

Law – Inheritance and Succession

The concept of a will is actually alien to Bharat.

It was introduced by FUKUS.

In ancient Bharat, the wealth that one earned, was not considered to be theirs, but was considered to be a trust bestowed by the grace of Brahman.

In fact in the Bhagavad Gita(Chapter 16 Verses 4-17), it says:

(13-15)“The demoniac person thinks: “So much wealth do I have today, and I will gain more according to my schemes. So much is mine now, and it will increase in the future, more and more. He is my enemy, and I have killed him, and my other enemies will also be killed. I am the lord of everything. I am the enjoyer. I am perfect, powerful and happy. I am the richest man, surrounded by aristocratic relatives. There is none so powerful and happy as I am. I shall perform sacrifices, I shall give some charity, and thus I shall rejoice.” In this way, such persons are deluded by ignorance.”

(16)Thus perplexed by various anxieties and bound by a network of illusions, they become too strongly attached to sense enjoyment and fall down into hell.

(17)Self-complacent and always impudent, deluded by wealth and false prestige, they sometimes proudly perform sacrifices in name only, without following any rules or regulations.

Enlightened willers knew they were only trustees of the wealth and had a responsibility to ensure that the wealth they had was handed over to people who would take care of it responsibly.

Succession was fully transparent and discussed with the heirs

and wise independent family well wishers (not blood relatives) and advisors and framed and handed over with their consent.

This did not mean that only family members were successors.

But a person did take the consent of wise independent family well wishers (not blood relatives) and advisors before they made succession plans.

No succession plan was made whimsically and independently taking personal biases and whims and fancies.

Succession plans were made for the good of the nation, not just for the good of the family.

Bharata, one of the greatest kings in Bharat, and from whom Bharat derives its name, never nominated any of his 9 sons to become king after him.

Instead he nominated Bhumanyu.

In modern times, a persons will is taken as the bible, written in stone to be followed at all costs even after a person is dead, even if his will is unfair and cause misery to those who served him.

Read my article on the things I have figured out, to understand that only ignorant idiots take pride in the feeling of "I" and "me" and "mine".

Many times a will is written when a person is old and dying.

They are in a very vindictive frame of mind.

They hate the people who deal with them on a daily basis and take care of them and decide to will it all to some absentee foreigner or absentee favoured friend or relative.

No will is valid until it is first disclosed to all interested parties while it is being created and before it is formally

registered.

Any will that is created without first disclosing its contents to all interested parties should be treated as invalid, and after the demise of the willer, all the interested parties have the sole authority to decide how to distribute the assets.

The interested parties will include:

- Immediate family (parents, spouse, children and their spouses, grandchildren) in the case of immovable and movable assets only.
- Immediate family and key employees and long term employees in the case of businesses and companies.

A long term employee is anyone who has served at least 15 years for their employer.

All objections to the will by all the interested parties must be recorded in writing and addressed as to why their objections are being overruled.

All the interested parties will still have the option to approach the courts for redress of their objections.

All the relatives and associates (not paid servants) who live with or take care of the willer or live on and take care of the property of the willer have first right over the property regardless of who the willer wills it too especially if it is to a non relative.

This does not apply to NRIs and absentee willers who do not live in the land that they inherit and are planning to will.

NRIs and absentee willers have no right to will inherited land or sell it to non relatives.

Inherited land can only be willed to the closest kin especially the closest kin who live on the land.

Once a husband dies, and if he has no children, his wife has a 50% right and his parents and unmarried sisters and minor brothers (below 18) have an equally divided 50% right to the inheritance.

But if he has children, his wife and children have an equally divided 70% right to the inheritance and then 15% to his parents and then 7.5% to his unmarried sisters and 7.5% to his minor brothers (below 18).

Above also applies to wives who die and leave their husbands as heirs.

Property should remain within the family.

If a man dies, his inherited property can go to his wife and children, but if he has no children, then the wife cannot sell or will the property without the consent of the husband's immediate relatives and sharing with them in the proceeds if sold.

The ratio of sharing of sale proceeds will be 50% to the wife and rest to his parents and unmarried sisters and minor brothers (below 18) who have an equally divided balance 50% right to the inheritance.

But if he has children, his wife and children have an equally divided 70% right to the inheritance and then 15% to his parents and then 7.5% to his unmarried sisters and 7.5% to his minor brothers (below 18).

Same also applies to a man with no children who inherits his wife's property.

However rental and business income from the estate of the deceased can be shared on a 50%-50% basis after deduction all costs for maintenance and at least one month's income by the person who maintains the estate.

A person is free to do as they wish with property that they

have amassed solely with their self earned earnings, but any inherited property must remain within the family.

