YOUR WEALTH YOUR WILL Alias

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YOUR WEALTH YOUR WILL

By Adv. Dinakar Parashram Bhave
Mobile: 9820529371

A brief introduction of the author along with
His education, experience and his thoughts

Mr. Dinakar Parashram Bhave was born on 4th February 1935 at Pale Village (Taluka Panvel, Dist. Colaba). His primary, High School education was at Brahaman Sabha, Thane, Ideal English School, Pune and Nutan Marathi Vidyalaya, Pune. He pursued higher studies at Brihanmaharashtra College of Commerce (B. M. C. C.), Pune and Law College, Pune.

He earned the degree of B.Com. in March 1955 ranking 7th in second class. Then he passed the First Chartered Accountant's exam (i.e. the Intermediate exam) in the month of October, 1955.

He vowed to go for further education by dint of own earning since he was aware of the hardships faced by his beloved father and elder brother for financing school and college education. With this determination at heart he began working full time effective 28th November 1955 in the Pune Municipal Corporation's Transport Undertaking (popularly known as "PMT") and at the same time took admission in the Law College, Pune. In due time, he passed first year of LL. B. ranking First in Second Class; and then in October, 1957, he passed the LL.B. examination with First Class and First Rank in Distinction (70% + marks). He scored highest marks to receive two awards in the field of (i) Hindu Law and (ii) The Transfer of Property Act, 1882.

Later on, the then Bombay Public Service Commission had selected him & recommended for direct appointment to the post of Sales Tax Officer, bearing Gazetted Officer status (Class –II) and accordingly, the State government appointed him as the Sales Tax Officer, and he assumed the charge in October 1958. In January 1962, he was appointed as an Additional Government Agent before the Sales Tax Tribunal, which gave him the opportunity of handling for

four and a half year's legal work in Bombay (Maharashtra) Sales Tax Tribunal on behalf of the State Government. This can be considered as a foray into the legal profession.

After this, he was selected in the senior cadre of 'Officer Grade-I' in the Bank of India Ltd., in June 1966. There he was instrumental in bringing justice to two highly placed Officers in their cases of Departmental enquiry by presenting their legal say.

In the year 1969, the Indian banks saw nationalization, privatization and re-nationalization compelling him to accept charge in 'Executive Grade' in the Indian Branch of an American oil company by name Esso Eastern Inc. in January 1970. Then for about twenty three years he took care of all adjudication matters, appeals, second appeals before Tribunals/courts regarding indirect taxation in all States of India and argued the cases himself.

After getting retired on 1st March 1993, he has been functioning as an independent lawyer for the last 22 continuous years, the journey of which began on 2nd April 1993 with his enrollment as an Advocate by the Bar Council of Maharashtra & Goa.

In all these 50 years when he was busy in handling court cases regarding indirect taxation, he used to feel a prick of conscience which goaded him to pay back something to the society at large from whom he has had received so much in abundance. He was tossing an idea how to go about it.

Then his thoughts settled in the direction of writing this monograph. Nobody could be more aware than him of the fact that property, either a guntha of land or pegged at lakhs and crores of Rupees, becomes an unaffordable matter once it enters into a legal war. Now-a-days the expenses towards meeting court fees, Lawyer's remunerations and other peripheral expenses have skyrocketed in such a way that common man gets a traumatizing shock. A common –man is even forced to mortgage or selloff his property to meet these expenses!

Keeping the famous cartoonist Late R.K. Lakshman's pioneering creation: the "common man" in sights, he embarked on writing this monograph. He has endeavoured to show how property can be disposed of without getting engulfed in quagmire of disputes. One's wealth is what one may have received from ancestors and augmented by own hard work, which one has to pass on to the generations next. Surely, everyone wishes that this transition must be smooth sans legal battle among the siblings. A bit of care & caution, would avert many a complications arising out of this will-document, which can be fruitfully used for financial planning as well. He has also decided to spread awareness in the neighbourhood/housing societies by holding small-scale rallies in this context.

He sincerely prays to God most humbly to kindly bestow upon him the health, energy and inspiration to take this project to its fruitful conclusion.

Bandra (East)

Date: 28th November 2015

Adv. Dinakar Parashram Bhave
Mobile: 9820529371

DEDICATION

Most Respectfully

Dedicated to my revered parents:

Late Sau. Seeta Parasharam Bhave &

Late Shri. Parasharam Keshav Bhave

CONTENTS:

WILL –SLUG 1

Important Points

WILL –SLUG 2

Preparation for making a will

Who can make a Will

What preparation is required for making Will

About which properties a Will can be made

WILL –SLUG 3

Equal right of daughters in the ancestral properties

Joint will

Nomination and a will

WILL –SLUG 4

How to draft the will document

Mental condition required for making a will

Will maker and witnesses

WILL – SLUG 5

Will Executor

Duties of a will executor

When to make a will document and why

What if will is not made at all

Important points in brief

CONTENTS:

WILL – SLUG 6

What exactly is the Hindu Succession Act?

WILL – SLUG 7

Ancestral Property

Property

Structural fabric of Indian society

Joint Family or a Hindu United Family (HUF)

Joint possession of property

WILL – SLUG 8

Ownership of property

What exactly is an ancestral property (Court verdicts thereon)

WILL – SLUG 9

Difference between ownership

A will of self-earned, ancestral property

Points to ponder

APPENDIX - I

Last will and testament

Schedule listing of my property and belongings (Schedules A, B, C and D

APPENDIX - II

daughters cannot inherit ancestral property if father died before 2005, says the hon.'ble supreme court

APPENDIX - III

what is *m$eeOeve*? (stridhan)

CONTENTS:

APPENDIX - IV

broad nature of provisions made under hindu succession act, 1956 for distribution of property

APPENDIX - V

What is probate?

Application

Documents

Notification

Fees

Points to note

APPENDIX - VI

Hindu male can will-away entire self-acquired property, subject to statutory obligation towards:

wife & minor, dependent children /parents etcetera

Maintenance of a wife

Maintenance of a child or of aged parent(s)

Amount of maintenance provided

" The Article was originally written in *cejeþer (DeeHeueermebbÊeeç DeeHeueerF®ïe),*

and was first published in *canejeä^ìeFcne* in Jan.-March 2015.

All the nine parts are now translated in English.

As is well known, any translation from one language to another has inherent limitations; and subject to that an attempt is made to retain the original sense & flavor of the Article.

WILL –SLUG 1

One may recall the old times when the Postal Department used to provide telegram services. The services were available to all till it was discontinued recently in July 2013. For most of us delivery of a telegram used to be a reason for deep anxiety; because more often than not, the telegram meant news of someone meeting an accident or being seriously ill or even news of someone's sad demise. However, the telegram also used to be a harbinger of good news such as congratulations on some achievement or birth of a son or a daughter, or frequently used code no. 8: "Best Wishes for a long and happy married life". Only one thing has rivalled this disturbing capability of telegram and that is a 'Will' document.

It is a common experience that after a person is no more & the mourning period is over, the close relatives would meet for having a reading a Will document. It may bring happiness to some and sorrow to others. Those relatives who haven't been bequeathed anything become frustrated and they move a Court of law claiming the will being false or being written under duress. Then the battle to get a piece of the pie called property start raging in courts even for a lifetime. On the contrary, our lawyer friends are seen laughing all the way to the bank during this whole time! All this revolves around a legal document called a 'Will' and it is of utmost necessity to at least have a broad understanding of its nature.

There are basically a lot of misunderstandings among people when it comes to the concept of a 'Will'. Several questions come to one's mind regarding the 'Will' such as who should make a Will, when it should be made, how to make a 'Will', whether to make a 'Will' at all or not etcetera. So without making much ado, let's discuss 'Will' in a relatively easy and straight-forward way.

