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Statutory requirements for execution of a Will and the evidentiary value of a Will.

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Principal District and Sessions Court
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CHAPTER I

INTRODUCTION

A Will is a testamentary instrument governed strictly by statutory mandates, as it operates only upon the death of the testator and is incapable of confirmation by the author thereafter. Recognizing the susceptibility of testamentary dispositions to fraud, coercion, and fabrication, the legislature has prescribed mandatory statutory requirements for the execution of a Will. These requirements, embodied primarily in succession and evidence statutes, are intended to ensure that the Will represents the free and conscious act of a competent testator. Compliance with such formalities is not merely procedural but substantive, as non-observance renders the Will legally invalid. Equally significant is the evidentiary value of a Will, which pertains to the legal standards and modes of proof required to establish its due execution and attestation before a court of law. Given that the testator is no longer available to testify, the burden lies heavily on the propounder to prove the Will in accordance with statutory provisions and settled judicial principles. Therefore, the statutory requirements for execution and the evidentiary value of a Will together constitute the legal framework governing its validity and enforceability.



CHAPTER II

DEFINITION OF A WILL

Will is defined under section 2(h) of The Indian Succession Act, 1925 as follows :-

Section 2(h) “Will” means the legal declaration of the intention of the testator with respect to his property which he describes to be carried into effect after his death.

The contents and chief characteristics features of a will are:

- **Legal declaration** – A Will is a declaration by which a living person (called testator or testatrix; we use the term “testator” to refer to both male and female) declares his / her desires or intentions. A Will is never an agreement or contract or settlement. It is for this reason that the beneficiaries of a Will should not be parties to the Will. The declaration must be legal. A declaration that is illegal either by way of the ultimate objective or in some other way will not be considered as a Will.
- **Intention of testator** – A Will is a declaration of intention of the person making the Will. By definition, intention relates to the future and is different from statement of narration of facts as at present. A Will that only narrates the present state of affairs and does not carry a clear exposition of the intention of the testator is not a Will. For example, if a Will made by a wife stating what her deceased husband always desired before death is not a Will; since it carries intentions of the testator’s deceased husband and not of the testator.
- **With respect to his / her property** – A Will can only be made with respect to the property that the testator owns or has rights over. The simple rule is that one can only give what one has. There is no way that one can give away something that one does not have. The expression "Property" is not defined in any enactment. Hence, one has to go by the general meaning of that expression. Broadly, it can be stated

that any asset in respect of which the Testator has acquired title can be covered by the expression his property.

- ***Desires to be carried into effect after his/her death*** – The Will must state clearly that the testator desires that it comes into effect after his / her death. A renunciation during one's lifetime does not amount to a Will. If the document desires to partition of property among the testator's sons while the testator is still living, the document cannot be called a Will. By the same logic, the beneficiary or legatee cannot claim any right or benefit during the lifetime of the testator.



Applicability of Indian Succession Act 1925

As far as applicability to religion is concerned, the concept of Will was unknown to Hindu Law prior to 1870. In the year 1870, the Hindu Wills Act was enacted. Subsequently, it was repealed by Indian Succession Act 1925. As per Section 57 and 58 of the Act, subject to schedule III, part III i.e., testamentary succession, is applicable to Hindu, Buddhist, Sikh or Jain.

57. Application of certain provisions of Part to a class of wills made by Hindus, etc.—The provisions of this Part which are set out in Schedule III shall, subject to the restrictions and modifications specified therein, apply—

- (a) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain, on or after the first day of September, 1870, within the territories which at the said date were subject to the Lieutenant-Governor of Bengal or within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Madras and Bombay; and*
- (b) to all such wills and codicils made outside those territories and limits so far as relates to immovable property situate within those territories or limits;*
- (c) to all wills and codicils made by any Hindu, Buddhist, Sikh or Jain on or after the first day of January, 1927, to which those provisions are not applied by clauses (a) and (b) :*

Provided that marriage shall not revoke any such will or codicil.

