

## Types of Wills in India

written by King Stubb & Kasiva | January 9, 2023



Are you aware of the different types of wills in India? Did you know that any individual can create a will, tailored to their needs owing to the different types of wills available in India? Through a will, one can choose to distribute assets to a number of beneficiaries, contribute to charitable organisations, exclude someone, or impose restrictions on the recipients' ability to inherit. This article discusses the types of wills, an individual may choose from among the different types of wills in India depending upon their circumstances.

Given the circumstance, in case of loss of life of an individual, it may get difficult for their next of kin to inherit the individual's property, which might have not been the case had he written a will. Pending down a will makes the process of inheritance of property easier for the family and helps eliminate the scope of disputes. When someone passes away intestate, their assets are distributed in accordance with the law rather than their wishes and testament. Hence, it is important to be aware of the types of wills in India.

A will must typically be signed by a person who is at least 18 and of sound mind, though state laws on this subject vary. Such a person is referred to as a "testator" who selects from among the types of wills and appoints an executor to manage the estate's distribution. The will may also need to be notarized. The testator must also sign and date the document, usually in front of one or more witnesses.

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Indian Succession Act, 1925

The Act addresses cases of intestacy and imposes laws and regulations controlling the wills made by individuals prior to their death and also governs the types of wills in India. The law of the person's country of domicile has the authority to decide how the succession of their movable property shall be handled.

The Requirements for a valid Will is mentioned in Section 63 of the Indian Succession Act of 1925 and they are the following-

- The testator must append or sign his signature.
- The Will needs to be witnessed by two or more people.
- The testator's signature or mark on the will must have been visible to the witnesses.
- The Will must be signed by each witness in the testator's presence.
- The witness shouldn't inherit anything from the Will.

Types of Wills in India

The appropriate choice of will for an individual from the types of wills available depends on one's circumstances. Mentioned below are some fundamental facts to guide your decision.

#### 1. Privileged Wills and Unprivileged Will

A soldier, airman, or mariner at sea participating in an expedition or actively engaged in actual combat are all granted certain privileges under the Indian Succession Act of 1925. These were implemented owing to the challenging situations a soldier faces while serving in mind. Section 66 of the Indian Succession Act mentions provisions relating to such powers, and such wills are known as Privileged Wills as mentioned in Section 65 of the Indian Succession Act, 1925. Some of the most popular examples of such privileges include clauses that let verbal agreements made in the presence of witnesses be regarded as genuine wills and clauses that permit written instructions to be regarded as legal wills following the death of a soldier. Unprivileged Wills are any types of will that are made by the general public and are not privileged wills. They must meet a number of requirements in order to be regarded as legally valid and Section 63 of the Act mentions these criteria

#### 2. Contingent or Conditional Will

Such a Will doesn't take effect until specific requirements are met or a scenario occurs. It could allude to a future occurrence, like reaching a certain age. In other words, the will is deemed legally invalid if the contingency does not materialize, or if the requirements are not satisfied. These wills are written for a variety of reasons. The testator can include a provision in his will for either encouraging a loved one to undertake good

deeds or making safe appropriations of his possessions in the event that he passes away while traveling overseas. Any clause that is illegal or unenforceable by definition cannot be included in a will.

### 3. Joint Will

Joint Wills are testamentary records that are created when two or more people agree to do so. It is also possible to make a joint will that shall go into effect following the passing of each testator. A single testator cannot unilaterally annul a joint will while all testators are still alive. To cancel their combined will, they would need the other testators' approval. The solitary surviving testator can only cancel the will on their own in case all the other testators have passed away. These are typically made by married couples with the goal of leaving their assets to the surviving spouse in the event of one of them passing away.

### 4. Concurrent Will

For each testator, only one will is typically created. To dispose of the properties, the testator can, however, prepare different wills if desired or for convenience reasons. The testator may create various wills for the property located in various areas based on his preferences or for convenience. They are declarations that deal with the affairs of a single testator.

### 5. Mutual Will

A mutual will is created by two people in agreement on specific terms and conditions. Mutual wills often referred to as reciprocal wills, are independent testaments in which the testators name one another as their legatees and grant one another advantages in exchange. Such wills are typically created by married couples with children from their prior marriage to protect the interests of those kids. After the death of the first partner, the remaining partner would still be subject to the terms and circumstances of the will. They also aid in making sure that, in the event that either partner remarries, the property will go to the deceased person's children and not their new husband or any other person.

### 6. Duplicate Will

A duplicate will is a copy of the original will. In order to secure the appropriate execution of the will after death, they are developed for security reasons. While the other copy is maintained in secure custody, such as a bank locker, the original copy is typically kept with the testator, executor, or trustee. According to Section 63 of the Indian Succession Act, of 1925, the replica shall be attested the same way as the original will. They are a convincing and reliable demonstration of the testamentary goals till the original will is no longer in existence. Otherwise, doubts may occur about the duplicate's genuineness.

### 7. Holograph Will

Holographs wills are those that the testator personally writes by hand. Such a will places a greater emphasis on making sure that the will is properly and lawfully executed and is very authentic. It must be written by hand, but a witness is not required to certify to it. There is a strong likelihood that they are regular and executed because they were entirely handwritten by the testator himself. In accordance with a number of judicial rulings that "very little proof will be needed to establish the validity of a will's execution and attestation if there are few questionable circumstances connected to it".

## 8. Sham Will

These kinds of wills are created with ulterior intentions in mind, often immoral ones like obtaining a property that doesn't belong to the claimant or deceiving someone. The testator's intent is a crucial component of any will. Sham wills are created through fraud or compulsion, which robs the testator of their freedom of choice. The documents required to properly execute the collateral purpose and not to execute the will in accordance with testamentary operations are added to these wills.

### Conclusion

Drafting a will and choosing from the different types of wills available in India is a relatively simple process, however, if an individual feels that the distribution of one's assets might turn out to be a complex procedure or given that one's circumstances are complicated, the individual has an option of considering to hire legal assistance. It is essential to get the legalities correct in all cases that might involve, for instance, business assets, property overseas, and children from previous marriages.

### FAQ

Who is eligible to make a will in India?

According to Section 59 of the Indian Succession Act, a will may be made by any adult who is of sound mind and is not a minor. The premise is that a person may make a will if he has the mental capacity to comprehend the contents and the nature and consequences of the disposition. The onus of demonstrating that the will's maker acted freely and without coercion or force. If a person makes a will while being of sound mind despite having periodic periods of insanity, the will is legitimate.

Are there any grounds for challenging a Will?

The few grounds on which a will can be challenged are listed below

1. Coercion, fraud, or improper influence present
2. The existence of suspicion
3. Lack of testamentary ability or intention
4. Incorrect execution
5. Lacking knowledge

Is it necessary to register a will?

No, it is not necessary. Whether the testator wishes to or not is up to him. However, if a Will is registered, it becomes a proof document that is safe in the registrar's possession.