First of all you must bear in mind that you and you alone have all the freedom and every right to make plans about your wealth, property and estate. You do not require anybody's consent or permission to do this. You should take special note of the fact that nobody can violate the rules or framework you have laid down for disposal of your wealth, property or estate. It doesn't matter whether your property is movable or immovable, whether it lies in India or abroad. The judicial machinery takes on all responsibility of carrying out your will to the letter and spirit. However, if we do not avail of this right, then your wealth shall be divided and distributed as per the Hindu Succession Act, 1956. However, the wealth of the persons who are Muslims, Parsis, Christians or Jews by religion is divided and distributed as per the different customs and rules set for that particular religion.

The Appendix-IV hereto annexed indicates the broad principles of distribution of wealth, when a person dies intestate, (having made no legally valid will before death) among the relatives and how succession of wealth happens along with; and an outline of its distribution in brief. Similarly rules applicable to other religions are also mentioned. Also, a specimen format of Will, vide Appendix-I, has been provided as a supplement but it is given only for the sake of a better understanding of the subject. Before proceeding any further & adopting the specimen format, it is advisable that you must seek a Lawyer's advice on this subject as the gravity of this document is quite remarkable.

The chief points which must be given proper attention while bringing this powerful tool in use are:

Important points -

- Will is a legal document declaring a person's wishes regarding the disposal of his property to take effect after his death.
- A Will is required to be in written form. Oral wish is not entertained by the law since it cannot be implemented legally.
- Although it is not necessary to write this document on a stamp paper, it is advisable to write it on a ledger paper (green colour sheets used for Agreements).
- It is also not binding to register the Will document with Sub-Registrar of Assurances.
- Both, the registered or non-registered Will documents hold equal value from legal point of view.
- The document should contain clear mention to the effect that the said Will is your final or Last Will and that you have not made any Will prior to this and that if you have made any will prior, then you are thereby cancelling the same along with its Codicils, if any.
- In case two Will documents do exist at one and the same time, then, the one which is signed last –both by Date & Time is held to prevail and would be acted upon by ignoring the one singed earlier in point of time.
- In order to avoid any sort of confusion, it is recommended that one should keep ONLY one will document at a given point of time. Once a new Will is made, executed by the testator /testatrix, care may be taken to destroy, burn or cut to pieces the previous Will as well as codicils (a supplement to a will intended to alter an already executed will) , if any.

WILL –SLUG 2

Preparation for making a will:

Often it so happens that the family members do not have all the information regarding financial affairs of the earning male or female of the house. In case of the sad & sudden demise of such an earning member, the other family members are left with no clue about his or her financial transactions. However, if such an earning member were to maintain on a routine or regular basis an up-to-date-file containing all documents of his / her financial affairs or dealings, then, it makes the life of the surviving family members a lot easier.

Who can make a Will:

The answer to this question is: – any person with a sound mind who has completed 18 years of age can make a legally valid Will. Even a semi-literate or illiterate person can make a Will. Also, a deaf, mute or blind person can make a Will if they fully understand what they are doing. A delusional person or a person not sound in mind can also sign his / her Will but only when he/she is in a state of sound mind. However, it is necessary to attach with the Will a Medical Certificate declaring him/her as of sound mind at the time of executing the Will with two witnesses. It is noteworthy here that a person who has lost soundness of mind owing to inebriation (A temporary state resulting from excessive consumption of alcohol), illness or reasons like those, cannot make a Will and if he makes it during such mental state, such a Will would not be entertained legally, that is, it would be held as invalid, inoperative.

What preparation is required for making Will:

Generally, people start putting aside a small portion of their income for investment by age of 30. After the age of 40, this investment starts becoming a property. Sometimes loans are taken to acquire property and such loans are repaid when some savings are made. Multiple Accounts are opened in banks and closed. It is very necessary to have all the details of such financial transactions handy maintained with all relevant documents in a file. A detailed analysis must be kept as to how much loan was taken, when repaid and the receipts for such re-payments.

Hence it is very much advisable to prepare an up-to-date-file containing documents related to all properties, investments, bank deposits, receipts thereof, names of the branches of banks along with amounts of money deposited with them, names and addresses of the Companies whose shares have been purchased along with share certificates thereof, purchase deeds, Gift -deeds of immovable assets in original if any, details of loans drawn from a person or institution such as total amount of loan taken and repaid etc.

It is of utmost necessity to compile all the documents of movable or immovable properties. In fact everybody must make such a compilation from time to time. It is advisable to create a separate file containing all such documents maintained date-wise. Non-availability of such information has become a common scenario which should be avoided at all costs. That was all about what it means by preparing for a will.

About which properties a Will can be made:

Generally, property is classified into two categories – movable and immovable properties. Movable properties include cash money, bank accounts, fixed deposits, company shares, gold and silver ornaments or items, jewellery, diamonds, pearls, rubies, home items such as furniture, clothes etc, abstract properties such as trademarks, copyrights, tenancy rights or any other rights and vested interests. Immovable properties include non-movable properties such as land, farms, farm residences, horticultures, buildings, houses, bungalows, flats in Housing societies, commercial shops etc.

The ownership rights of properties are purchased through self- earned money or under the Gift-deeds. Also, ancestral properties received for being a descendant comes under the head of properties too.

A person can make a Will in relation to both the movable & immovable properties which are called <u>self –acquired properties</u>, which include those which are purchased by the person or are received under a Gift-deed of movable or immovable properties. In the case of a woman, her 'stridhan' (m$eeOeve) is her absolute property over which she alone has full ownership rights including right to sell or transfer etc.

The concept of stridhan is now nomen juris—having specific legal meaning owing to the judgment of the Honourable Apex Court. The gist of the judgment is given in the Appendix-III.

Further, while a woman is free to make will regarding self acquired property without any restriction, the man's right is subject to his obligations under the Hindu Adoption & Maintenance Act,1956, more particularly spelt out in the Appendix-VI.

The Self-acquired is in contrast to the Ancestral properties which are inherited by established rules (usually legal rules) of descent. The subject of ancestral or inherited properties would be discussed in detail later in another part. So far as the share in the ancestral property is concerned, the person can make a Will in relation to his undivided share in the Mitakshar coparcenary property, that

is, joint right of succession to an inheritance, as permitted by the Hindu Succession Act, 1956, section 30 thereof which has an Explanation:

> "The interest of a male Hindu in a Mitakshara coparcenary property or the interest of a member of a tarwad, tavazhi, illom, kutumba or kavaru in the property of the tarwad, tavazhi, illom, kutumba or kavaru shall notwithstanding anything contained in this Act or in any other law for the time being in force, **be deemed to be property capable of being disposed of by him or by her within the meaning of this [3][section.**]"

WILL –SLUG 3

Equal right of daughters in the ancestral properties:

The Hindu Succession (Amendment) Act 2005 has given women equal rights in ancestral property as the men (including right to demand share in property, called right of partition).

Since ancient times, joint family system prevailed in India in accordance with traditions, customs and religious scriptures. In this system, the right of common properties lay with the head of the family. Family's property used to be distributed among three generations viz. Father, Grand-father & Great –grand-father and Son, grand–son & Great grand-son. All these persons are joint–owners and are collectively referred to as "coparceners". Death of one of the coparceners used to cause increase in other coparceners' share in property. Contrarily, birth of a coparcener decreased the share of other coparceners.