Similarly, section 30 of Hindu Succession Act crystallizes that, any Hindu may dispose of by will or other testamentary disposition any property. Apart from Hindus, testamentary succession is applicable to Christians also without any restrictions as stated above i.e., schedule III.

SCHEDULE III

(PROVISIONS OF PART VI APPLICABLE TO CERTAIN WILLS AND CODICILS
DESCRIBED IN SECTION 57)

Sections 59, 61, 62, 63, 64, 68, 70, 71, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 95, 96, 98, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189 and 190.

As far as Muslims are concerned, the Indian Succession Act 1925 is not applicable. It is governed by their personal Law. As per rule 118 of Mulla's Principles of Mahomedan Law, a Mahomedan cannot by Will dispose of more than 1/3rd of surplus of his estate after payment of funeral expenses and debts. However, as per explanation of said rule, bequests in excess of the one third cannot take effect unless the heirs consent. Summarily, Hindu, Buddhist, Sikh, Jain and Christian can dispose of their properties by Will or other testamentary dispositions, unlike conditions in Mahomedan law.



Who can make a Will

Section 59 of Indian Succession Act - Every person of sound mind, who is not minor, may dispose of his property by Will.

This Section has four explanations, which provide as follows;

- i). A married woman may dispose by Will any property, which she could alienate by her own act during her life
- ii). A person who is deaf/dumb/blind can make a Will, if he/she is able to understand what he/she is doing
- iii). An insane person can make a Will during the period when he is of sound mind
- iv). Any person who is not capable of knowing what he/ she is doing by reason of illness/intoxication/ any other reason, cannot make a Will.

There are only two considerations to determine capacity for making a Will. The first is that the person should be of sound mind and the second is that he / she should not be a minor.

Minor - Section 4 of The Hindu Minority and Guardianship Act, 1956 (Act No. 32 of 1956) defines “minor” means a person who has not completed age of 18 year. Clearly, anyone who has not completed the age of eighteen years is not capable of making a Will

The issue of “person of sound mind” is a bit more complicated. A person cannot make a Will if he/she is intoxicated in any way. If a person was a known alcoholic and a Will purporting to be the person’s Will is brought after the person’s death, it will need to be proved beyond doubt that the person was not under the influence of alcohol at the time of executing the Will.

Often old persons lose some mental faculties due to age or general weakness. In all such cases, the key question before a court examining genuineness of the Will shall be to determine if the testator, despite his / her old age, was “capable of exercising a judgement as to the proper mode of disposing of his property”.

It may be mentioned here that a person need not be in sound mind continuously at all times during the period when he / she makes a Will. The key consideration is to be in sound mind at the time of making the Will and also being in a position of understanding the contents of the Will.



NATURE OF PROPERTIES

Generally speaking, all assets which are owned by the Testator can be given away by Will. Section 30 of the Hindu Succession Act, 1956 provides, inter alia, that any Hindu may dispose of by Will or other testamentary disposition any property which is capable of being so disposed of by him (or her), in accordance with the provisions of ISA or any other law for the time being in force and applicable to Hindus.

Coparcenary property - An explanation to the Section 30 explains that the interest of a male Hindu in a Mitakshra Coparcenary property shall, notwithstanding anything contained in this Act or in any other law for the time being in force, be deemed to be property capable of being disposed of by him or by her.

In conclusion, broadly speaking, person can dispose of by Will all property which is owned by him, i.e. the property in respect of which the title has vested in him. The nature of assets, i.e. immovable or movable is not at all relevant. Hence, immovable property, movable assets, such as household equipment, vehicles, cash, ornaments, securities in the form of shares, bonds, units in mutual funds etc, share in HUF property can be given away in the Will.

It is important to note that Will can also cover future properties, i.e. the properties which may be acquired by the Testator after execution of the Will. However, it is necessary to take note of certain aspects, which are discussed below :-

(i) **Immovable property** The expression "immovable property" is generally understood as meaning, a plot of land/ constructed house/ flat/ apartment etc.

