

CONFIDENTIAL

Inheritance and its Nuances



J. B. NAGAR CPE STUDY CIRCLE

Of Wirc Of The Institute Of Chartered Accountants Of India

SILVER JUBILEE YEAR 2023-24



Inheritance Needs Services Pvt. Ltd.

India's pioneer 'Enabler to Inheritance'

What gets measured, gets managed

Who are “YOU” ?



KYC

Know Yourself Closely

Life Cycle

Born in _____ family

Born to Mr & Mrs. _____

Brother/Sister of _____

“Family Name” / “Surname”

BIRTH

creates – Eligibility for Inheritance

DEATH

triggers – Inheritance



Do YOU have an answer to any of these ?

Who after ME ?

मेरे बाद कौन ?

What after ME?

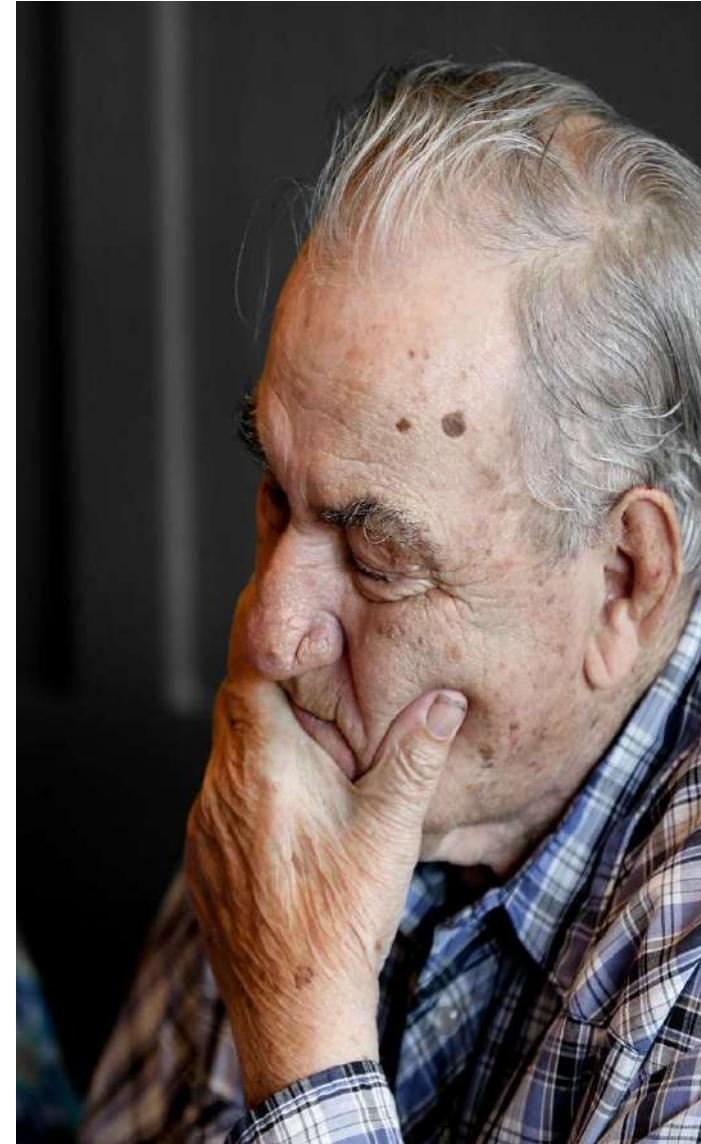
मेरे बाद क्या ?

How after ME?

मेरे बाद कैसे ?

Whom to depend on !

किस पर निर्भर करे !



NOW visualise YOURSELF as part of this family portrait

GEN – “S”



BABY BOOMER

Post WW II 1945+



NOW visualise YOURSELF as part of this family portrait



GEN X

Early 1960s to late 1970s



NOW visualise YOURSELF as part of this family portrait



GEN Y

1980s to late 1990s



No one is

IMMORTAL



LIFE IS **UNCERTAIN**
DEATH IS **CERTAIN**

LEAVE
NOTHING
TO
CHANCE

Age has no bearing at all !



