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HT Estates

Legal Q & A

# Wills and succession

**How is a will different from a mere wish or a desire or an intention? Does everyone need to make a will? Can one do without it?**

Sec.2(h) of the Indian Succession Act, 1925 defines a will as being "a legal declaration of the intention of a 'testator' (the person making a will) with respect to his property which he desires to be carried into effect after his death."

A legal will therefore amounts to something more than just a desire or an intention. It must relate to the property that a person has or expects to have at the time of his death and must state clearly how he wants the property to be dissolved.

A will is simple to make and the formalities are few. It must be written, signed and witnessed by two persons. A will need not be made on stamp paper. It does not have to be registered but the person making the will has the option of registering it, in case he wants to prove its authenticity.

Anyone of sound mind and who is a major (over 18 years in case of females and over 21 in case of males) may make a will. A physical disability such as being deaf or dumb or blind does not incapacitate a person from making a will.

A will may set out a list of assets in detail or may be general. For instance, the testator may state "I have the following assets... I bequeath asset A to my wife, asset B to my daughter and asset C to my son and the residue to my wife."

Alternatively, the testator may bequeath everything to his wife or may bequeath a percentage of everything to his wife and some proportion to each of his children.

Some practical issues that come up are that sometimes a person may wish not to give an asset permanently or absolutely to someone, but may wish to give the right of use of the same. This is known as a life interest or as a limited interest. For instance, a person may write in his will "I give to my daughter-in-law the right to use the flat for her lifetime and thereafter I bequeath the flat to my grandson provided however that my grand-daughter shall have a right to reside in the flat until she gets married."

Even if one has made a will, one may later make a codicil, i.e, a supplement to a will. This could be because the testator wishes to amend only certain bequests and not others.

The law that governs making a will is the Indian Succession Act, 1925. This sets out the procedure and also certain other rules of interpretation in the manner of making the will. However, this Act sets out not only the procedure but in the case of certain communities such as Christians, Parsis and Jews even sets out the manner of succession if there is no will, i.e if a person has died intestate.

In the case of Hindus, the Hindu Succession Act, 1956 provides that if a Hindu male dies intestate, his property will devolve in a particular manner and in the case of a Hindu female dying intestate, her property will devolve in a different manner.

Some sects of Muslims are not permitted to make a will in respect of all their assets. Part of their estate may be bequeathed by them to whomsoever they wish and the rest of it will devolve in accordance with the law of succession, as if they had died intestate. If, however, a marriage is solemnised, or later registered, under the Special Marriage Act, a person may get over this disability and may be able to bequeath his or her entire estate.

It can be very important and useful to make a will and since a will is not usually binding and may be altered or revoked by the testator and a fresh will made, one must consider whether a will ought to be made. One may do it even at a young age – the fact that you make a will doesn't mean that you are over the hill! ■

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