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Wed, Jan 22 2014. 06 08 PM IST

# Managing intangible legacies

Sometimes, the most well thought out succession plans are the victims of changing circumstances

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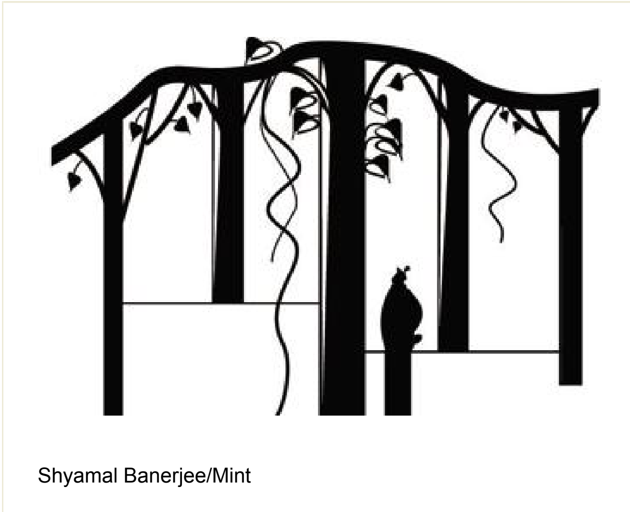

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We are often our worst obstacles, and this also holds true even when we put together succession plans. Sometimes, the most well thought out succession plans are the victims of changing familial or socio-economic circumstances. Globalization, for example, has single handedly changed the contours of the planning exercise by contributing to a spike in the movement of money and people across borders. This was impossible to anticipate even a few decades ago.

The nature of wealth itself has seen change. It is more common than ever before for people to hold valuable intangible assets such as intellectual property, digital assets such as passwords or digital currencies such as Bitcoins. And yet, traditional succession planning techniques such as wills or trusts rarely factor in these forms of wealth, nor do prevalent laws allow for them to be transmitted smoothly. Will writers typically focus on properties such as real estate, cash, jewellery or financial investments; and turn a blind eye to intangible assets, relegating them to the portion of the will that deals with residuary interests. Intangibles are hardly monoliths though, nor are they bound by the same laws or principles of succession.

Let us take the case of trademark succession. Most Indian businesses today are family run, and several of them own valuable trademarks. However, when families distribute businesses among their children, rarely do they invest time into considering how the trademark will be provided for. Take the example of the Sumeet brand of electric mixers. They used to be produced by the Power Control Appliances company, whose proprietor, Madhuri Mathur, owned the Sumeet trademark. While dividing her assets, she bequeathed the ownership of the Power Control Appliances company to one son, and the trademark to another son, who set up Sumeet Machines. Sumeet Machines manufactured other home appliances (excluding mixers). The dispute began when Sumeet Machines began manufacturing mixers similar to those sold by Power Control Appliances, which had the brothers fighting all the way to the Supreme Court, a legacy dispute that broke up not only the family but also the brand.

The purpose of a trademark is to represent the brand in a particular product or service and to give the customer an indication of the manufacturer of the product or the service provider. This can be problematic when a family wants to divide multiple businesses among children, but only owns one valuable brand. One solution may be to register separate marks across businesses (Dabur being split into Dabur Vatika, Dabur Hajmola, etc.). Another option would be to divide geographical usage, as was done for the Haldiram trademark. One heir was granted permission to use the trademark only in Kolkata (where the mark was not recognized), while the other was allowed to own the registered mark for use in the entire country except Kolkata.

Over the next few generations, when the market for the Haldiram products became extremely profitable in West Bengal, the third generation descendants carrying on business in Kolkata sought to register the mark in Kolkata. However, the registration of the trademark was subsequently challenged as having been made by fraud, which ultimately led to the cancellation of the trademark on the basis that Kolkata was only a “permitted user” and could not claim to be the proprietor of a trademark for the purposes of registration.

The Haldiram case may be an example of a situation where, in spite of a profitable market, the ability of an heir to fully realize the value of an asset hits a roadblock because the law is not in consonance with the intention of the bequeather at the time when the asset was bequeathed. If the intention was to allow for the West Bengal branch to derive a certain percentage of monetary benefits, a solution may have been to have the mark housed in a trust instead of giving complete ownership to one branch of the family. This would have also solved another issue, which is that trademark law mandates that joint owners of the mark use the mark jointly. When relationships are not amicable, it makes far better business sense to have the mark professionally managed to avoid dilution in value, with the economic proceeds being divided by a trust.

On the same note, the planning required for other kinds of intellectual property could involve considerations that are very different—an author’s copyrights, for example, would be planned for differently from the rights of descendants of celebrities to derive monetary benefits from biopics. (California has now introduced an image rights regime conducive to all its celebrities, by allowing publicity rights to be considered

bequeathable “intellectual property”, but Indian law does not specifically deal with this yet.)

An even more difficult territory to navigate is that involving third party intermediaries. Last year, it was reported that Bruce Willis was looking to sue Apple for preventing him from bequeathing his iTunes library to his children. Apple uses digital rights management technologies (DRM), which limit transfers between users, even within the family. While the story was later stated to be a rumour, it did cast the spotlight on a larger issue: what would be the impact of DRM on the future? Would e-libraries mean that we don’t have access to the the books or music that our loved ones leave behind?

An e-library may not be significant in terms of economic value, but not all succession planning should have to do with monetizable wealth. In fact, the hoops that we jump, no matter how valuable the asset, are less about the transfer of money and more about our hope that our heirs will be happy.

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