

# WILLS, HUF & PRIVATE TRUSTS – KEY ASPECTS OF SUCCESSION PLANNING

DR. CA.ABHISHEK MURALI

B.COM, M.COM, FCA, MBA, ACMA, CGMA,  
CIMA(LON.), LLB, CISA(USA), DISA(ICAI), ADIT  
(UK), D.LITT.,

REGIONAL COUNCIL MEMBER, SIRC  
OF ICAI

PRESIDENT, ALL INDIA TAX PAYERS'  
ASSOCIATION (AITPA)





# Annual Information Statement (AIS) & Tax Information Summary (TIS)

A hand is shown placing a single sheet of white paper onto the top of a tall stack of papers. In the background, there are several other stacks of papers of varying heights, creating a stepped effect. The scene is set against a plain, light-colored background.

# WILLS & SUCCESSION PLANNING

# **Landscape of Family Business in India**

- **Over 70% of businesses in India are Family businesses**
- **About 60% of the top 500 companies in India are family- controlled.**
- **India's top 10 family businesses have a combined value of ₹60 lakh crore.**
- **India's family-owned biz projected to drive 85% of GDP by 2047.**





**mint**



**PRS Oberoi  
Estate: Delhi  
High Court Halts  
Share Transfers  
Amid Legal  
Battle**



INFOCUS

**mint**

Think Ahead, Think Growth.



Gautam Singhania  
@SinghaniaGautam

Happy to have my father at home today and seek his blessings. Wishing you good health Papa always.

**Raymond**

**RAYMOND GROUP FAMILY**  
**RECONCILIATION ON THE CARDS?**



# Other Major Family Distribution of Assets

- ◆ Hinduja Group
- ◆ Hero Honda Family
- ◆ Godrej Family
- ◆ TVS Family
- ◆ Lodha Group



# Need for Succession Planning

- ◆ Lack of anticipating the worst
- ◆ Growing family trees with even growing physical distances between
- ◆ Fear of discussing death of people in the family
- ◆ Lack of inventory of the assets
- ◆ Tendency for one person to handle all the assets/finance decisions while others are excluded or allowed to not participate
- ◆ Clarity for the Next Generation

## Example 1 – What will happen?

- ◆ Man has a wife & 2 sons
- ◆ Owns 5 Houses, Mutual Funds & Several Shares across Companies, Jewellery and Vehicles
- ◆ Now he wants his assets in hands to go equally to his 2 Sons.
- ◆ But before he can act on it, he dies

As per Hindu Succession Act, the property automatically devolves onto all Class – 1 legal heirs, i.e. Wife and 2 sons equally between them



# The Complex Applicability of Tax Laws

---

- Hindu Succession Act – Hindu, Buddhist, Sikh, Jain
- Indian Succession Act – Christians / Special Marriages
- Muslims – Shariat Law, Quoran, Sunna (traditions), Ijma and Qiya

## Example 2 – What will happen if he has a daughter?

- Man has a wife, 2 sons and a daughter
- Owns 5 Houses, Mutual Funds & Several Shares across Companies, Jewellery and Vehicles
- Now he wants his assets in hands to go equally to his 2 Sons.
- But before he can act on it, he dies

As per Hindu Succession Act, the property automatically devolves onto all Class – 1 legal heirs, i.e. Wife, 3 children (including daughter). Prior to 2005, Daughter had no share in the property



# The 2005 Major Amendment to HSA

---

- The daughters of coparceners will have the same rights as a son
  - Remove patriarchy mindset
  - Remove gender discrimination
- 
- However, even after the amendment doubts remained on retrospective nature or prospective nature



## Example 3 – What if Daughter was married in 2010?

- Man has a wife, 2 sons and a daughter
- Daughter was married 15 years ago (in the year 2010) - At the time of marriage of his daughter he had given her 1 house and several KGs of jewellery
- Owns 5 Houses, Mutual Funds & Several Shares across Companies, Jewellery and Vehicles
- Now he wants his assets in hands to go equally to his 2 Sons.
- But before he can act on it, he dies

As per Hindu Succession Act, the property automatically devolves onto all Class – 1 legal heirs, i.e. Wife, 3 children (including daughter)

# Prakash vs Phulvati – 2016 Supreme Court – Conditions to Claim Property by Women

- Daughter must be alive in 2005 (at the time of amendment) to claim share in the father's property
- If daughter was born before 2005 and also died before 2005, she will not be eligible for this
- Father should have also been alive in 2005 (at the time of amendment) for the daughter to claim the share. If father died prior to 2005, she does not get the right
- **If property already sold before this 2016 decision, then Daughter cannot claim a share or stake in the consideration/reinvestment**

## Example 3 – Daughter married in 2000 – Any change?

- Man has a wife, 2 sons and a daughter
- Daughter was married 25 years ago (in the year 2000) - At the time of marriage of his daughter he had given her 1 house and several KGs of jewellery
- Owns 5 Houses, Mutual Funds & Several Shares across Companies, Jewellery and Vehicles
- Now he wants his assets in hands to go equally to his 2 Sons.
- But before he can act on it, he dies

As per Hindu Succession Act, the property automatically devolves onto all Class – 1 legal heirs, i.e. Wife, 3 children (including daughter)



Conflicting  
Judgements in  
HSA. But 2018  
saw a  
landmark  
judgement  
again

- In *Lokamani vs Mahadevamma (2016)(Kar.)*, High Court held that daughters have right as amendment is retrospective in nature
- In *Danamma vs Amar (2018)*, a High court held that even though father passed away prior to amendment, daughters still get equal right.
- **SUPREME COURT (2018) – Vineet Sharma vs Rakesh Sharma**, it was held that Act provides an unobstructed heritage by birth to the daughter. Thus, a coparcener's father need not be alive on 9 September 2005. The court also stated the following, "Coparcener's right is by birth. She has not been conferred the rights of a coparcener by obstructed heritage"

## Example 4 - Would Your Answer Change if he wrote a Will before Dying

- Man has a wife, 2 sons and a daughter
- Daughter was married 15 years ago (in the year 2010) - At the time of marriage of his daughter he had given her 1 house and several KGs of jewellery
- Owns 5 Houses, Mutual Funds & Several Shares across Companies, Jewellery and Vehicles
- Now he wants his assets in hands to go equally to his 2 Sons.
- **HE WRITES A WILL BEFORE DYING**

The Answer is – NOT ENOUGH INFORMATION IN THE QUESTION

# **What is Self-acquired Property and How Does it Differ from Ancestral Property?**



Self-Acquired vs Ancestral Assets

# INTRODUCTION

## ■ **What is a Will?**

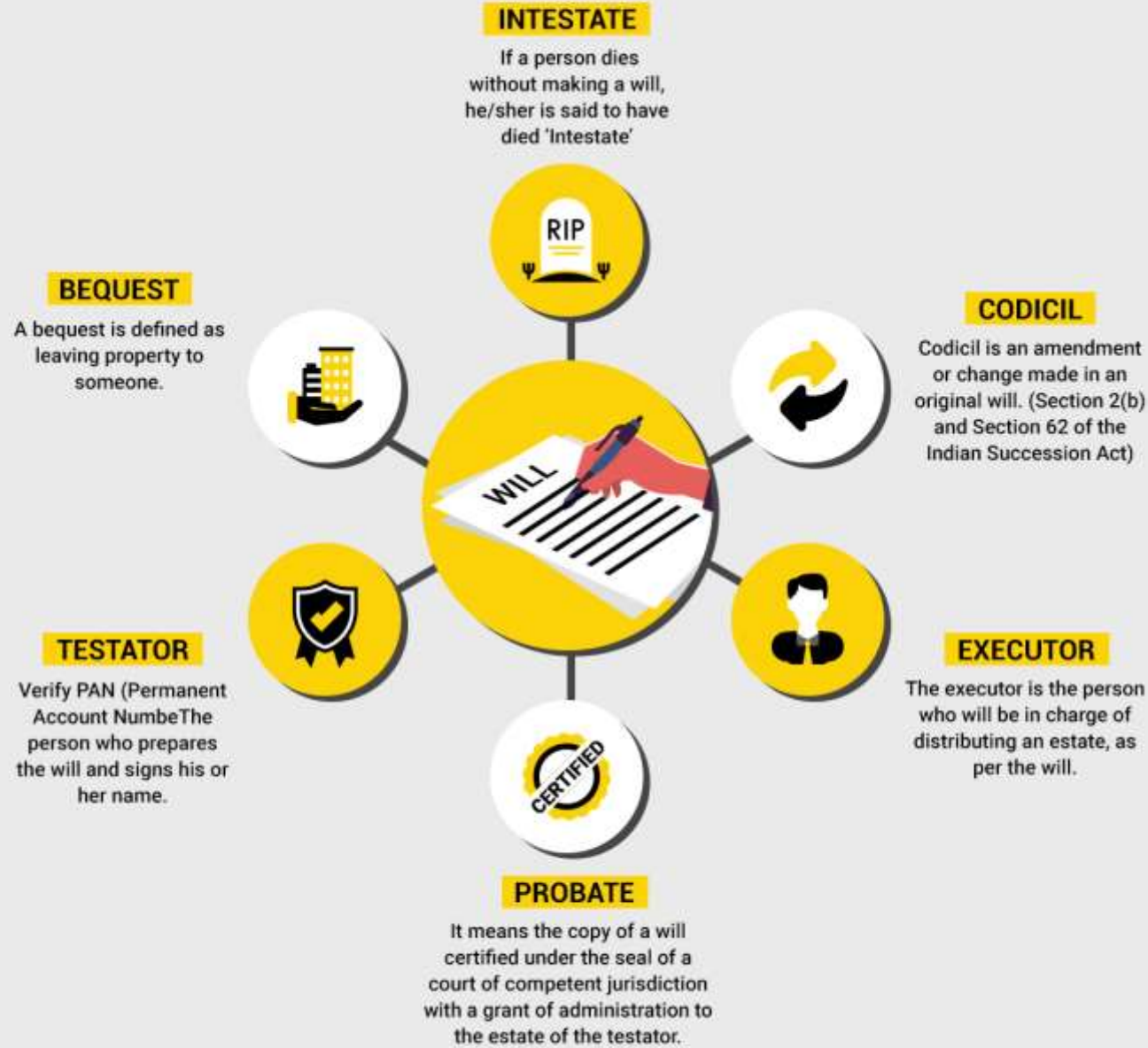
Legal declaration of a testator with respect to his property to be carried into effect after his death

