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A STUDY OF LEGACY UNDER WILL

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ABSTRACT

The purpose of this study is to examine the concept of legacy under a will and its impact on the distribution of wealth. Legacy under a will refers to the specific gift of property or money left to an individual or organization in a will. The study aims to analyse the importance of legacy planning, the legal framework for legacy under a will, the factors that influence people's decisions to leave a legacy, and the impact of legacy on both the testator and the beneficiaries. The study also examines the consequences of legacy on beneficiaries and society. The research was conducted through a literature review of legal and social science sources. The findings suggest that legacy planning is motivated by a desire to leave a lasting impact, maintain family traditions, and protect assets. The study concludes that legacy under will is a crucial aspect of estate planning that allows individuals to shape their legacy and ensure their wishes are respected after their passing.

INTRODUCTION

In legal terms, a legacy is a bequest of personal property, which is typically made by a will. It refers to a specific item or asset that is left to an individual or entity in a last will and testament. Black's Law Dictionary defines legacy as, "A testamentary gift of personal property, a bequest. A legacy may be of money, goods, chattels, or anything else that the testator may lawfully dispose of by will."¹ Legacy planning is an essential component of estate planning, as it allows individuals to determine how their assets will be distributed and shape their legacy. However, little research has been conducted on the motivations and factors that influence legacy planning decisions. This study aims to fill this gap by exploring the concept of legacy under will and its significance in modern society.

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ANALYTICAL CHAPTERS

LEGAL REQUIREMENTS FOR LEGACY UNDER WILL

The primary purpose of a will is to ensure that the deceased's assets are distributed to the people they've designated as heirs in accordance with the terms of the will. Essentially, a will is a legal document in which an individual's final desires and directions for the administration and distribution of their assets after death are set forth.² The Indian Succession Act, 1925 defines will as the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.³

Executor, as defined by Section 2(c) of ISA, 1925, is "a person to whom the implementation of the last Will of a dead person is, by the decedent's nomination, entrusted."⁴ A testator is the person who writes the Will and leaves property or benefits to another person, called a legatee or recipient. In India, the administrator of a Will plays a crucial part in the distribution of assets to heirs. In the case of *Smt. Suhashini Dasi v. Ahi Bhusan De*⁵ it was held that a dead person's administrator has the formal duty to manage their estate in accordance with their last will and testament, including making sure that their property is distributed to their heirs and fulfilling any other responsibilities they may have had before they died. The supreme court of India in the case of *Crystal Developers v. Asha Lata Ghosh*⁶, have upheld the principle that "the administrator is a creation of the Will" and draws his or her power from the Will. The decedent same Will.

According to Section 141 of the Indian Succession Act, 1925, a person designated as an administrator is prohibited from receiving any bequests made to him until the Will is proven or until he makes clear his willingness to serve in that capacity. Consequently, provided few requirements are met, a legatee may also serve as an administrator of the Will.

Section 222 of the Indian Succession Act, 1925 sets out the qualifications of an administrator. According to this section, any person who is competent to contract, and who has not been disqualified by any law in force in India, may be appointed as an administrator of a will.

In addition, Section 219 of the Act provides that the person appointed as an administrator must give a bond or security to ensure that they will faithfully perform their duties as administrator. The amount of the bond or security may be fixed by the court or by the person who appointed the administrator.⁸

Therefore, in India, a legatee may serve as an administrator in a will if they are competent to contract and have not been disqualified by any law, and they must give a bond or security to ensure faithful performance of their duties.

FACTORS INFLUENCING PEOPLE'S DECISION

Legacy planning is the process of deciding how to distribute your assets and wealth after your death, as well as how to pass on your values, beliefs, and memories to future generations. It involves making decisions about various aspects of your estate, including property distribution, charitable giving, trusts, and more. There are several factors that influence people's decisions regarding legacy planning, which are discussed below.