However, it needs to be clarified that "interest in immovable property" is treated as "immovable property" by the Courts. For instance, if the Testator has acquired a plot of land on Lease and the term of the Lease has not expired, the Testator can, bequeath his interest in the unexpired period of the Lease. Needless to add, such right can be exercised, subject to the terms of the Lease and provisions of applicable law.

(ii) Jointly owned property Very often, particularly in the case of inherited immovable property, though the property is owned jointly by the heirs, the shares of each of the joint owners is not determined. In such situations, the Testator can give by Will only his undetermined share in the said property.

The legatee/s in the Will then step into the shoes of the Testator, after the death of the Testator and become co-owner(s) of the said property along with other owners.

(iii) Flat in housing co-operative society or Apartment Owners Association Generally speaking, the housing cooperative societies or associations of apartment owners require their members to nominate another person for effecting transfer of the interest after their death.



CHAPTER III

MODIFICATION AND REVOCATION OF WILL

A Will can be revoked or modified at any time during the lifetime of the testator who made the original Will. Revocation as well as modification process is the same as that for making a Will. As in making of the Will, in case of revocation or modification the key considerations are (a) sound mind of the testator (b) testator to sign in front of the witnesses and (c) the witnesses to sign in front of the testator. Revocation can either be by writing or by burning, tearing or otherwise destroying of the Will by the testator or by some other person under the directions of the testator in the presence of two or more witnesses. Relevant sections of The Indian Succession Act read as follows:

Section - 62. Will may be revoked or altered—*A will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by will.*

Section -70. Revocation of unprivileged will or codicil.—*No unprivileged will or codicil, nor any part thereof, shall be revoked otherwise than by marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction with the intention of revoking the same.*

71. Effect of obliteration, interlineation or alteration in unprivileged will.—*No obliteration, interlineation or other alteration made in any unprivileged will after the execution thereof shall have any effect, except so far as the words or meaning of the will have been thereby rendered illegible or undiscernible, unless such alteration has been executed in like manner as hereinbefore is required for the execution of the will: Provided that the will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses is made in the margin or on some other part of*

the will opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

Revoking of Will by Marriage

In many countries and communities across the globe, marriage of a testator revokes any Will created by the testator before marriage.

69. Revocation of will by testator's marriage.—*Every will shall be revoked by the marriage of the maker, except a will made in exercise of a power of appointment, when the property over which the power of appointment is exercised would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.*

The above section makes it clear that testator's marriage revokes a Will made prior to marriage. However, the noticeable fact is that the above section does not apply to Hindus. The Indian Succession Act is an omnibus act with application to different communities. Hindus are covered only by the sections mentioned in Schedule III of the Act. Section 69 is absent from the list of sections given in Schedule III. To make it even more clear, section 57 of The Indian Succession Act has a provision which makes it amply clear that a Will shall be not be revoked by marriage.



CHAPTER IV

MANNER OF EXECUTION

For the purpose of determining the procedural requirements of a Will as per The Indian Succession Act, 1925 it is important to understand the difference between a privileged and unprivileged Will.

65. Privileged wills.—Any soldier being employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or any mariner being at sea, may, if he has completed the age of eighteen years, dispose of his property by a will made in the manner provided in Section 66. Such wills are called privileged wills.

A privileged Will can be in writing or can be oral. A privileged Will written in his own hand by the Testator need not be signed. A privileged Will signed by the Testator does not need attestation by witnesses. Privileged Will is a special Will made in extraordinary circumstances like war or dangerous expedition. **Most importantly, Hindus are not permitted to make privileged Wills since the relevant sections 65 and 66 of The Indian Succession Act, 1925 are not listed in Schedule III of the Act.**

Unprivileged Will

Every person who is not entitled to make a privileged Will can only make an unprivileged Will. In other words, Hindus can only make unprivileged Wills.

