

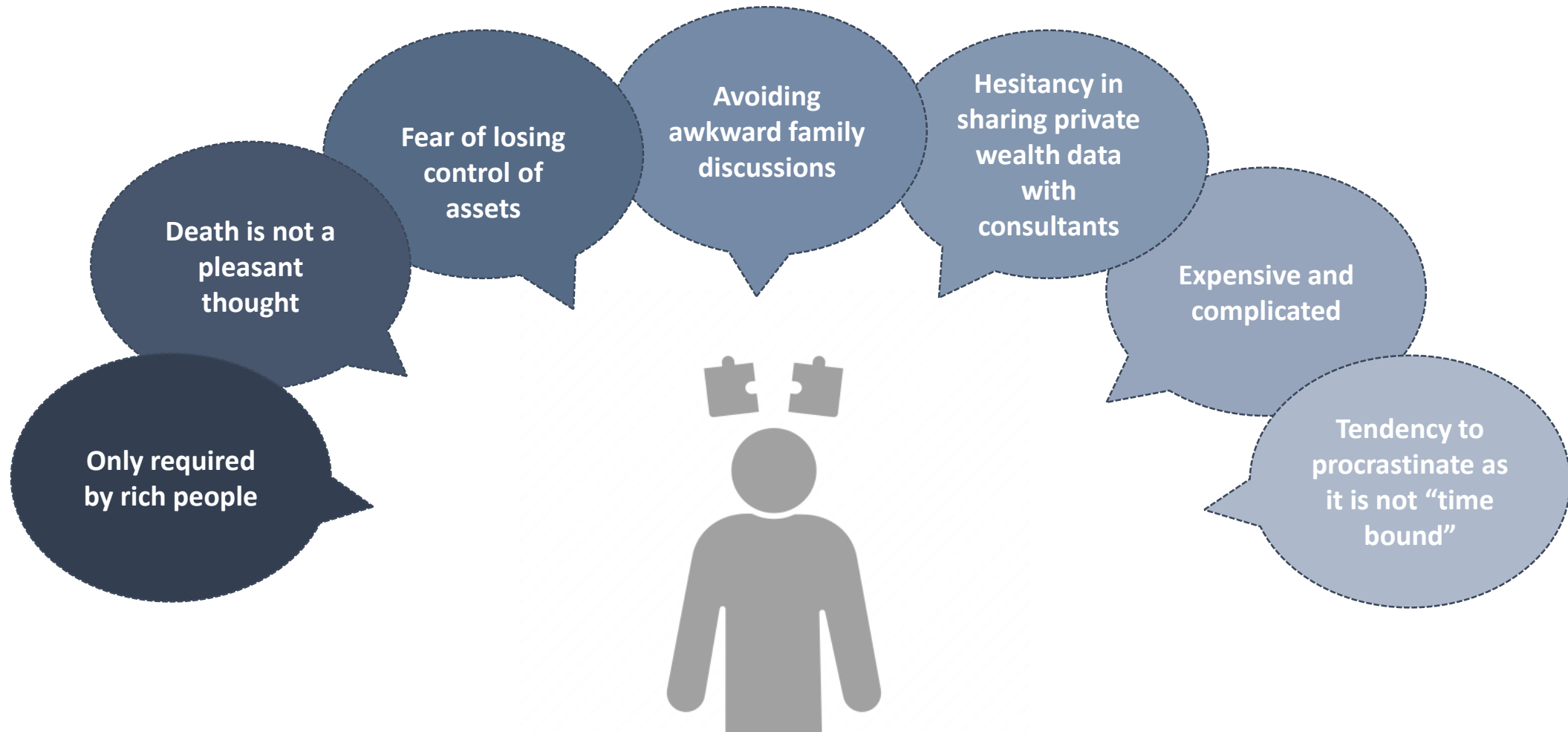
Estate and Succession Planning



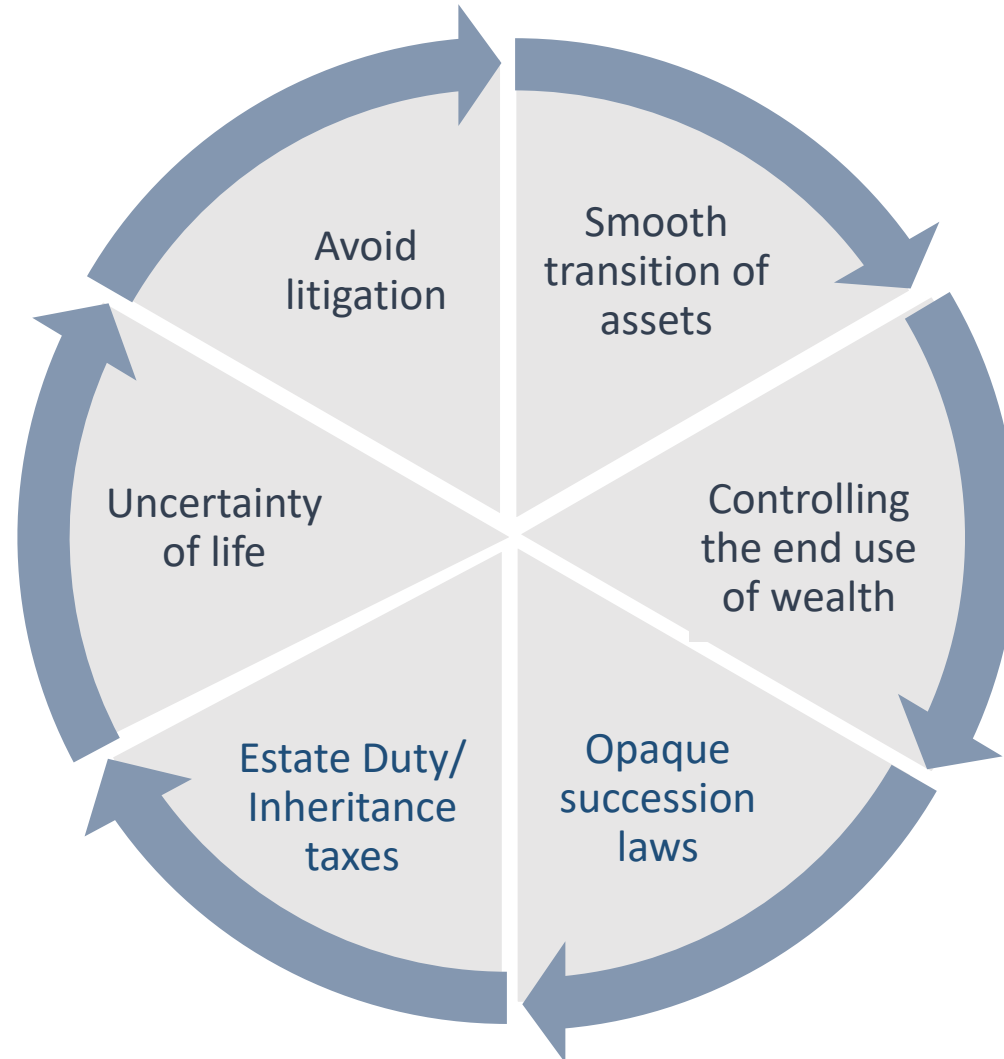
Years of
dedicated service



Lack of Will to find a way



Why is Succession planning important?



Overview

- Business succession plan has to **precede** Estate succession planning
- Certain **hurdles** in succession planning of business:
 - ✓ Nobody is willing to question the patriarch
 - ✓ Lack of clarity and principles on asset sharing ratio, PSR and remuneration
 - ✓ No entry and exit strategies
 - ✓ Lack of personal withdrawals discipline
 - ✓ Lack of communication amongst family members
 - ✓ Cross family holdings of assets

Due to above hurdles, the ownership of business assets and interests is more often than not opaque, thereby a roadblock to effective Estate planning.