## ■ **Terms to be familiar with**

- Testator :Who makes the will
- Executor :Who will deal with your estate
- Legatee : Person benefitting from the will



# IMPORTANT TERMINOLOGIES OF A WILL





DYING INTESTATE WITHOUT A  
WILL



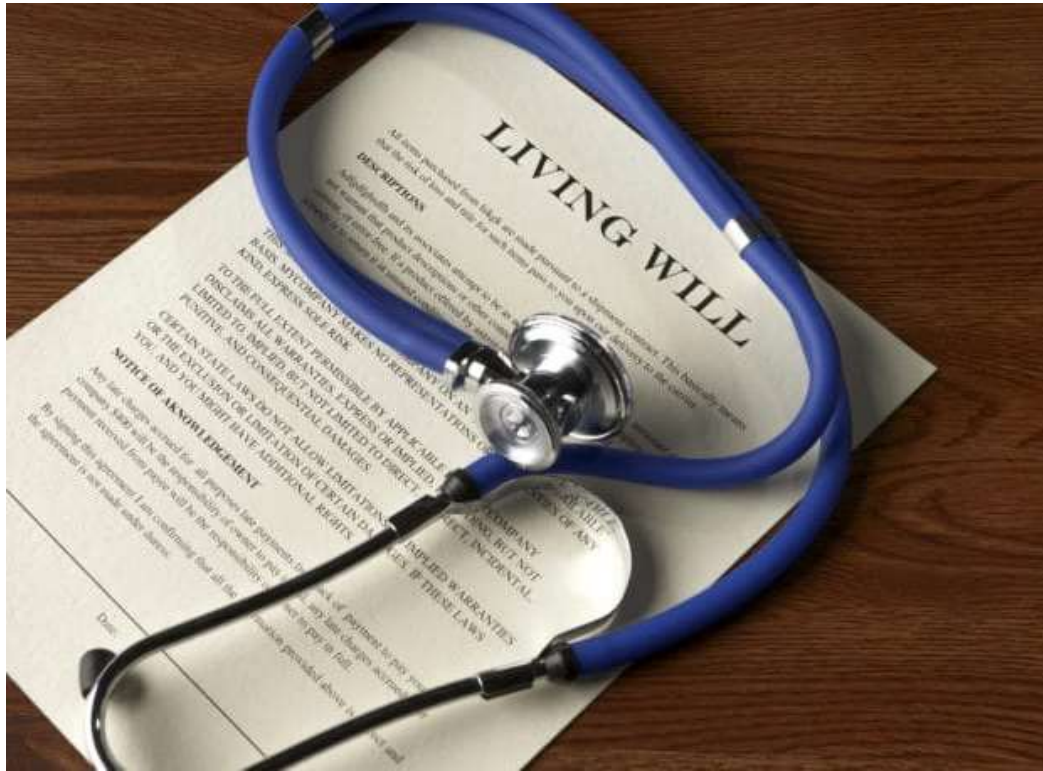
## INTERESTING CASE

- Assessee's father died intestate (without leaving a will)
- Assessee inherited several properties under HSA
- Assessee included the properties with his HUF
- Is this permissible?

In ***Mahaveer Yadav vs ITO (2018) 91 TM 476 (Jaipur Trib.)***, it was held that ather died intestate leaving behind certain ancestral properties which assessee inherited under section 8 of Hindu Succession Act, said properties devolved on assessee in his individual capacity and not as karta and hence taxable as Income of Individual (not HUF). Same held in ***CIT vs APS Parameswaran Pillai (Mad HC)(2003) 128 TM 84***



# WHAT CLIENTS SAY ABOUT WRITING WILLS

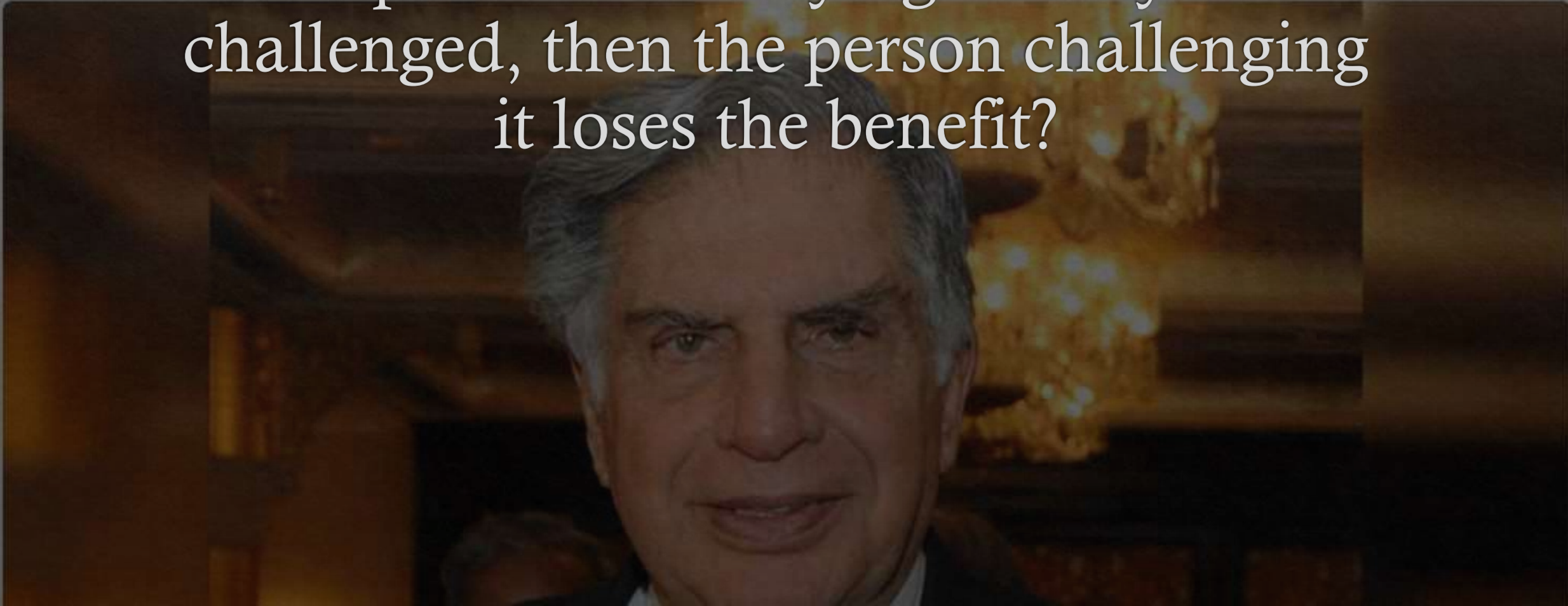


- Its Cheaper if I write my own will
- Only wealthy/sick people need a will
- I can write my will only once
- I have orally told my wishes so I don't need a will
- Government will inherit my property if I don't have a will

# Ratan Tata's aide Mohini Dutta accepts ₹588 crore inheritance in will case

*Mohini Dutta, Ratan Tata's longtime aide, agrees to the will after initial resistance, removing the final hurdle for probate of his ₹3,900 crore estate at the Bombay High Court.*

Can I put a clause saying – if my will is challenged, then the person challenging it loses the benefit?







