



# Intestate succession, Testamentary Will, Nomination and HUF's

**CA Pankaj Shah**

BBA, CS, LLB(Hons.), FCA, DISA, IP, RV



# Need of Succession planning

Lessons from history

---

# Mahabharat

- Absence of proper succession plan
- Destroyed the mightiest empire of Hastinapur



## Lessons from history

---

### The Bhushan Group

- The patriarch of the family tried to arrange a family settlement and have a succession plan but it was disputed by two of his three sons who went to court and sued their father. This carried on for ten years **wiping out almost USD\$1 billion from the companies' market value**. Finally a settlement was reached within the family and the companies distributed.



## Lessons from history

---

### The Modi Group

- By the late 1980's most of the family business had been divided and diluted and, because of infighting in the family and the lack of a cohesive succession plan through the generations, the group lost most of its value. In the last ten years some of the group companies have started doing well again and very recently the group stated that it plans to have a proper succession plan in place soon.




# Positives of proper succession plan

---

## The Dabur Group

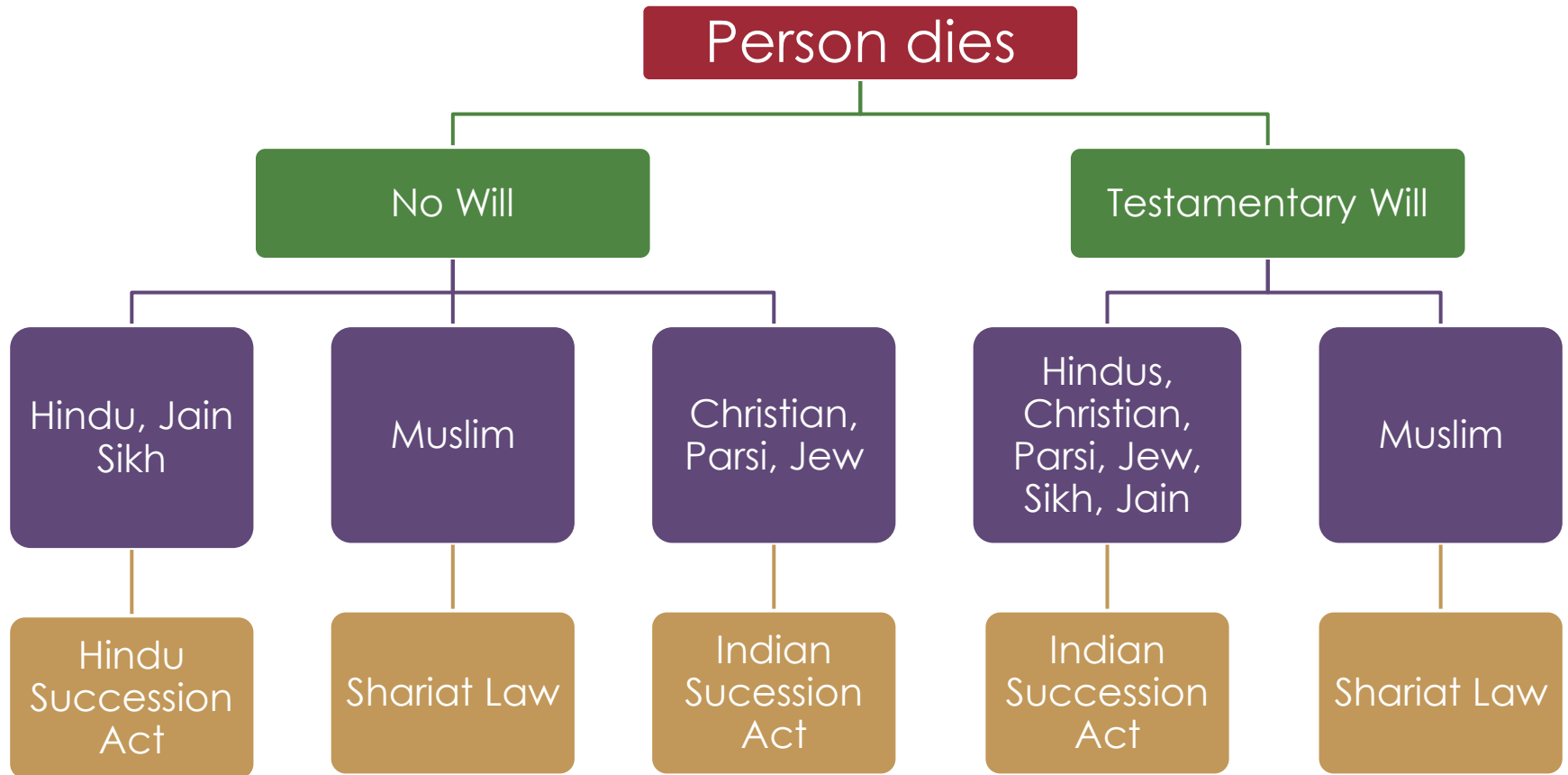
- The family decided to implement a proper succession plan where majority of the assets were held by a trust and the family divested itself of management control. The board of trustees appointed a professional CEO and the company has gone from strength to strength.

## Ranbaxy

- Before the chairman (Dr. Parvinder Singh) of the company passed away he ensured that there was a succession plan in place and that the management was in the hands of professionals.
- 
- 