Puneeth Rajkumar
46 | 29th October 2021



Shane Warne
53 | 4th March 2022



KK
53 | 31st May 2022



Suhani Bhatnagar
19 | 16 th February 2024



Raju Srivastav
59 | 21st September 2022



Satish Kaushik
66 | 9th March 2023



Address the unaddressed

Succession is not natural:

To or from spouse

Parent to child(ren)

Amongst siblings

- In case of Hindus: girls (married or otherwise) have equal share in father's property
- Nominees are not owners, but mere custodians / trustee/ safe keepers

Every asset class follows a distinct process of moving the path of legacy

Laws are in place and seek documentary evidence

How does wealth travel the path of legacy?

by a Testamentary document

WILL OR a Trust Deed

AND in the absence of both

by applicability of Succession laws

Intestate Succession

(death without a testamentary document)

Assets/ property will be distributed in accordance with the personal law applicable to deceased i.e. religion of the deceased person on birth

- Hindu Succession Act 1956 (Hindus, Jains, Buddhists,& Sikhs) including those converted and re-converted
- Indian Succession Act, 1925 for others (Parsis, Christians, Jews, others married under Special Marriages Act)
- Muslims - Under Muslim Personal Laws

Death of a Hindu Male

(death without a testamentary document)

CLASS 1 heirs



Hindu MALE

- i. Mother – **NOT FATHER**
- ii. Widow (wife)
- iii. Daughter(s)
- iv. Son(s)
- v. Widow of a predeceased son
- vi. Son & Daughter of a predeceased son
- vii. Widow of a predeceased son of a predeceased son
- viii. Daughter of a predeceased son of a predeceased son
- ix. Son of a predeceased son of a predeceased son
- x. Daughter & Son of a predeceased daughter

Death of a Hindu Male

(death without a testamentary document)



Hindu MALE

CLASS 2 heirs

(only if no CLASS 1 heirs)

In succession

i. Father

ii.(a) Son's daughter's son, (b) son's daughter's daughter, (c) brother, (d) sister

iii.(i) Daughter's son's son, (ii) daughter's son's daughter, (iii) daughter' daughter's son, (iv) daughter's daughter's daughter

iv. (1) Brother's son, (2) sister's son, (3) brother's daughter, (4) sister's daughter

v. Father's father; father's mother

vi. Father's widow; brother's widow.

vii. Father's brother; father's sister.

viii. Mother's father; mother's mother

ix. Mother's brother; mother's sister.



Hindu Female

Death of a Hindu Female

(death without a testamentary document)

For assets inherited from father & mother (Stree Dhan)

- i. Firstly - Son(s) and Daughter(s) [including children of any pre-deceased son or daughter] **NO HUSBAND**
- ii. Secondly - Heirs of Father – [grandmother (if alive) , mother , siblings [all in equal ratio]

For assets acquired post marriage or during wedlock & inheritance from husband

- i. Firstly - Son(s) and Daughter(s) [including children of any pre-deceased son or daughter] and husband
- ii. Secondly - Heirs of the husband
- iii. Thirdly - Mother & Father
- vi. Fourthly – Heirs of Father
- v. Lastly – Heirs of Mother

Daughters equal birth right to inherit property

- Hon Supreme Court – August 11, 2020 –
amended Hindu Succession Act - daughters have equal rights to ancestral property, with retrospective effect
- Right to coparcenary of a daughter is by birth, it is not necessary that the father should be alive as on September 9, 2005. The court has thus overruled an earlier 2015 decision
- an unregistered oral partition, without any public document, cannot be accepted as statutory recognised mode of partition
- However, in exceptional cases where plea of oral partition is supported by public documents and partition is finally evinced in the same manner as if it had been affected by a decree of a court, it may be accepted

Normal mistakes which proved to be disastrous

Father (4 children - 2 sons and 2 daughters) through a WILL (very sketchy) handwritten (1 witness signed & 1 named only) wanted to give immovable property to two sons (equally) and all other assets to all 4 children equally