DOES A WILL  
HAVE TO BE  
ON STAMP  
PAPER?

Not Required. Can be on a regular paper, as well.



Registration of a Will is only optional. Witnesses, along with testator and executor can visit the nearest sub-registrar office



**DOES A WILL HAVE TO BE REGISTERED?**

# Benefits of Registering a Will

- In case there is tampering of the original Will, it can be compared with the Will maintained in the office of the sub-registrar.
- In the event the original Will is destroyed or lost, a certified copy can be obtained from the office of the sub-registrar.
- If a Will is made regarding leasehold property, it can be used to edit entries in the mutation register, before probate is obtained.



# Will vs Settlement Deed – Are they both Title Deeds?

A Will is only a statement, whereas a Settlement Deed is a title deed. Normally, a probated will is accepted as a document confirming ownership as per testator

# Interesting Case

- ◆ Father purchases 4 different properties and is joint owner with his 4 children
- ◆ Much later he wishes to transfer his share in each property to the 4 children
- ◆ Writes a single release deed in favour of his children for these properties
- ◆ Is this acceptable?

Its perfectly okay but a Release/Settlement Deed is a Title Deed and a buyer may want the original copy of this Deed. Where multiple properties are involved but only single release/settlement deed is available, issue may arise as to who has to keep the original copy. Advisable to have a separate deed for each property

# WILL IT BE LONG TERM OR SHORT TERM?



- Father purchased property in 1998
- Father dies in April 2022
- Only Son inherits the property on death. Sells the Property in May 2022 (less than 1 month after inheriting)
- Will it be Long Term or Short Term?



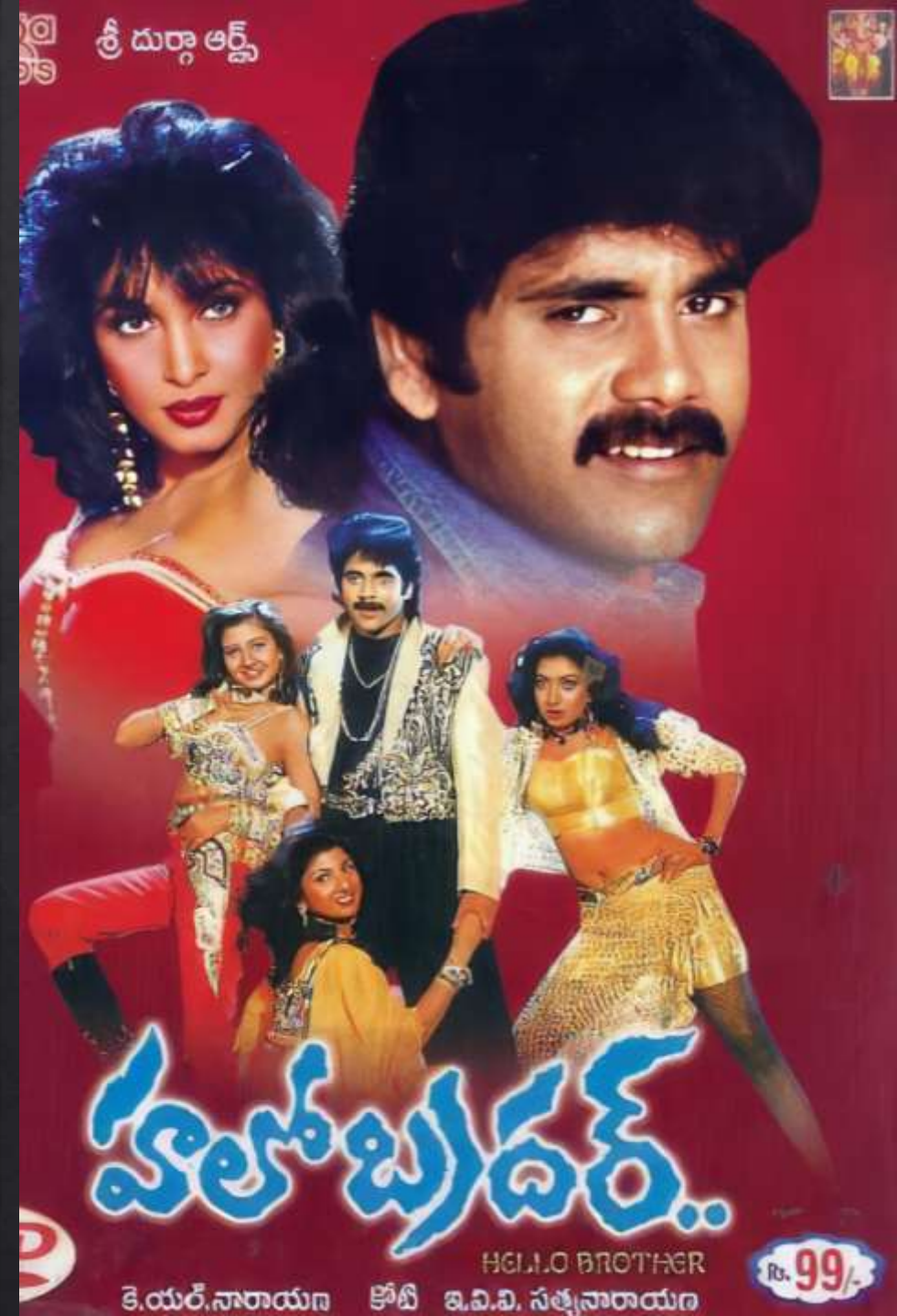
# IMPORTANT POINTS – PERIOD OF HOLDING – PROVISO TO 2(42A)

SITUATION	HOW TO CALCULATE HOLDING
Inheritance, Gift, Will, Partition, Succession	<b><u>Period</u></b> asset <b><u>held by previous owner</u></b> to be <b><u>included</u></b>
Right Shares & Bonus Shares	Period calculated from date of allotment
Sweat Equity Shares	From Date of Allotment of Shares
Conversion of Preference to Equity	<b><u>Period of holding Pref Shares</u></b> will <b><u>be included</u></b>
Conversion of Stock in Trade to Capital Asset	Period of holding from <b><u>date of conversion</u></b>



# Do Adopted Children have the same right as a Birth Child?

Once adopted, the child's legal ties to  
their biological family are severed,  
and they become a legal heir of their  
adoptive family







Does an Illegitimate  
Child have the same  
right as a Birth Child?



## Benefits of Settlement Deed

- ◆ The Transfer is immediate and irrevocable
- ◆ Lower Stamp Duty on settlement to relatives (in Tamil Nadu)
- ◆ No Capital Gains on settlement
- ◆ No Taxation under Income from Other Sources for recipient



Can a  
Settlement be  
made with  
conditions?







[www.lawforalltt.com](http://www.lawforalltt.com)

**"I HAVE A  
LIFE INTEREST  
IN MY PROPERTY"**



## Concept of Life Interest

A will can specify that a person is granted a life interest in a property, meaning they have the right to use and enjoy the property during their lifetime, but do not have ownership rights to sell or transfer it. The life interest automatically ends upon the death of the person with the life interest

# Can I give a bigger share to a particular child?

- ◆ Parents have 3 children
- ◆ 2 children are living out of the country
- ◆ 1 child is living with them and takes care of them during health issues and other challenges and spends more time with them
- ◆ Can the parent give the Child in India who's taking care of them a bigger share in the house property?

Yes. But only if I either Settle before my death or write a will. If I die intestate, my wishes will not be carried out unless it is represented in the form a will. **Property should be self-acquired and not inherited**

## INTERESTING CASE

- Man with 4 children, have all mutually orally agreed with their father and mother that the immovable property will go to the eldest child, Mr. X
- There was no documentation except a letter signed by the sisters agreeing to this
- After death of father, everyone behaves as per the wishes of the father and the letter
- Subsequently when Mr. X is attempting to sell the property. He faces some key questions.
- **As a buyer would you buy this property? Are there any documents will you ask additionally?**

The father died without a will. Hence, as per HSA, all children have equal rights on the assets. Buyer should ask for release deed from siblings and mother of Mr. X.

## WIFE WITH NO CHILDREN DIES – WHERE DOES HER PROPERTY GO?

- Shubha obtained properties through succession from her father. She has no children.
- To the extent of property inherited from her father, in case she did not have children, it will go to the heirs of the father.
- In case her husband had died earlier and she inherited property from her husband and there are no children, property would go to the heirs of the husband.