# Succession Law

---





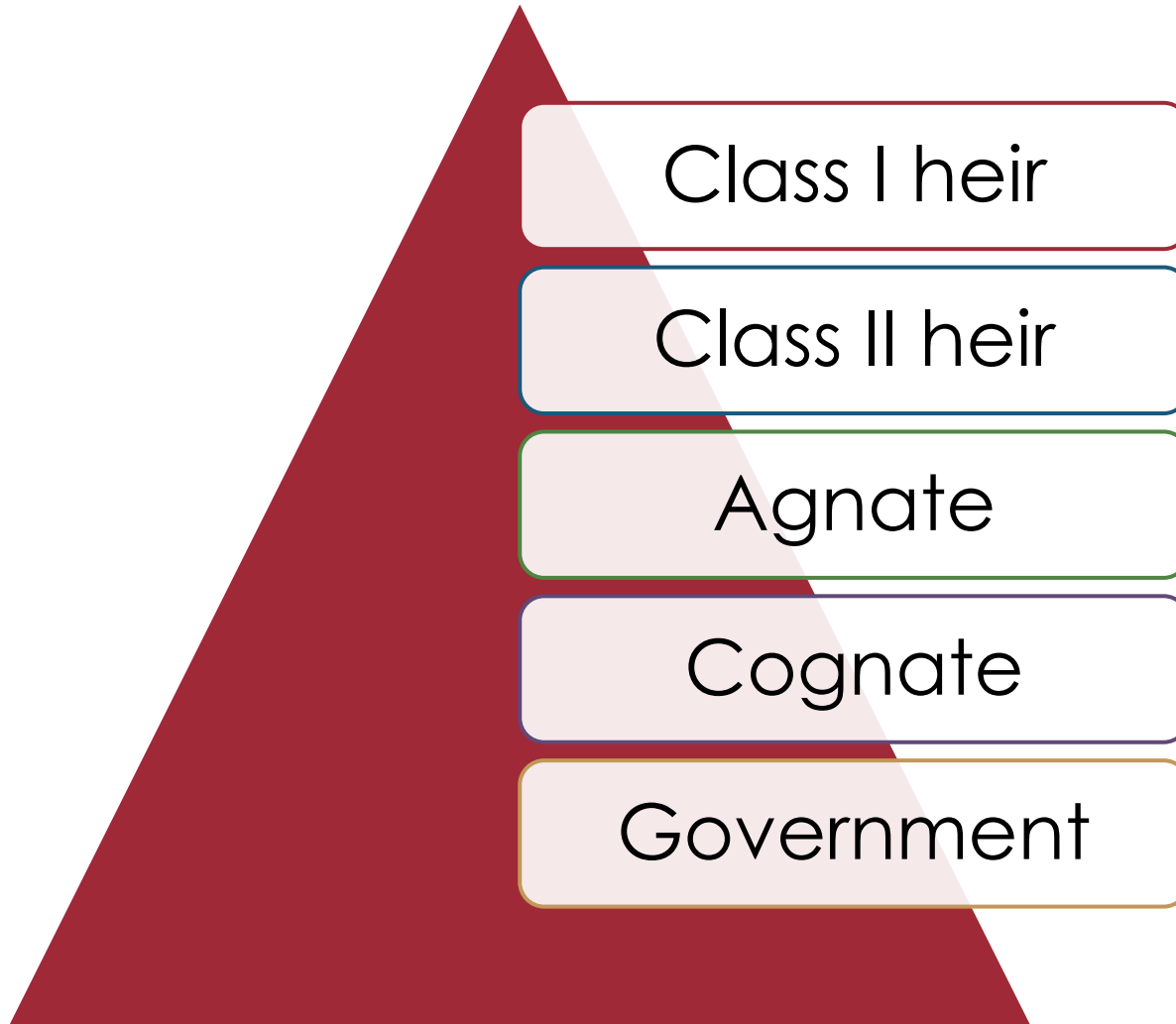
# Intestate Succession

Without making Will



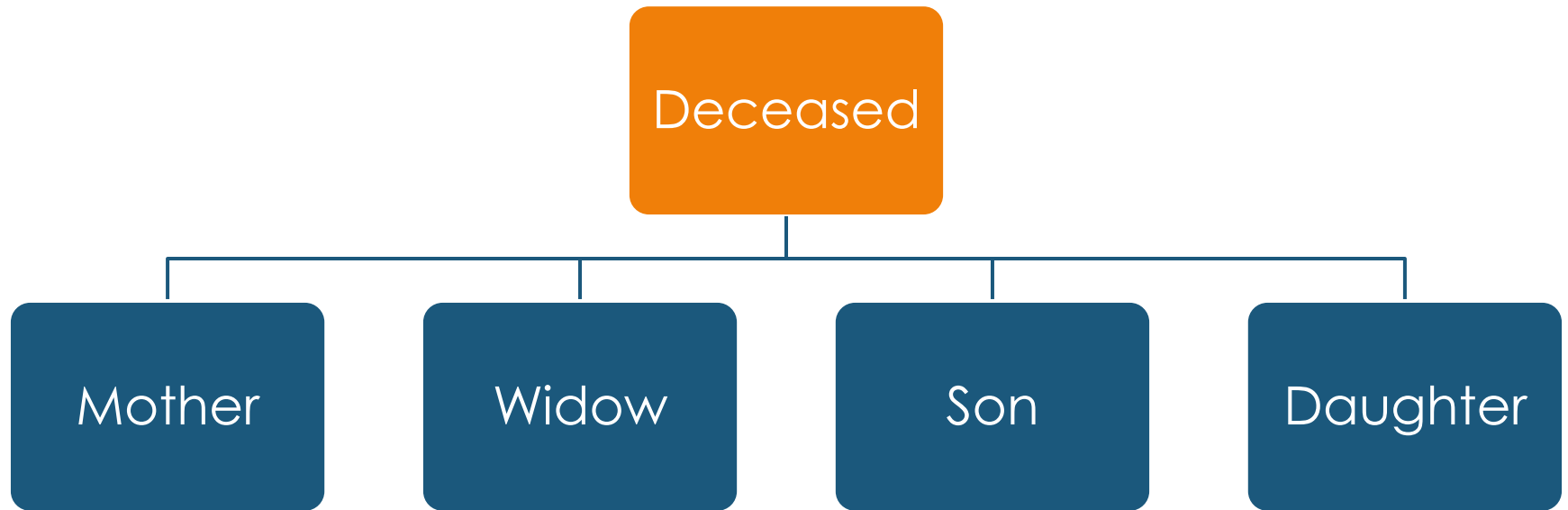
# Hindu male (S.8-13) – self acquired

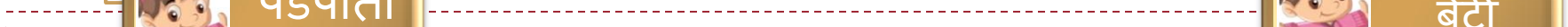
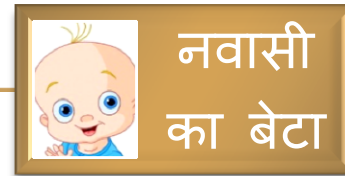
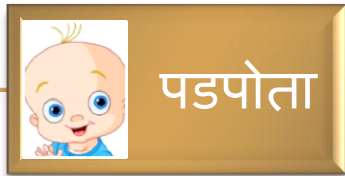
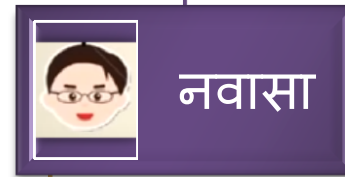
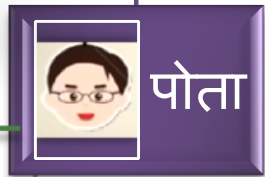
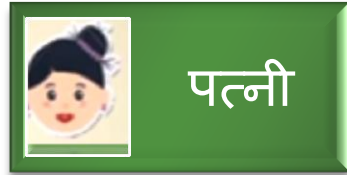
---