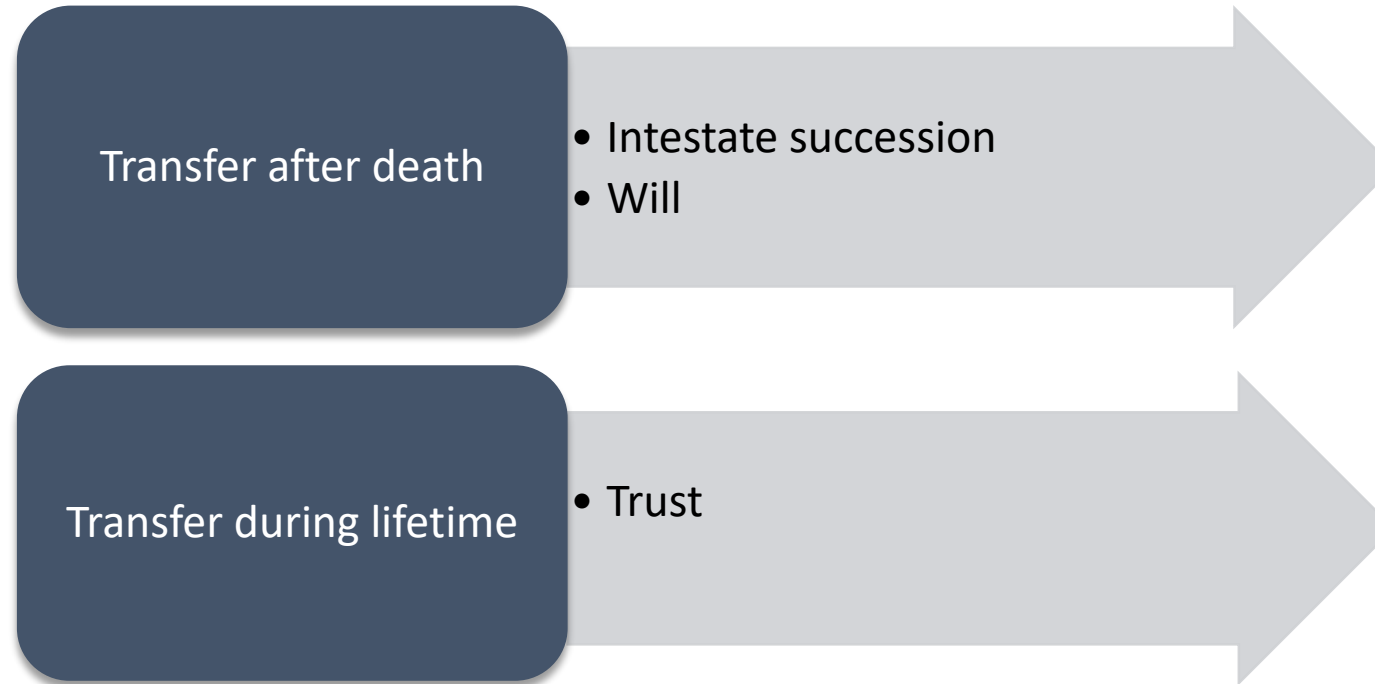
You can Will only what you own!

- Inherent weakness of **HUF, LLP and family arrangement** as a means of succession

HUF partition – Common reasons

- Tax benefits of HUFs are losing relevance
- Increasing nuclear families
- Governed by Hindu Succession Act which is complex
- Determination of ownership share of joint assets of Karta, co-parceners along with members is ambiguous
- Daughters have higher rights than mother and daughters-in-laws