# Can I Make Changes to the Will?

---





# Can I Make a Change to the Will?

---

Yes. A codicil is a separate document that amends or adds to the existing will. To be valid, a codicil needs to be signed, dated, and witnessed



# Can I Make a Change to Settlement Deed

No absolutely not. As it is complete in all aspects



# Important Documents along with Will

- Death Certificate
- Application before Tahsildar
- Legal Heirship Certificate
- Ensure spelling mistakes are avoided

# Key things to include in the drafting of the will

- **Details of the testator**- The name, age, address and aadhar
- **Declaration** - Sound mind and free of any coercion
- **Details of the beneficiary** - Who shall be benefitting out of this will and to whom shall the assets be divided
- **The executor of the will** - Appoint an executor : The name, age, address and relation to the testator should be specified
- **Details of property and assets** - List out all the details of the assets and properties that a testator covered by will
- **Division of share** - The share that each beneficiary gets for each asset to be listed in full detail.
- **Specific Directions** - Directions of executing the Will
- **Witness** - There should be a signature by the testator in the presence of at least 2 witnesses. The witnesses do not need to know the details of the will they just have to verify that the signature by the testator was done before them.
- **Signature** - The testator should sign with the date on the will after the last statement.



## Does the Will have to be in English?

- ◆ No such requirement.
- ◆ Will can be in any language
- ◆ The Testator needs to specifically state he understand the language/or has been explained the language in the Will and it correctly reflects what he wishes to communicate





IS A HAND-  
WRITTEN WILL  
VALID?

# Can a person have multiple wills?

Yes. But the most recent will automatically replace all the earlier wills. Therefore, at any point of time only 1 will can be active. It is very important to specifically state there was an earlier will which is now being overridden.



An aerial photograph of a tropical beach and resort. The turquoise water of the ocean is on the left, with a few small boats. A large, hand-drawn black arrow with a thick outline points from the land towards the water. Inside the arrow, the word "BARGAIN" is written in bold, red, hand-painted capital letters. The land on the right is covered with lush green palm trees and several buildings, including a large resort complex with multiple red-roofed structures and smaller villas. A dark purple horizontal bar is at the top of the image.

**BARGAIN**

**PROPERTY IN FOREIGN COUNTRY?**



## DEATH OF TESTATOR

- Executor or Heir to Apply for Probation
- Court hearing with heirs regarding objection
- General public notice
- If objected, citation served for consent
- No objections : Probate granted
- Certified by Court
- Conclusive evidence of genuineness of will
- Granted only to Executor
- Only after 7 days of death of testator



# What is PROBATE?



# What is Probate

- ◆ Probate in India, as defined by the Indian Succession Act, 1925, refers to a certified copy of a will, sealed by a court
- ◆ It is a legal process of proving the validity of a will and ensuring the deceased's assets are distributed according to their wishes
- ◆ Compulsory in Presidency Cities (i.e. Chennai, Mumbai, Kolkatta)
- ◆ Other cities at the option of the Court or based on dispute

# APPLICATION FOR PROBATION OF WILL

## Following Facts

- Time of death
- Last will
- Asset list
- Petition by executor of will

Signed and verified by Executor/Beneficiary

Stamp paper equal to court fee

Submit application form

Attesting witness to file affidavit

Court fees Rs 75,000



# CONTESTING A WILL

1. **Presence of coercion, fraud or undue influence-** Not drawn with a clear intention and under pressure.
2. **Presence of a suspicious nature-** Reasonable understanding that there was some transgression with it.
3. **Absence of testamentary intention or capacity-** Testator might not be of sound and reasonable mind
4. **No proper execution-** If the signature of the testator along with two witnesses are not present
5. **Absence of knowledge-** If the testator did not have knowledge of signing the Will



# **Can a Will be Challenged After Probate?**



# Can a probated will be challenged

If there was a fraudulent grant of probate by concealing facts or deceiving the court

If probate was granted by a false allegation of fact

If there was a defect in the proceedings to grant a probate

If the grant of probate has become useless due to certain situational changes

## REVOCATION/CANCELLATION OF WILL

- Will cannot be found after the death of the testator
- Execution of a subsequent will the previous revoked
- Declaration of intention to revoke the will by the testator in written
- Destroying the will by tearing, burning or by other means by the testator.
- If testator gets married after the will then the old will revoked.



# Can a CA play a role in the process of Will



Yes, a Chartered Accountant (CA) can be an executor of a will. A CA, like any other individual, can be appointed as an executor, which means they would be responsible for carrying out the instructions in the will, including managing and distributing the deceased person's asset

# DUTIES OF EXECUTOR



- Legal Representative of deceased person
- Can sue others for recovery of debts
- Duty bound to distribute assets
- Probate is granted only to executor
- Pay funeral expenses
- Pay debts of deceased
- Ascertain assets of deceased
- Testator need to take approval or show will before

WILL 2019  
REGISTERED  
WILL 2020  
UNREGISTERED



# Legal heir certificate



## DOES WILL ACT AS LEGAL HEIR CERTIFICATE?

In normal circumstances, it cannot. However, if it is probated then depending on the circumstances, it can be used as a proof of legal heirship





---

NOMINEE  
CANNOT  
OVERRIDE THE  
SUCCESSION  
LAW – 2024  
SUPREME COURT  
DECISION

# Parents can cancel gift or settlement deeds if children fail to take care of them, even in the absence of an explicit condition: Madras HC

Justices S.M. Subramaniam and K. Rajasekar hold that it is enough if the intent regarding maintenance is found to be implicit

**Updated** - March 19, 2025 07:34 am IST - CHENNAI

# HINDU SUCCESSION ACT – HINDU, JAIN, BUDDHIST, SIKHS

## HINDU MALE PASSES AWAY

- The Class I heirs get equal shares
- In case no Class I heirs it shall be equally divided amongst Class II heirs
- No Class I or Class II Heirs shall be divided amongst the Agnates and Cognates.
- If none of the above-mentioned heirs exist then shall pass on to the Government

## HINDU FEMALE PASSES AWAY

- First her children and husband
- Then among her husband's heirs
- Then among her father and mother
- Then among her father's heirs
- Then among her mother's heirs

## CLASS I HEIRS

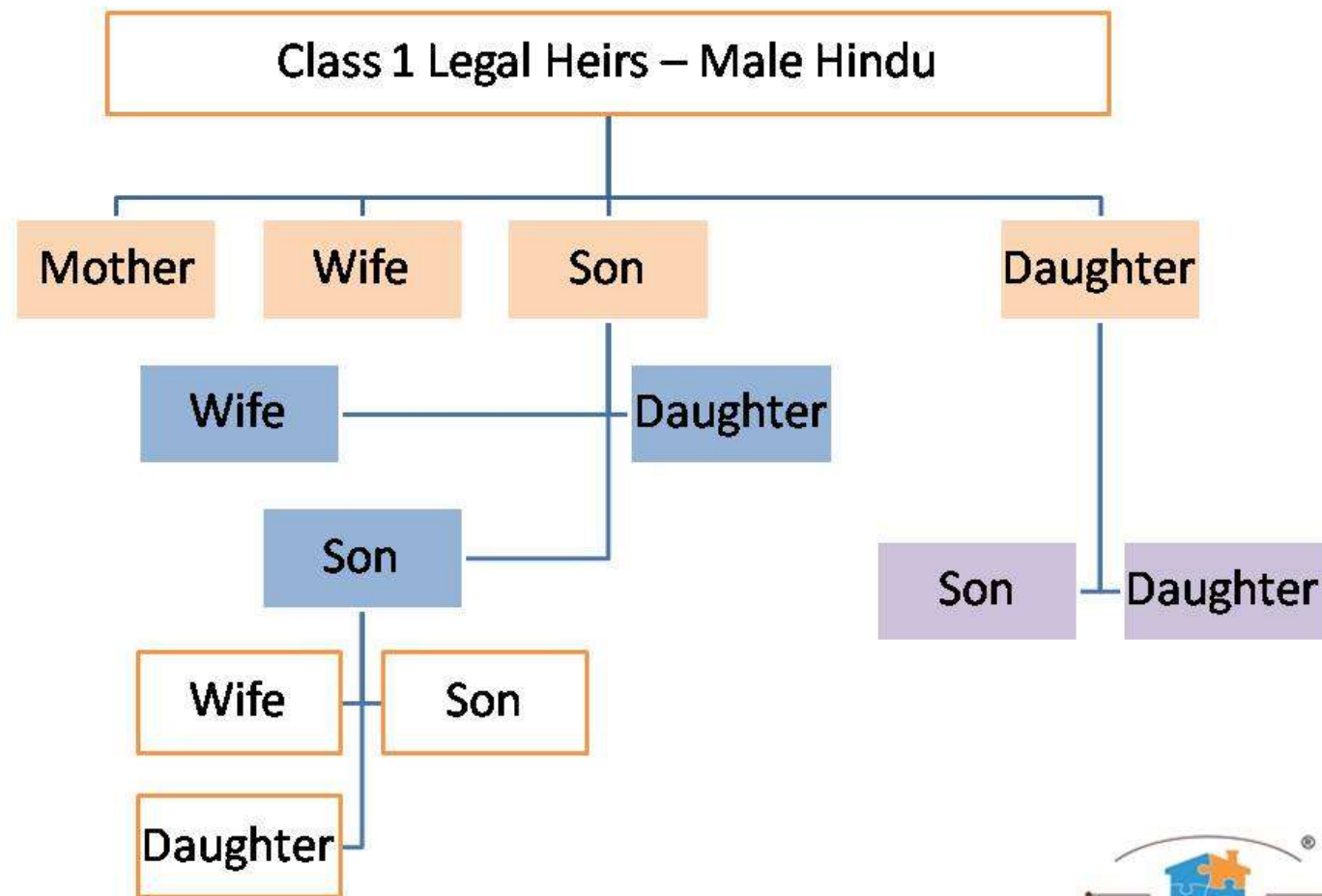
Type	Share
Son, Daughter, and Mother	One share each
Widower	One share
Heirs of the predeceased son or predeceased daughter	Same share that their parent would've received