# Class I heir (in individual capacity in equal ratio)

---





# Class II heirs

---

Father

Siblings

Grandparents

Parent's siblings

---

# Agnates

---

Related wholly  
through males

- Father's brother's daughter



# Cognates

---

Related not wholly  
through males

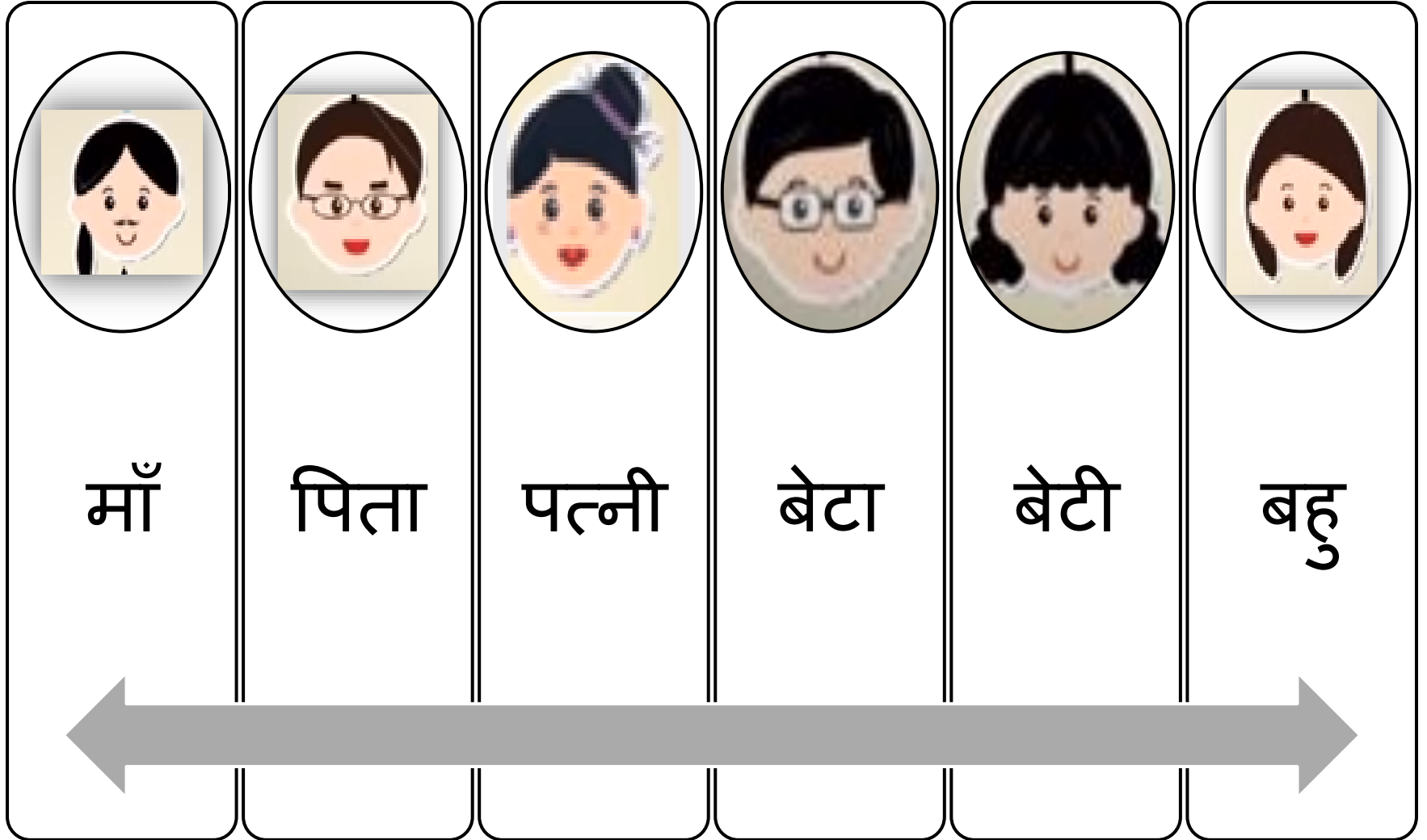
- Mother's brother's  
daughter





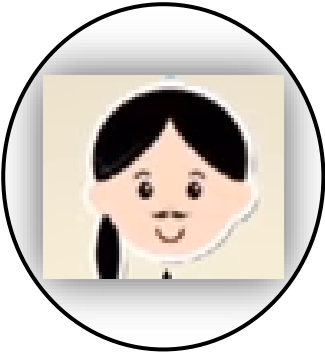
# Case Studies

# Situation 1- Intestate male





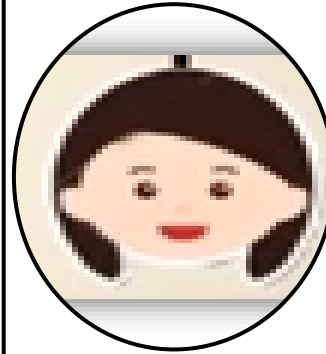
## Situation 2 - Intestate male



पत्नी



भाई



बहन



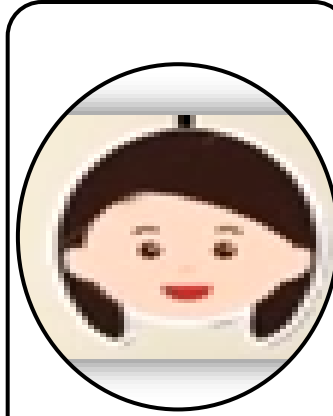
विधवा बहु



स्वर्गवासी  
बेटी का बेटा  
(नवासा)



# Situation 3 - Intestate male



भाई

भाई

बहन

बहन

नाना



## Situation 4 - Intestate male

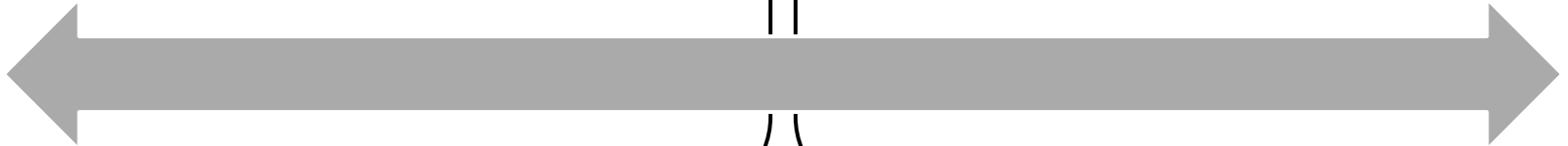
---



मामा का बेटा



चाचा की बेटी



# Is a step son Class I heir?

- Income tax Act
  - Child includes Step and adopted
- Hindu Succession Act
  - Natural born son
  - Adopted son
- Step son through first marriage of wife cannot succeed as legal heir to estate of male



