

Intestate Succession – Hindu Law

- Succession means succeeding or following in general day to day language, but here it means succeeding or passing of rights of property from one to another.
- There are two types of property in Hindu Family
 1. Joint Family Property
 2. Separate property
- Joint Family Property which is also called Coparcenary property is devolved according to rules of Coparcenary or through partition.
- **Separate Property devolves via two ways:**
 1. **Testamentary Succession** (i.e. through will but that could be the case only when the person who died made a will before dying)
 2. **Intestate Succession** (when the person dying didn't leave any will)

Hindu Succession Act, 1956

- It provides for the rules and procedures for Intestate Succession Intestate

Succession of Hindu male: (Sec 8-13-Hindu Succession Act.)

Section 8:– General rules of succession in the case of males.

- The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter-
 - a. Firstly, upon the heirs, being the relatives specified in **class I** of the Schedule;
 - b. Secondly, if there is no heir of class I, then upon the heirs, being the relatives specified in the **class II** of the Schedule;
 - c. Thirdly, if there is no heir of any of the two classes. Then upon the **agnates** of the deceased; and
 - d. Lastly, if there is no agnate, then upon the **cognates** of the deceased.



Class - 1 Heirs

1. Mother
2. Widow
3. Daughter
4. Son

5. Widow of a Pre-deceased son.
6. Son of a Pre-deceased son.
7. Daughter of a Pre-deceased son.

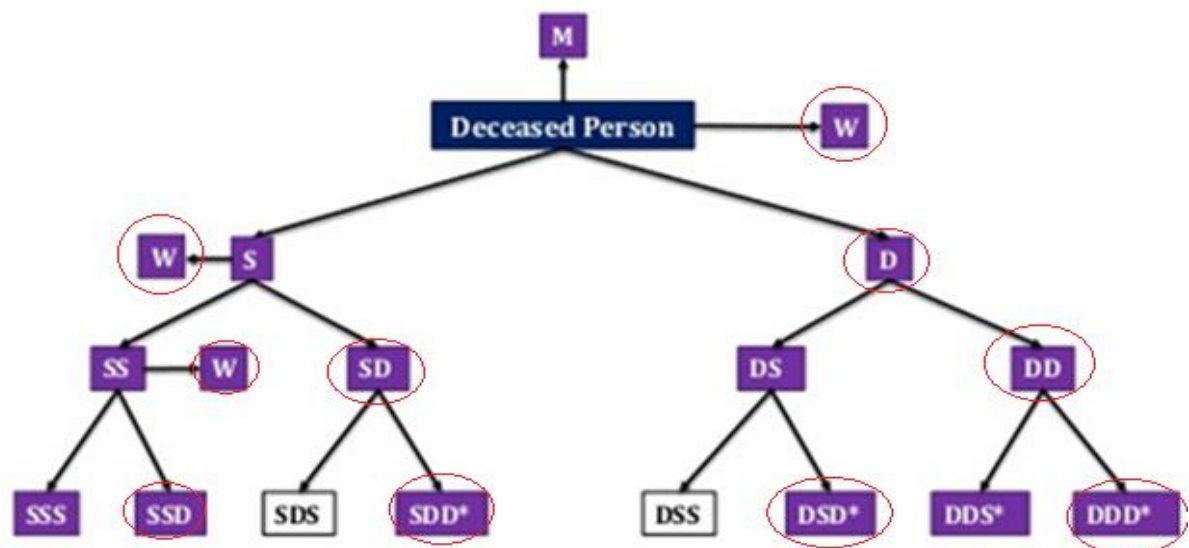
8. Widow of a predeceased son of a predeceased son.
9. Son of a predeceased son of a predeceased son.
10. Daughter of a predeceased son of a predeceased son.

11. Daughter of a Pre-deceased daughter.
12. Son of a Pre-deceased daughter.

13. Son of a Pre-deceased daughter of a Pre-deceased daughter.
14. Daughter of a Pre-deceased daughter of a Pre-deceased daughter.