Modes of Succession

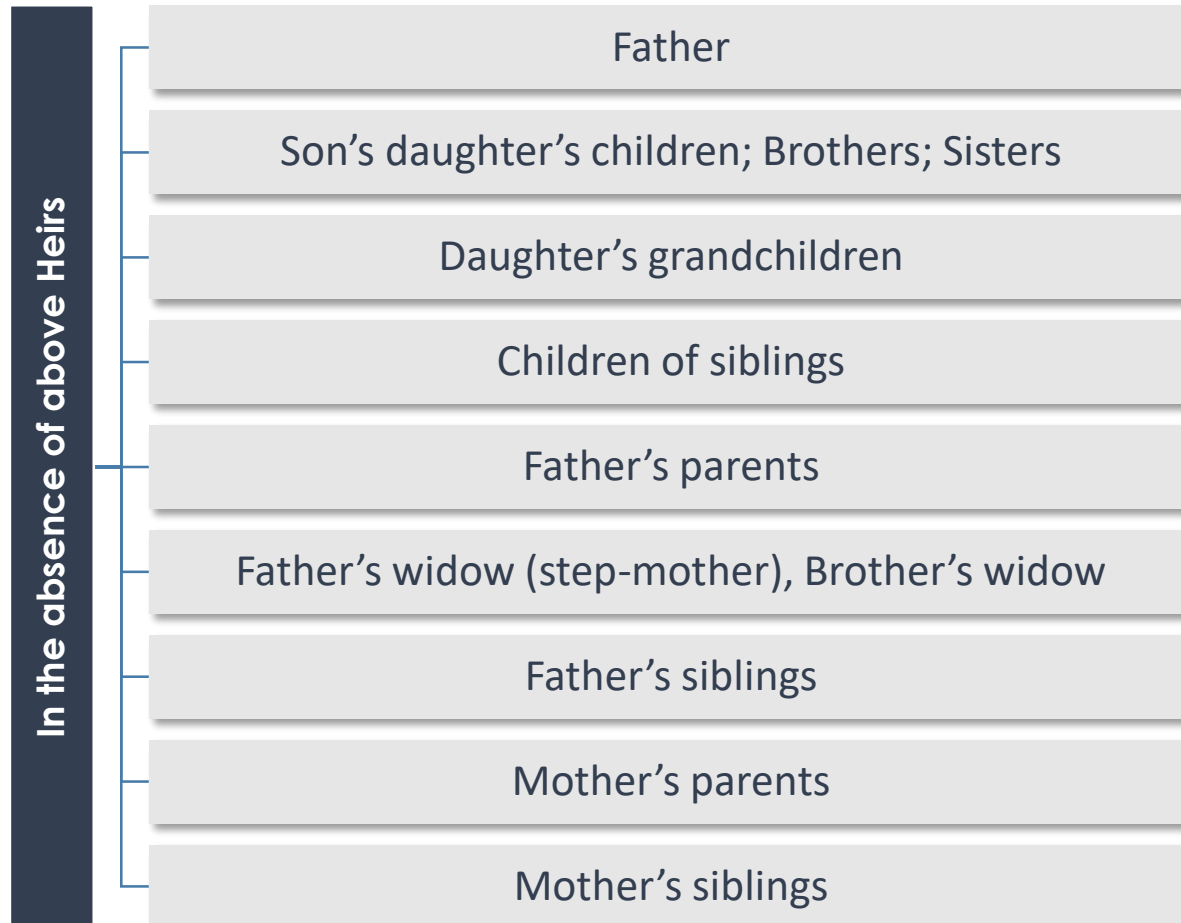


Note

- Intestate Hindus - Hindu Succession Act 1956
- Testate Hindus - Indian Succession Act, 1925
- Testate and Intestate Christians/Parsis/Jews - Indian Succession Act, 1925

Intestate Succession

Intestate Succession - Hindu Male (Class II)

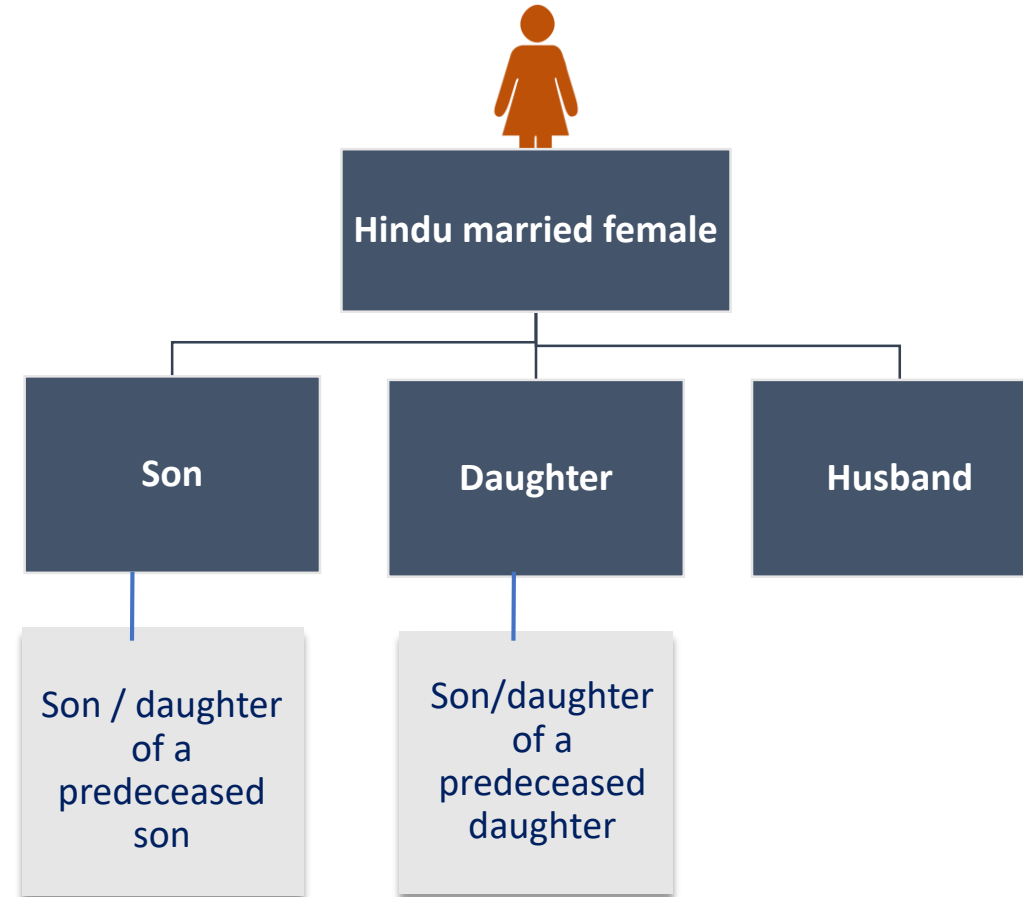


If father is surviving then he takes the property in **exclusion** to all other heirs i.e. those in the first entry take the property in exclusion to all those in the subsequent entries.