# Female Intestate

# Female Intestate Hindu

---

Son, daughter, husband

Heirs of husband

Her Parents

Heirs of father

Heirs of mother



# Female Intestate

---

## Absolute property

- Inheritance
- Partition
- In lieu of maintenance
- By gift
- Own skill
- Purchase

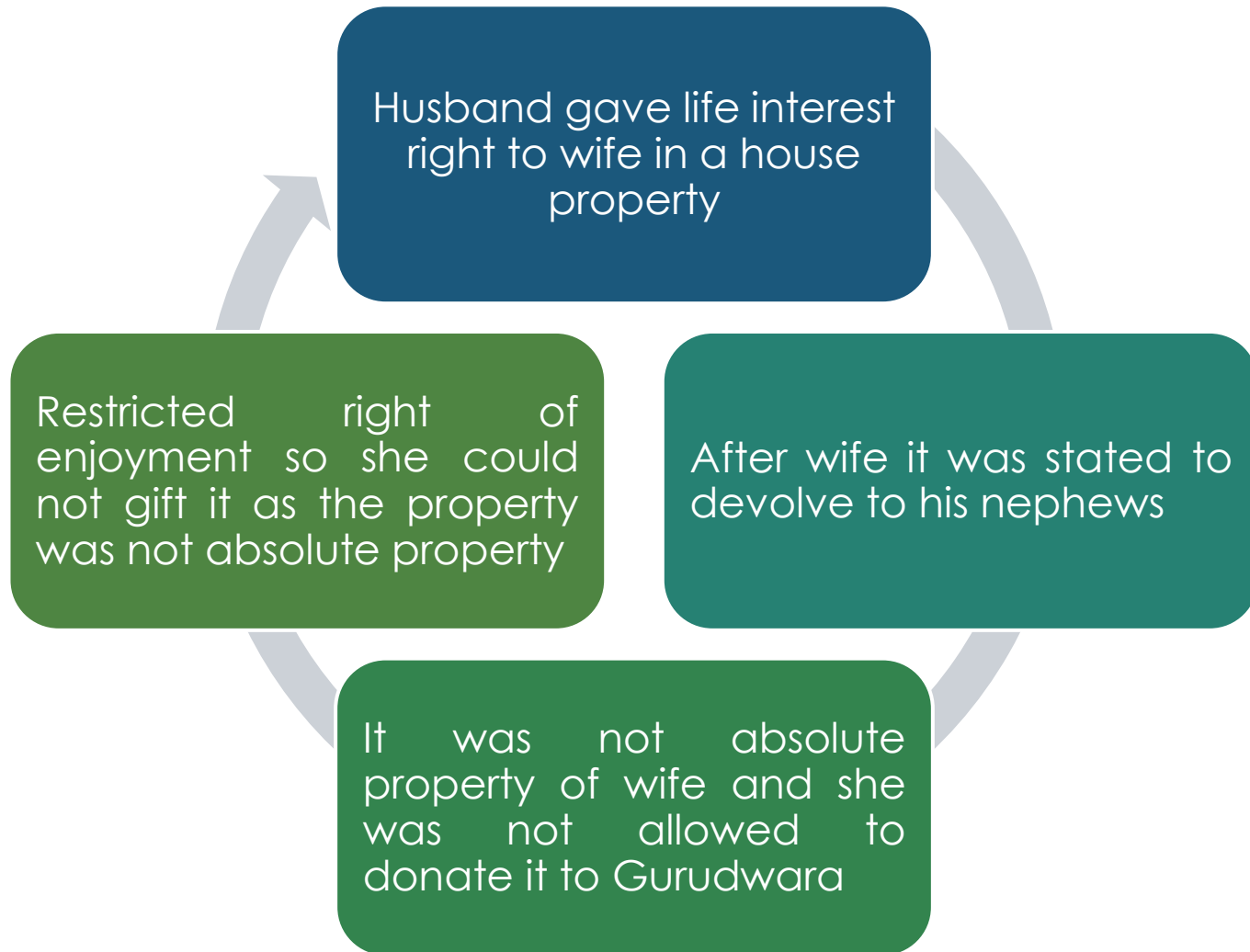
## Free to dispose such property

- Can will away to whoever she likes



# Life interest *Sadhu Singh v. Gurudwara Sahib Narike (SC)*

---





# Exceptions to free disposal

---

Property  
inherited from  
parents

Dies without  
children

- Property will revert to father's heirs

Property  
inherited from  
husband side

Dies without  
children

- Property reverts to husband's heirs



# Situation 1 - Intestate female

---



Husband



Son



daughter



Mother  
and  
Father



## Situation 2 - Intestate female

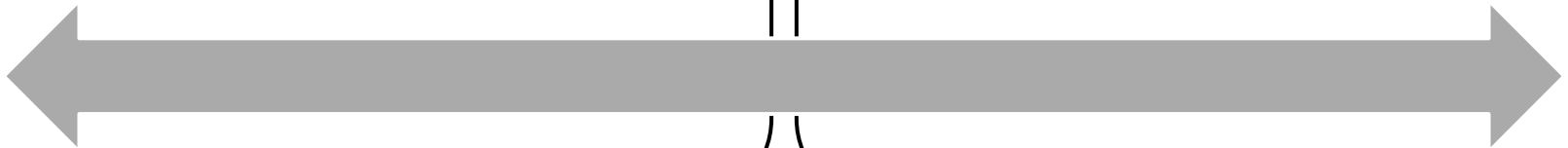
---



Ex Husband  
(Divorced)



Mother and  
Father



## Situation 3 - Intestate female

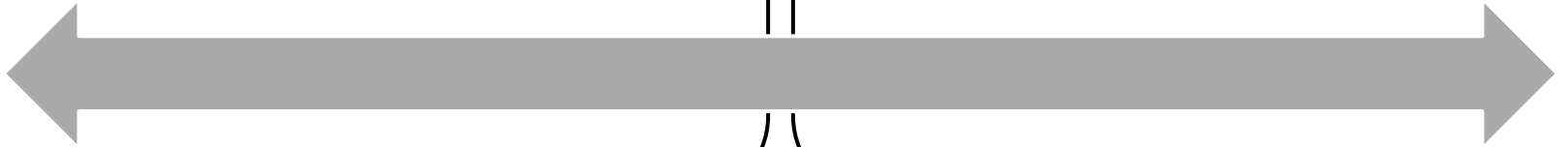
---



देवर



ननद का बेटा  
(भतीजा)