15. Daughter of a Pre-deceased son of a Pre-deceased daughter.
16. Daughter of a Pre-deceased daughter of a Pre-deceased son.

CLASS-I HEIRS



Section 9: Order of succession among heirs in the Schedule.

- Among the heirs specified in the Schedule, those in class I shall take simultaneously and to the exclusion of all other heirs; those in the first entry in class II it shall be preferred to those in the second entry; those in the second entry shall be preferred to those in the third entry; and so on in succession.

CLASS I HEIRS

- **Mother;**

Here the term mother also includes an adoptive mother Moreover, if there is an adoptive mother; the natural mother has no right to succeed to the property of the intestate.

A mother is also entitled to inherit the property of her illegitimate son by virtue of Section 3(1)(j)

Jaya lakshmi Ammal and Ors vs. T.V. Ganesalyer (1971)

The unchastity of the mother is no bar as to her inheriting from her son. Even if she is divorced or remarried she is entitled to inherit from her son.

- **Son; daughter;**

Adopted children also included, children born out of void/voidable marriage also illegitimate children [acc. To Sec. 16 of Hindu Marriage Act. 1955]

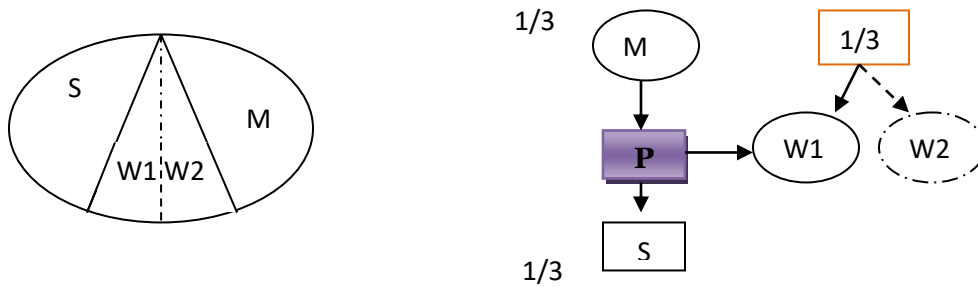
- **Widow;**

If there is more than one widow then they will inherit one share jointly. (Widow of the dead is entitled to inherit from ex-husband's property even if she remarries after his death)

Section 10: Distribution of property among heirs in class I of the Schedule.

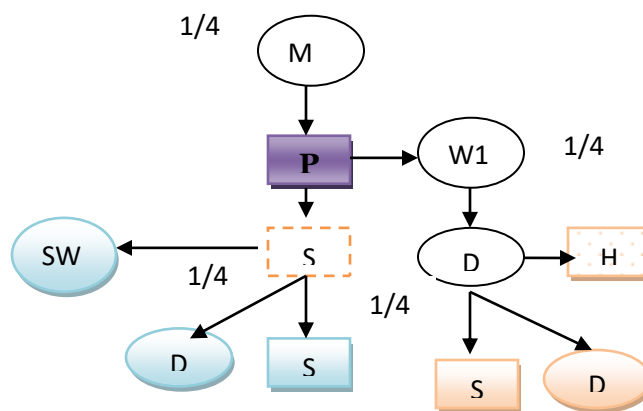
The property of an intestate shall be divided among the heirs in class I of the Schedule in accordance with the following rules:

Rule 1- The intestate's widow, or if there are more widows than one, all the widows together, shall take one share.



Rule 2 – The surviving sons and daughters and the mother of the intestate shall each take one share.

Rule 3 – The heirs in the branch of each pre-deceased son or each pre-deceased daughter of the intestate shall take between them one share.



Rule 4 – The distribution of the share referred to in Rule 3-

- (i) Among the 'heirs' in the branch of the pre-deceased son shall be so made that his widow (or widows together) and the surviving sons and daughters get equal portions; and the branch of his predeceased sons gets the same portion;
- (ii) Among the heirs in the branch of the pre-deceased daughter shall be so made that the surviving sons and daughters get equal portions.

Section 11. Distribution of property among heirs in class II of the Schedule.

