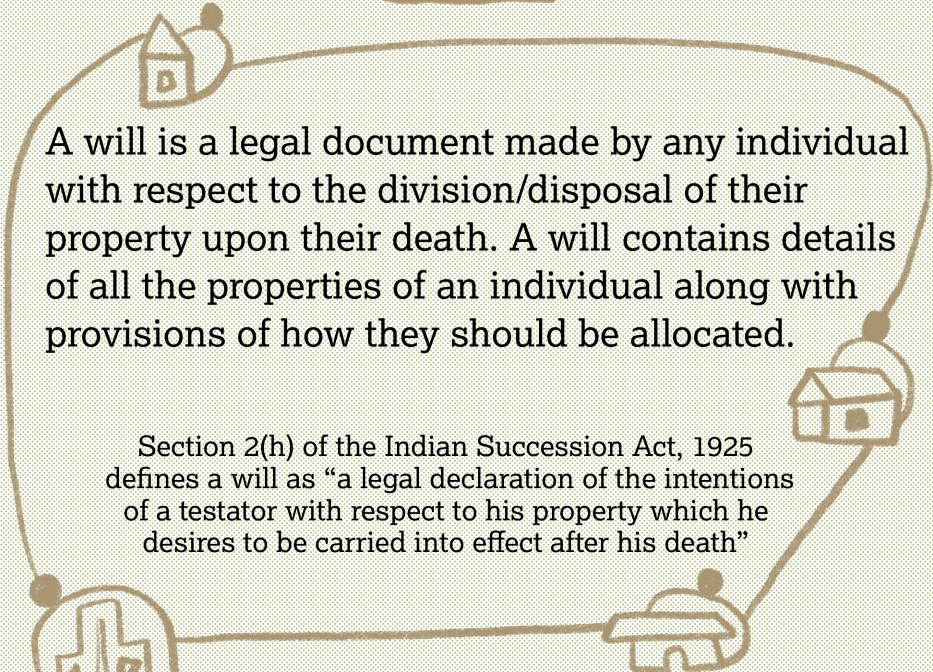


Procedures

Wills



A will is a legal document made by any individual with respect to the division/disposal of their property upon their death. A will contains details of all the properties of an individual along with provisions of how they should be allocated.

Section 2(h) of the Indian Succession Act, 1925 defines a will as “a legal declaration of the intentions of a testator with respect to his property which he desires to be carried into effect after his death”



If a person leaves behind a will upon their death, then the property is disposed according to the instructions in the will. This is called a Testamentary Succession and the person making the will is called a testator while the one who receives the properties is called the legatee.

On the other hand, if a person dies without preparing a will, their property will devolve upon their successors by rules of Intestate Succession. Intestate succession is governed by different personal laws in India.

Characteristics of a Will

1. It takes effect only after the death of the testator.
2. It is revocable any time before the death of the testator.
3. It must relate to disposition* of property owned by the testator or may be owned in future at the time of their death

**The distribution or transfer of property or money to someone, especially by Will*

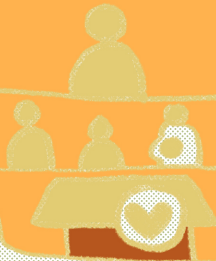
Who can make a Will?

OWNER



1. The person should be major in age i.e. the person should have completed 18 years of age or completed 21 years in cases a guardian has been appointed by Court.
2. The person should be in complete ownership of all property mentioned in the will
3. The person should be of a sound mind at the time of making the will.

Who can be a legatee?



1. Any person having the capacity to hold the property can be legatee, they may or may not be family members of the testator
2. Legatee can be a major or minor or even an unborn child
3. Legatee can also be charitable or religious institution

Execution of a Will

WILL

Upon the death of the testator, an executor of the will or an heir of the deceased testator can apply for a Probate. Simply put, a probate is a copy of will certified by a competent court.

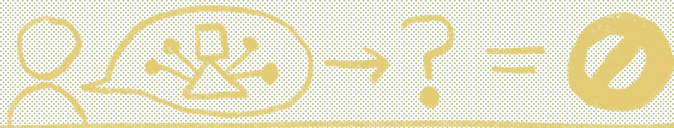
An Executor is a person appointed by the testator to execute the contents of the will. In cases where the testator has failed to appoint an executor or there is no consensus amongst the heirs as to who will be the executor, then the competent court appoints a person to execute the will of the deceased. Such a person appointed by the court for execution of the will of the deceased is called as Administrator.

If there are no objections to the will, the court will grant a probate.

Execution of a Will

Restriction on certain bequests under Indian Succession Act, 1925:

● Bequest to person not in existence at the time of testator's death:
When a bequest is made to a person of particular description and no such person exists at the time of death then such a bequest is void.



● Rule against Perpetuity:
The rule restricts the testator from creating an interest in the property beyond the lifetime of persons living at the time the will is written. This rule is based on the considerations of public policy because no property can be made inalienable.



Essential Ingredients

Statement declaring the document to be a will

Declaration of the name and contact details of the testator



Declaration of fitness and soundness of mind



Identification of family members, with names and relationship



Identification and description of assets



Two independent witnesses to sign the will (attestation)




Signature of the testator


Best Practices:

SIMPLE भासात


A will must be written in simple language without any technical terms. It can be drafted in any language.



Give a detailed description of all the property, including address and mode of acquisition in case of the immovable property or bank details in case of cash or jewellery.



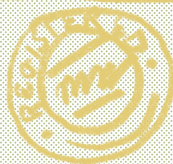
While a will without an executor will not be invalid, it is always better to appoint an executor to the will. This can be a close family member or a completely independent person.



Ensure that the witnesses are not beneficiaries of the will as this can make the will easier to challenge.

WILL + CODICIL

A codicil, which is a testamentary document but not the same as the will, may be prepared in case any amendment is to be made to the will. For e.g. adding or deleting legatees, change of executors, etc.

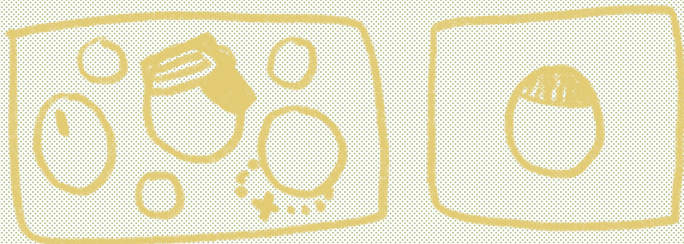


To ensure complete authenticity, have the will registered at the registrar's office.

FAQs

1) Which law governs wills in India?

A) The Indian Succession Act, 1925 governs testamentary succession for Hindus, Sikhs, Christians and others while the personal law of Shariat covers Muslims. While most provisions remain the same, the distinguishing feature of Shariat law is that only one-third property can be disposed by a will and the remaining has to devolve equally upon the heirs.



FAQs

2) Can a will be revoked?

A) Yes, a will can be revoked at any point by the testator during their lifetime. Section 70 of the Indian Succession Act, 1925 provides for certain situations where a will be automatically revoked:

- A will which is made before marriage stands cancelled or revoked by subsequent marriage of the testator.
- If the contents of a subsequent will or codicil are inconsistent with the previous will, then the previous will stands revoked.

FAQs

3) In what situations is a will invalid?

A) If it is found that a will or any part of it has been caused by fraud or coercion, it can be declared void or invalid.

4) Can one challenge a will?

A) Anyone with an interest in the will/properties can challenge a will by filing a suit. However, a complete stranger cannot challenge a will.