Situation 4 - Intestate female – house  
inherited from father – no child



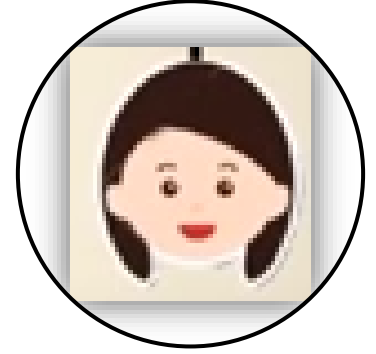
पति



चाचा



बुआ



ननंद



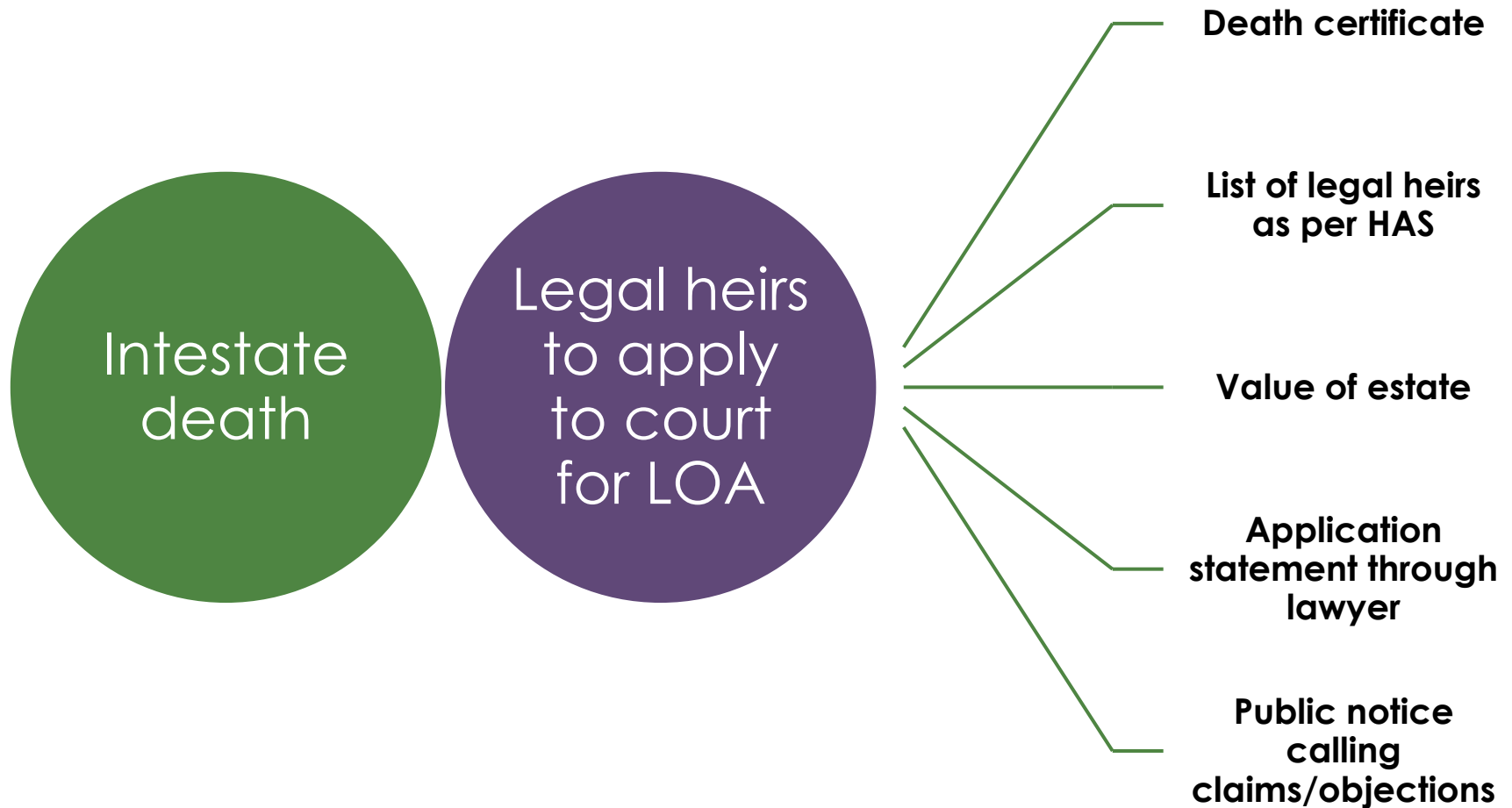
# Escheat

---



# Letter of Administration

---



# Problems in Intestate

---

Litigations amongst  
successors

Difficulty in transmission  
due to lack of consensus

Cross ownerships  
of assets/business

Joint ownership only  
stop gap arrangement

*Therefore Will*

---



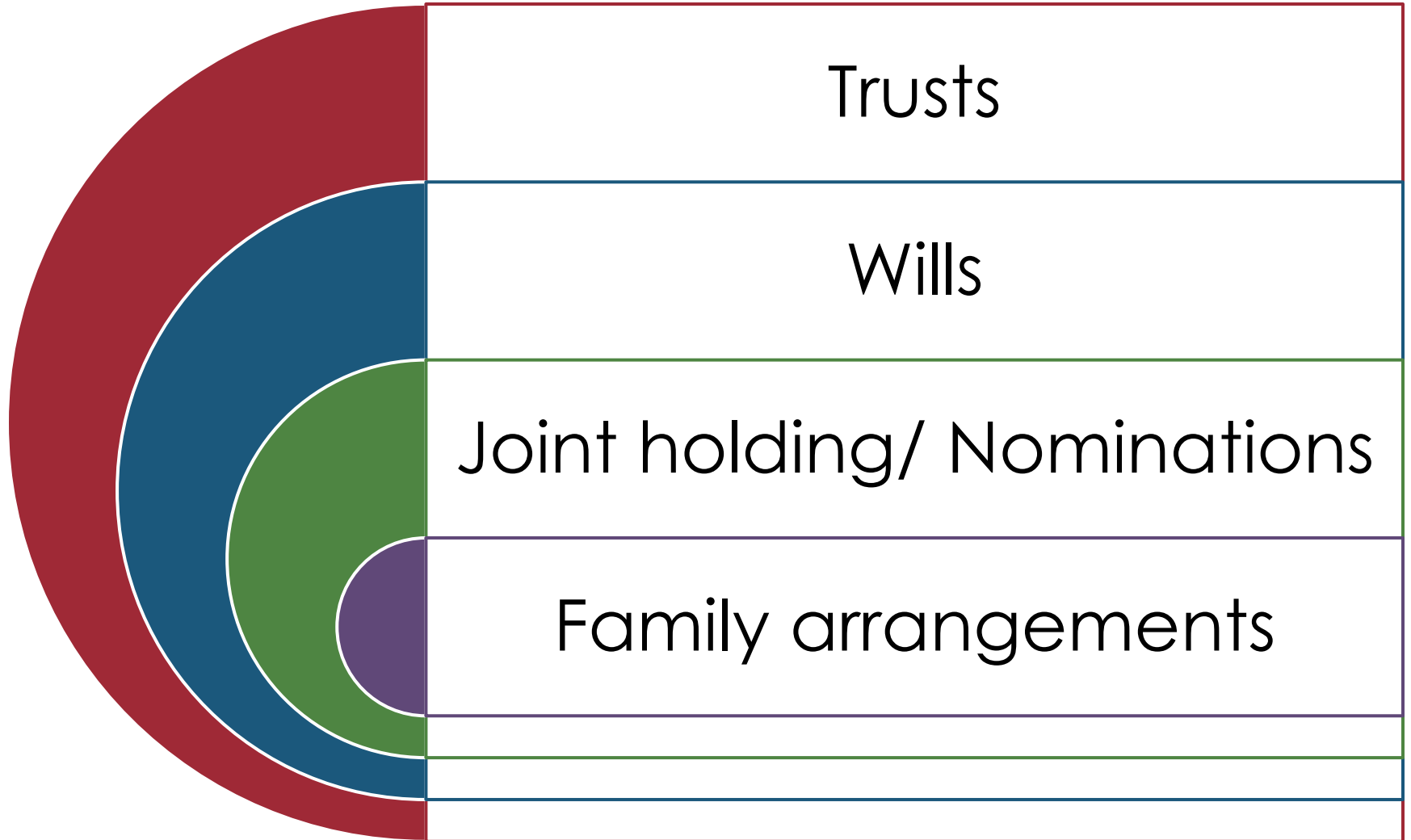




# Modes of Estate planning

# Modes

---





# Testamentary Wills

# Terms

---

'Testator'

- A person making a Will.

Legatee or  
beneficiary

- A person to whom property is given under the Will.

Legacy

- A benefit under the Will.

Executor

- A person appointed by the testator to execute the Will as per the provisions of the Will.

Attestation

- An act of witnessing the execution of the Will.
- 



# Terms

---

## Administrator

- A person appointed by a competent authority to administer the estate when no executor is appointed or an executor appointed refuses to act as an executor.

## Probate

- A copy of a Will certified under the seal of a Court of competent jurisdiction with a grant of administration to the estate.

## Codicil

- A document which modifies or alters the provisions of the original Will and forms part of it.

## Letter of Administration

- A letter of the court appointing an administrator to the estate.

## Succession Certificate

- Issued by Civil Court of jurisdiction in respect of property of a person who has died intestate, i.e. and where letter of administration or probate is not compulsory.



# Tetamentary will

---

## Statute

- Indian Succession Act, 1925

## Legal declaration of testator's intention

- As regards is property

## Manifests only after the testator's death

- Will not valid if testator alive
- Speaks from the grave

Can be revoked as many times as possible

---



# Capacity

---

Major person

Sound mind

- Intoxicated person non in his senses cannot

Deaf, Dumb, Blind

- Yes they can provided it is evident that they knew the contents

Ordinarily insane

- During intervals of sanity
- 



# Domicile of deceased

---

For purposes of determining applicability of laws in case of a succession, it is necessary to determine the domicile of the deceased.

In case of an immovable property located in India, the laws of succession prevailing in India would determine the successors of such property.

In case of movable properties, the laws governing the country of domicile of the deceased would determine the successors of the property.