# CLASS I HEIR SPLIT

- A has died. He has left behind
  - B, his wife,
  - C, his mother
  - D, elder son,
  - F, youngest son and
  - G, his daughter.
- E, his middle son had died few years earlier and he left behind his wife E-1, and two children E-2 and E 3.

His property would be divided in 6 parts, Each legal heir would get one part. Wife and children of deceased E would collectively get one part.



## Class II Heirs

Do not get equal representation and that the heir in an earlier category shall exclude the heirs in the subsequent category. All the persons in one category shall have equal representation.

Category	Heir
I	Father
II	Son's Daughter's Son Son's Daughter's Daughter Sister Brother
III	Daughter's Son's Son Daughter's Son's Daughter Daughter's Daughter's Son Daughter's Daughter's Daughter
IV	Brother's Son. Brother's Daughter Sister's Son Sister's Daughter
V	Father's Father Father's Mother
VI	Father's Widow [Step Mother] Brother's Widow
VII	Father's Brother Father's Sister
VIII	Mother's Father Mother's Mother
IX	Mother's Brother Mother's Sister

# QUESTIONS?

- **Can a father disown his child from his property?**

If the property is self-acquired by the parents, a son or a daughter has no legal claim in it. However, it should be noted that if parents die intestate, the son or the daughter, no matter how poor their relationship was with the parents, will have succession rights in the self-acquired property of the parents.

- **Can a married daughter claim her mother's property?**

A married daughter has an equal right on her mother's property as per the Hindu Succession Act, 2005 and also the daughter of the predeceased daughter can also claim for the property. Sons and daughters have several rights as a coparcener.

- **Do grandchildren have inheritance rights in India?**

Indian law concerning Hindus is very clear that self-acquired intestate (when no will have been made) property of the deceased male/female Hindu is inherited by his/her sons and daughters in equal proportion along with the surviving spouse. The grandparents can transfer the property to whoever they wish in a will.



## Inheritance dealt with under Muslim Personal Laws

Dealt with in 2 manners;  
Per Capita Distribution (Shia),  
Per Strip Distribution (Sunni).

There is no differentiation  
between Self Acquired and  
Ancestral Property under Muslim  
Inheritance.

---

Widow (if children are there)	1/8th share
Childless Widow	1/4th share
Son	Double the share of the daughters
Only one Daughter	1/2 of the property
Widower (If there are no children)	1/2 share
Widower (if there are children)	1/4th share
Share of daughters if more than one daughter	2/3rd of the property

---

Section	Relation	Share
33, 33A, 34, 35	Widow or Widower with lineal descendants	1/3rd share
33, 33A, 34, 35	Widow or Widower without Lineal Descendants but with other of kin	½ share
33, 33A, 34, 35	Widow or Widower without Lineal Descendants and without other of kin	Full share
36-40	Linear Descendants while widow or widower is alive	2/3rd share with equal distribution
36-40	Linear Descendant while widow or widower is not alive	Full share with equal distribution
48	Relatives if no lineal descendant or parents or siblings	Full share

## CHRISTIAN INHERITANCE (NON-TESTAMENTARY)

# ANCESTRAL PROPERTY

- Four generations : Father/Grand Father/ Great Grand Father/Great Great Grand Father
- Inheritance only on death and share by birth
- Property should not have been divided by Partition deed
- Property from mother/ grandmother/uncle not ancestral
- Property through will/ gift deed not ancestral



## PROPERTIES DEALT IN WILL

Rights? Yes

Tenancy  
Rights? No

Leasehold  
rights? Yes

Ancestral  
property? No

Joint  
property? Yes

Company  
shares? Yes

Shares in a  
HUF? Yes

Intellectual  
property? Yes

Antiques? Yes

Art? Yes

Books? Yes



# ESTATE PLANNING






-  Protects your children's inheritance against their later divorce
-  Protects your children's inheritance from your spouse re-marrying
-  Can save your children tax
-  Can save your children's inheritance from a challenge to your estate
-  Can include super, family trusts and insurance money to save administration costs and delays
-  Can include overseas savings and assets
-  Can protect your children from wasting their inheritance
-  Is prepared by experienced lawyers who understand what can go wrong with estates

VS

# STANDARD WILLS



-  Does not protect your children's inheritance against their later divorce
-  Does not protect your children's inheritance from your spouse re-marrying
-  Does not consider any tax saving options.  
Did you know you may pay up to 15% of your super in tax when you die?
-  Does not protect your children's inheritance from a challenge to your estate
-  Does NOT include any super, family trusts or insurance money
-  Does not include overseas assets
-  Does not protect your children from wasting their inheritance
-  Usually done by non-lawyers or junior lawyers

# Hindu Undivided Family (HUF)

**HUF**  
(Hindu Undivided Family)

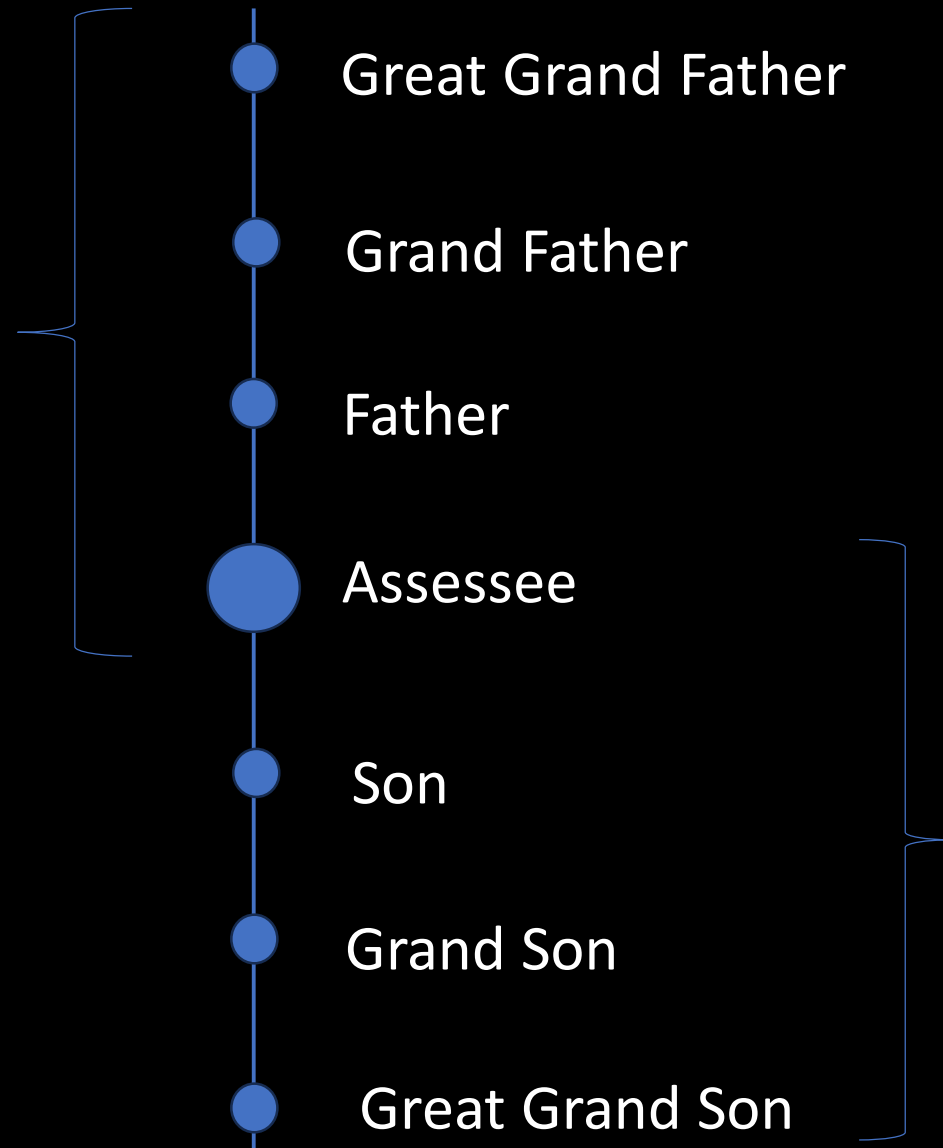




# Concept & Formation of HUF



# Degrees of HUF & Co- Parcener





Karta, Co-  
Parcener &  
Member

---





Can a Woman be a Co-Parcener in a HUF?