Essential procedural requirements of an unprivileged Will can be summed up as follows:

- Must be in writing
- Signed by testator in the presence of witnesses
- Signed by two or more witnesses in presence of the testator

Relevant section of The Indian Succession Act, 1925 reads as follows:

“63. Execution of unprivileged Wills.—Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:—

(a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

(b) The signature or mark of the testator, or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.

(c) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.”

As seen above, Section 63(c) enumerates distinct situations:

A is the testator of the Will in question. B and C have signed the Will. For B and C to qualify as attestors,-

Situation 1: Each of them has to have seen A sign the will or put his mark on it;

OR

Situation 2: They should have seen some other person, let's say D sign the will in the presence of and on the direction of A;

OR

Situation 3: They ought to have received a personal acknowledgment from A to the effect that A had signed the Will or has affixed his mark thereon;

With the use of the conjunctive, 'and' one further stipulation has been provided: B, C, D or any other witness is required to sign the Will in the presence of A however it is not necessitated that more than one witness be present at the same time.

The statutory language also clarifies that B and C, the attestors, are not required to follow any particular prescribed format.



CHAPTER V

PRINCIPLES REQUIRED FOR PROVING THE VALIDITY AND EXECUTION OF THE WILL

Important Provisions regarding requirements in law to prove a Will.

Section 68 of the Evidence Act reads as under:

“68. Proof of execution of document required by law to be attested. - If a document is required by law to be attested, it shall not be used as evidence until one attesting witness at least has been called for the purpose of proving its execution, if there be an attesting witness alive, and subject to the process of the Court and capable of giving evidence:

Provided that it shall not be necessary to call an attesting witness in proof of the execution of any document, not being a Will, which has been registered in accordance with the provisions of the Indian Registration Act, 1908 (16 of 1908), unless its execution by the person by whom it purports to have been executed is specifically denied.”

Section 63 of the Succession Act prescribes the mode and method of proving a Will and, to the extent relevant, it reads as under: -

“63. Execution of unprivileged Wills. - Every testator, not being a soldier employed in an expedition or engaged in actual warfare, or an airman so employed or engaged, or a mariner at sea, shall execute his Will according to the following rules:-

(a).

(b).

(c). The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of his signature

or mark, or the signature of such other person; and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

On a combined reading of Sec 63 of the Indian Succession Act with Sec 68 of the Evidence Act, it appears that a person propounding the will has got to prove that the will was duly and validly executed. That cannot be done by simply proving that the signature on the will was that of the testator but must also prove that attestations were also made properly as required by clause (c) of Sec 63 of the Succession Act.

No doubt, section 68 of Evidence Act does not say that both or all the attesting witnesses must be examined. But at least one attesting witness has to be called for proving due execution of the Will as envisaged in Section 63.

If one attesting witness can prove execution of the will in terms of clause (c) of Sec 63, viz., attestation by two attesting witnesses in the manner contemplated therein, the examination of other attesting witness can be dispensed with.

We may also refer to **Janki Narayan Bhoir vs. Narayan Namdeo Kadam (2003) 2 SCC 91 wherein Supreme Court held** that, to prove that a Will has been executed, the requirements in clauses (a), (b) and (c) of Section 63 of the Succession Act have to be complied with. It was pointed out that the most important point is that the Will has to be attested by two or more witnesses and each of these witnesses must have seen the testator sign or affix his mark to the Will or must have seen some other person sign the Will in the presence of and by the direction of the testator or must have received from the testator a personal acknowledgment of his signature or mark or of the signature or mark of such other person and each of the witnesses has to sign the Will in the presence of the testator. It was further held that, a person propounding a Will has got to prove that the Will was duly and validly executed and that cannot be done by simply proving that the signature on the Will was that of the testator, as the propounder must also prove that the attestations were made properly, as required by Section 63(c) of the Succession Act.