**Domicile is relevant for movable properties while location is relevant for immovable property.**

---





# Why to make a will

---

Complete discretion on distribution of property after death

Reduces Succession disputes

For rewarding those who cared

Better to make a will of every one at even younger age

- Can be revised numerous times



# How to make

---

Write or type?

- Oral will – Soldiers/ Muslims

Designate legatee/beneficiaries

Make it detailed



# Essentials

---

## Date

- Very important as only last will prevails

## Signature/ thumb mark

## Witness

- Atleast two witnesses
- **Cannot be witness**

## Appoint executor

- Younger than testator
  - Else court to be approached for appointing executor
- 




# Beneficiary

---

## Any one?

- Relative/ Friend/ Employee/ Servant
- CA/ Lawyer
- Stranger

## Pets/Animals

- Mumbai couple created trust and donated 5 crores for their two golden dogs
  - In US Karl Lagerfield's cat is a beneficiary of Rs.2700 crore.
- 
- 

# Digital assets

---

Email credentials

Bank account credentials

Bitcoins

---



# Executor

---

## Beneficiary

- Common to have spouse as executor

## CA/ Consultant

- Provision of fee in the will

## Primary and secondary

## Capable to be testator

## Willing to become

---



# Witness

---

## Section 67 of ISA

- Witness or his spouse cannot be beneficiary
- Bequeath shall become void

Must see testator affixing the will

Need not know the contents of will

---



## Section 69 : Revocation by Marriage

---

Revocation of Will by  
testator's marriage

Except

- Hindus/Jains/Buddhists and Sikhs
- Muslims





# Registration of Will

---

Testator may register will with Sub-Registrar

- Not compulsory but advisable

becomes public document for inspection

Raises strong presumption of genuineness of will

Registered will can be superceded by subsequent unregistered will

Notarisation can also be considered

---



# Income tax – Registered will

---

## Copy of Legal Heir Proof from the below list:

- Legal Heir Certificate issued by Court of Law /Local Revenue Authority.
- Surviving family member certificate issued by the Local Revenue Authority.
- Family Pension certificate issued by Central/State Government.
- **Registered will.**
- Letter issued by the banking or Financial Institution in their letter head, with official seal and signature mentioning the particulars of nominee or joint account holder to the account of the deceased at the time demise.