Do you need  
Children to be  
an HUF?






Can a Woman  
be a Karta of  
a HUF?

Yes



# 2005 Hindu Succession Act Ammendment – Retrospective Effect

---



# Can you be part of 2 HUFs?

---

Yes if it is lineally ascendant or descendant. But the exception is Women. Who can be co-parceners of 2 HUFs. One the HUF she was born into and the other the HUF she's married into



# How Does HUF Generate Funds?



# Assets in the HUF



Whatever is received from 3 generations before will partake the character and nature of HUF Asset



HUF can receive assets also as a Gift or by way of Will – Gifts from Friends is also okay



Assets received on partition from larger HUF



# Income of the HUF

- Deposit in Bank Account FD – Interest
- Purchase Shares & Sell Shares – STCG and LTCG
- Income from Business of the HUF
- HUF can also lend to others and earn Interest from the same



Can HUF purchase a house or car or shares?

Yes. No restriction

Can HUF be  
a Partner in  
a Firm?



In **Fomra & Co.**, Chennai ITAT held that there is no restriction on HUF being a partner in a firm, provided funds are brought from the HUF only. So Yes. HUF Can be a partner in the Firm.

Can the HUF Partner receive interest, share of profit and Remuneration?

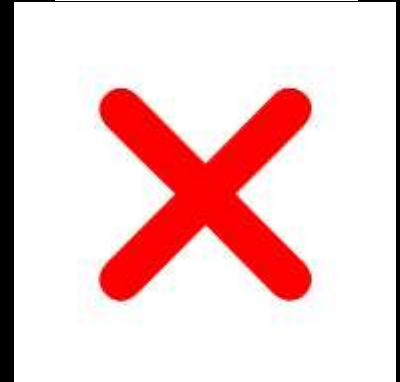
Interest?



Share of Profit?



Remuneration?





A group of business professionals in an office setting. A woman in a grey blazer is gesturing with her hand while holding a smartphone. A man in a dark suit and striped tie is visible on the left. In the foreground, a hand holds a tablet displaying a document with charts and text. A white coffee cup is also visible. The scene is brightly lit, likely from a window in the background.

Can HUF engage in Business?



Can HUF render  
professional services?

Can HUF earn a  
commission income?

---

# Key Points of HUF

- No codified law on concept of HUF – evolved by practice
- Consists of members who have descended from common ancestor
- Karta is the eldest member of family
- By birth automatically HUF is formed
- By birth member becomes a co-parcener
- Jain & Sikh also covered by HUF even though not Hindu Law



# Tax Benefits of HUF?

---

Upto Rs.2.5 Lakhs is fully exempt from tax

---

Gift upto Rs.50,000/- not taxable

---

Chapter VI-A Deduction –  
80C Rs.1.5 Lacs, 80D, 80TTA

---

Capital can be built up over a period of time



# How to Form a HUF?

- List out the Co-Parceners
- Create an Affidavit
- Get the same notarized
- Make a PAN application along with the affidavit and create HUF

# Dissolution of HUF

AP International



# Full Partition vs Partial Partition

Assessee was co-parcener in father's HUF. Assessee had wife but no children

HUF was partially partitioned and he received Capital from HUF.

Using the Capital he Purchased a property and claimed the same to be a HUF property as he had to maintain wife.

Held in Favour of the Appellant.

**NV Narendra Nath vs Commissioner Wealth Tax (SC) (74 ITR 190) (1969)**



During Partition – Does share have to be split evenly among Co-Parceners?



HUF pays Co-Parcener a sum of money – How is it taxed? – Tax Planning Tip

Section 10(2) - The amount received by any member of a Hindu Undivided Family (HUF) from the family income, or an impartible estate, out of the income of the family estate is exempt from income tax.






Property Sold by Owner. He has shown the property in HUF books but buyer states that I will only buy from individual hands. TDS is deducted by buyer against Seller's individual PAN and not HUF.

How to handle this?

Assessing Officer could not deny credit of TDS in assessee's name when corresponding capital gain on said transaction was taxed in assessee name – *Ananth Singhania HUF vs ITO (151 TM 389) (Mum.)*

# Can HUF give a gift to a daughter / daughter in law?

- Gift to relatives is exempt from tax.
- However, HUF does not have 'relative' because its not an individual.
- Rajkot Tribunal held that HUF can give gift but Ahmedabad Tribunal has held that Rajkot is wrong and HUF cannot give gift.
- If it does, it'll be taxable



If Karta decides  
to sell the asset  
of HUF can a Co-  
Parcener object  
to it?

---

Yes they can  
object and stop  
the sale of the  
asset



- +
- 
- 

# If Someone Dies Intestate – Does the property go to HUF?

The answer is no. It goes to legal heirs unless there is a Will where he bequeaths the same to the HUF.



HUF Problems for  
NRI or Working in  
Foreign Country –  
No Concept of  
HUF there



# Can HUF Take a Loan from a Bank?

A solid orange horizontal bar is positioned below the title, spanning most of the width of the slide.

Yes it can. But lot of practical challenges in recent years

# Private Trusts

# Survival Statistics of Family Business

---

Contribution to  
global GDP

**70%**

Family businesses contribute  
70% to the global GDP.

Transition rate to the  
second generation

**30%**

Only 30% of family businesses  
transition to the second  
generation.

Operate at the fourth-  
generation level and beyond

**3%**

A mere 3% of family businesses  
operate at the fourth-generation  
level and beyond.

# Indian Trusts Act, 1882

## • What is a Trust

- A trust is a legal arrangement involving the ownership and management of various assets.
- It arises out of a confidence reposed in and accepted by the owner of the property or declared and accepted by him for the benefit of another and/or himself.

## • Parties involved in a Trust:

- **Author/Settlor/Trustor:** The person who reposes or declares confidence in another person for the creation of a Trust.
- **Trustee:** The person who accepts the confidence for the creation of the Trust.
- **Beneficiary:** The person for whose benefit the confidence is accepted.

## Note:

- There may be more than one Settlers, Trustee/Beneficiaries.
- Trustee is the legal owner and beneficiaries are the beneficial owner of the trust property.
- Same person can be in any 2 of the above 3 roles in a Trust Structure





# Objective of setting up of Trust

- **Protection of Assets:**

- In the event of a bankruptcy, a Trust can safeguard assets against creditor claims if the assets were transferred prior to bankruptcy being filed through an irrevocable and discretionary trust.
- Assets held in a family trust may have a better chance of being excluded from a property settlement than assets owned directly by an individual in the case of a family settlement.
- Placing assets in a Family Trust can help avoid 'Will' contests by ensuring that assets kept in the trust are not included in a deceased person's estate.



# Objective of setting up of Trust

- **Autonomous and Accurate Control:**

- The Settlor and the Trustee, both have a specific function to perform in managing the Trust.
- The primary objective of a trust is to empower the trustee with managing authority for the benefit of the beneficiaries. After signing the Trust Deed, the settlor must refrain from interfering, as each party's roles and responsibilities are defined by the Trust Deed and the relevant law.

- **Preservation of Family Wealth :**

- Trusts can be created to possess specific assets that would be inappropriate or impractical for a Settlor to split between individuals, such as property or a stake in a family business. The use of a trust allows these individuals to benefit from the assets even though they do not own them. A trust will also aid in the preservation of such assets' capital value for future generations.