The court has to consider two aspects:

- i). firstly, that the Will is executed by the testator, and secondly, that it was the last Will executed by him;
- ii). It is not required to be proved with mathematical accuracy, but the test of satisfaction of the prudent mind has to be applied.
- iii). A Will is required to fulfil all the formalities required under Section 63 of the Succession Act, that is to say:
 - (a) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction and the said signature or affixation shall show that it was intended to give effect to the writing as a Will;
 - (b) It is mandatory to get it attested by two or more witnesses, though no particular form of attestation is necessary;
 - (c) Each of the attesting witnesses must have seen the testator sign or affix his mark to the Will or has seen some other person sign the Will, in the presence and by the direction of the testator, or has received from the testator a personal acknowledgment of such signatures;
 - d) Each of the attesting witnesses shall sign the Will in the presence of the testator, however, the presence of all witnesses at the same time is not required;
- iv). For the purpose of proving the execution of the Will, at least one of the attesting witnesses, who is alive, subject to the process of court, and capable of giving evidence, shall be examined;
- v). The attesting witness should speak not only about the testator's signatures but also that each of the witnesses had signed the will in the presence of the testator; vi. If one

attesting witness can prove the execution of the Will, the examination of other attesting witnesses can be dispensed with;

vi).Where one attesting witness examined to prove the Will fails to prove its due execution, then the other available attesting witness has to be called to supplement his evidence;



How to prove a Will?

Leading Case Laws

The Hon'ble Supreme Court in the case of *Shivkumar v. Sharanabasappa (2021) 11 SCC 277* has laid down the adjudicatory process concerning the proof of Will and summarized it as under :

1. Ordinarily, a Will has to be proved like any other document; the test to be applied being the usual test of the satisfaction of the prudent mind. Alike the principles governing the proof of other documents, in the case of Will too, the proof with mathematical accuracy is not to be insisted upon.
2. Since as per Section 63 of the Succession Act, a Will is required to be attested, it cannot be used as evidence until at least one attesting witness has been called for the purpose of proving its execution, if there be an attesting witness alive and capable of giving evidence.
3. The unique feature of a Will is that it speaks from the death of the testator and, therefore, the maker thereof is not available for deposing about the circumstances in which the same was executed. This introduces an element of solemnity in the decision of the question as to whether the document propounded is the last Will of the testator. The initial onus, naturally, lies on the propounder but the same can be taken to have been primarily discharged on proof of the essential facts which go into the making of a Will.
4. The case in which the execution of the Will is surrounded by suspicious circumstances stands on a different footing. The presence of suspicious circumstances makes the onus heavier on the propounder and, therefore, in cases where the circumstances attendant upon the execution of the document give rise to suspicion, the propounder must remove all legitimate suspicions before the document can be accepted as the last Will of the testator.
5. If a person challenging the Will alleges fabrication or alleges fraud, undue influence, coercion et cetera in regard to the execution of the Will, such pleas have to be proved by him, but even in the absence of such pleas, the very circumstances surrounding the execution of the Will may give rise to the doubt or as to whether the Will had indeed been executed by the testator and/or as to whether the testator was acting of his own free

will. In such eventuality, it is again a part of the initial onus of the propounder to remove all reasonable doubts in the matter.

6. A circumstance is “suspicious” when it is not normal or is ‘not normally expected in a normal situation or is not expected of a normal person’. As put by this Court, the suspicious features must be ‘real, germane and valid’ and not merely the ‘fantasy of the doubting mind.’

7. As to whether any particular feature or a set of features qualify as “suspicious” would depend on the facts and circumstances of each case. A shaky or doubtful signature; a feeble or uncertain mind of the testator; an unfair disposition of property; an unjust exclusion of the legal heirs and particularly the dependants; an active or leading part in making of the Will by the beneficiary there under et cetera are some of the circumstances which may give rise to suspicion. The circumstances above-noted are only illustrative and by no means exhaustive because there could be any circumstance or set of circumstances which may give rise to legitimate suspicion about the execution of the Will. On the other hand, any of the circumstance qualifying as being suspicious could be legitimately explained by the propounder. However, such suspicion or suspicions cannot be removed by mere proof of sound and disposing state of mind of the testator and his signature coupled with the proof of attestation.