# Undue Influence

---



**Mahesh  
Kumar (2012)  
4 SCC 387**

- a case where a testator bequeathed all his wealth to one son in preference to the others
- since he was living with that son and the attitude of the other sons was extremely hostile towards their parents.
- The Court held that the fact that one son took care of the parents in their old age showed that there was nothing unnatural or unusual in the decision of the testator to give his property only to him.
- Any person of ordinary prudence would have adopted the same course and would not have given anything to the ungrateful children from his / her share in the property.
- Thus, the Court held that there was nothing invalid in the Will.



# Joint wills

---

Husband and Wife both make a common will

Reciprocal promises

Cannot be changed unilaterally

Instrument to bind others to avoid

- Remarriage
- Arbitrary disposal

Otherwise not advisable as bottleneck

---



# Beneficiary predeceasing testator

---

Where it was made  
in favour of a person  
who is dead at the  
time of the death of  
the testator,



estate will devolve  
on the legal heirs of  
dead person.



# What can be willed

---

## Can be willed

- Self-acquired properties
- Acquired by inheritance or gift, etc. and held exclusively
- share in the properties of HUF under Will by member.

## Cannot be willed

- Tenancy rights not being transferable should not be made a subject matter of Will.
- A Mohammedan under Will can bequeath only 1/3rd of his property,
- the remaining 2/3rds part shall devolve on legal heirs as per the Mohammedan Law.
- Notwithstanding this rule, a Mohammedan may bequeath his entire property under a Will provided his legal heirs otherwise entitled to his estate **consent to such a disposition after his death** — their consent before death is not valid.



# Common clauses

---

a)	Name, age, address, religion	b)	Revocation of earlier Will
c)	List of relatives	d)	Appointment of executor
e)	Discharge of obligations	f)	Legacies and bequests to persons
g)	Residual estate	h)	Testimonium
i)	Execution	j)	Witness
k)	Safe custody		



# Codicil

---

A Will can be changed by the testator during his life time either

by making a new Will after revoking an old Will or

by amending the old Will by separate instrument made with the intention to make such an instrument a part of it.

This new instrument is known as Codicil. S. 2(d) defines it as an instrument made in relation to a Will and explaining, altering or adding to its dispositions which shall be deemed to form part of the Will

---





## Stamp Duty

---

No stamp duty is payable on execution of a Will.

A Will can be made on a plain paper.



# Probate

---

A probate is the grant of administration of the estate by the court of competent jurisdiction based on Will.

A probate provides the conclusive evidence

- of the execution of a Will
- of the legacies and
- of the legal character of legatees by confirming validity of Will.

It can be granted only to an executor.

---



# Probate

---

- ▶ Probate not compulsory in cases of a Hindu and a Mohammedan unless
  - ▶ The estate consists of an immovable property situated in the cities of Mumbai and Chennai and Kolkata.
  - ▶ Will is executed in the cities of Mumbai and/or Chennai and/or Kolkata and deals with an immovable property wherever located.
  - ▶ A maximum court fee of Rs. 75,000 is payable in the State of Maharashtra for obtaining a probate.
- ▶ No time limit is prescribed for filing an application for probate.
  - ▶ However, delay is required to be explained where filed beyond a period of three years of death.



## Mr Purvez A Poonawalla Vs ITO 138 TTJ (Mumbai) 673 :

- Assessee has abstained from contesting will and this constitutes consideration for payment by other person. Such receipt is not without any consideration.

# Fake reports / Myths

---

No.	Myth	Reality
1.	Will must be on Stamp paper	Can be handwritten on plain paper
2.	Legal format to be followed	No format
3.	Will cannot be changed once made	Can be changed end number of times
4.	Effective in person's lifetime	Effective only after death of testator
5.	Cannot exclude close relatives Eg. Son, wife, etc.	Can bequeath anything to Charity/ servant/ friends

---



# Fake reports / Myths

---

No.	Myth	Reality
6.	Will need not be dated	Last will prevails. Dating must
7.	Nomination prevails over will	Will prevails in all cases
8.	Married woman cannot make will	All women can make will
9.	No need of witness	Two witness are must
10.	Marriage revokes will	True. However not in case of Hindus

---





# Hindu Undivided Families

HUF

---

Only used as a tax  
planning device

HUF started with married  
male

- Headache Unlimited
- 





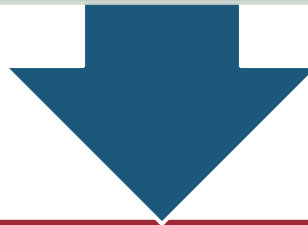
# Constitution of HUF

---

## Hindu Succession Act

HUF is created when a male makes under Hindu Law

- NV Narendranath v. CWT (SC)



## Income tax Act

For it to be taxed as HUF, two coparceners are must

- Husband only coparcener unless children

A son is not a must for an HUF even a daughter can be member

- Gowli Buddana v. CIT



# Daughter's rights

---

## 09.09.2005 amendment

- Daughter of coparcener **equal to son**
- Daughter can demand partition
  - but Daughter in law cannot
- Daughters children can also become coparcenar in Nana's HUF
- Husband may also become member of Father in law's HUF



# Vineeta v. Rakesh Sharma (SC)

---

Daughter  
must be alive  
on 09.09.2005

HUF must exist  
on 09.09.2005

Registration  
of partition  
mandatory

Oral partition  
not allowed



# Female as Karta

---

## Eldest child

- Even daughter can become Karta in Father's HUF
- However she cannot become Karta in Husband's HUF as not coparcenar

## Jurisprudence

- Sujata Sharma v. Manu gupta (Delhi)
- Seth Govindram Sugar Mills (SC)
  - coparcenary must for Kartaship



# Food for Thought

---

## In father's HUF only 3 member

- Father, Mother and son
- Father dies and son is minor
- Who shall be Karta?