# **Benefits of Private Trust**

**Protection of  
Family Interests**

**Efficient  
Management of  
Family Assets**

**Minimizing  
Disputes**

**Centralized  
Control of Family  
Business**

**Probate-Free  
Transition**

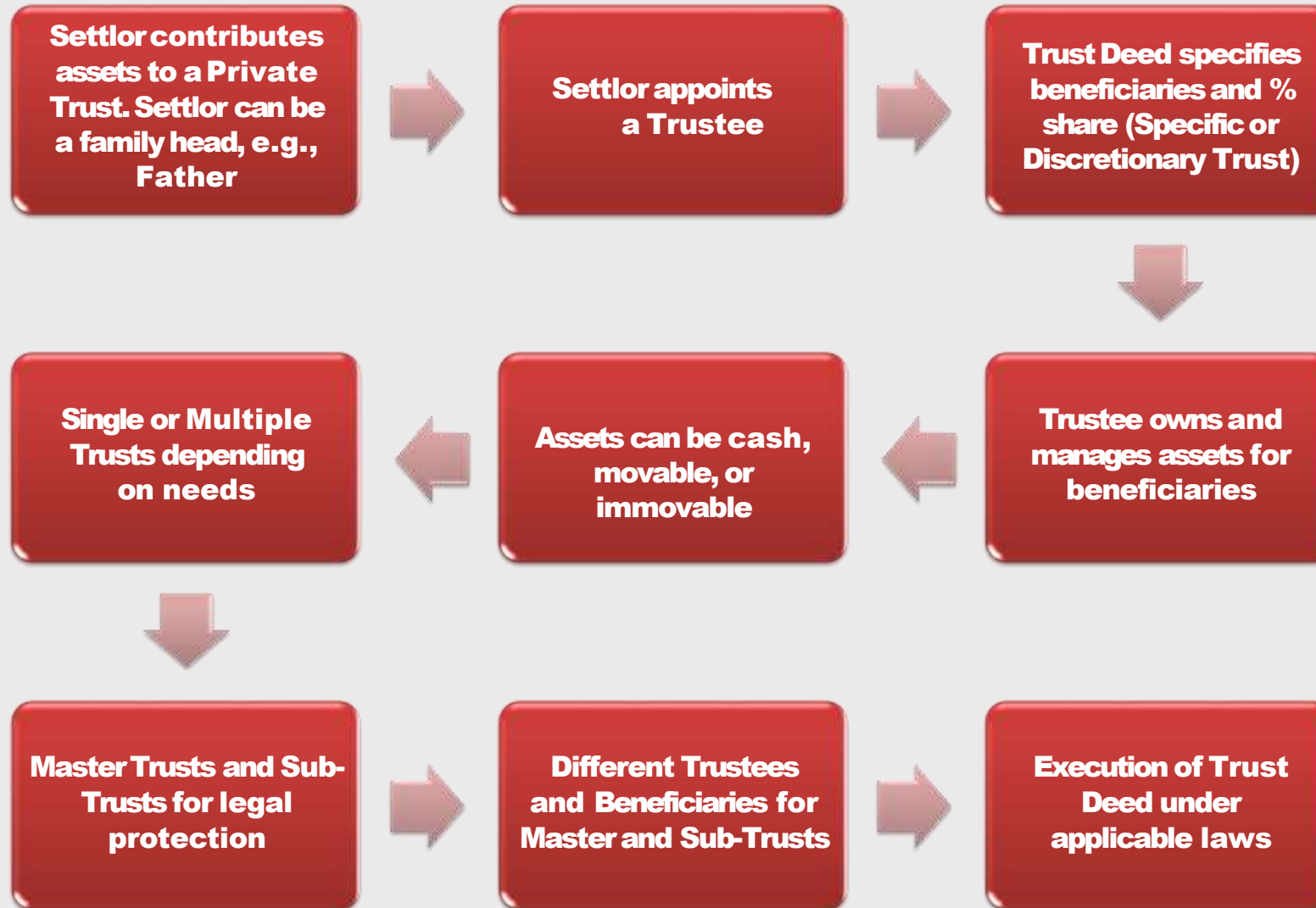
**Protection  
Against  
Insolvency Risks**

**Customizable  
Terms**

**Flexibility of  
Structure**

**Privacy**

# Steps for implementation of Trust



# Registration of Private Trusts

## Immovable Property:

- **Mandatory Registration:** Trusts involving immovable property must be registered under law.
- **Exception:** If the trust is created under a will, registration is not mandatory.
- **Purpose:** Ensures legal ownership is recognized and safeguards against disputes.

## Movable Property:

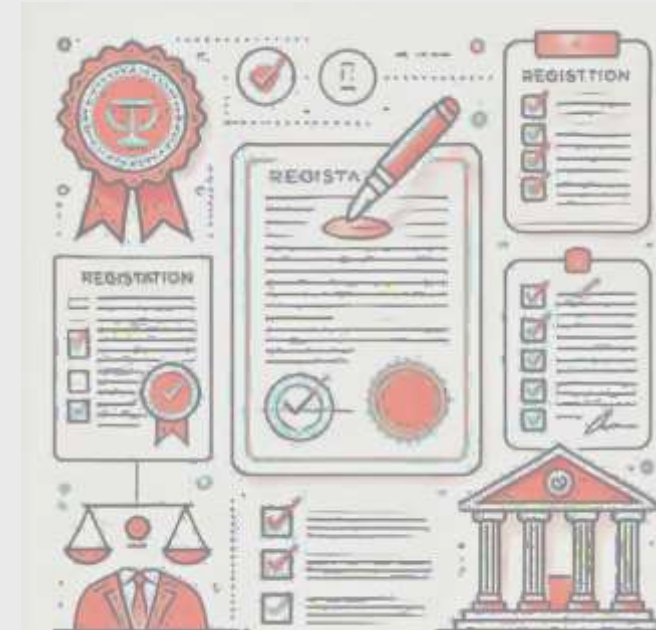
- Registration is not mandatory for movable property transferred to a trust.
- Movable property includes cash, investments, or other personal assets.

### Documents Required for Registration:

- Trust Deed (core legal document outlining the terms and objectives).
- Identity and address proof of Settlor, Trustee(s), and Witnesses.
- Details of the property being transferred to the trust.

### Procedure:

- Draft a trust deed specifying terms and beneficiaries.
- Submit the trust deed for registration at the Sub-Registrar's office.
- Pay applicable registration charges.





# Stamp Duty on Private Trusts

## When is Stamp Duty Applicable?

- Stamp duty is mandatory when property is transferred to a trust during the settlor's lifetime.
- Applies to both movable and immovable property.
- Exemptions: No stamp duty is required if the property is transferred to the trust under a will.

## Amount of Stamp Duty:

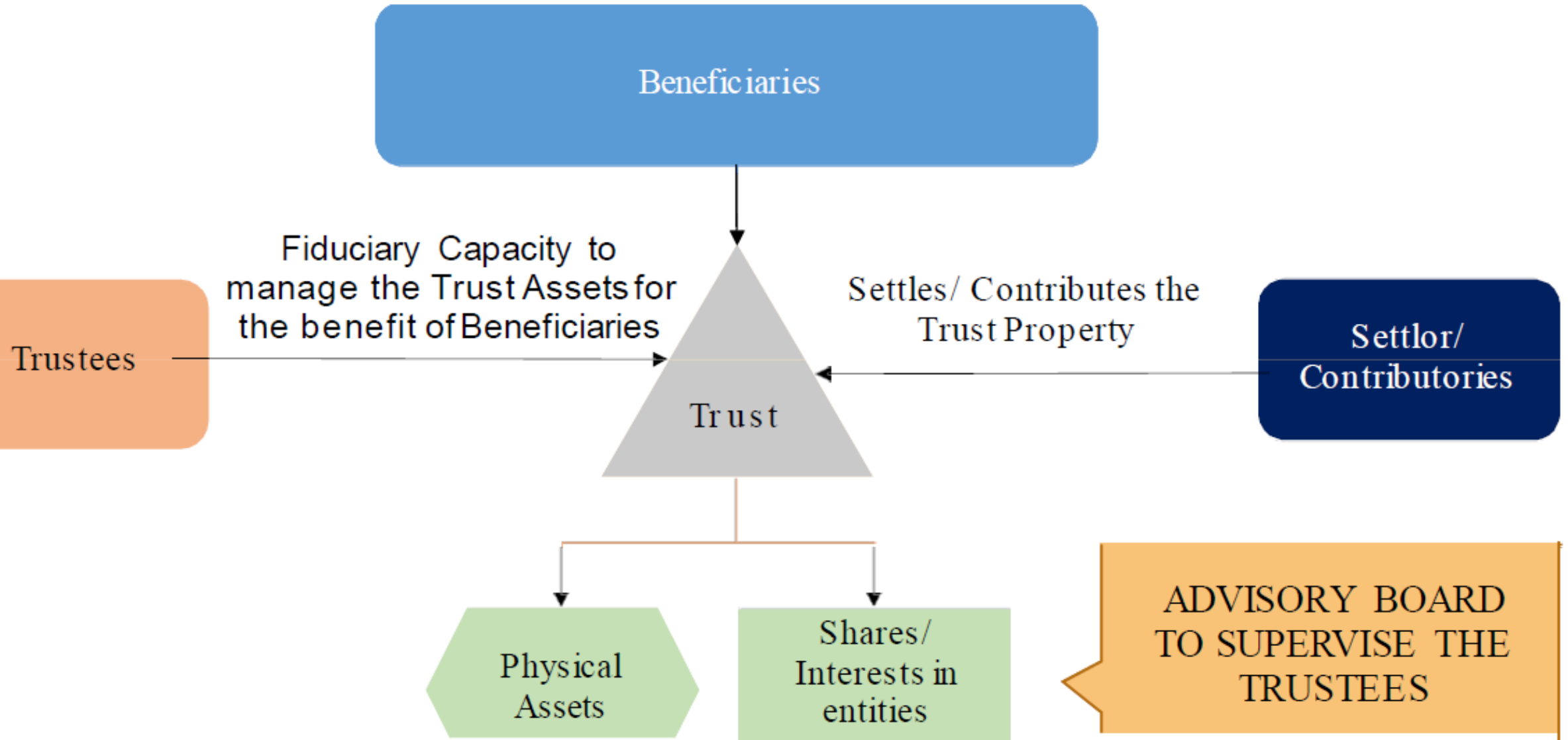
- Varies depending on the jurisdiction and the nature of the property.
- Calculated based on the value of the property being transferred.

