# India's changing family dynamics present growth opportunity

*The growing complexity of Indian families, evidenced by rising divorce rates and internal disputes, is boosting demand for trust structures to ensure wealth is not eroded, says Bijal Ajinkya at Khaitain & Co.*

Demand for trust structures is increasing in India as succession is no longer just a matter of leaving a will and waiting for the courts to determine its legitimacy, according to Bijal Ajinkya, international tax and investment funds partner at lawyers Khaitan & Co.

"There is now more need for personal asset planning than there was before, particularly since families have become truly global, with beneficiaries and assets throughout the world," she says.

"We have been helping a lot of families with advice on a comprehensive estate plan, including the preparation of trusts and wills."

One source of families' growing demand for trust structures is patriarchs' growing realisation that they cannot keep business and personal assets in one entity. If they do their personal wealth can be caught up in legal proceedings if a case is brought against the business.

"We have seen many patriarchs of successful businesses monetise their wealth creation in their lifetime and create family offices where they do not have any heir apparent for the continuity of their business who is either capable of running it or interested in the same," says Ajinkya, a specialist in legal and tax issues around asset protection and succession planning who counts educational and charitable trusts, individuals, and local as well as international estates, among her clients.

## DIVORCE AND OTHER DISPUTES

The second generations of wealthy Indian families are also looking at planning, Ajinkya says, as they have seen their parents' hard-earned assets eroded due to internal family disputes.

"One specific area of concern is matrimonial disharmony," she explains. "Hence we often have families who engage in externsive pre-marital asset planning and protection structures to

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Khaitan & Co

protect their assets in the event of a marital breakdown."

According to divorcepad.com, during the 1990s there were 1,000 divorce cases brought each year in Delhi, but by the end of the 2000s that figure had risen to 7,000.

The number of divorces is only going to go up, according to Ajinkya, and is already causing a surge in demand for pre-marital trusts.

"As divorce is no longer taboo, families accept that there could be separations that erode that wealth," says Ajinkya, who joined Khaitan & Co in 2013 after a 12-year stint at Nishith Desai Associates. At that firm she rose to become co-head of the firm's international tax and funds practice.

Her new firm, founded in 1911, has won a host of awards in recent years, including VC Circle's best private equity law firm, *Indian Business Law Journal*'s best overall firm and capital markets law firm of the year (2014) in the Corporate INTL Global Awards.

"A third major source of demand for trusts is the protection of the wellbeing of a minor child in the event of the untimely death of the parent," Ajinkya says.

"Indian laws have protective mechanisms for preserving assets which are inherited by a minor child and are locked in by the court until the child reaches majority. Families therefore seek to create trusts to hold property during the minority of their children so that the courts do not assume the property as a custodian in the event of a child being a direct heir of the estate of a deceased parent."

Trusts that deal with this issue also have to take India's rule against perpetuity into account.

This rule means they can only exist for the life of the settlor plus the time it takes for the minor to reach 18, Ajinkya points out.

As well as the demand for new trust structures, there are now more issues around existing ones, including some questions over the legitimacy of some asset transfers. This has hit the headlines in recent times with the case of 218 blocks in Indian coalfields that had been dispersed to companies over the last 20 years but have now been ordered to be returned to the government.

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## STILL AN EMERGING INDUSTRY

With rising demand for new trusts, and questions about existing structures, the last five years has seen a surge in the professional trustees, according to Ajinkya. However, she warns, it remains an emerging industry, so both advisers and clients should tread carefully.

For her part, Ajinkya spends time and effort working out precisely what a client's requirements are when meeting them for the first time, as she explains: "When we approach clients we want to understand the family and their needs.

"Often these can be very diverse, particularly with families that are just entering wealth planning and have not had time to enjoy their money yet." Wealth managers can take advantage of the desire to split the trustee and management function that has arisen after families who have tried to take on both roles themselves got their "fingers burned", she adds.

"It makes sense for families to ask the trust adviser to speak to their private banker or wealth manager to understand what they have done in the trust space, Ajinka says. "Some wealth managers may not have acted as trustees but they will know the wealth planning market inside and out."

One area where it might be difficult for a wealth manager to make inroads, however, is the UHNW segment, as most of the families within it will already have trust structures in place, and recruit investment managers directly into their family offices.

India's second-tier cities, where there is so far little awareness of the concept of wealth planning or the need for trust structures, is likely to be the next big area of growth for wealth planning, according to Ajinkya. Under the government's ranking system, there are 69 of these second tier, or 'Y cities', including places like Agra and Lucknow. ■