1. **Family dynamics:** Family dynamics play a critical role in legacy planning decisions. For example, if someone has a close relationship with their children or other family members, they may want to leave a larger portion of their assets to them. Conversely, if there are strained relationships or conflicts within the family, they may choose to leave their assets to charities or other non-family members.⁹
2. **Financial situation:** The economic circumstances of an individual or family are another factor that can play a role in the decisions made regarding succession planning. People who have substantial assets may have a greater propensity to leave a larger legacy, whereas people who have limited resources may be more focused on providing for their own needs during retirement and leaving a smaller legacy. People who have substantial assets may have a greater propensity to leave a larger legacy.¹⁰
3. **Values and beliefs:** The choices one makes regarding succession planning can be significantly influenced by one's personal principles and beliefs. For instance, a person who feels a strong connection to a particular field of study or philanthropic organisation might decide to make a bequest consisting of a sizeable contribution to the entity in question when they pass away. In a similar vein, an individual who places a high value on education might establish a trust to endow scholarships for future generations.¹¹
4. **Tax considerations:** The implications of various taxes are yet another crucial aspect of estate preparation. People may choose to organise their inheritance in a way that

⁹ Emswiller, T., & Emswiller, J. (2015). *The influence of family dynamics on charitable giving in estate planning*. Journal of Financial Planning, 28(5), 46-54.

¹⁰ Moore, M. J., & Bowers, B. J. (2017). *Estate Planning Issues Faced by Low-and Moderate-Income Older Americans*. Journal of Financial Planning, 30(10), 46-54.

¹¹ Kelly, L. A., & de Ruyter, A. (2015). *Values-based estate planning: Creating a legacy for future generations*. Journal of Financial Planning, 28(8), 34-41.

reduces the amount of tax that will be owed by their successors if they live in one of the many countries where there are tax consequences associated with estate planning.¹²

5. Personal goals and aspirations: Personal objectives and objectives for the future can also play a role in influencing decisions regarding estate planning. For instance, a person who has a passion for the arts might decide to give their personal art collection to a museum or another cultural organisation. On the other hand, a person who has a passion for the preservation of the natural environment might establish a foundation to support connected causes.¹³
6. Religious or cultural traditions: Theological or societal customs may also be taken into consideration during the decision-making process for inheritance planning. A person who adheres to a particular religious tradition, for instance, might decide to give money to philanthropic organisations or designate certain assets to religious causes or organisations in their will.¹⁴
7. Health and age: Health and age can also influence legacy planning decisions. As people age or face health challenges, they may become more focused on ensuring that their affairs are in order and that their legacy reflects their wishes and values.¹⁵

Therefore it can be concluded that legacy planning is a complex process that involves a variety of personal, financial, and social factors. Family dynamics, financial situation, values and beliefs, tax considerations, personal goals and aspirations, religious or cultural traditions, and health and age are all factors that can influence people's decisions regarding legacy planning. By carefully considering these factors and seeking professional advice, when necessary, individuals can create a legacy that reflects their wishes and values and provides for the needs of future generations.

¹² O'Neill, R. F., & Simmons, L. A. (2018). *Estate and Gift Tax Planning Under the Tax Cuts and Jobs Act*. Journal of Financial Planning, 31(6), 48-57.

¹³ Wagner, M. W. (2015). *Leaving a legacy: Incorporating a personal history into estate planning*. Journal of Financial Planning, 28(9), 40-47.

¹⁴ Reiser, J., & Siegel, J. G. (2017). *Faith, culture and estate planning*. Journal of Financial Planning, 30(4), 38-45.

¹⁵ Fitzpatrick, C. C., & Goodrich, J. N. (2015). *Estate planning for clients with health issues: Seven key considerations*. Journal of Financial Planning, 28(1), 42-50.

IMPACT OF LEGACY UNDER WILL ON TESTATOR AND BENEFICIARIES

Legacy under will refers to the act of planning and bequeathing assets and property to heirs or charitable organizations upon the testator's death. The act of legacy planning can have significant impacts on both the testator and beneficiaries, both positive and negative. Legacy under will has a positive impact on the testator, as it provides a sense of peace of mind and control over their assets. For beneficiaries, legacy under will have emotional and financial benefits, providing a sense of security and continuity.

