

Hello friends, I'm Sonali Naik. I'm an Assistant Professor at G. R.

Kare College of Law, Margao-Goa.

The name of the module is, 'General Rules of Succession and Disqualifications Relating to Succession'.

An outline of this topic;

General rules of Succession as laid down under

Section 18 to Section 23 of the Hindu Succession Act, 1956

and the **disqualifications** relating to

Succession which are encompassed in **Section 24 to Section 26** of the Act.

Learning Outcomes: the student will be introduced to the general rules of succession applicable to a person governed by the Hindu Succession Act of 1956. It will also familiarize students with the grounds that disqualify a person from inheritance under the said Act, Section 18 to section 23 of the Hindu Succession Act of 1956 deal with the general rules of succession for Hindus. The general rules of succession prescribed the mode of preference among various relations and the manner in which the property would be distributed where there are more than one heir.

The general rules of succession are as such.

Section 18 gives preference to full blood relations over half blood relations.

Section 19 lays down the mode of succession where there are two or more heirs.

Section 20 asserts the right of a posthumous child.

Section 21 lays down the presumption in cases of Simultaneous death.

Section 22 states the preferential rights of heirs to acquire property in certain conditions and

Section 23 makes special provisions in case of a dwelling house.

1. Let us move on to section 18. As said earlier, Section 18 gives preference to full blood relations over half blood relations. It lays down that those related to the deceased by full blood shall be preferred over those related by half blood where the nature of the relationship is the same in every other respect. Two persons are said to be related to each other by full blood when they are descended from a common ancestor by the same wife and two persons are said to be related to each other by half blood when they are descended from the same ancestor but by two different wives. Therefore children of the same parents, that is, siblings, like brother and sister are related to each

other by full blood but children born from the same father but by different mothers are related to each other by half blood.

Therefore if a person leaves him surviving a full blood brother and a full blood sister, the full blooded brother or full blood sister would exclude the half blood relations from inheritance.

2. Section 19 lays down the mode of Succession where there are two or more heirs.

It lays down that if two or more heirs succeed together to the property of the Interstate, they shall take the property Per Capita and not Per Strip, and as tenants-in-common and not as joint tenants.

Per Capita succession means, each heir would take a share individually and separately and not branch wise,

whereas **Per Strip** succession means that a heir would take a share, not individually or separately, but branch wise, on the basis of the Doctrine of Representation

Tenants-in-common and Joint Tenants:

Tenancy-in-common means that the ownership is common, but the shares of each owner is specified and therefore in the event of the death of one his share would devolve upon succession upon his own heirs and not in accordance with the doctrine of survivorship upon the surviving co-owner.

In joint tenancy the ownership in property is joint.

The shares of the joint owners are not

specified and in the event of the death of one, the other would take his share by survivorship, which means that nothing would succeed to the heirs of the deceased.

3. Section 20 asserts the rights of a posthumous child.

It lays down that if a child was in the womb of the mother at the time of the intestate's death, and who is subsequently born alive, shall have the same rights to inherit the intestate as if he or she was born before the death of the

Intestate. Now this right is recognized not only under the Hindu Succession Act, but it is a right which was recognized even under the traditional law. There are two conditions which are required to be satisfied for Section 20 to operate.

(i) the child must be in the womb of the mother at the time of the father's, or the intestate's death and

(ii) the child must be born alive subsequently.

4. Section 21 lays down a Presumption in cases of Simultaneous Death.

It lays down that when two persons die in similar circumstances wherein it becomes difficult to ascertain or establish as to who died first, then in such a situation, the law presumes that the younger survived the elder.

The word younger used under the section has two meanings.

It means, “younger in age” and it also means “younger in relationship”.

‘younger in age’: If a father and a son died in an air crash, it would

by virtue of section 21, mean that the son

survived the father, as the son is younger in age in comparison to the father.

‘Younger in relationship’: If a nephew aged

30 and an uncle aged 15 die in similar circumstances, let us

assume, in an earthquake, here it would be presumed that the nephew

survived the uncle for the reason that the nephew is seen

as ‘younger in a relationship’.

Where the relationship is the same:

If two brothers die in similar circumstances, say for

Example in a road accident, then it would be presumed that

the younger survived the older.

5. Preferential rights of heirs to acquire certain property.

We enter Section 22, this section lays down the preferential rights of heirs to acquire certain property.

This is the right of Preemption. The right of pre-emption gives the right to have the

offer of sale of property made to co-heirs before it is offered

to others for sale or for purchase. Section 22

provides that, ‘where heirs simultaneously succeed to the

immovable property or the business of a Hindu male

as Class I heir and if one of them wants to dispose of his or her share in the immovable property, then the Other heir/s will have a preferential right to acquire the same. Now in such situation, the price is generally agreed upon between the heirs, but in the event there is a failure then the price may be fixed by the Court on an application made by any heir

Now we go to Section 23. Now section 23 is for the purpose of academic interest. The section has been omitted by the Hindu Succession (Amendment) Act of 2005. It provided that when a Hindu Interstate died, leaving him or her surviving, both male and female heirs, specified in Class I of the Schedule and his or her property included a dwelling house which was wholly occupied by the members of this family that included male members as well as female members, then the right of any such female heir to claim partition of the dwelling house would not arise until the male members choose to divide their respective shares amongst themselves. However, Section 23 recognized the female' heirs right of a to residence.

We now move on to the **Disqualifications relating to Succession.**

Disqualifications are the grounds that disentitle an heir from inheritance.

The Hindu Succession Act of 1956, as well

as the Hindu Succession (Amendment) Act of 2005 reduced these

disqualifications to its barest minimum. Under the traditional

law; disease, defect, deformity, unchastity were some of the many grounds for

disqualification. However, Section 28 of the Hindu

Succession Act, 1956 provides that, "no person shall be disqualified on

the ground of disease, defect, or deformity". It also provides,

by virtue of Section 27, that

any heir who suffers a disqualification shall be

treated as if having predeceased the testator.

Section 24: Remarriage of certain widows a disqualification

Three classes of widows were disqualified from inheritance on

the ground of remarriage. These included the widow of predeceased

son, the widow of a predeceased son of a predeceased son and the

widow of a brother. However, Section 24 has been omitted by

the Hindu Succession (Amendment) Act, 2005.

Section 25: disqualifies a Murderer from succession.

Any person who commits the murder or abets the Commission of murder

shall be disqualified from inheriting the property of the

person murdered or any other person in furtherance of succession to which he or she committed or abetted the commission of murder.

Who are disqualified under this section? There are two sets of murderers who are disqualified.

1. A person who commits the murder or abets the Commission of the murder of the propositus.

2. A person who murders or abets the commission of the murder of a person other than the propositus. What is the condition that is required to attract this provision?

The qualification/s required for the purpose of attracting this section is the murder has to be **in furtherance of succession**. In the case of *Vallikannu v. R. Singaperumal*, the Supreme Court disqualified a son from inheriting his father's property on the ground of murder.

Section 26 lays down a disqualification of conversion.

It provides that if a Hindu ceases to be a Hindu, by conversion to any other religion, children born to such converts after such conversion and their descendants shall be disqualified from inheritance.

However, what we realized from Section 26 is that conversion is not a grounds for disqualification

for the heir, but the children as well as the descendants of
the converts cannot inherit property from their Hindu
relations.

Thank you.