All the heirs specified in **one entry** get an **equal** share in the property.

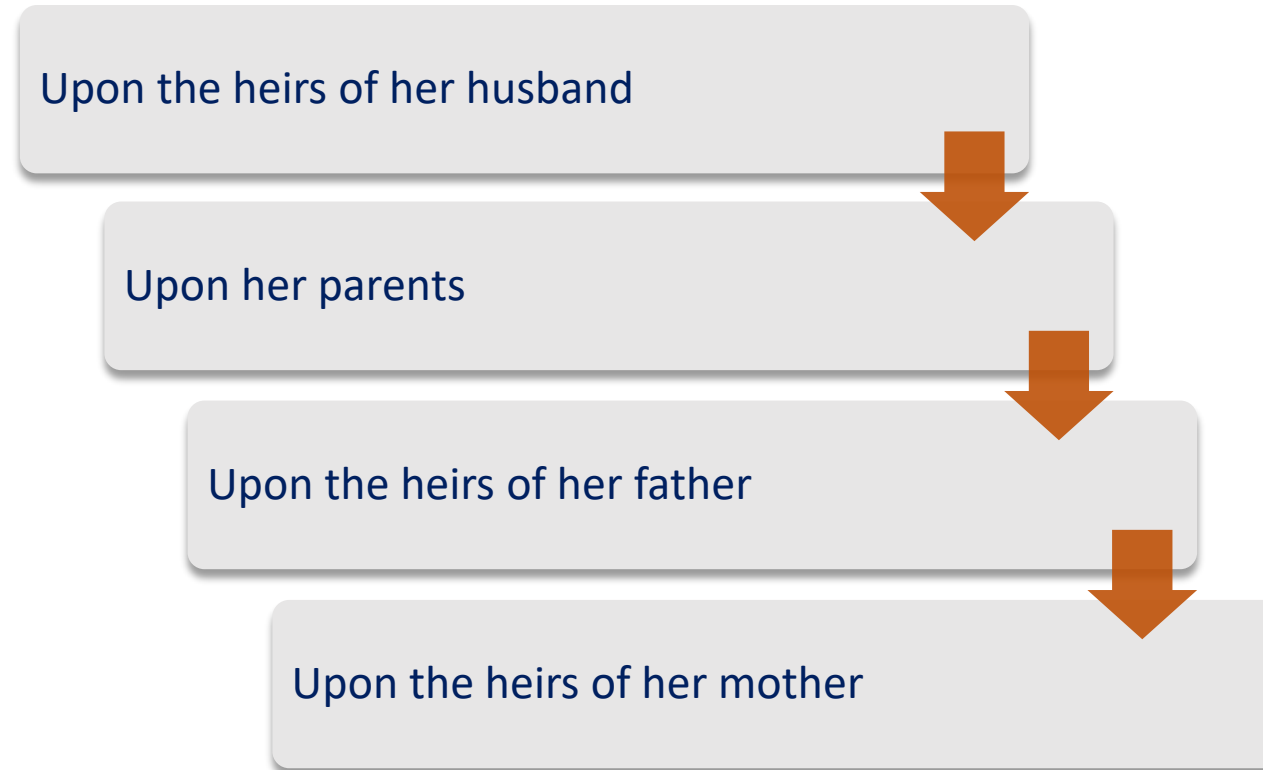
Intestate Succession - Hindu Female (Class I)

All the below heirs take the property **simultaneously** i.e. equally and in priority succession to all the other heirs :



Intestate Succession - Hindu Female (Class II)