A person must not be able to sell inherited properties without the consent of their family especially their children and heirs.

Inherited property is is not theirs to begin with.

They did not inherit it from their grandfather, they have borrowed it from their grandchildren.

Even with self earned property, it must be divided equally among the spouse and all immediate heirs regardless of their gender unless the willer specifically excludes one or more of the heirs for ill treatment and neglect.

This is subject to the condition that the spouse and other heirs agree to this condition of the willer.

If the other heirs do not agree to this condition of the willer, then all heirs will get an equal share of the property.

If one of the heirs cannot maintain the property and depends on one or more of their siblings to maintain their share of the property, then when the property is sold the maintenance costs and one months income for every year of maintenance should be paid to the sibling who paid for the maintenance.

This should be linked to the price of gold or any other stable asset for inflation indexing since the time the maintenance was done.

However rental or business income from the property can be shared on a 50%-50% basis after deduction all costs for maintenance by the person who maintains the estate.

If the heir who could not maintain the property wills or sells it to another person, a share must be also given to the heir

who paid for maintenance or their designated successors if they have expired.

No person can earn income alone.

All persons, especially wealthy persons have some contribution to their earnings mainly from their family and also from their employees and society.

Hence no wealthy person has the right to exclude any of these parties in their legacy of their business – family, employees and society.

Their wealth has been earned because of the contributions of all these three parties.

Debt to society must be done in the form of endowments and donations to True Temples.

Considering a benchmark of January 2018 and the cost of living in Bharat, the following values are suggested for income distribution:

The suggested ratio is 60% equally between all children and 20% to the employees trust for upto and 20% to society for business assets upto Rs 50 crores.

The suggested ratio is equally divided between all children and the employees trust for upto 60% of the assets, and 40% to society for business assets upto Rs 250 crores.

The suggested ratio is equally divided between all children and the employees trust for upto 50% of the assets, and 50% to society for business assets upto Rs 500 crores.

The suggested ratio is equally divided between all children and the employees trust for upto 40% of the assets, and 60% to society for business assets upto Rs 1000 crores.

The suggested ratio is equally divided between all children

and the employees trust for upto 30% of the assets, and 70% to society for business assets upto Rs 10000 crores and above.

Regarding dividend income from the business, suggested ratio is equally between all children and the employees trust for upto 60% of the dividend income, and 40% to society for dividend income upto Rs 5 crores.

Regarding dividend income from the business, suggested ratio is equally between all children and the employees trust for upto 50% of the dividend income, and 50% to society for dividend income upto Rs 10 crores.

Regarding dividend income from the business, suggested ratio is equally between all children and the employees trust for upto 40% of the dividend income, and 60% to society for dividend income upto Rs 30 crores.

Regarding dividend income from the business, suggested ratio is equally between all children and the employees trust for upto 30% of the dividend income, and 70% to society for dividend income upto Rs 100 crores.

However all voting power for major decision making that involves the future of the company, its employees and its contribution to society will remain equally with the promoter family and employees for a private limited company.

And independent director who has a significant stake in the company will cast the deciding vote.

For a public listed company it will not be less than the original shareholding at the time of the death of the willer and inheritance by the successors.

This applies to all future income from the business and also to any sale of shares or interests in the business to a third party.

This also means that liabilities for loans taken on the assets

should also be shared at the ratio of share to the family and share to the employees.

If the employees are not willing to take liability for any loans incurred for the business, then they should not get any proceeds of income from or sale of shares/business until the loan is cleared.

All assets in the name of the business or its subsidiaries should be shared in the above ratio.

The wealthy person's personal immovable and movable properties can be exempt upto a limit of 70% of the above caps suggested for business income distribution.

After the 70% cap is exceeded, the same above ratios should apply to the movable and immovable properties also.

The immediate successor family can each individually choose one property as their primary inheritance and this is exempt from the above rule.

That one chosen property can consist of many survey numbers, but they all must be located in the same place.

Immediate family means spouse, immediate children, grandchildren and any other immediate first generation lineal successors.

If the immediate children or grandchildren are deceased, their spouses can claim their share.

Contributions to society should mainly be made to registered True Temples, for the conservation of Nature, for social enterprise startups or businesses or to purely charitable foundations set up by the wealthy person.

However if the wealthy persons family is already a beneficiary to the assets, then they should not be allowed to get a salary and benefits from their charitable foundation, beyond what is

the market prevailing rate for similar position in other similar charitable foundations, especially those run and funded by the State.

Contributions to social enterprise startups or businesses cannot exceed more than 50% of the total funds allocated for contribution to society.

The wealthy person or their family should have absolutely no business or financial return or income, or return from equity or bonds, from these social enterprise startups or businesses.