Only coparceners had the right to partition in respect of commonly held property. Women did not have any rights when it came to inheriting property. The scriptures recognized Stridhan (m$eeOeve) as women's own property, completely owned by them. Appendix –III hereto gives more details as to what is "stridhan". As per the scriptures, for a married woman Stridhan falls under two heads: **The saudayika** (gifts of love and affection) – gifts received by a woman from relations on both sides (parents and in-laws). **The non-saudayika**- all other types of Stridhan such as gifts from stranger, property acquired by self-exertion or the mechanical arts. In the context, the Hon'ble Supreme Court of India held that: "a Hindu married woman is the absolute owner of her Stridhan property and can deal with it in any manner she likes and, even if it is placed in the custody of her husband or her in-laws they would be deemed to be trustees and bound to return the same if and when demanded by her".

It may be mentioned that while the un-codified Hindu Law did not confer on women any ownership or property rights, the responsibility to provide for the needs of all the females –food & shelter, clothing etc. (For married, unmarried

or widowed women) in a joint family was entrusted to the Head of the family i.e. the chief member of the family, commonly called "karta" (keÀlee&).

The Hindu Succession Act, 1956 proclaimed that with effect from the commencement of the Act all rules, traditions and customs prevailing prior to that date shall cease to have effect in relation to matters provided in the Act. Section 30 gives right to a coparcener to dispose his undivided share in the property through a will. The amendment of 2005 went a step ahead by according equal rights to women in getting share of property (along with the right to demand for such a share—known as "partition".). The disparity between women and men with respect to getting share in ancestral properties has been thus removed.

The new Amendment Act, 2005 brought into effect from 9th September 2005 was the subject matter of judicial scrutiny, and the Apex Court has recently ruled that the daughter's right to ancestral property at par with the son, is conditional in the sense that the amendment cannot be given "retrospective" effect as held by some High Courts, and the new provision shall be prospective and hence the father & the daughter both must be alive on the 9th September 2005; otherwise the daughter would have no right in the ancestral property. Kindly see Appendix-II.

It may be noted that only a person who is complete owner of movable or immovable assets can prepare a will for those properties. Hence generally a will provides for distribution of self-earned property. A person having a share in the ancestral property can make a will with regard to only that share and no other. The rights of other family members with regard to share of the ancestral properties remain uncompromised.

Even a property under the burden of debt can be bequeathed through a Will. However, it is required that the person receiving such property must accept both – the property as well as the burden over it. Naturally, only a burden of debt or amount of loan over a property cannot be bequeathed to other person through Will.

If the person who is named in the Will for receiving a share of the property refuses to accept that share then, such a share again becomes a part of the total property. Sometimes, inadvertently it may so happen that certain property is left out of the Will. To avert such a problem, at the end of the Will one must make a mention of a specific person to receive the "residuary property" which may remain behind after distribution of all the properties as per the Will. This will ensure distribution of all properties held by the will-maker, the Testator or the Testatrix.

The person making a Will can also give away any amount which s/he is expected to receive in future. (e.g. arrears of pension, pension or a part of it sanctioned with retrospective effect, insurance money, amount to be repaid by someone etc.)

Joint will:

When two persons, generally a husband and a wife, sign a single Will document together and jointly give away their property to a single or multiple persons, in such a situation it is termed as a "Joint Will". Such a joint will helps a husband to transfer all of his property to his wife and make provision of its distribution in the event of her death. The wife carries out the same process and bequeaths all her property to her husband and then to others in the event of her husband's death.

It must be noted in this context that, a joint Will thus made cannot be revoked by a husband or wife after the death of the spouse. Thus a joint Will is a joint agreement which cannot be breached after death. Even making alterations to such a Will is not permitted. What is even more noteworthy here is the fact that a husband or a wife who remarries after the death of his/her spouse cannot revoke or change a joint Will once it is solemnly signed. However such a joint will can be altered or revoked jointly till the time both the husband and wife are living. Against all this background, it might be said that a joint Will doesn't serve any special benefit or usefulness.

Nomination and a will:

Many of us submit a nomination form for bank accounts, term deposits, share certificates or residential flat in a housing society. But such a nomination only permits the bank or the concerned institution to transfer the nominated property in the name of the nominee or the nominees. People seldom know that such a nominee/s is never considered as a complete owner of the property received through nomination. Law only reckons such a person as a mere "trustee" of that property who cannot sell, mortgage or transfer the property to any other person without the consent of all the legal heirs. However, one exception to this rule is the nomination made for shares of a company. In case of a company-share, the nominated person is deemed to be a complete owner of the nominated property because the Company Act provides for such an exception. This exception is also upheld by the Mumbai High Court.

Considering the importance of nomination, it is proper to make nominations regarding all properties. However, there must be a clear mention in the will that the Will- maker is giving away all the concerned property to the nominated person along with the full rights of ownership to the exclusion of the legal heirs or other legal heirs, if the Nominee is a legal heir.

In the case of bank accounts and term deposits held jointly, the person whose name is mentioned first in the Account or Receipt –document is deemed to be the owner of the money in such accounts or deposits, as per the Banking law & practice. Hence it is very necessary to make a clear mention in will as to who is going to be the owner of such accounts or deposits. Otherwise, the banks, even in absence of a nomination, may give away all money from such accounts and deposits to the "surviving account-holder" and such a surviving account-holder shall have to accept such accounts and deposits only as a mere trustee! A clear mention in Will with regard to such accounts and deposits is a must to clothe the surviving person as the full owner of the amount in the Account or one specified in the Deposit Receipt.

WILL –SLUG 4

How to draft the will document:

There is no prescribed format for drafting a will document. A will written in a very simple and straight-forward language is acceptable. However the only requirement here is that the will should be drafted in clear and precise terms. When a certain property, movable or immovable, is given away to a person, then, it must be fully and adequately described and it may be clearly mentioned in the will that others will not have any right or claim on the same.

The concerned property should be described in complete details. For example, 'I am giving amount deposited as term deposit in say the State Bank of India (with the name of the Branch) –Receipt number so and so along with the interest accrued thereupon amounting to Rupees so and so, to Mr. /Mrs. / Miss ABC and the said person shall be at liberty to enjoy or dispose of the same as s/he may deem fit. No other person shall have any right or claim over the aforesaid property.'

It may be remembered that one must not commit erasing or overwriting upon letters or figures so as create ambiguity. If any overwriting is there , then all the three persons –the Will-maker and the two witnesses —have to sign nearby and authenticate the correction / overwriting, otherwise it may be construed as 'tampering with the document', making it invalid in law. If the will document is hand-written then it should be written in clearly legible and large sized characters. All numbers should be written clearly. In case you are finding it difficult to write the document by hand, type it or prepare it on computer.

In case a person is unable to write, he / she can get a will drafted by engaging the services of a writer. However, the writer in such cases must make a mention at the end of the Will-document that the text contained in the Will has been written at the behest of the Will –maker; and also that the text has been read out to the will maker and that the Will-maker has understood and accepted the

same as correctly representing what s/he had in his/her mind. Further, the Writer should once again take affirmation about the correctness of the text before signing the will or thumb-printing it, in presence of witnesses and only then it must be signed or imprinted with a thumb-print (for a woman, right-hand thumb).

Mental condition required for making a will:

The will maker must mention it clearly in the will that he is of sound mind. Some people advice to attach a doctor's certificate to this effect or get the will signed by a doctor as a witness. One is not supposed to or required to do so by law. Nonetheless, doing so may give certain strength to the will. The will maker shall clearly mention in the will that s/he has made the Will by his /her own free-will, pleasure and at his/ her own discretion and that he / she is under no duress or force or compulsion to make or sign the Will; because, if it is proved in a court of law that a will has been drafted/signed by use of force, coercion or threat then the court invalidates such a will. Naturally, in such a case, all the property and assets of the deceased person are distributed as per the succession law applicable to the person concerned.