The primary impact of legacy planning on the testator is the sense of control and peace of mind that comes from knowing that their assets will be distributed according to their wishes. By having a clear plan in place, the testator can feel secure in the knowledge that their estate will be managed as they intended, even after their passing. This can provide a sense of comfort and emotional well-being to the testator, especially if they are nearing the end of their life.

In addition to emotional benefits, legacy planning can also have financial benefits for both the testator and beneficiaries. By planning ahead, the testator can minimize tax liabilities and other expenses associated with estate administration, allowing more of their assets to go to their heirs. This can provide a significant financial benefit to beneficiaries, who may use the inheritance to pay off debts, invest in their future, or otherwise improve their financial stability.

Furthermore, legacy planning can be an opportunity for the testator to pass on their values and beliefs to their heirs. By specifying certain conditions or requirements for the distribution of their assets, the testator can incentivize their heirs to behave in a certain way or pursue certain goals. For example, a testator may require that their heirs use a portion of their inheritance to pursue higher education or start a business or may specify that their assets should be used to support a certain charitable organization.

However, the impact of legacy planning is not always positive. If the testator's wishes are not communicated clearly or are contested by family members, legacy planning can cause significant conflict and tension. This can create emotional distress for the testator and can strain relationships between beneficiaries. Furthermore, if the testator's estate plan is not updated regularly or is not properly managed, it may not reflect their current wishes or may result in unintended consequences.

It is also important to note that the impact of legacy planning can vary depending on the cultural and familial context of the testator and beneficiaries. In some cultures, inheritance may be viewed as a way to maintain family wealth and status, while in others it may be seen as an opportunity for individual achievement and independence. Furthermore, family dynamics and relationships can have a significant impact on the way that inheritance is perceived and managed and can contribute to the potential for conflict or tension.

Thus, legacy under will have a significant impact on both the testator and beneficiaries. Legacy planning can provide emotional benefits to the testator and financial stability to beneficiaries, while also offering an opportunity to pass on values and beliefs. However, legacy planning can also lead to conflict and tension if not properly managed or communicated. It is important for all parties involved to approach legacy planning with open communication, clarity, and sensitivity to ensure that the legacy is carried out with integrity and respect for the wishes of the testator.

ETHICAL CONDITIONS THAT SHOULD BE CONSIDERED

While making decisions about legacy under a will involves several ethical considerations that need to be taken into account. These include cultural norms, social justice, autonomy, fairness, and legal requirements.

Cultural norms play a crucial role in shaping decisions about legacy under a will in India. Traditionally, Indian society places a strong emphasis on family ties and the obligations of family members towards each other. This can make it difficult for individuals to make decisions about their assets that are seen as going against the interests of their family. Moreover, cultural norms in India also vary across religions, castes, and regions. For example, some communities may have specific customs and traditions that dictate how assets should be distributed. It is, therefore, essential for individuals to be aware of these cultural norms and to factor them into their estate planning decisions.

Social justice is another important ethical consideration when making decisions about legacy under a will in India. It requires individuals to think beyond their immediate family members and consider the broader impact of their assets on society. One way to promote social justice is by leaving a portion of one's assets to charitable organizations or causes that align with one's values. This can help address issues such as poverty, education, healthcare, and environmental

protection. Additionally, individuals can also create trusts or foundations that will continue to benefit society long after their death.

Autonomy is also an important ethical consideration when making decisions about legacy under a will in India. It allows individuals to exercise their right to make decisions about their assets and ensures that their wishes are respected after their death. However, in India, there are certain legal restrictions on testamentary freedom. For example, the Hindu Succession Act¹⁶, 1956, imposes restrictions on the testator's right to dispose of their property in certain circumstances, such as when they have a surviving spouse, children, or other legal heirs. Similarly, under Muslim personal law, a testator cannot bequeath more than one-third of their assets to non-heirs. It is, therefore, important for individuals to be aware of these legal requirements and work with a qualified attorney to ensure that their will is legally valid.