If the wealthy person also wishes to donate to any unregistered True Temple or other social activity, this also should be allowed but approvals for tax treatment and separation from their assets must be obtained from the State.

Regarding Agricultural Property (includes Plantation Property)

One of the problems with agriculture in Bharat is the fragmentation of land holdings.

Some of my concepts are based on the Jamma Land System followed in Kodagu.

The Jamma Land System unlike other Vedic systems of succession does not just favour the eldest male.

However it still does favour only male successors.

In these days times have changed.

The eldest male successor may not even want to stay and cultivate land.

The unmarried sister may choose to stay and cultivate land.

The main thing is that the land should be taken care of and well maintained regardless of male or female or youngest or oldest.

Hence the true successors are first those who live on and cultivate the land, and then those even though absentee and non resident, but still contribute to the upkeep of the land by financial or other forms of contribution.

Below are just my suggestions considering my experience in business legacies.

Most businesses grow bigger by adding more shareholders.

Each shareholder does not go off and start their own separate business.

Instead each shareholder contributes their financial and other efforts to the main business and this helps the main business grow stronger and bigger and eventually all shareholders benefit.

If each shareholder sold off their share of the existing businesses and then went and started off their own separate business, the chances are they would have ended up in bankruptcy.

This is because the existing business would have become weaker due to so many divisions and the new businesses could have failed and not become as successful as the old stable existing business.

In principle and also in practice the same concept also applies to agricultural land and plantation land.

However business legacies are intangible.

Even if a person is given intangible shares they feel like owners of the business.

However land is tangible.

Unless a person sees a fence around their boundary they do not feel like they own it.

Hence it will take a great deal of education and involvement of the State to convince people to form family land trusts.

I feel people will be convinced if they see the benefits of a joint cultivation instead of fragmentation into even smaller holdings.

Fragmentation of inherited land holdings can be avoided by forming family land trusts.

This is similar to a company business with share holders whose benefits I have already described above.

A certain area upto a maximum of 8000 sqft in the inherited property can be marked out for each successor.

This area will be in the sole freehold title of the successor and used for the purpose of constructing of their primary residence and also residences for their children.

The suggested area is 8000 sft for a two acre holding.

If the successor has children, an additional area of 3000 sft can be allocated for each child.

For any holding below two acres it must be prorated accordingly but a minimum of 600 sft should be allocated for each free holder successor and 300 sft for each of their children.

For any holding above two acres it must be prorated accordingly, but on no event should a demarcated residential area for each successor exceed 3 acres per successor and 1/2 acre for each of their children.

The rest of the agricultural land is treated as a single unit and is cultivated jointly by the successors.

In the event that the original land holder has given an urban property or business with a worth more Rs 1,00,00,000 to one

of the successors, then that successor can be excluded from ownership of the agricultural land trust.

This applies if the total share of the rest of the estate which includes the agricultural land is less than 50%.

If the total share of the rest of the estate which include the agricultural land is more than 50% and upto 70%, the urban land/business successor gets a 10% share proportion of the shares by the other successors.

If the total share of the rest of the estate which include the agricultural land is more than 70% and upto 80%, the urban land/business successor gets a 25% share proportion of the shares by the other successors.

If the total share of the rest of the estate which include the agricultural land is more than 80%, the urban land/business successor gets a 40% share proportion of the shares by the other successors.

The inherited agricultural property cannot be sold without the fully informed and unforced written consent of all successors and heirs to that family property at the same level of lineage of the successor from the original land holder owner.

The first right of purchase of inherited property lies with the family members upto a discounted price of 60% of the market value offered by a non-family member.

This especially applies to properties that has been handed over before three generations.

After a property has passed three generations (parent who is original land holder, child, grandchild), the fourth generation can sell the property to a non-family member.

In the event the income from the holding is still small, then the successors who choose to stay on the land and cultivate it gets the major share.

The rest of the absentee non resident successors can only claim a share of the total net profits left after all expenses.

Their share cannot exceed a total of 20% of the net profits.

In the event that the absentee successors have also contributed to the upkeep and cultivation of the land, then they are entitled to a 35% share of the net profits.

If the absentee successors contribute more than 60% towards upkeep and cultivation they are entitled to a 50% share of the net profits.

In the event a successor/s returns to reside full time in the family land upon retirement or other activity, the original successor who resided there must share the income equally with the other successor/s henceforth.

There is no differentiation of male or female member in inheritance of agricultural land, if the female member/s husband/s do not have agricultural land.

However if the female member/s husband/s also have agricultural land, then that respective female member gets the same share proportion and format as mentioned for urban/business asset successors of agricultural or plantation land.