Will maker and witnesses:

The validity of a will depends on the signature of the will maker and signatures made jointly by at least two witnesses along with the Will-maker. Hence care should be taken while signing a will that all the three persons sign the will at the same time and in the presence of each other. This fact should be mentioned in the will clearly. The essential validity of the Will primarily rests on the state of mind of the Will-maker, and his having signed the Will –document in the presence of at least two witnesses, who have to testify that the Will-maker affixed his/her hand in their presence, and in the presence of each other.

It may please be borne in mind that the witnesses need not know the contents of the will document. They only have to depose, if and when required in the Court, the fact that the will was signed by the will maker in their presence. It is also not necessary that a witness should be a lawyer or doctor by profession. Any person who has completed 18 years of age, literate or otherwise, relative or otherwise, or any person who has been given a share from the property or any person who has been appointed as a 'will executor' may act as a witness and sign the will document in that capacity. A will document thus signed is completely valid. However, it is noteworthy here that if a will executor has been given a share in the property then, he must do something as a will executor; otherwise he will not get his share of the property.

It is also advisable to select a young person as a witness so that the heirs could take his/her help comfortably if there arises any court matter to prove the validity of the will at a future date.

WILL – SLUG 5

Will Executor:

It is in the best interests of the will maker to appoint a trusted and faithful person as a will executor since this is very important position. After the death of the will maker, all of his or her property is vested in the will executor in the capacity of a trustee.

A will executor is a person who has been appointed for the purpose of proving the validity of the will document and distribute the will maker's movable and immovable properties in accordance with the will. The will maker clearly mentions this appointment in the will document. In case the appointed will executor becomes unable to discharge his/her duty in future for any reason, then a substitute will executor can be appointed in the will document itself beforehand.

Duties of a will executor:

First of all the will executor needs to obtain a probate of will from an appropriate court of law. A probate of will means a certificate of validity issued by a court for a will. Then the Will-executor needs to get all the properties and money transferred in his/her own name. Later on s/he needs to give away all this property as provided in the will to the appropriate persons named in the will. Then he needs to submit a complete account of the whole properties and their distribution to the court. In case an executor has not been appointed by the will maker then any heir can move a court of law for appointing an executor & obtaining the probate of will. Since this process is a little complex, it is advisable to get this process done through a lawyer.

A small note is given in the Appendix-V clarifying the process involved in obtaining the probate.

When to make a will document and why:

It goes without saying that every person should make his /her will. It can be altered any time and indeed one should go on making alterations in his / her will as circumstances demand. However, for the sake of avoiding doubt, only one will document should be kept in existence at a time. It is advisable to tear off or destroy the old will when the new one is made. Needless to say that will document helps avert unwarranted strifes and quarrels among heirs and relatives and maintain cordial atmosphere among all. It also makes way to give a larger share of property to a son or daughter whose financial status is not satisfactory, or who otherwise needs/deserves it. After all it is the sincere wish of every will maker that the property earned by the sweat of his brow should be passed on to his successors or it should be put to use for a noble cause such as

religious, medical donation or donation to orphanages etc. Nobody wishes for unnecessary expenditure on court cases and mutual discords.

What if will is not made at all:

In a scenario wherein a will has not been made at all, or if a will doesn't exist or has been declared invalid then, distribution of property in such cases is carried out as per the provisions of Hindu Succession Act, 1956 (amended by Act of 2005). This is mainly applicable to people belonging to Jain, Buddha and Sikh religions. The provisions of this Act are not applicable to people belonging to Muslim, Parsi, Christian and Jew religions. Their properties are disposed as per the rules separately laid down for them.

The aforementioned Hindu Succession Act, 1956 has been amended on 9th September 2005 whereby women of the family have been given equal rights in ancestral properties and assets.

Important points in brief:

One can safely conclude from the above discussion that there is no loss or damage in getting a will prepared. Because it can be altered anytime or it can even be revoked. A will adds to one's joy by assuring that one's properties are to go to appropriate and worthy persons. Such a property has good chances of growing further in future. A will, if made with foresight and poised mind, helps maintain cordial relationship among the family members by making proper planning.

WILL – SLUG 6

What exactly is the Hindu Succession Act?

The Hindu Succession Act, 1956 is a law which provides for disposal of properties owned by Hindus. It recognizes property of a woman completely as her own and after the amendment of 2005 (effective 9th September 2005) she has been conferred equal rights as of men. If a woman has not made any will before her death, then all her property is disposed of as provided in the Hindu Succession Act, 1956.

In the absence of any testamentary disposition, the property of a Hindu is passed on to his heirs after his death. Identification of successors and distribution of property to them is carried out under Hindu Succession Act, 1956. The general nature of the rules related to disposal of property, are as follows –

(1) Heirs of a man –

Relatives of male can be categorized mainly as follows –

Heirs falling in Category 1 – Sons, daughters, widowed wife (one or more), mother, son of the deceased son or wife of the deceased son and the a generation next to him – All these persons receive **one part of the property at the same time**. In case no person falling in Category 1 is living anymore, all the property shall pass on to persons falling in Category 2.

Heirs falling in Category 2 – These are classified in following sub-categories. It is to be noted that all persons falling in first sub-category shall share all the property among themselves. In case no person falling in sub-category 1 is alive anymore, the property shall be distributed to heirs belonging to second sub-category and in case no heirs falling in second sub-category is alive anymore then it will be distributed to the heirs falling in third sub-category and so on.

Sub-category 1 – Father,

Sub-category 2 – (a) Son of son's daughter, (b) Daughter of son's daughter, (c) Brother, (d) Sister.

Sub-category 3 – (a) Son of daughter's son, (b) Daughter of daughter's son, (c) Son of daughter's daughter, (d) Daughter of daughter's daughter.

Sub-category 4 – (a) Brother's son, (b) Sister's son, (c) Brother's daughter,

(d) Sister's daughter

Sub-category 5 – (a) Father's father, (b) Father's mother

Sub-category 6 – (a) widowed wife of father, (b) Widowed wife of brother.

Sub-category 7 – (a) Father's brother, (b) Father's sister.

Sub-category 8 – (a) Mother's father, (b) Mother's mother.

Sub-category 9 – (a) Mother's brother, (b) Mother's sister.

Explanation:– The aforementioned terms such as 'brothers' and 'sisters' (full-blooded and step-brother or step-sister) do not include uterine brother/sister.

- If no heir from category 2 exists anymore, then the property shall go to blood-relatives of the man or his adopted son.
- In case such relations do not exist then, it will go to non-blood-relatives and if even such relations do not exist then the property shall be acquired by the Government.

(2) Heirs of a woman –

Since all the property held by a woman is deemed to be owned completely by her and by her alone and since she has been awarded equal rights as of a man by amendment of year 2005, her property, in absence of a will, shall be given to her heirs as follows–

- **First of all**, every living (1) son, (2) daughter, (3) sons and daughters of deceased son/daughter and (4) her husband shall get an equal part.
- **Secondly:** In case where the aforesaid heirs are not alive anymore, the property shall go to husband's heirs,
- **Thirdly:** In case where the aforesaid heirs are not alive anymore, the property shall go to father's heirs,
- **Fourthly:** In case where the aforesaid heirs are not alive anymore, the property shall go to mother's heirs,

Explanation:- Husband's heirs and father's heirs shall be determined in accordance with the rules laid down to decide the man's heirs and mother's heirs shall be determined in accordance with the rules laid down to decide a woman's heirs as given above. In absence of all heirs as given above, the property shall be acquired by the Government.