The property of an intestate shall be divided between the heirs specified in any one entry in class II of the Schedule so that they share equally.

Class II Heirs

i. Father. (includes adoptive father, father is not entitled to property from illegitimate son unlike mother but he is entitled to inherit property from children born out of void and voidable marriages)

ii. (1) son's daughter's son
(2) Son's daughter's daughter

(3) Brother

(4) Sister.

(Brothers and sisters inherit simultaneously. Here the term 'brother; includes both a full and a half brother. However, a full brother is always preferred to a half brother (according to Section 18))

Uterine brother is not entitled to the intestate's property. However when the intestate and his brother are illegitimate children of their mother. They are related to each other as brothers under this entry.

iii. (1) Daughter's son's son
(2) Daughter's son's daughter
(3) Daughter's daughter's son
(4) Daughter's daughter's daughter.

iv. (1) brother's sons

(2) Sister's son

(3) Brother's daughter

(4) Sister's daughter.

v. Father's Father; father's mother.

- vi. Father's widow; brother's widow.
- vii. Father's brother; father's sister.
- viii. Mother's father; mother's mother.
- ix. Mother's brother; mother's sister.

Arunachalathammal v. Ramachandran Pillai (1962)

It was contended that the different heirs mentioned in one entry (in this case Entry I of Class II) are subdivisions of that particular entry and they do not inherit simultaneously but here again there is a question of preference i.e. the first subdivision inherits and then in its absence the later. The question arose because there were in his case. One brother and five sisters of the intestate and no other heir and the brother contended that in a brother being in subcategory (3) of entry I was to be preferred over sister who was in subcategory (4) of entry I and thus he was entitled to the full property. However the same was negated and It was held that all heirs in an entry inherit simultaneously and there is no preference to an heir in a higher subcategory within an entry to an heir in a lower subcategory in the same entry

If there is no class I or Class II heirs then the property will go to Agnates of the intestate (Section 8)

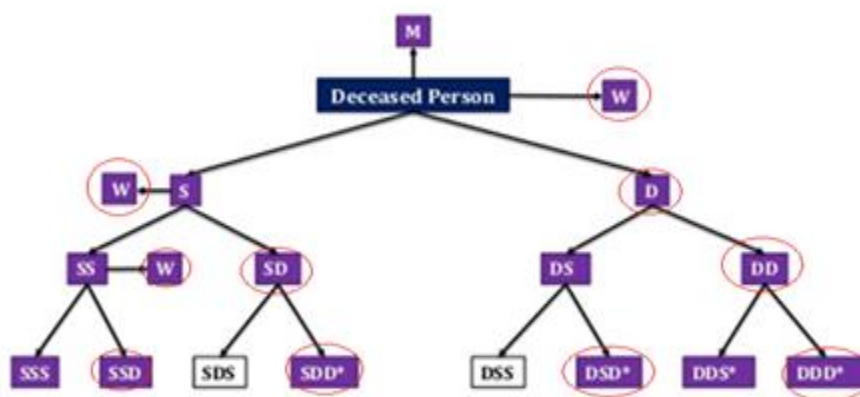
Section 3 (1) (a) "agnate" – one person is said to be an "agnate" of another if the two are related by blood or adoption wholly through males;

- ✓ Agnates of the intestate do not include widows of lineal male descendants because the definition of agnates does not include relatives by marriage but only relatives by blood or adoption.
- ✓ There is no limit to the degree of relationship by which an agnate is recognized. Hence, an agnate however remotely related to the intestate may succeed as an heir.
- ✓ This relationship does not distinguish between male and female heirs.
- ✓ There is also no distinction between those related by full and half blood. However, uterine relationship is not recognized.

If there are no class I or Class II heirs and no agnates then the property will go to Cognates of the intestate (Section 8)

Section 3 (1) (c) “cognate”- one person is said to be a cognate of another if the two are related by blood or adoption but not wholly through males;

- ✓ It does not matter if the intervention in the line of succession is by one or more females. So long as there is at least one female intervening, it is a cognate relationship
- ✓ Cognate relationship is also not based on marriage and only on blood or adoption. Hence widow or widowers of those related by cognate relationship do not fall under this category and hence they are not entitled to succeed on this ground.