## Shreya Vidyardhi (SC)

- Guardian Manager
- 
- 

# Partition

---

## Full Partition

Recognized under  
Both Hindu Law and  
Income tax

Section 171 Income  
tax

## Partial Partition

Qua - members or  
property

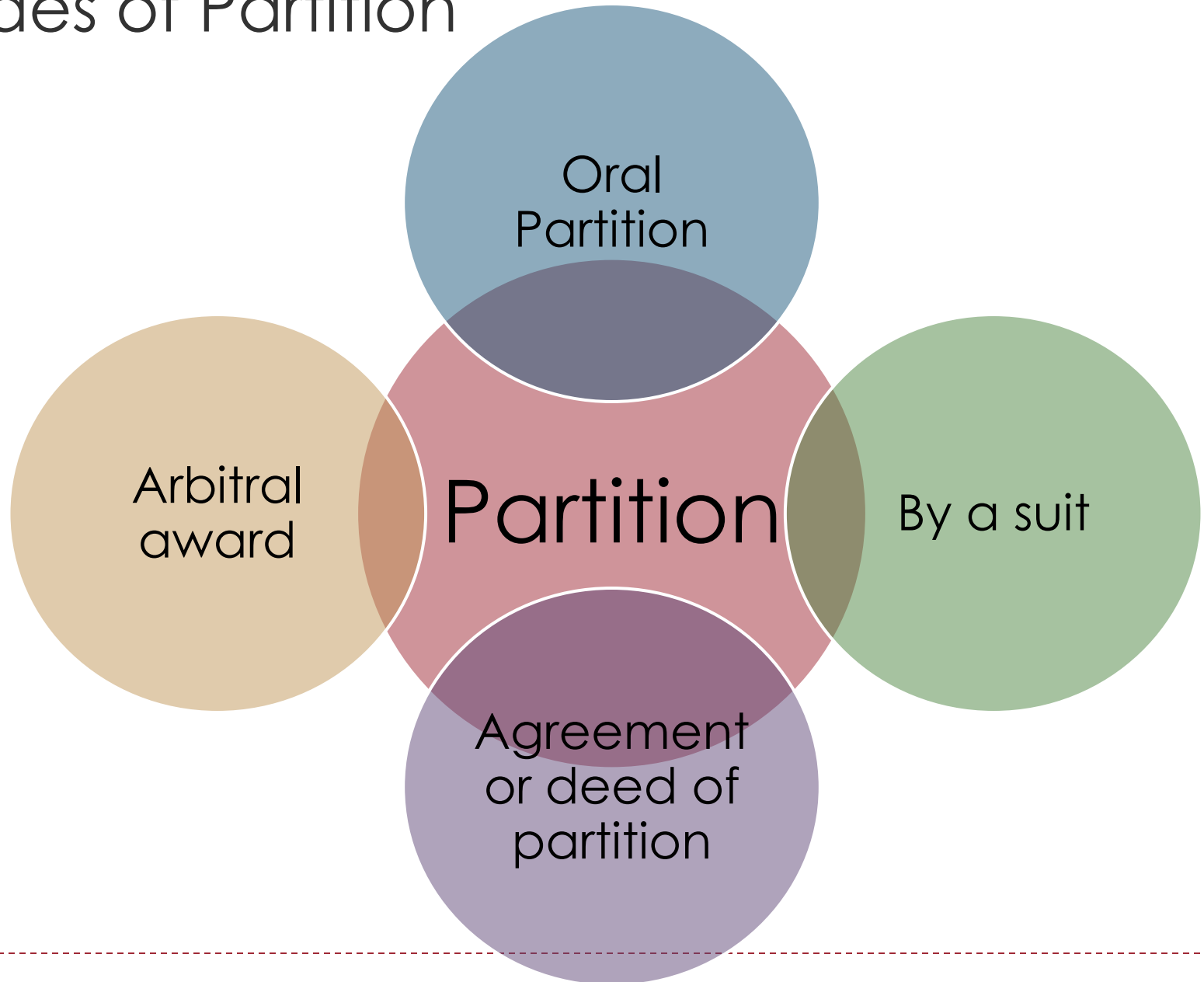
Not recognized  
under Income tax

Clubbing as if HUF  
has not parted away

---



# Modes of Partition



# Notional Partition

---

On every death there is notional partition to align the share of coparceners

- If 10 members each one has  $1/10^{\text{th}}$  share.
- If deceased has bequeathed his share to a member than the legatee shall have  $2/10^{\text{th}}$  share

SC in *M. Arumugam v. Ammaniammal*





# Key constituents of HUF

---

## Karta

- Eldest child i.e. male or female

## Coparcener

- By birth

## Member

- Eg. Wife
  - Cannot demand partition
- 



# Exempted Gift transactions of HUF

---



Gift from HUF  
to **relative**



Gift to HUF  
from  
**member**



# Gift from HUF

---

- ▶ **Vineetkumar Raghavjibhai Bhalodia v. ITO [2011] 12 ITR(T) 616 (Rajkot)**
  - ▶ In the given case a member of HUF received Gift from HUF, Assessing Officer was of the view that HUF is not covered in the definition of 'relative'
  - ▶ It was held that a gift received from 'relative', irrespective of whether it is from an individual relative or from a group of relatives is exempt from tax under provisions of section 56(2)(vi).
  - ▶ **HUF is a group of relatives and therefore, gift received from HUF would be exempt from tax under section 56(2)(vi)**

# Gift to HUF

---

- ▶ ***Subodh Gupta (HUF) v. PCIT [2018] 169 ITD 60 (Delhi - Trib.)***
  - ▶ Only gift received by member of HUF is not chargeable to tax;
  - ▶ thus, where assessee HUF received gift of 75,000 equity shares from mother of Karta of assessee HUF,
  - ▶ not being member of assessee HUF, said sum would be chargeable to tax under Section 56(2)(vii)

# Ancestral Property

---

Property inherited from 3 generations above of male lineage

- Father, grandfather, great grandfather

Deemed to be HUF property

Automatic right in ancestral property

Myth

- Ancestral property cannot be alienated

Reality

- Ancestral property can be lineated
  - Yudhister v. Ashok Kumar (SC)
  - Uttam v. Saubhag Singh (SC)
  - Surender Kumar (Del)
  - Arshnoor Singh (SC)





# Joint holder and nomination

# Joint Holder

---

Any asset movable or immovable can be joint

Joint is not beneficial owner

- Either or survivor
- Former or Survivor

Stop gap arrangement as becomes owner after death in both cases

Will shall prevail over joint holder

---



# Nomination

---

- ▶ Stop gap arrangement
  - ▶ Nomination Must to ensure smooth transition
  - ▶ Advisable to make the legatee in Will and nominee same person
- ▶ Will vs. Nomination
  - ▶ Will or intestate succession rules prevail always
  - ▶ Noiminee only
    - ▶ Custodian
  - ▶ Nomination ends on execution of will
  - ▶ Section 72 of Companies Act 2013
    - ▶ Shares vest in nominee
    - ▶ Shakti Yezdani v. Jayanand Salgaonkar (Bom HC)





# Joint holder vs. Nominee

---

## Hierarchy

- Joint holder
- Nominee

Nomination only active if all joint holders expire

Ultimately both should sync with the Will



*Thank you..*

- ▶ CA. Pankaj Shah
- ▶ Chartered Accountant
- ▶ [pankajgshah@gmail.com](mailto:pankajgshah@gmail.com)
- ▶ +91 9691893040