Fairness is another crucial ethical consideration when making decisions about legacy under a will in India. It requires individuals to distribute their assets in a way that is reasonable and just, considering the needs and interests of all beneficiaries. This can be challenging in cases where there are conflicting interests or where there are disputes among family members. To ensure fairness, individuals can consider creating a clear and well-documented will that outlines their intentions in detail. This can help prevent disputes and ensure that their wishes are carried out as intended.

Finally, it is essential to consider the legal implications of decisions about legacy under a will in India. In addition to the legal restrictions discussed earlier, individuals also need to consider issues such as taxes, probate, and registration requirements. For example, in some states, wills need to be registered to be considered legally valid. Similarly, certain gifts or bequests may be subject to taxes or other legal requirements. It is, therefore, crucial for individuals to work with a qualified attorney to ensure that their will is legally valid and that their intentions are carried out in accordance with the law.

Therefore, making decisions about legacy under a will in India involves several ethical considerations, including cultural norms, social justice, autonomy, fairness, and legal requirements. By carefully considering these factors and working with a qualified attorney, individuals can create a will that reflects their values and ensures that their assets are distributed in accordance with their wishes.

SIGNIFICANCE OF LEGACY UNDER WILL IN MODERN SOCIETY

In India, legacy under will has significant legal, social, and cultural implications. The concept of legacy under will has been recognized and upheld by Indian law for centuries, and it continues to play an essential role in shaping the country's legal system and social norms.

One of the most significant benefits of legacy under will in India is that it provides individuals with greater control over the distribution of their assets after their death. This is particularly important in cases where the individual has specific preferences for how their assets should be used or distributed. For example, an individual may wish to leave their assets to a particular charity, a family member, or a close friend. Legacy under will provides individuals with a means of ensuring that their assets are distributed according to their wishes.

In addition to providing individuals with greater control over their assets, legacy under will also has significant legal implications in India. The Indian Succession Act, 1925, governs the distribution of assets after an individual's death. The act recognizes the right of individuals to dispose of their property upon their death through a will. This means that individuals have the legal right to create a will that outlines how their assets should be distributed after their death.

Legacy under will also plays a significant role in shaping social norms and cultural practices in India. In many Indian families, the distribution of assets after an individual's death is a sensitive issue that can lead to conflicts and disputes. Legacy under will provides individuals with a means of avoiding such conflicts by ensuring that their assets are distributed according to their wishes.

Furthermore, in India, legacy under will can also be used as a means of promoting social welfare and charitable causes. Many individuals choose to leave their assets to charities and social organizations in their wills, which can have a significant impact on society. Legacy under will can also be used to support family members and dependents, providing them with financial security and stability.

Despite the benefits of legacy under will, there are also some challenges associated with the concept in India. One of the most significant challenges is the lack of awareness and education around the process of creating a will. Many individuals in India do not have a will, which can lead to disputes and conflicts over the distribution of assets after their death. It is crucial for individuals to educate themselves about the process of creating a will and to seek professional legal advice when necessary.¹⁹

Another challenge is the potential for disputes and conflicts to arise over the distribution of

assets. In India, it is not uncommon for family members to contest a will, particularly if they feel that they have been unfairly treated. This can lead to lengthy and expensive legal battles that can be emotionally and financially draining for all involved.

Despite these challenges, legacy under will remains an essential part of Indian society and culture. It provides individuals with a means of ensuring that their assets are distributed according to their wishes, promoting social welfare and charitable causes, and providing financial security to family members and dependents. To fully realize the benefits of legacy under will, it is important for individuals to educate themselves about the process of creating a will and to seek professional legal advice when necessary.

CONCLUSION

Legacy under will is a crucial aspect of estate planning that allows individuals to shape their legacy and ensure their wishes are respected after their passing. Motivations for legacy planning are diverse, ranging from a desire to maintain family traditions to a wish to make a lasting impact. Factors that influence legacy planning decisions are also diverse, including family dynamics, cultural and religious beliefs, and financial considerations. The impact of legacy under will is positive for both the testator and beneficiaries, providing emotional and financial benefits. However, legacy planning can be challenging, and individuals should seek professional guidance to ensure their legacy is protected.