Father died. WILL got triggered, but was not presented for Probate though property was in Chennai. The family continued to dwell in the same house

Mother made a proper WILL in which she passed on all immovable property to 2 sons equally and all other assets to 4 children equally

Before mothers demise, one son died. His heirs (wife and children) sought share in assets

As Fathers WILL was defective, Succession Laws got triggered

All immovable properties were divided amongst WIFE, 4 Children equally so $1/5$ th share (to each)

Mother had a WILL so apart from her 50% ownership, (of her $1/5$ th inherited from her husband) she gave immovable assets equal to 2 sons, so sons got ($1/10$ th share each from fathers wealth) and for other assets 4 equal portion so $1/20$ share to each child

Indian Succession Act

Christians

A third of the property shall go to the wife and the rest will be divided equally among children (including the children of any predeceased son or daughter)

If there is no wife, the property will be divided among the children;

If there are no children, the property is shared equally by the wife and the husband's relatives

Lastly, it will devolve upon the parents of the deceased

Parsis

Half goes to the wife, the rest to the children

If there is no wife, the property is distributed equally among children

If neither wife nor child survives, the assets go to the parents of the deceased

Muslim Personal Laws

Muslims

A Muslim can by Will, dispose only $\frac{1}{3}$ of the surplus of his estate after payment of funeral expenses and debts to non heirs only

Under Shia Laws, the bequeath of this $\frac{1}{3}$ requires the consent of other heirs and this consent can be given during the Testator's life or post the demise of the testator. Under Sunni Laws, this consent should be given after the demise of the Testator.

$\frac{2}{3}$ rd follows distribution to specified family members

These rules do not apply to the Aga Khani Khoja community; members of this community are allowed to bequeath their assets to beneficiaries of their choice

Established case law

Under Muslim law, no widow is excluded from succession

A childless Muslim widow is entitled to one-fourth of the property of the deceased husband, after meeting her husband's funeral and legal expenses and debts

However, a widow who has children or grandchildren is entitled to one-eighth of the deceased husband's property

Abdul Hammed Khan vs. Peare Mirza, 1935 I.L.R. 10 Luck. 550 –
it was held that a childless widow, in the absence of other heirs, was entitled to inherit her share and rest of the property including the land, of her husband by the application of the doctrine of return

Two sides of a “coin”

- Immovable Assets (e.g. Real Estate etc.) do not recognise the concept of Nomination – Transfer of Property Act 1882
- The movable portion of the real estate as reflected in Share Certificate follows the Nomination route – Securities Contract Regulation Act 1956
 - In case of cooperative housing society nominee is a custodian of the heirs /beneficiaries of the owner
- Movable assets need nomination :
 - in Bank accounts nominee does not have the rights of a legal heir of the original account holder
 - in Life insurance policies nominee acts as a beneficiary of the proceeds
 - in Mutual Funds nominee is a custodian who has to distribute it to legal heirs
 - in Demat account nominee represents the heirs/ beneficiaries