8. The test of satisfaction of the judicial conscience comes into operation when a document propounded as the Will of the testator is surrounded by suspicious circumstance/s. While applying such test, the Court would address itself to the solemn questions as to whether the testator had signed the Will while being aware of its contents and after understanding the nature and effect of the dispositions in the Will?

9. In the ultimate analysis, where the execution of a Will is shrouded in suspicion, it is a matter essentially of the judicial conscience of the Court and the party which sets up the Will has to offer cogent and convincing explanation of the suspicious circumstances surrounding the Will.”



ARM CHAIR THEORY

The Honb'le High Court of Chhattisgarh in the case of *Smt. Surinder Kour v. Rajendra Singh 2023 SCC Online Chh 1109* held that-

“**Para 2-**. Further in order to assess the correctness of the Will, on the basis of which right is claimed by defendant, the Courts are required to resort to arm chair theory. Meaning thereby the Court is required to sit at the arm chair of the testator”.

Hon'ble High Court of Chhattisgarh in the case of *Indubala Tirki Versus Harold Kirti Kumar Jacob 2009 SCC OnLine Chh 350 and Chandra Kumar and Others Versus Aswani Kumar and Others 2012 SCC OnLine Chh 580 : (2009) 4 CGLJ 168* reiterated same principle which is upheld by Honourable Supreme Court in various Judgement:

- i). The propounder has to show that the Will was signed by the testator, that he was at the relevant time in a sound disposing state of mind, that he understood the nature and effect of the dispositions, that he put his signature to the testament of his own free will and that he has signed it in the presence of the two witnesses who attested it in his presence and in the presence of each other.
- ii). Once these elements are established, the onus which rests on the propounder is discharged,
- iii). Where the caveator alleges undue influence, fraud and coercion the onus is on him to prove the same,
- iv). Whether there are suspicious circumstances, the onus will be on propounder to explain them to the satisfaction of the Court before the will could be accepted as genuine, meaning thereby the conscience of the Court has to be satisfied by the propounder of the will adducing evidence so as to dispel any suspicious or unnatural circumstances attaching to a will,
- v). A well-founded suspicion may be a ground for closer scrutiny of evidence but suspicion alone cannot form the foundation of a judicial verdict—positive or negative”.



Registration of Will

In India, registration of documents is covered by Registration Act, 1908. Section 18 of Registration Act provides a list of documents for which registration is optional. Wills are covered under (e) of the said section 18. Relevant extract reads as follows:-

Section 18- Documents of which registration is optional -

Any of the followings documents may be registered under this Act, namely;-

(e)- Will

Registration reduces the chances that the Will may be challenged as being a forgery. However, other challenges to a Will as being signed under undue influence etc. are still open. The other advantage of registration is that the Will is in safekeeping at the office of the Registrar. The Will may only be withdrawn from the Registrar by the testator or his agent during his lifetime. On the testator's death, the Registrar may permit an applicant to take a copy of the Will. However, the original Will is still kept in deposit with the Registrar. This ensures that the Will is not tampered with subsequent to the testator's death.

In case of a registered Will, all subsequent alterations or modifications (Codicils) should also be registered. Any non-registered alterations or modifications or explanations or deletions are not accepted by courts.

The Hon'ble Supreme Court in the case of **Metapalli Lasum Bai v Metapalli Muthaih 2025 SCC OnLine SC 1488** reaffirmed that a Will, if registered, carries a presumption of genuineness. The burden to prove otherwise lies on the party challenging the Will, who must demonstrate that it was not executed properly or that suspicious circumstances cast doubt on its validity.