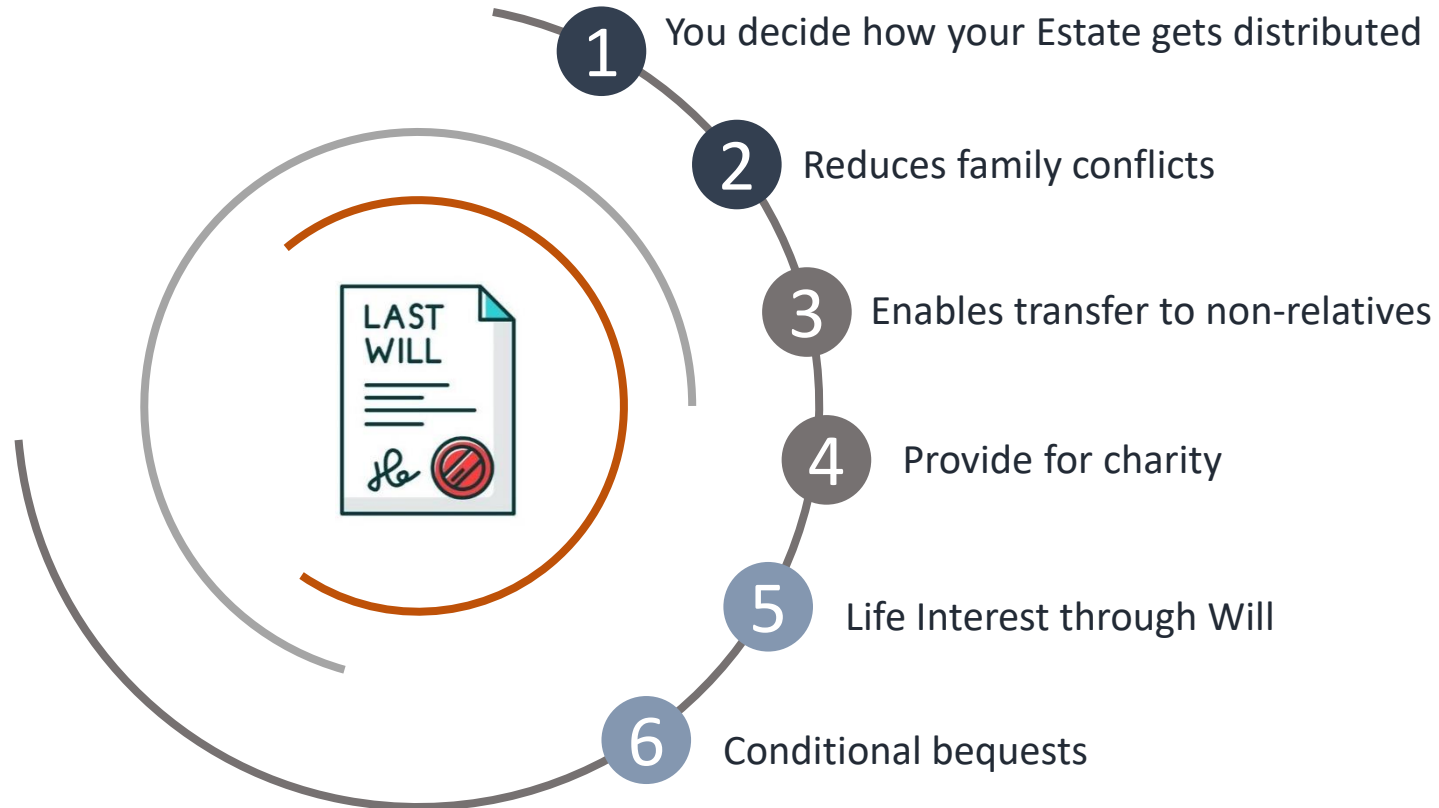
In absence of Class I heirs, the following heirs shall take the property **simultaneously** i.e. equally and in priority succession to all the other heirs :



In case female dies intestate, then properties inherited from her parents shall be taken by the father's heirs.

Wills

Why should one make a Will?



Wills – Important aspects

Pre formation



Appointment of executors



Identification of beneficiaries and their respective shares



At least two witnesses are required



Registration



Alternate beneficiaries



Residuary clause

Post formation



Alignment of joint holder/nominee with the Will

















Probate



No income tax/
stamp duty

Private Trusts

Will versus Private Trust

| | Will | Trust |
|--|---|---|
| Ease of transition |  |  |
| Control via ownership |  |  |
| Ring fencing of assets |  |  |
| Estate tax planning |  |  |
| Control of end use of Wealth and Income across generations |  |  |
| Probate process |  |  |
| Confidentiality |  |  |

Private Trust - Basics



Settlor: Person who settles the Trust, defines his intentions in the Trust deed
Contributor: Person who contributes to the Trust property

Settlor/Contributor



Has a fiduciary capacity to hold and manage the trust property for benefit of the beneficiaries