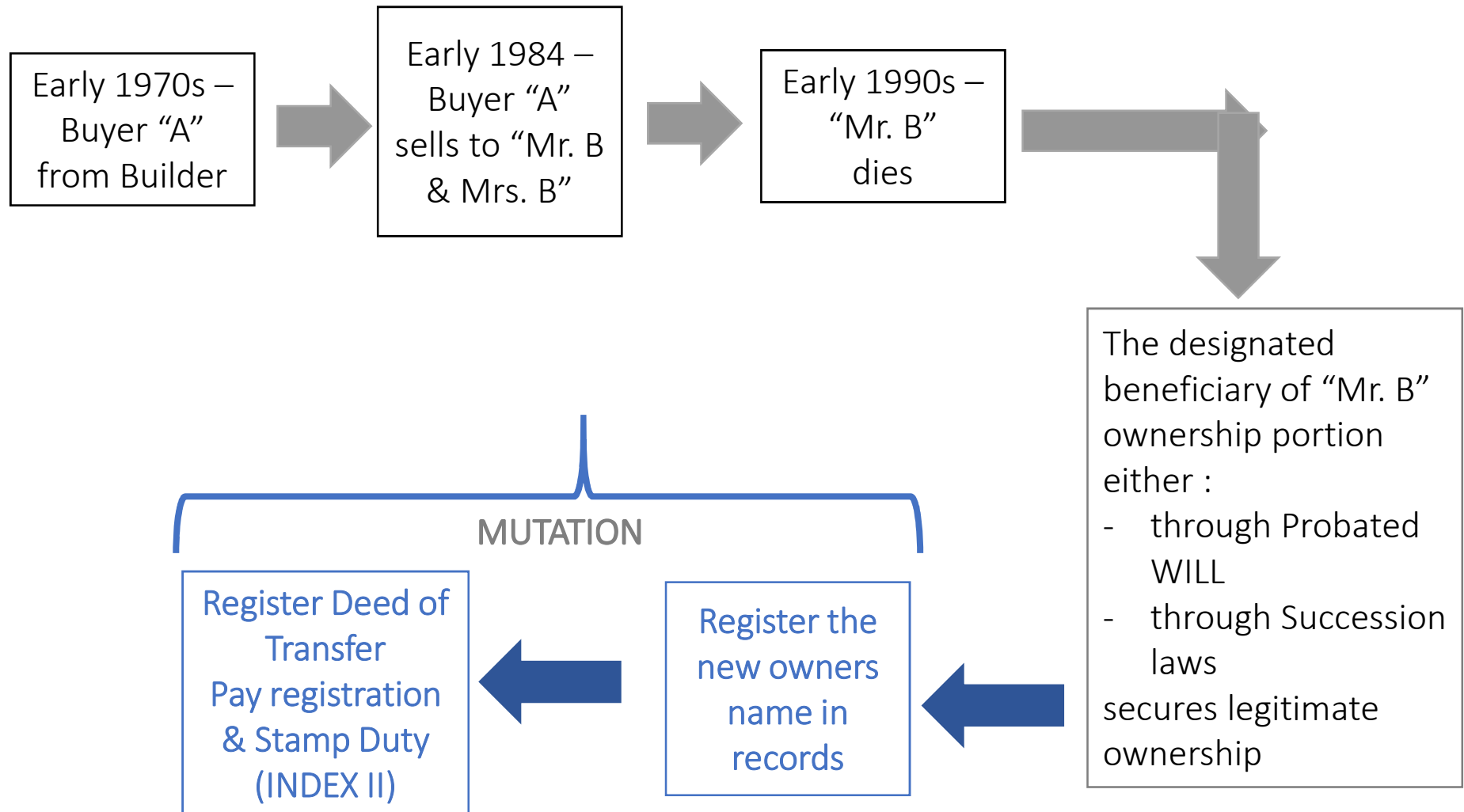
Immovable Property - the most discussed topic

Immovable Property can be :

- Agricultural land v/s Non agricultural land
- Residential v/s Commercial

- Land with an independent house
- An apartment in a Co-operative Housing Society
- An apartment under an Apartment/ Condominium setup
- A structure on Collectors land etc.
- A structure on land lease land of any authority now governed by Cantonment Act

Schematic Activity Chart



So what's the Noise all about ?

WILL is the only document which has a bearing on Wealth distribution of the Testator post demise

Any mistake in its drafting , recording ownership - can pose a challenge during Execution

The bereaved family would need to make efforts in retrieving its own wealth entitlement...

Efforts could be time consuming and cost gulping

Summation - Intricacies of WILLS

WILL also contains loans and debts - would the beneficiary be liable to pay for (outstanding) debts of Testator ?

Role of Witness is extremely critical - Witness may not outlive the Testator ?

