

Indian Succession Act, 1925

Section 40 - Where Intestate Leaves Lineal Descendants Not All in Same Degree of Kindred to Him, and Those Through Whom the More Remote Are Descended Are Dead

(1) If the intestate has left lineal descendants who do not all stand in the same degree of kindred to him, and the persons through whom the more remote are descended from him are dead, the property shall be divided into such a number of equal shares as may correspond with the number of the lineal descendants of the intestate who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving lineal descendants who survived him.

(2) One of such shares shall be allotted to each of the lineal descendants who stood in the nearest degree of kindred to the intestate at his decease; and one of such shares shall be allotted in respect of each of such deceased lineal descendants; and the share allotted in respect of each of such deceased lineal descendants shall belong to his surviving child or children or more remote lineal descendants, as the case may be; such surviving child or children or more remote lineal descendants always taking the share which his or their parent or parents would have been entitled to respectively if such parent or parents had survived the intestate.

Illustrations

(i) A had three children, John, Mary and Henry; John died, leaving four children, and Mary died, leaving one, and Henry alone survived the father. On the death of A, intestate, one-third is allotted to Henry, one-third to John's four children, and the remaining third to Mary's one child.

(ii) A left no child, but left eight grand-children, and two children of a deceased grand-child. The property is divided into nine parts, one of which is allotted to each grand-child, and the remaining one-ninth is equally divided between the two great-grand-children.

(iii) A has three children, John, Mary and Henry; John dies leaving four children; and one of John's children dies leaving two children. Mary dies leaving one child, A afterwards dies intestate. One-third of his property is allotted to Henry, one-third to Mary's child and one-third is divided into four parts, one of which is allotted to each of John's three surviving children, and the remaining part is equally divided between John's two grand-children.

(iv) A has two children, and no more, John and Mary. John dies before his father, leaving his wife pregnant. Then A dies leaving Mary surviving him, and in due time a child of John is born, A's property is to be equally divided between Mary and the posthumous child.