in force or required or their retention as separate acts is unnecessary. Under this Act, 71 amending Acts relating to various enactments have been repealed.

Alongside these repeals, the Act introduces few important amendments to certain provisions of the General Clauses Act, 1897, the Code of Civil Procedure, 1908, the Indian Succession Act, 1925, and the Disaster Management Act, 2005.

Change in the Indian Succession Act, 1925

A very interesting amendment introduced by the Act is the omission of Section 213 of the Indian Succession Act, 1925 (Succession Act).

Section 213 of the Succession Act provided that no right as executor or legatee could be established in any Court unless a court of competent jurisdiction in India granted probate of the Will under which the right is claimed. This requirement applied to Wills made by Hindus, Parsis, Sikhs and Jains in specific jurisdictions, namely the erstwhile 'presidency towns' of Bombay (now Mumbai), Calcutta (now Kolkata) and Madras (now Chennai) in respect of immovable property situated within those limits. This provision, however, did not extend to Muslims and Indian Christians, whose testamentary succession is governed by their respective personal laws.

This provision now stands deleted and obtaining probate is no longer mandatory to establish a right as executor or legatee.

Effect of this omission

Under Indian law, Wills do not require notarising, stamping or registration of any kind to be valid. The law as earlier stood provided a system of checks and balances for establishing the validity of a Will irrespective of the manner of its execution. The effect of obtaining probate served as a formal judicial confirmation of the validity of the will of the testator. Probate also provided a level of finality to the executor to proceed with distribution of the estate of the deceased to the legatees in terms of the Will.

With the omission of this provision, the mandatory requirement of obtaining probate as a pre-condition to enforcing testamentary rights by the specified persons in the said presidency towns has been done away with. This will bring considerable relief to majority of estates / Wills which are largely uncontested.

That said, the omission of Section 213 does not remove other mechanisms under the Succession Act. Other provisions relating to probate, letters of administration and succession certificates continue to remain in force.

Practical challenges

Considering that immovable properties in Mumbai, Chennai and Kolkata can be of extremely high value, removal of the mandatory provision for probate, may be a cause for discomfort for most prospective purchasers establishing a chain of title.

Questions also arise as to how immovable property derived through a Will would be dealt with by cooperative housing societies and financial institutions in the absence of probate.

Presently, it is a widespread practice of cooperative housing societies and financial institutions to insist on probate or letters of administration before effecting transfers of property to a deceased's legatee or legal heir. The deletion of Section 213 of the Succession Act takes away the legal basis for cooperative housing societies and financial institutions to insist on probates. This will help speed up and simplify the process of transmission and transfer of such properties.

Conclusion

While the Act repeals certain enactments and amends others, it expressly protects actions already taken, rights and liabilities already accrued, and proceedings that are pending or concluded. The Act makes it clear that established laws, procedures, and jurisdictions remain untouched, and that the repeal of any enactment does not revive anything that is no longer in force.

However, specific changes, such as the omission of Section 213 of the Indian Succession Act, have practical consequences which are widespread. The deletion of the mandatory provision for obtaining probate will bring relief to a large number of citizens in the specified cities and likely speed up devolution of estates without the need of approaching courts.

Since the Act does not specify how testamentary rights are to be proved going forward, the manner in which courts and other authorities apply and treat this omission, will determine its practical effect. In the absence of express legislative guidance, clarity on this issue is likely to come through judicial scrutiny or further legislative clarifications.

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