Role of Executors – is responsibility embedded and laced with authority

If Testator does not want to give or part with any asset to a particular family member , then Testator must clearly mention the name of the non recipient

Residual Clause in a WILL necessary to capture position till date of demise

Short cuts could be an expensive proposition

WILL in most cases is used as a repository – hence information of assets and liabilities need to be correct

WILL drafting critical as it's the only document which is the reference point (post demise) of asset owner

Cost of making a WILL is of least relevance as the **cost of not making is extremely high** (especially the stress undergone by heirs)

Choice of Executors a critical decision

Can Chat GPT be ventured for WILL drafting ?

Is WILL drafting an 'art' or a 'science' ?

It's no less than a 'craft'

Idea is to provide legitimacy to the wish list of wealth owner not impaired
with limitation of time

It includes the capability to visualise future possible scenarios

Properly worded to address any perceived anomalies

Needs to be solution oriented providing options to circumvent deadlocks (if any)

Legally compliant enabling ease in implementation

Is registration of WILL needed?

WILL is a supreme document and would override all nominations and administrative aspects governing / regulating individual assets

Though registering a WILL is not compulsory – many prefer registering their WILL

Testators (person writing the WILL) who feel that their asset or wealth profile is diverse and have a distribution wish which could hurt few beneficiaries ; prefer registration to safeguard possible litigation

A Will can be registered by Executors post demise of Testator- Sec 40 read with 41 of The Registration Act 1908

A WILL made before demise of Testator but after an existing Registered WILL is valid if made under “no suspicious circumstances”

Then why register a WILL ?

If immovable asset is in Bombay, Kolkata or Chennai, for purposes of proceeding ahead with the legacy or succession; a Probate would be required

A Probate is a court certified process wherein the Court endorses the validity (in terms of authenticity of the WILL) to be valid and the last WILL to enable process of legacy to travel as per the death wish of the Testator

A Probate does not in any manner comment on the contents of the WILL

Established case law

The Last WILL or most recent WILL (before demise of Testator) is a valid WILL

If the recent WILL is after a registered WILL then unless proved under suspicious conditions is deemed to be valid

Several circumstances which would be considered by this Court as suspicious circumstances:

- (i) When a doubt is created in regard to the condition of mind of the testator despite his signature on the Will;
- (ii) When the disposition appears to be unnatural or wholly unfair in the light of the relevant circumstances;
- (iii) Where propounder himself takes prominent part in the execution of Will which confers on him substantial benefit

Niranjan Umeshchandra Joshi vs. Mrudula Jyoti Rao and Ors. (2006)

Masala Mix

A person serving under any of the defense services can make a Will as per Army Order 4/91

Under provisions of a Privileged WILL is considered when the person is actively engaged in an expedition or during actual warfare, in that case even an oral direction to inmate or companion is valid as a Oral WILL and respected as a death wish

Under provisions of Unprivileged WILL it is treated at par with civilian WILLS (Sec 65)

A child in womb at the time of the death of an intestate shall have the right to inherit (if the child is subsequently born alive) (Sec 20)

Widows remarrying are entitled to inherit as widow

Any person who commits murder or abets the murder shall be disqualified from receiving any form of inheritance from the victim (Sec 25)

No person shall be disqualified from succeeding to any property on the grounds of any disease, defect or deformity (Sec 25)

Elder presumed to have died first

Elder brother and younger brother were travelling to their home town for a religious function

Elder brother was married with 3 children a daughter and 2 sons all married and well settled.

Younger brother was unmarried and staying alone in a house close by to the elder brothers family

The car they were travelling met with a held on collusion and both died on the spot

When two persons die simultaneously, the presumption is that the elder died first and the younger survived the elder (Sec 21- Hindu Succession Act 1956)

Younger brother had in his WILL mentioned bequeath of all asset to his elder brother , elder brother in his WILL had bequeath all his wealth to his individual family members

TRUST an option only if

- i. when the asset owner has an indivisible (immovable) asset which
 - i. a) it cannot be divided amongst the beneficiaries for structural/ legal or administrative reasons
 - ii. b) it is part of an HUF property which is not envisaged to be dissolved
 - iii. c) If asset is to be shared disproportionately amongst proposed beneficiaries
- ii. when the asset owner has beneficiary with special needs and needs to be taken care post demise of asset owner
- iii. when the asset owner feels that beneficiary will not be able to prudently handle wealth due to inadequate skill sets
- iv. when the objective of asset owner is to stagger wealth distribution over a period of time (years) to beneficiary
- v. when a business owner is worried on his **personal assets being attached due to default in business debt**
- vi. when asset owner wishes to continue eternal ownership within the family fold

घर घर की कहानी...