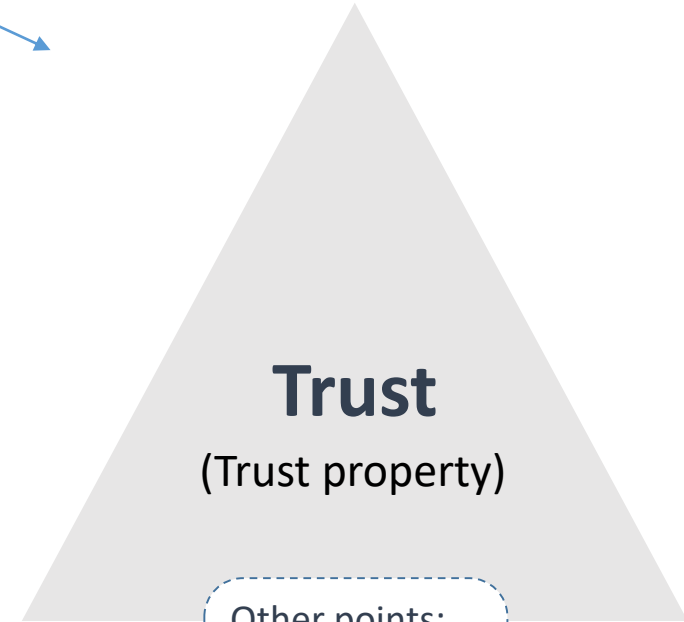


Trustees



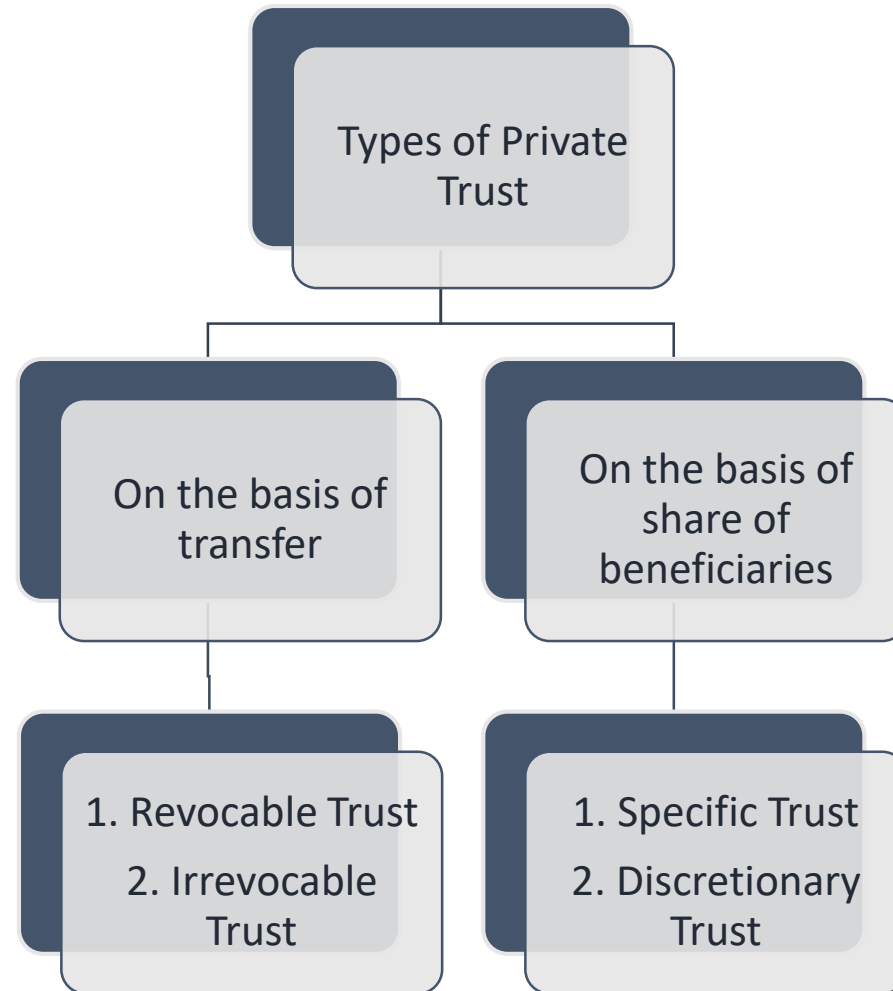
Are the persons for whom the Trust is settled and entitled to the benefits of the Trust

Beneficiaries



- Other points:
1. Duration
 2. Registration
 3. Objects

Types of Private Trust



Taxation of Private Trust

Transfer

Income

Distribution

Section 56(2)(x) of the IT Act provides that:

- where any person receives any property (defined under the IT Act)
- without consideration or for consideration lower than fair market value of the property (computed in the prescribed manner)
- the excess of consideration received over fair market value of property
- is deemed as income in the hands of the recipient

Specific exemption provided under proviso to section 56(2)(x):

- Clause (X) of proviso to section 56(2)(x) states that this section shall not apply to any sum of money or any property received from an individual by a trust created or established solely for the benefit of relative of the individual

