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# HANDLING PROPERTY TRANSFER IN INDIA FOR SMOOTH SUCCESSION TO CHILDREN

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*By STC Helping Hands*

This document outlines the legal frameworks, policy structures, and institutional guidelines governing property ownership transitions in India for smooth succession to children requires navigating strict legal frameworks, while aligning with state-specific stamp duty policies and executing institutional guidelines mandated by local Sub-Registrar Offices and municipal revenue departments



This guide was created to support Telugu families in Sweden for the properties they have in India.

There are 2 categories

1. Your owned properties : Described below how to handle, different options and scenarios
2. Your parents owned properties: You can not do anything for the properties you are holding.

“You” means you as a person(parent) living in Sweden(any place living abroad).

- Category-1 : Your owned properties with 2 options
- Option-1: Plan Ahead.
- Option-2: If nothing is done.

Transferring immovable property (land, house, flat, etc.) from parents to children in India involves multiple legal processes depending on whether there is a **will, a gift deed, or no legal document at all**.

## 1. Plan Ahead

### a. Executing a Will

A legal declaration of how a person’s property should be distributed after their death.

*Key Points:*

- Must be signed by the testator (property owner) and attested by two witnesses.
- Does not require mandatory registration, but registering with the Sub-Registrar adds authenticity.
- A will can be changed or revoked anytime before the person’s death.

*Process:*

1. Draft the will (preferred on stamp paper).
2. Mention all property details clearly (survey numbers, flat registration numbers, etc.).
3. Include details of beneficiaries (children, spouse).
4. Have it attested by two independent witnesses.
5. **Optional:** Register the will with the local Sub-Registrar.

### b. Gift Deed (during lifetime)

Transfer of property ownership during the lifetime, without monetary consideration, advantage is that Immediate transfer of ownership and avoiding disputes after death, can not be taken back, once done it is done.

*Requirements:*

- Drafted on stamp paper.
- Must be registered with Sub-Registrar.
- Attracts stamp duty.

### c. Joint Ownership / Nomination



- Joint Ownership: Parents can add children as co-owners. On death, the surviving owner automatically becomes the sole owner.
- Nomination: For properties like cooperative housing society flats, a nomination can be made. The nominee is not necessarily the owner but a caretaker until legal heirs are identified.

## 2. If Nothing Is Done (No Will, No Gift Deed)

If the parent passes away intestate (without a will), the property is distributed as per the Hindu Succession Act, 1956 (or applicable personal law – Muslim, Christian, Parsi succession laws differ).

- **Class I Legal Heirs :**

- Children (sons and daughters, including married daughters)
- Co-partner
- Mother of the deceased

*They inherit equal shares in the property. (Need to get more details if the properties are divided into among all the different classes or not?)*

- **Process for the Children to claim the property:**

- Obtain Death Certificate of the deceased.
- Collect Ownership Documents of the property (sale deed, patta, khata, tax receipts).
- Legal Heir Certificate / Succession Certificate:
  - Apply through the Tehsildar/Municipal office or court.
  - Proves who the legal heirs are.
- Mutation of Property Records:
  - Apply to the local municipal/revenue office to update records in heirs' names.
  - Submit death certificate, succession/legal heir certificate, property deed.
- Registration / Partition Deed:
  - If multiple heirs, execute a partition deed (registered) to divide shares, or sell and distribute proceeds.

- **If There is a Co-Partner (Spouse):**

- The surviving spouse is a Class I heir and gets an equal share with children.
- If property is jointly owned (with spouse), the spouse becomes the sole owner automatically.

### When to Consult a Lawyer:

- If there are multiple heirs with disputes.
- For drafting and registering wills or gift deeds.
- For court-issued succession certificates (mandatory for bank deposits, securities).
- To resolve complications with ancestral properties (joint family properties).



### Checklist for Smooth Transfer:

- Draft and register a will (preferable for flexibility).
- Or execute a gift deed if immediate transfer is intended.
- Maintain updated property records and pay property taxes regularly.
- Keep copies of ownership documents safe and accessible.
- Register nominations in housing societies, banks, insurance, etc.
- Ensure legal heir certificates can be easily obtained by keeping records of family members.

### Quick Reference: Documents Needed

- Property title deed / sale deed
- Encumbrance certificate
- Khata/Patta/Mutation records
- Tax paid receipts
- Parent's death certificate
- Aadhar/PAN of heirs
- Legal heir certificate / succession certificate

## WILL

I, \_\_\_\_\_, son of Shri \_\_\_\_\_, aged \_\_ years, resident of \_\_\_\_\_, do hereby revoke all my former Wills, Codicils and Testamentary dispositions made by me. I declare this to be my last Will and Testament.

I maintain good health, and possess a sound mind. This Will is made by me of my own independent decision and free volition. Have not be influenced, cajoled or coerced in any manner whatsoever.

I hereby appoint my \_\_\_\_\_, as the sole Executor of this WILL.

The name of my wife is \_\_\_\_\_. We have two children namely, (1) \_\_\_\_\_ (2) \_\_\_\_\_, I own following immovable and movable assets.

1. One Flat No. \_\_\_\_ in \_\_\_\_\_.
2. Jewellery, ornaments, cash, National Saving Certificate, Public Provident Fund, shares in various companies, cash in hand and also with certain banks.

All the assets owned by me are self-acquired properties. No one else has any right, title, interest, claim or demand whatsoever on these assets or properties. I have full right, absolute power and complete authority on these assets, or in any other property which may be substituted in their place or places which may be Acquired or received by me hereafter.



I hereby give, devise and bequeath all my properties, whether movable or immovable, whatsoever and wheresoever to my wife, \_\_\_\_\_, absolutely forever.

IN WITNESS WHEREOF I have hereunto set my hands on this \_\_\_\_ day of \_\_\_\_, 2000 at \_\_\_\_\_.

#### TESTATRIX

**SIGNED by the abovenamed Testatrix as his last WILL and Testament in our presence, who appear to have perfectly understood & approved the contents in the presence of both of us presents, at the same time who in his presence and in the presence of each other have hereunto subscribed our names as Witnesses.**

#### WITNESSES :

1.

2.