- A small nuclear family of 4 – Parents a son and a daughter
- Father working executive/ businessman / professional , mother home maker

Post 65 yrs (retirement) -

- Son with his family (post marriage) stays with parents in the house owned by father & mother
- Daughter is married and happy in her in laws house
- Parents want to part some share of their wealth to daughter for her future financial independence
- Parents are unsure about such an action which could be counter productive in relations amidst son and daughter-in-law
- While no Testamentary document is in place one of the parents die
- Surviving spouse refrains from taking a decision/ action and dies peacefully
- Post demise both siblings are at daggers drawn and litigative – legal fraternity summoned

Discussion CASE STUDY

In his WILL, husband mentions that his property goes to his wife till she is alive but on her death it will go to his son and his legal heirs. Son dies, immediately after death of father. Can the wife write a new will?

Husbands WILL can rightfully mention that in case of his death it must go to his wife

Then it becomes the wife's property (asset) ; and will be guided by her WILL (if any) or as per applicable Laws of Succession on Wife's demise if wife dies intestate

However, it can also state that in case his wife predeceases him (i.e. dies before him) then it can go to his son

At this juncture it becomes the sons property (asset) which will be guided by the Son's WILL (if any) or as per applicable Laws of Succession if son dies intestate

Inheritance is a “Social responsibility”

How does one meet it?

- address issues on Inheritance
- ensure protection to earnings and wealth
- organise for seamless transition through Legacy

But at what cost ?

The cost is estimate of your evaluation of providing comfort to the residual family

Would you wish to avoid
a
“check mate” situation ?

Then
strategise
to
secure generations





Source: Film scene of Guzaarish 40

Living WILL

Hon.'ble Supreme Court, on 9 March 2018 ; recognised need of Living Will

Living Will is an advanced health care direction

Living Will - a document that allows a person to decide in advance the course of medical treatment he/she would want if he/she were rendered terminally or seriously ill and incapable of taking a decision at that point

Living Will incorporates clear instructions of one's desire and wishes either to continue or discontinue medical procedures

Other clauses relate to declaration on Palliative care, where a patient is helped to be kept comfortable without having to bear pain and instructions not to receive treatments that are life prolonging in case of terminal illness

Case Laws

Challenger of WILL tries to threaten or Influence the witnesses of a WILL so that the witness doesn't testify to the validity of the WILL , proving it to be invalid

Technicalities of a WILL includes the following:

Testator signed it in person and while in sound and healthy mind and not under duress or coercion , WILL is dated and mentions it to be the last WILL superseding any previous WILL or Codicil. WILL has 2 witnesses who have signed the WILL and are genuine persons and not fictitious.

The role of the Witness is not restricted to mere signing the WILL but **also certifying that TESTATOR did sign the WILL in their presence.**

In case both the WITNESS had died before the TESTATOR died, then the question of Witness being genuine would be ascertained only through the **process of their signature verification** with any other independent document that they would have signed


Further **Witness are not supposed to read the WILL** and know its contents, now after the TESTATOR has died , they have felt left out and not aligned to their expectations and hence decided to object and prove their own signatures as forged.



**DO NOT LEAVE IT TO
DESTINY**



**Medical Science
cannot assure eternity**



**Grief of losing a loved one
is unbearable**

Ensure Certainty

Inheritance Compliance
a dependable way forward...

Address issues for 'eternity'

What after ME ?
Who after ME ?
How after ME ?

Initiate the process of legacy
to avoid being aggrieved



**All in the family
amongst us
&
close to us**

RD1

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To know more about the services send an email

writeto@inheritanceneeds.com