WILL – SLUG 7

Ancestral Property:

In old times, after the death of the earning male member of the family, his eldest son used to step into his shoes. However this was just a management convenience. The wealth or property of the family was there for every member to enjoy. In recent times, joint families are going out of tradition. Several families have gone nuclear since 30 to 40 years. A duo of husband-wife and a duo of two kids has become the mantra of the nuclear family. (Nowadays even the number of kids has reduced to only one!) However, after the implementation of Hindu Succession Act, 1956, the courts were flooded with cases regarding the scope and expanse of its section 6 and section 8. Similarly, it can't be said with confidence that the members of the older generation have buried their hatchets. Many people are still struggling to answer questions about how to determine whether a property is ancestral or not, how much share do a sister and a brother has in the ancestral property etc. That's why it is essential to have at least a broad understanding of the concept of property.

Property:

A property is classified into two categories – movable and immovable. Movable assets or properties are those which can be moved such as cash money, bank account, term deposits, shares of companies, gold, silver, precious stones, household items, furniture, clothes etc. Even abstract properties like trademarks, copyrights, tenancy rights etc. fall under the head of movable properties.

On the contrary, immovable properties include non-movable properties such as land, farms, farm residences, horticultures, buildings, houses, bungalows, flats located in housing societies, commercial shops etc.

The ownership rights of properties are purchased through self-earned money or under Deed of gift. Also, ancestral properties received by a descendant come under the head of properties too.

Structural fabric of Indian society:

For centuries, the pattern of Indian society was structured, guided and sustained by well fashioned self-manifested Vedas, Shrutis, Smrutis, observations made thereon by sages, their criticism and practices, traditions and customs set by years together. The structure of a joint family, rights of the earning members of a family and rights of the others, their respective duties etc. had been laid down by scriptures, the dominant was the Manusmruti (cevegmcelee). As per the customs of those times, five main schools of thought existed regarding family system – Banaras and Bengal Schools of thought took the lead. (Which respectively evolved into Mitakshar and Daaybhag systems later on.) They have taken strong roots in the society since several centuries. The Smruti thesis authored by Sage Yadnyawalkya and a critique written thereon by Sage Vidnyaneshwar is known as Mitakshar. On the other hand, the Sampatti-Vibhaajan (division of property) thesis authored by Sage Jimootvaahan is known as Daaybhag.

Joint Family or a Hindu United Family (HUF):

The Mitakshar system has awarded the ownership rights of properties to three Ancestral generations of father, grandfather and great-grandfather and three descendant generations of son, grandson and great-grandson. A group of all these family members is called "coparceners". The share of property held by each of these used to increase or decrease as and when any of them died or was newly born.

Any member of the coparceners' group who is married joined his wife, his grandmother, his great-grandmother to the family while any dead coparcener resulted in joining of his widow, married or unmarried daughters and other close relatives to the family. Daaybhaag system also supported joint family but differed on ownership rights. This will be discussed shortly.

Joint possession of property:

The salient feature of a Hindu joint family is common eating, common prayers and common properties. This feature was acknowledged by both Mitakshar and Daaybhaag schools of thought. In both systems, the right to manage common

properties lay with the head of the family—known as Karta (keÀlee&). After the death of the family head, if the family remained joint, then his eldest son became the head of the family. But it was only a convenience from management point of view, the family property being held in common by the coparceners. The concept of "ownership of property" by an individual did not exist for many centuries.

WILL – SLUG 8

Ownership of property:

Introduction: Descendent children cannot have common ownership in self-earned properties. Since children have no right whatsoever in such property, their father is completely at liberty to dispose of his property as per his own wishes, subject, however, to the provisions of the Hindu Adoption & Maintenance Act,1956—Kindly see Appendix-VI.

The very concept of family's ownership over property dates back to ancient times. It is only when the division of property became necessary due to birth of nuclear family system that the people started thinking about partitioning of property. The Mitakshar and Daaybhaag systems put forth opposing ideas as to when the son of a family-head becomes owner of the common property.

- The Mitakshar system postulates that even in a father's lifetime, his son, his grandson and his great-grandson have equal share in property. However, they do not own their shares individually but they hold it as coparcerners.
- Contrarily, Daaybhaag system postulates that children get ownership of property only after passing of their father.
- As per the Daaybhaag system, the property was only shared between sons and grandchildren but it was not shared between a father and his children and grandchildren. However a father could, if he willed so, distribute his property to children. In short, only those who did not have any living ancestors had ownership rights. In a Daaybhaag system, the members of a family had ownership of the undivided share of the common property.

What exactly is an ancestral property (Court verdicts thereon):

The British Rule established a modern justice system after the year 1860. Sometimes they made laws that supported religious scriptures and sometimes they made laws which brought reformations in the rules laid down by scriptures. The important legal cases were decided through House of Lords / Privy Council in England. Similarly, many benches of the High Courts in India as well as the Honourable Supreme Court have given several verdicts in the last 7 to 8 decades which relate to ancestral property and ownership rights.

The verdicts in these Court cases were given by studying the original concept in the scriptures, critique made by sages over them, opinions of chief observers, authors and vernacular and foreign researchers. A study of all these verdicts clearly underlines fundamental legal concepts and foundational principles applied or used in deciding them.

Following are some of the remarkable verdicts related to Mitakshar school of thought:

1. An ancestral property means the property received as a descendant of three generations (father, grandfather and great-grandfather). The son, grandson and great-grandson used to get birthright in such a property. The property received from great-great-grandfather (4th generation) is not deemed as ancestral.
2. If a father, in his lifetime, gives away his property to his son through a gift-deed and if that gift-deed clearly gives rights of selling and transferring that property to the son, then such a property is not deemed as ancestral. Naturally, grandson and great-grandson does not receive ownership rights in the said property. However, if the gift-deed does not make any such clear mention then, a dispute may arise whether the said property was gifted for enjoying by survivor-ship system.
3. A property received from any relative except the aforesaid three ancestors (e.g. from paternal and maternal uncles, maternal aunt, grand-mother or some other person) is not deemed as ancestral. Hence sons, grandsons and great-grandsons do not have any rights in the said property and their consent is not required while selling or disposing of such property.
4. If a common property is passed on to a childless coparcener, then such property is also deemed as self-earned and the right to sell such a property lay with such a coparcener. A son, born to such a coparcerner afterwards, gets rights in the property which may re-main after selling but he can not object to past selling of the prop-erty i.e. concluded sale.
5. After division of an ancestral property, the share received by each of the co-owner is considered as his own property, qua the other co-owners. However, it is deemed to retain "ancestral property tag" from the point of view of sons, grandsons and great-grandsons of the co-owner since the characteristics of the original property does not alter owing to mere partitioning.
6. Based on Mayne's thesis related to Hindu Law and Customs, the Hon. Supreme Court of India has given a verdict in the matter of Kalyani (deceased), representative (AIR 1980 SC 1173) as follows –

"The father has power to effect a division not only between himself and his sons but also between the sons inter se. The power extends not only to effecting a division by metes and bounds but also to a division of status." Thus, the property received by every co-owner in such a partition, which terminates "joint-status" is deemed as his own and independent property, it shall pass on to his successors as per the Hindu Succession Act, 1956.

7. The children cannot have common ownership in their father's self-earned property. Hence he can dispose of such a property as per his own will, subject to statutory obligations. (Appendix-VI)

WILL – SLUG 9

Difference between ownership:

Let's understand the difference between ownership concepts put forth by Mitakshar and Daaybhaag systems of succession.