Following are the Categories of agnates and cognates

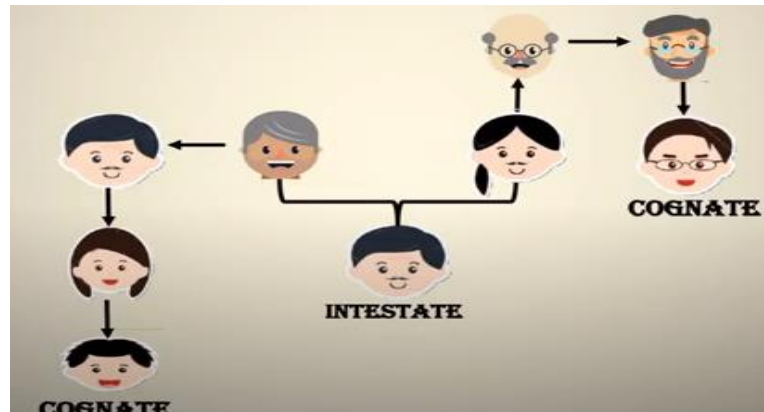
- (a) Agnates and Cognates who are **descendants**, Ex. Agnates- son's son, son's son's daughter
Cognate- daughter's son, son's daughter's daughter
- (b) Agnates or Cognates who are **ascendants**, Ex. Agnates- Father's father's father
Cognates- father's mother's father
- (c) Agnates or cognates who are **collateral** i.e. related to the intestate by degree of both ascent and descent. Ex. Agnate- father's brother's son
Cognate- Mother's brother's son.

Section 12 says that descendants shall be preferred over ascendants who in turn shall be preferred over collaterals.

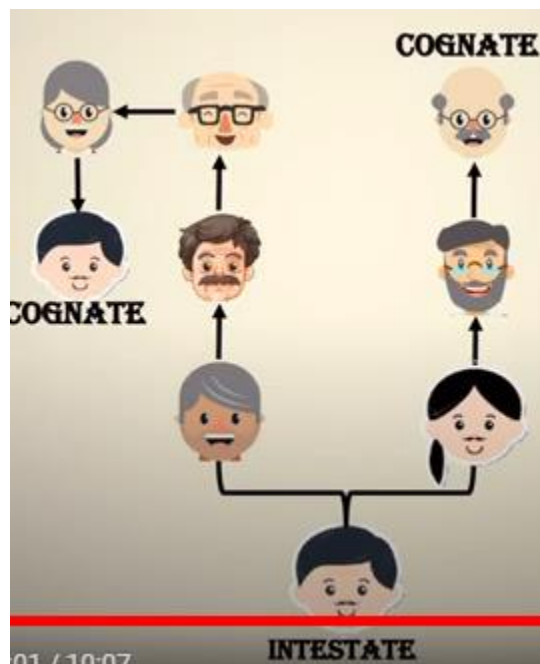
Section 12:- Order of succession among agnates and cognates.

The order of succession among agnates or cognates, as the case may be; shall be determined in accordance with the rules of preference laid down hereunder:

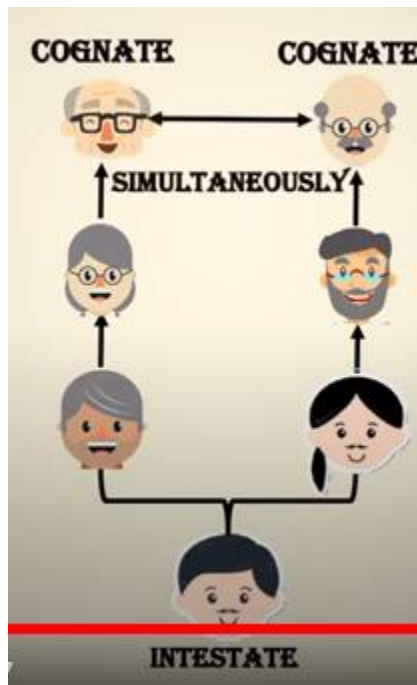
Rule 1 – of two heirs, the one who has fewer or no degrees of ascent is preferred.