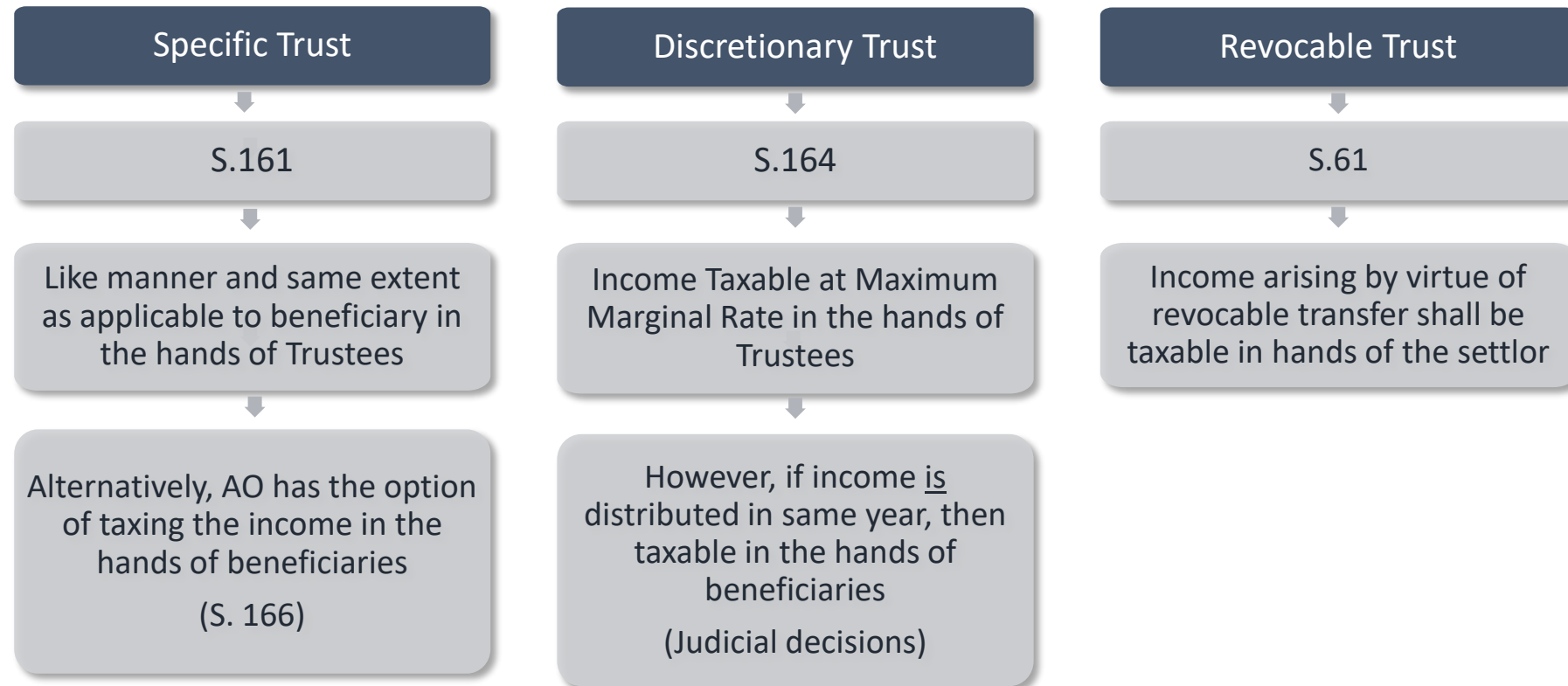
Stamp duty:

- Stamp duty implications on transfer of certain asset classes

Taxation of Private Trust



Where all the beneficiaries are individuals, for levy and recovery of tax, the Trust is considered as an individual



Taxation of Private Trust

Transfer

Income

Distribution

- Once such income is taxed in the hands of the Trust, when distributed in subsequent year(s) to the beneficiaries should **not be again taxable** in the hands of beneficiaries.

Interplay with other Laws

FEMA

- Residential status of the Trust
- Non-resident beneficiaries
- Non-resident Trustees

SEBI

- In case of listed entities, transfer to newly formed Trusts in excess of the prescribed threshold of 5% by the promoters may trigger open offer requirement under Regulation 3(3) of SEBI Takeover Code
- On prior application, SEBI may grant exemption from the open offer subject to certain prescribed conditions

Offshore Trusts

- Indian tax and FEMA perspective
- Tax laws of foreign jurisdiction
- DTAA and MLI provisions

Key takeaways

- Immense benefit in succession planning – do not neglect
- Succession planning of business imminent
- Shift to simpler and transparent ownership structures
- Ensure participation and align with all stakeholders and successors
- Initiate structured communication with next generation
- Engage with specialist consultants who bring value and objectivity
- Optimize not just for tax but other tangible and intangible benefits
- Revisit at periodic intervals and at all important events



When You Win,
We Win!



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