Both these systems supported societal structure comprising of joint/united families. However, the conspicuous differences of opinion between the two regarding ownership rights can be shown as follows –

Subject	Mitakshar	Daaybhaag
Share of property	Uncertain, unpoised, changing at every birth and death	Every coparcener's share is fixed
Succession, inherit-ance	Based on survival since property is owned com-monly.	A father can distribute property in his lifetime.
Method of partition-ing	By clear intention	Intention not required since shares are already fixed.
Fulfillment of parti-tion	After staking claim	After court delivers ver-dict.
Partition's imple-mentation	Lies with three genera-tions (father, son, grand-son, great-grandson) pre-vious and next and imple-mentation made by de-mand	No rights to sons, grand-sons and great-grandsons.
Widow's rights	No ownership in property. Only rights to food, clothes and shelter.	Ownership rights in prop-erty after father's death.

Subject	Mitakshar	Daaybhaag
Nature of ownership	Common ownership	Common possession
Father's ownership	No independent ownership to father alone	Father alone has all ownership rights
Step-mother's rights	One share if she is childless	No rights to step-mother
Principle	Rights by survival	Right by heir-ship
Rights	Birthright	Right on ancestral property after father's demise
Personal property	Property NOT earned using common property (This needs to be proved with evidence.) Also property received through gift deed	No limitation regarding self-earned property.

Secondary status to women:

- Scriptures did not give women any right to demand share in the property. They only acknowledged that the property owned by a woman, called stridhan (m$eeOeve) (ornaments, jewels etc.) is solely, exclusively her property. The concept of stridhan (m$eeOeve) is elaborated in the Appendix-III hereto. Even though the women, did not have any ownership rights in the common family property, the responsibility of providing for the needs like food, shelter, clothing etc. of all the womenfolk of the household (widowed, married or otherwise) laid on the shoulders of the family-head, called the Karta (keÀlee&), to be met from and out of the family earnings.
- The Hindu Succession Act, 1956 superseded all the customs and traditions and rights to property were newly laid down. Daughters were given equal rights in property. Section 30 of the said act has given a copercener the right to dispose of his undivided, unspecified ownership rights through a will.
- The Hindu Succession (Amendment) Act, 2005 went a step ahead and gave women equal rights in ancestral property (along with right to demand share in property). This act has made a lot of endeavours in redressing the inequalities between men and women with regard to rights on ancestral property and it's hoped that whatever lacunae still exist in the law shall be remedied through a fresh amendment act. The latest decision of the Honourable Supreme Court puts a caveat, a rider on the ownership rights of women by ruling that the

father & daughter must be alive on the date the Amendment Act 2005 came into force i.e. on the 9th September 2005. –A note is given in the Appendix-II hereto.

A will of self-earned, ancestral property:

The above discussion has made it amply clear that a person can make a will document only with regard to the property (movable and immovable) of which he/she has complete ownership rights. In other words, only self-earned property can be given away through a will. A person having ownership rights only for a share or portion of the ancestral property can make a will only regarding that share or portion of the property. The rights of other family members in the said ancestral property remain uncompromised.

Even a property under the burden of debt can be bequeathed through a will. However, it is required that the person receiving such property must accept both – the property as well as the burden over it. Naturally, only a burden of debt or amount of loan over a property cannot be bequeathed to other person through will.

If the person who is named in the will for receiving a share of the property refuses to accept that share then, such a share again becomes a part of the total property. Sometimes it may so happen that certain property is left out of the will inadvertently. To avert such a problem, one must make a mention of a specific person at the end of the will to receive the "residuary property" which may remain behind after distribution of all the properties as per the will. This will ensure distribution of all properties held by the will maker.

The person making a will can also give away any amount which he is expected to receive in future (e.g. arrears of pension, pension or a part of it sanctioned with retrospective effect, insurance money, amount to be repaid by someone etc.)

Points to ponder:

Even though receiving father's self-earned property and the ancestral property is a birthright of the heirs, it is of utmost necessity on their part to see that the family property is being put to good use. They should always bear in their mind that even though they are heirs for their ancestors, they are also trustees for the generations next that follow. Hence, it is left to one's personal conscience to determine whether to hand over the ancestral legacy with added glory to the future generations or to cause detrimental reductions to it and leave such tainted property by way of legacy to sons, grandsons and so on.

APPENDIX - I

Given below is a specimen of the Will document, which may be adopted by making appropriate additions/modifications to suit individual requirements.

It may please be noted that this is a document which may land-up in a Court of law to ascertain the precise intention of the Will-maker and at that stage various rules of interpretation come into play, with which a common–person may not well versed or aware of, and hence it is strongly recommended that advice of an experienced Advocate may generally be taken and more so when the title to the property is unclear or disposal thereof involves complexities that are uncommon.

LAST WILL AND TESTAMENT

I, ...(name), an adult of Indian Inhabitant aged about ______years presently residing at (full address), hereby revoke any wills and codicils or other testamentary dispositions whatsoever that may have been previously made by me and declare this to be my Last Will and Testament, executed at .... (Place) on this 15th day of November Two thousand fifteen, (15th November 2015).

1. I declare that all the properties, either movable or immovable of whatsoever nature, wheresoever situate, possessed by me and standing in my name are self acquired properties and that no other person has any right title or interest of whatsoever nature therein.
2. I declare that I have not at any time heretofore done, committed, executed or knowingly suffered or been party or privy to any act, deed, matter or thing whereby I am in any way prevented to dispose of the whole of my respective property by Will as per my wishes.
3. I do hereby appoint my wife .... (Full name) as the sole Executrix of this Will. The Executrix appointed as aforesaid for the execution of this Will shall do, cause to be done and act upon my Will. I, hereby state that my intention by this will is that the Executrix shall have absolute right to administer the properties moveable and /or immovable in the manner mentioned below.
4. I hereby direct Executrix to take charge, on my demise, of all properties and assets and to recover from all persons, companies, corporations, firms whatever amounts which remain due. The Executrix shall firstly pay all just and my legal debts, to pay out of my respective estate, expenses of my funeral and obsequies ceremonies.
5. I further direct the Executrix to pay all taxes and duties payable in respect of my estate and to pay out of my respective estate all other

outgoings relating thereto and all my lawful debts, if any, outstanding at the time of my death.

6. Amongst properties movable and immovable are as mentioned below, and particularly mentioned in the Schedules A, B, C, &D hereinbelow:

   a) I own a flat being .... (Address) along with the Share Certificate No. ...... and Distinctive No. .... to .... (Both inclusive).

   b) Following Bank Accounts are standing in my name:

      i) Saving Account No ________________with ________________Bank, ____________Branch, Mumbai.

      ii) Saving Account No ________________with ________________Bank, ____________Branch, Mumbai.

   c) I have my saving deposited as Fixed Deposits with

      i) ___________Bank _____________Branch, Mumbai.

      ii) ___________Bank _____________Branch, Mumbai.

   d) I have jointly and severally made various investments in shares, mutual funds, fixed deposits, Insurance policies etc and also hold accounts with various banks. I hereby direct the Executrix to liquidate all such investments / bank accounts as she deems fit and appropriate taking into consideration the market conditions. I direct the executrix to be the beneficiary of such investments in shares, mutual funds, bank accounts, Insurance policies and fixed deposits. It is clearly stated that despite the nominations mentioned in various investments, it is my last will that the beneficiary shall be the executrix only. I hereby clearly express my desire that all investments in shares, mutual funds, fixed deposits, Insurance policies etc and amounts standing to the credit of our respective accounts with various banks shall be bequeath to the executrix.

   e) I further wish that in the event any investments being jointly held with any other person, then in the said event such investments shall be bequeathed to such joint holder absolutely.

   f) In the event there is no nomination, in that event all investments and all such assets be bequeathed to my wife absolutely.