Rule 2 – Where the number of degrees of ascent is the same or none, that heir is preferred who has fewer or no degrees of descent.



Rule 3 – Where neither heir is entitled to be preferred to the other under Rule 1 or Rule 2 they take simultaneously.



Section 13: Computation of degrees.

- (1) For the purposes of determining the order of succession among agnates or cognates, relationship shall be reckoned from the intestate to the heir in terms of degrees of ascent or degrees of descent or both, as the case may be.
- (2) Degrees of ascent and degrees of descent shall be computed inclusive of the intestate.
- (3) Every generation constitutes a degree either ascending or descending.

The order of succession among agnates and cognate is not determined merely by the total number of degrees of ascent and descent. It is subject to and regulated by Section 12 of the Act.

Intestate Succession of Hindu Female

(Sec. 14-16, Hindu Succession Act)

Women were not given autonomy as a person in the past in Hindu culture, so women had limited property rights, section 14 changed that

Section 14:- Property of a female Hindu to be her absolute property.

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16.

- a. Firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- b. Secondly, upon the heirs of the husband;
- c. Thirdly, upon the mother and father;
- d. Fourthly upon the heirs of the father; and
- e. Lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section

- a. Any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any predeceased son or daughter) not upon the other heirs referred to in sub-section

(i) In the order specified there in, but upon the heirs of the father; and

- b. Any property inherited by a female Hindu from her husband or from her father in law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

- It is important to note that the two exceptions herein referred are confined to only the property inherited from the father, mother, husband and father-in-law of the female and does not affect the property acquired by her by gift or other by other device.

Section 16. Order of succession and manner of distribution among heirs of a female Hindu.

- The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place, according to the following rules, namely:

Rule 1- Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those including in the same entry shall take simultaneously.

Rule 2- If any son or daughter of the intestate had predeceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3- The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

GENERAL PROVISIONS RELATING TO SUCCESSION

Section 18: Full blood preferred to half blood.

- Heirs related to an intestate by full blood shall be preferred to heirs related by half blood, if the nature of the relationship is the same in every other respect.

Section 19: Mode of succession of two or more heirs.

- If two or more heirs succeed together to the property of an intestate, they shall take the property-
 - (a) Save as otherwise expressly provided in this Act, per capita and not per stripes; and
 - (b) As tenants-in-common and not as joint tenants.

Section 20: Right of child in womb.

- A child who was in the womb at the time of death of an intestate and who is subsequently born alive has the same right to inherit to the intestate as if he or she had been born before the death of the intestate, and the inheritance shall be deemed to vest in such a case with effect from the date of the death of the intestate.

Section 21: Presumption in cases of simultaneous deaths.

- Where two persons have died in circumstances rendering it uncertain whether either of them, and if so which, survived the other, then for all purposes affecting succession to property, it shall be presumed, until the contrary is proved, that the younger survived the elder.

Section 25: Murderer disqualified.

- A person who commits murder or abets the commission of murder shall be disqualified from inheriting the property of the person murdered, or any other property in furtherance of the succession to which he or she committed or abetted the commission of the murder.

Section 26: Convert's descendants disqualified.

- Where, before or after the commencement of this Act, a Hindu has ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendant are Hindu at the time when the succession opens.

Section 27: Succession when heir disqualified.

- If any person is disqualified from inheriting any property under this Act, it shall devolve as if such person had died before the intestate.

Section 28. Disease, defect etc. not to disqualify.

- No person shall be disqualified from succeeding to any property on the ground of any disease, defect or deformity, or save as provided in this Act, on any other ground whatsoever.

Section 29: Failure of heirs. ESCHEAT

- If an intestate has left no heir qualified to succeed to his or her property in accordance with the provisions of this Act, such property shall devolve on the government; and the government shall take the property subject to all the obligations and liabilities to which an heir would have been subjected.