## Payment Process:

- Stamp duty is paid to the local revenue department or via authorised banks.
- A receipt is issued, which must be attached to the trust deed.



# Structure of a Trust





# Advantages of Use of Trust for Estate Planning

---

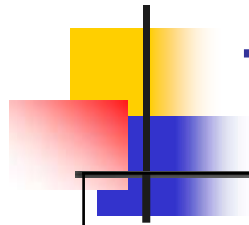
- Efficient mode of managing and passing the family assets as it helps create a legal framework for the family assets
- Bypasses the Probate process which is susceptible to frivolous claims and delays in court process
- safe-guards interests of family members including maintenance of members with special needs/disabilities
- Possible to attach conditions to gifts such as on attaining a particular age or fulfillment of the settlor's wishes
- Avoids family disputes over the property



# Advantages of Use of Trust for Estate Planning (con't)

---

- Trust can serve as protection in case of a bankruptcy by protecting assets from creditor's (actual and potential) claims, provided the assets have been transferred two years prior to the bankruptcy being declared
- Settlor can direct the managing and advisory committees, to monitor and advise the trustees on application and management of the trust assets there by enabling a relatively large pool of assets/ investments to be managed under one umbrella
- Trust can help exploiting offshore business opportunities, acquisition of interests and cross-border movement of family members



# Trust VS Will for Estate Planning

	Revocable Living Trusts	Wills
Name beneficiaries for property	✓	✓
Leave property to young children	✓	✓
Revise your document	✓	✓
Avoid probate	✓	
Keep privacy after death	✓	
Requires a notary public	✓	
Requires transfer of property	✓	
Protection from court challenges	✓	
Avoid a conservatorship	✓	
Name guardians for children		✓
Name property managers for children's property		✓
Name an executor		✓
Instruct how taxes and debts should be paid		✓
Simple to make		✓
Requires witnesses		✓
Reduce estate taxes	-	-



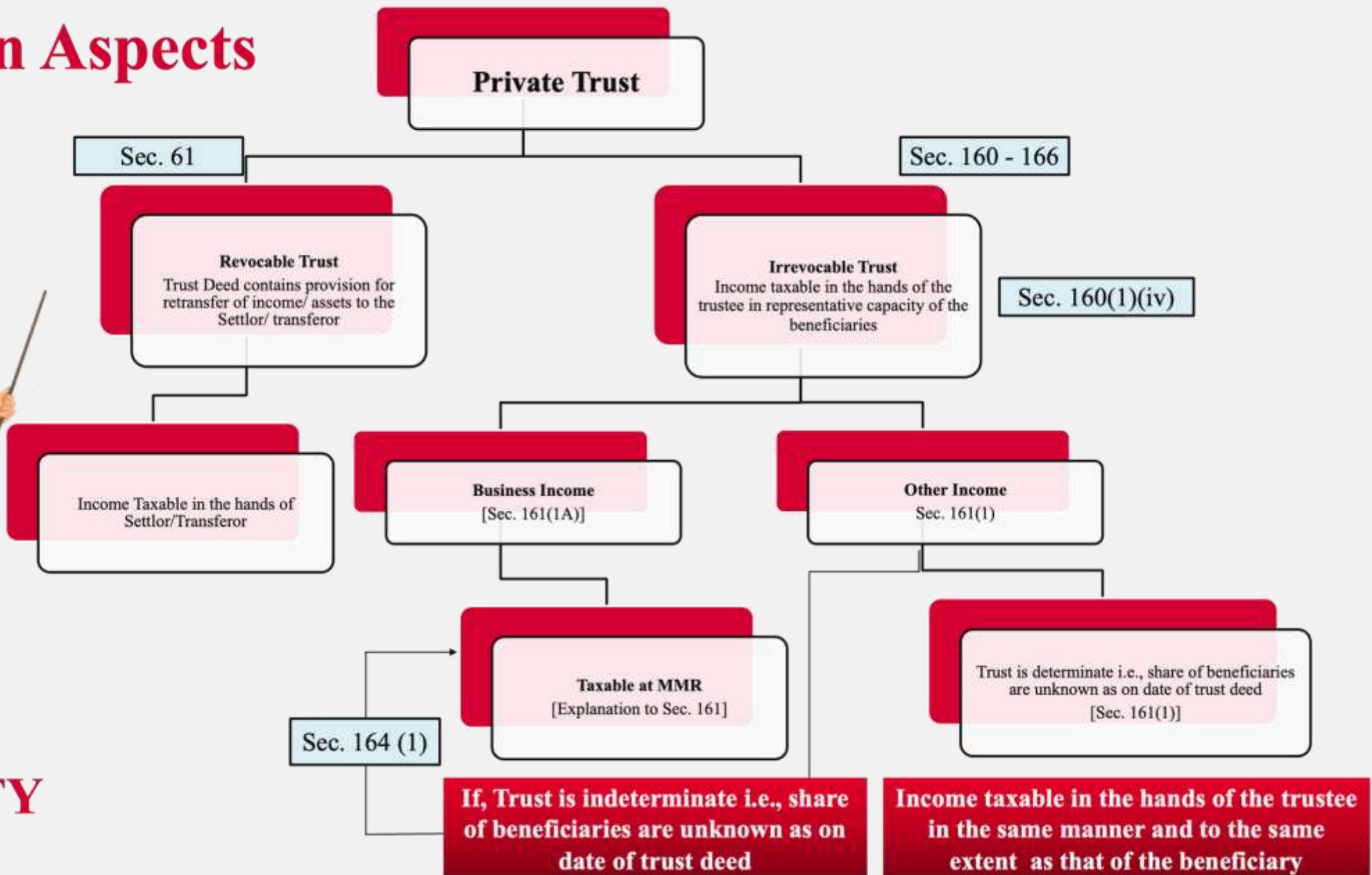


# **Taxation of Private Trust**

# Taxation Aspects



**TAXABILITY**



A large orange circle is positioned on the left side of the slide, partially overlapping the dark background.

How is  
Transfer of  
Assets to  
the Trust  
but the  
Settlor  
Taxed?

---

Exempt in the hands of the Settlor  
as per section 47(iii) of the Income  
Tax Act

---

Recipient i.e., the trustee will  
get the cost of acquisition of the  
previous owner i.e., the Settlor

---

However, this is applicable only for  
an irrevocable trust

# Thank You!

**Dr. CA ABHISHEK MURALI**

B.Com, M.Com, FCA, ACMA, LLB, MBA, CGMA -  
CIMA(Lon.), CISA(USA), DISA(ICAI), ADIT(UK), D.Litt

Regional Council Member, SIRC of ICAI  
President, All India Tax Payers' Association (AITPA)

[abhishekmurali@gmail.com](mailto:abhishekmurali@gmail.com) ; Victorgrace.office@gmail.com

Mobile & Whatsapp : +91 99625 21966