7. I hereby bequeath all the properties as mentioned herein above and all the rest and residue of my estates to Executrix exclusively. In the event of death of both of us, I hereby bequeath the same to my son________________________ .

   I do not wish to give any of my property to ______________________

[Note please fill the details as to how the property is to be distributed]

8. It is my desire that whatever bequeaths have been made by me under this my last will should be gracefully and without any demur or sorrow accepted by all the legal heirs. All should give respect and make utmost efforts to fulfill my aforesaid wishes.

9. Under no circumstances they should step into any court of law for claiming any right which has not been given to them under this Will, and thereby they should avoid lowering my prestige and reputation in the populace.

10. In the event of any heir or any relative or any other person challenges this Will, the said beneficiary shall stand deprived of his/her said bequeathal and the executrix shall be at liberty to utilize the said assets for the benefits of the other legal heirs who respect my last will.

11. I have made this last Will out of my own free will and accord and without any pressure or influence of any nature whatsoever in sound and disposing state of mind memory and understanding while capable of performing any act requiring thought, judgment and reflection.

12. In order to obviate any problem on this count I have asked the Family Doctor to affix a Certificate duly signed by him to testify that at the time of signing this Will I was in sound state of mind & otherwise physically & mentally fit.

13. IN WITNESS WHEREOF, I have set my signature hereunder in the presence of the two witnesses, who have signed in my presence and in the presence of each other at the same time on the day, month and the year first mentioned hereinabove.

Signed by the withinnamed Testator ...	)	XYZ
In the presence of witnesses,	)	Testator /Testatrix
In the presence of the Testator and in the presence of each other have put their signatures hereunder As witnesses.	)	ABC & DEF Witnesses

(Attach detailed and well described list of all your movable, immovable, cash, investment and share certificates, bonds, proceedings from Insurance policies etc, property as Schedule and give numbers as A, B, C, etc., as suggested in Clauses 5,6,7 etc., for clarity. In fact, you are expected to prepare very detailed table with

property details, jewelry descriptions, folio numbers, certificate no etc and details of bank accounts and cash to make it as clear and unambiguous as possible to avoid any dispute)

SCHEDULE LISTING OF MY PROPERTY AND BELONGINGS

SCHEDULE A

Land and flats, apartments, farm house, bungalows and immovable items etc.

Sr. No.	TYPE	Address/Location	Specific No. bearing, agreement/7/12 record	Bequeathed to
1	Flat	Write address	Index 11 and agreement data	Elder Son- Mukesh
2	Land			
3	Bungalow			

SCHEDULE B

Valuables, jewelry, etc.

Sr. No.	Object	Description	Details/specifics	Bequeathed to
1	Gold Chain	30 Gms	If any	Elder daughter-Anu
2	Diamond ring			
3				

SCHEDULE C

Cash, Share certificates, Bank lockers and all other items

DEMAT ACCOUNT –PARTICULARS

Sr. No.	TYPE	Description	Particulars	Bequeathed to
1	Car	SX4	MH12-ET 3435	Son- Umesh
2	Shares	TISCO	Folio No.	

SCHEDULE D (OPTIONAL)

MY PASSOWRDS: FOR BANK, LOCKER, CAR, COMPUTER AND SPECIFIC FILE

APPENDIX - II

Daughters cannot inherit ancestral property if father died before 2005, says the Hon.'ble Supreme Court

The Supreme Court has recently said that a daughter's right to ancestral property does not arise if the father died before the amendment of Hindu law that came into force on 9th September 2005.

In 2005, the Parliament had passed a landmark amendment to the Hindu Succession Act, 1956, granting daughters the right to inherit ancestral property along with their male relatives. But now, a 'small' clause has been added to it.

A daughter can only hold a right to the ancestral property if the father has died after this amendment came into force in 2005, the Supreme Court rules. In other words, the father would have to be alive till September 9, 2005, for the daughter to become a co-sharer of his property along with her male siblings.

Adding that the amended provisions of the Hindu Succession (Amendment) Act, 2005, do not have a retrospective effect, a Supreme Court bench comprising Justices Anil R Dave and Adarsh K Goel held that the date of a daughter becoming coparcener is on and from the commencement of the Act.

The Hindu Succession Act, 1956 originally denied women the right to inherit ancestral property, allowing them only to ask for sustenance from a joint Hindu family.

After the amendment was passed in 2005, the only restriction to remain was that women could not ask for a share if the property had been alienated or partitioned before December 20, 2004, which is the date the Bill was introduced.

But that was until the Supreme Court came up with the latest 'restriction'. Now, the law stands settled; and the High Courts like the Bombay High Court which had taken the view that it being beneficial legislation or gender equality legislation it would have retrospective effect, stands overruled.

APPENDIX - III

What is m$eeOeve ? (Stridhan)

The topic is well discussed in the 60 PAGE Larger Bench decision of the Apex Court: Pratibha Rani Vs Suraj Kumar and Another 12-03-1985 –1985 AIR 628.

Excerpts below:

1.1 The stridhan property of a married woman cannot acquire the character of a joint property of both the spouses as soon as she enters her matrimonial home so as to eliminate the application of section 406 IPC. The position of stridhan of a Hindu married woman's property during coverture is absolutely clear and unambiguous; she is the absolute owner of such property and can deal with it in any manner she likes---She may spend the whole of it or give it away at her own pleasure by gift or will, without any reference to her husband. The entrustment to the husband of the stridhan property is just like something which the wife keeps in a bank and can withdraw any amount whenever she likes without any hitch or hindrance. Ordinarily, the husband has no right or interest in it with the sole exception that in times of extreme distress, as in famine, illness or the like, the husband can utilize it but he is morally bound to restore it or its value when he is able to do so. This right is purely personal to the husband and the property so received by him in marriage cannot be proceeded against even in execution of a decree for debt. [206F; 201D-E]

What is *m$eeOeve*?

Earlier referred to in **cevegceHeer**–Now it is mentioned in the judgment -

"113. Manu enumerates six kinds of stridhan:

1. Gifts made before the nuptial fire, exlained by Katyayana to mean gifts made at the time of marriage before the fire which is the witness of the nuptial (adhyagni).
2. Gifts made at the bridal procession, that is, says Katyayana, while the bride is being led from the residence of her parents to that of her husband 201 (adhyavanhanika)
3. Gifts made in token of love, that is, says Katyayana, those made through affection by her father-in-law and mother-in-law (pritidatta), and those made at time the of her making obeisance at the feet of elders (padavandanika).
4. Gifts made by father.
5. Gifts made by mother.
6. Gifts made by a brother."

APPENDIX - IV

Broad nature of provisions made under Hindu Succession Act, 1956 for distribution of property

(1) Heirs of a male –

Relatives of male can be categorized mainly as follows –

Heirs falling in Category 1 – Sons, daughters, widowed wife (one or more), mother, son of the deceased son or wife of the deceased son and a generation next to him – All these persons receive **one part of the wealth at the same time**. In case no person falling in Category 1 is alive anymore, all the property shall pass on to persons falling in Category 2.

Heirs falling in Category 2 – These are classified in following sub-categories. It is to be noted that all persons falling in first sub-category shall share all the property among themselves. In case no person falling in sub-category 1 is alive anymore, the property shall be distributed to heirs belonging to second sub-category and in case no person from second sub-category is alive anymore then it will be distributed to the heirs falling in third sub-category and so on.

Sub-category 1 – Father,

Sub-category 2 – (a) Son of son's daughter, (b) Daughter of son's daughter, (c) Brother, (d) Sister.

Sub-category 3 – (a) Son of daughter's son, (b) Daughter of daughter's son, (c) Son of daughter's daughter, (d) Daughter of daughter's daughter.