In the case of **Rani Purnima Debi and another Vs. Kumar Khagendra Narayan Deb and another AIR 1962 SC 56**, Hon'ble Supreme Court held that

“There is no doubt that if a Will has been registered, that is a circumstance which may, having regard to the circumstances, prove its genuineness. But the mere fact that a Will is registered will not by itself be sufficient to dispel all suspicion regarding it where suspicion exists, without submitting the evidence of registration to a close examination. If the evidence as to registration on a close examination reveals that the registration was made in such a manner that it was brought home to the testator that the document of which he was admitting execution was a Will disposing of his property and thereafter he

admitted its execution and signed it in token thereof, the registration will dispel the doubt as to the genuineness of the Will. But if the evidence as to registration shows that it was done in a perfunctory manner, that the officer registering the Will did not read it over to the testator or did not bring home to him that he was admitting the execution of a Will or did not satisfy himself in some other way (as, for example, by seeing the testator reading the Will) that the testator knew that it was a Will the execution of which he was admitting, the fact that the Will was registered would not be of much value. It is not unknown that registration may take place without the executant really knowing what he was registering. Law reports are full of cases in which registered Wills have not been acted upon Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a Will; though the fact that there has been registration would be an important circumstance in favour of the Will being genuine if the evidence as to registration establishes that the testator admitted the- execution of the Will after knowing that it was a Will the execution of which he was admitting.



CHAPTER VI

IMPORTANT LEGAL QUESTIONS REGARDING WILL

1. Whether Attesting witnesses must know the Contents of Will?-

According to Section 63 of Indian Succession Act even on acknowledgement that testator signed on the Will, witnesses may attest the Will in the presence of testator is sufficient. Except that, it does not mandate, witnesses must know contents of Will or describe the same in the evidence. So, witness may not know contents of the Will.

Honourable Supreme Court in the case of **Chandraantaben J Modi and Narendra Jayantilal Modi Vs Vadilal Bapalal Modi AIR 1989 SC 1269** held that there is no presumption that an attesting witness of a document must be assumed to be aware of its contents.

However, In the case of **Apoline D'souza Vs. John D'souza 2007 (7) SCC 225 Honourable Supreme Court** held that there is no evidence to show that the Will was read over and explained to the testator and he is accepted/admitted with the contents of will, authenticity of will is doubtful.

2. Can Will be proved through the evidence of scribe and identifying witnesses ?

Role of identifying witness is only identifies the executant before the Sub-Registrar. His physical presence was not mandatory when executant was signing/putting his thumb mark on the Will.

Similarly, role of scribe is only preparing the Will to the instructions and satisfaction of testator. He may or may not be present at the time of execution and attestation of Will.

So, scribe or identifying witnesses of an attestable document including Wills, cannot be regarded as attesting witnesses because there was no animo attestandi. It is necessary ingredient to prove execution of Will.

3. Whether Will can be proved through the evidence of scribe? If so, when it arises ?

Hon'ble Apex Court in the case of **Palanivelayutham Pillai and others Vs Ramachandran and others (2000) 6 SCC 151** held that the scribe can be an attesting witness only if he signed the document as a witness.

4. Whether will can be proved through the evidence of Sub-registrar ?

Role of Registrar is very limited. Under **Section 58 of the Registration Act**, the Registrar shall endorse the following particulars on every document admitted to registration:

- (1) the date, hour and place of presentation of the document for registration;
- (2) the signature and addition of every person admitting the execution of the document, and, if such execution has been admitted by the representative, assign or agent of any person, the signature and addition of such representative, assign or agent;
- (3) the signature and addition of every person examined in reference to such document under any of the provisions of this Act; and
- (4) any payment of money or delivery of goods made in the presence of the registering officer in reference to the execution of the document, and any

admission of receipt of consideration, in whole or in part, made in his presence in reference to such execution.

The above particulars are required to be endorsed by the Registrar along with his signature and date on the document under Section 59 and then certified under Section 60.