Sub-category 4 – (a) Brother's son, (b) Sister's son, (c) Brother's daughter, (d) Sister's daughter

Sub-category 5 – (a) Father's father, (b) Father's mother

Sub-category 6 – (a) widowed wife of father, (b) Widowed wife of brother.

Sub-category 7 – (a) Father's brother, (b) Father's sister.

Sub-category 8 – (a) Mother's father, (b) Mother's mother.

Sub-category 9 – (a) Mother's brother, (b) Mother's sister.

Explanation – The aforementioned terms such as 'brothers' and 'sisters' (full-blooded and step-brother or step-sister) do not include uterine brother/sister.

If no heir from category 2 is available anymore then the property shall go to blood-relatives of the man or his adopted son.

In case even such relations do not exist then, it will go to non-blood-relatives and if even such relations do not exist then the property shall be acquired by the Government.

(2) Woman's heirs –

Since all the property owned by a woman (ornaments, jewels etc.) is deemed to be owned completely by her and by her alone and since she has been awarded equal rights as of a man by amendment of year 2005, her property, in absence of a will, shall be given to her heirs as follows –

- **First** of all, every living (1) son, (2) daughter, (3) Sons and daughters of deceased son/daughter and (4) her husband shall get an equal part.
- **Secondly:** In case where the aforesaid heirs are not alive anymore, the property shall go to husband's heirs,
- **Thirdly:** In case where the aforesaid heirs are not alive anymore, the property shall go to father's heirs,
- **Fourthly:** In case where the aforesaid heirs are not alive anymore, the property shall go to mother's heirs,

Explanation: Husband's heirs and father's heirs shall be determined in accordance with the rules laid down to decide the man's heirs while mother's heirs shall be determined in accordance with the rules laid down to decide a woman's heirs as given above.

- In absence of all heirs as given above, the property shall be acquired by the Government.

(1) Muslims (2) Parsis (3) Christians and (4) Jews

A. Regarding a Muslim person:

1) Islam permits making of a will (Vaseeyat) and it is advisable that a Muslim person should indeed prepare one. However a Muslim person can distribute his property even by expressing his wish either orally or in writing. The written wish is acceptable even without a signature and no signatures of witnesses are required either.
2) Net property of a Muslim person is the property that remains after subtracting loans and funeral expenses and a one third (1/3rd) part of the said net property cannot be given away willingly without the consent of other heirs.
    - Ø The concept of property in Muslim religion encompasses all of the properties such as movable, immovable, material, abstract, self-earned and ancestral property.

- Ø The property which remains after keeping aside the aforesaid one third part is required to be kept only for heirs in the family.
- Ø Total twelve persons are recognized as heirs and their shares in the property are laid down in the Islamic scripture.

B. Regarding a Jewish person –

a. Women and men are not treated as equal when it comes to distribution of property.

b. A man's property is distributed among his sons. In absence of sons, property goes to daughters. A wife's property goes to her husband after her death. In case of a widow's death, her property goes to her sons and daughters. If no heirs are alive then, the property goes to father and in his absence goes to brothers/sisters. If even brothers and sisters are no more, then the property goes to their children.

C. Regarding Parsis and Christians –

Heirs are categorized as per the Indian Succession Act, 1925 and their respective shares have also been laid down.

A Note of caution: The aforesaid description **only gives the broad outline** of provisions made in the aforesaid religions with regard to distribution of property. Also amendments being made in the laws relating to aforesaid religions, proposed amendments therein or recent verdicts given by the High Courts and the Supreme Court may have to be considered before taking a firm view on the entitlement in a given case. .

APPENDIX - V

WHAT IS PROBATE?

A probate is a copy of a will certified by a court of competent jurisdiction. It proves that it is the last and final will of the deceased penned on a particular date. A probate is granted with the court seal and has a copy of the will attached to it. An administrator or executor appointed under the will may not be able to administer its provisions without a probate. It may also be necessary when the deceased leaves behind securities with various nominees and there is a dispute on their division. The nominee can only hold the assets in trust till these are divided as indicated in the will after a probate has been obtained. In the absence of a will or nomination, succession laws come into play.

Application

The application for a probate has to be made to the competent court (a pecuniary jurisdiction may require a higher court to issue a probate for high-value immovable assets) through a lawyer.

Documents

The Court usually asks the petitioner to establish the proof of death of testator, proof that the will has been validly executed by the testator, and that it is the last will and testament of the deceased's.

Notification

After receiving the petition or application for probate, the court issues a notice to the next of kin of the deceased to file objections, if any, to the granting of probate. It also directs the publication of a citation in a newspaper to notify the general public.

Fees

The Court may impose a percentage of assets as a fee to issue a probate. In Maharashtra, for example, a court fee of Rs. 25 is payable for assets less than Rs. 50,000; 4% for assets between Rs. 50,000=00 Rs. 2 lakh, and 7.5% for assets over Rs. 2 lakh. There is a ceiling of Rs. 75,000.

Points to note

Under the Indian Succession Act, a probate can be granted only to the executor appointed under a will. If the executor is not available to administer the estate, an application must be made for appointing the same by the court before applying for probate.

A probate is a must when the will is for immovable assets in Mumbai, Kolkata or Chennai.

APPENDIX - VI

Hindu male can will-away entire self-acquired property, subject to statutory obligation towards: wife & minor, dependent children /parents etcetera

The Hindu Adoptions and Maintenance Act was enacted in India in 1956 as part of the Hindu Code Bills.

2. The other legislations enacted during this time include:

- The Hindu Marriage Act (1955),
- The Hindu Succession Act (1956), and
- The Hindu Minority and Guardianship Act (1956).

All of these acts were put forth under the leadership of Jawaharlal Nehru, and were meant to codify and standardise the current Hindu legal tradition.

The Adoptions and Maintenance Act of 1956 dealt specifically with the legal process of adopting children by a Hindu adult, as well as the legal obligations of a Hindu to provide "maintenance" to various family members including, but not limited to, their wife or wives, parents, and in-laws.

Maintenance of a Wife

3. A Hindu wife is entitled to be provided for by her husband throughout the duration of her lifetime. Regardless of whether the marriage was formed before this Act was instated or after, the Act is still applicable. The only way the wife can null her maintenance is if she renounces being a Hindu and converts to a different religion, or if she commits adultery.

4. The wife is allowed to live separately from her husband and still be provided for by him. This separation can be justified through a number of different reasons, including if he has another wife living, if he has converted to a different religion other than Hinduism, if he has treated her cruelly, or even has a violent case of leprosy.

5. If the wife is widowed by her late husband, then it is the duty of the father-in-law to provide for her. This legal obligation only comes into effect if the widowed wife has no other means of providing for herself. If she has land of her own, or means of an income and can maintain herself then the father-in-law is free from obligation to her. Additionally, if the widow remarries then her late husband's father-in-law does is not legally bound by this Act anymore as well.

Maintenance of a Child or of Aged Parent(s)

6. Under this Act, a child is guaranteed maintenance from his or her parents until the child ceases to be a minor. This is in effect for both legitimate and illegitimate children who are claimed by the parent or parents. Parents or infirmed daughters, on the other hand, must be maintained so long as they are unable to maintain for themselves.

Amount of Maintenance Provided

7. The amount of maintenance awarded, if any, is dependent on the discretion of the courts.

8. Particular factors included in the decision process include the position or status of the parties, the number of persons entitled to maintenance, the reasonable wants of the claimants, if the claimant is living separately and if the claimant is justified in doing so, and the value of the claimant's estate and income.

9. If any debts are owed by the deceased, then those are to be paid before the amount of maintenance is awarded or even considered.