The above endorsement made at the time of registration are relevant to the matters of the registration only. On account of registration of a document, including a Will, a presumption as to correctness or regularity of attestation cannot be drawn. **So execution of Will can not be proved through the evidence of Sub-registrar.**

5. How to prove execution of Will, where attestors are dead or not found?

Propounder of Will may prove Will in the light of sections 69 of Evidence Act.

Section 69 of Evidence Act - Proof where no attesting witness found

If no such attesting witness can be found, or if the document purports to have been executed in the United Kingdom, it must be proved that the attestation of one attesting witness at least is in his handwriting, and that the signature of the person executing the documents is in the handwriting of that person.

In Babu Singh & Ors. v. Ram Sahai alias Ram Singh 2008 (14) SCC 754 the Apex Court held as follows with regard to Section 69:

“It would apply, inter alia, in a case where the attesting witness is either dead or out of the jurisdiction of the court or kept out of the way by the adverse party or cannot be traced despite diligent search. Only in that event, the will may be proved in the manner indicated in Section 69 i.e. by examining witnesses who were able to prove the handwriting of the testator or

executant. The burden of proof then may be shifted to others. Whereas, however, a will ordinarily must be proved keeping in view the provisions of Section 63 of the Succession Act and Section 68 of the Act, in the event the ingredients thereof, as noticed hereinbefore, are brought on record, strict proof of execution and attestation stands relaxed. However, signature and handwriting, as contemplated in Section 69, must be proved.”

To prove handwriting of attesor and signature of testator, Propounder of Will shall examine the persons who had acquaintance with the handwriting and signature of attesor and testator, under section 47 of Evidence Act. He can also prove the same by examining expert section 45 of Evidence Act.

6. How to prove execution of Will, where attestors denied or does not recollect execution?

Section 71 of Evidence Act resolves this situation. As per this provision, propounder of Will can prove execution of Will by other evidence. As far as Will is concerned, propounder of Will must prove the Will in the light of section 69 as stated above.

7. Whether proving of will is necessary, where execution of Will is admitted by the opposite party?

In S.R. Srinivasa and others Vs S. Padmavathamma (2010) 5 SCC 274 Honourable Supreme Court held that irrespective of admission of opposite party, propounder of Will must prove execution of Will under section 68 of the Evidence Act, in the light of section 63 of the Indian succession Act. It was held that, though opposite party admitted will, propounder of Will must prove execution of Will by examining witness.

8. Whether presumption under section 90 of Evidence Act is extend to Wills ?

The Supreme Court in the case of **Ashutosh Samanta (D) by LRS. & Ors. v. Ranjan Bala Dasi & Ors.** has recently held that wills cannot be proved based only on their age and that the presumption under Section 90 of the Evidence Act, 1872 as to the regularity of documents is inapplicable. Further, it was held that, A will has to be proved in terms of Section 63 (c) of the Succession Act read with Section 68 of the Evidence Act.



CONCLUSION

Wills are legally recognised documents which enables ones property to be distributed according to his or her desires or wishes. The Law of Wills in India is an important aspect of succession law. It provides a legal framework for individuals to ensure that their assets and property are distributed as per their wishes after their death. The Indian Succession Act, 1925, lays down the formalities that must be followed for a will to be considered valid. It also provides for the revocation of a will, the process of probate, and the revival of a will. It is important for individuals to understand the Law of Wills in India and to ensure that they have a valid will in place. The case laws provide clarity on the various aspects of the Law of Wills in India and serve as a guide for individuals who wish to make a will. In case where a person dies without making a will usually referred to as intestate situation, various issues may arise. Though writing of a will accrues various benefits, very little people do so. The most commonly types of will embraced by individuals are oral and handwritten wills. In cases where no will was written by the deceased person, the governing law automatically controls and regulates property distribution among the beneficiaries. The improvement in current law relating to wills in India is required to make the present status (framework) more effective like a will should be made video graphed, the person who is making will should medically examined.

