

Wills in India - Inheritance laws in India for Wills

written by King Stubb & Kasiva | March 3, 2023



A will is a legal document that expresses a person's desires about the management or distribution of their possessions after death. Despite being legally binding documents, wills in India can be written in any format. A will does not have to be written on stamp paper when asking about creating a will in India; it can be typed or written by hand. Yet, a handwritten will is preferred because it is harder to challenge. According to the Indian Succession Act of 1925, anyone who is of sound mind and is not a minor may make a will.

As creating a will in India is considered to be a real inconvenience, many people elect to die intestate. Nonetheless, having a will is crucial. The fact that it gives precise instructions regarding the decedent's possessions and estate is the most important component of creating a will in India. A will eliminates any potential for future confusion by specifying who will receive each piece of property. As a result, it helps to lessen family disputes. It gives one the option to designate a beneficiary to receive their assets after death. The Hindu Succession Act states that in the case of an intestate death, the estate descends intestate to heirs who the decedent may not have intended to receive it.

A person includes a safety net for his little children in his will. He can select a guardian for them and make any financial preparations required. It can be crucial to protecting one's business. If one distributes their firm and powers of attorney to their selected heirs, there can be less conflict in commercial relationships. It also makes it feasible to make sure that, in the event of a second marriage, the children from the first marriage are not in any way disinherited. In addition to declaring the inheritance in favour of friends and family members, it may also name a charity or any other

organisation.

Due to its utmost importance, creating a will in India should be the first financial choice taken. It must be made clear in order for the testator's intention to be known without a shadow of a doubt. The complexity of writing a will shouldn't be a reason to put it off. People are very reluctant to talk about wills, according to Shankar Pai, the founder of the Make a Will Foundation. They think the person asking about their will is either hinting at their death or is only interested in their stuff.

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Wills and essential requirements of Valid Will

The Indian Succession Act, 1925 regulates the sorts of wills in India, as well as the laws and regulations that apply to cases of intestacy. It also addresses cases of intestacy. The succession of a person's moveable property shall be governed by the laws of the person's country of domicile.

Section 63 of the Indian Succession Act of 1925 outlines the requirements for a valid will in India.

- The will must begin by stating that the testator is of sound mind and must name the executor to carry out their instructions. Any previous wills and codicils must be cancelled if this is not the first will.
- The testator must create a list of all their assets, including property, savings accounts, term deposits, and mutual funds.
- The will must specify in writing who will receive which assets, including a custodian for minors.
- The will must be signed in the presence of two witnesses who must attest to the execution by signing it. The date, full names, and addresses of the witnesses must be included in the will.
- Every page of the will must be signed by the testator and the witnesses.
- Any amendments to the will must be countersigned by the testator and the witnesses.
- The original will must be stored in a safe place, and copies must be stored separately if any are produced.

In addition to the previous requirements, there are other essentials for a valid will in India.

- The testator must sign or append their signature to the will.
- The will must be witnessed by at least two people.
- The witnesses must have seen the testator's signature or mark on the will.
- Each witness must sign the will in the presence of the testator.
- The witnesses cannot be beneficiaries of the will.

The types of Wills in India

There are 8 types of Wills in India.

- Privileged Wills and Unprivileged Will
- Contingent or Conditional Will
- Joint Will

- Concurrent Will
- Mutual Will
- Duplicate Will
- Holograph Will
- Sham Will

As per Section 59 of the Indian Succession Act, any mentally sound adult who is not a minor is permitted to make a will, assuming they have the capacity to understand its contents and the effects of the disposition. The responsibility to demonstrate that the will-maker acted voluntarily and without duress or coercion falls on the individual. A will written during a period of sound mental health is considered valid, even if the individual is prone to insanity on occasion.

Probate and obtaining probate

After death, the estate of a person must be distributed to the heirs. This is often a protracted process known as probate. In order to ensure that the heirs receive their inheritance, an executor is responsible for carrying out the necessary procedures to move the estate through probate. The duties of the executor are numerous, yet they are also limited.

When a person passes away, the probate procedure begins when the local court receives the will, death certificate, and other required documents. The selection or appointment of a person to act as the estate's executor is the first step in the probate process, which is overseen by the court. Once appointed, they are in charge of handling the estate administration and asset distribution in accordance with the guidelines laid down in each state's probate code.

Most typically, an adult child or grandchild from the immediate family serves as the executor. It might be the surviving parent, brother, or spouse. If no family member is accessible or able to complete the task, a friend may be selected. In some states, the executor must be an attorney.

An executor's duties and powers:

- One of the executor's first duties is to protect the estate. This can require locating all of the decedent's assets, getting access to real properties, and making sure that a manager is in charge of any enterprises the decedent owned. At this time, they must also let the heirs know that the estate is being probated.
- If the decedent leaves behind property suitable for the purpose, it is the executor's duty to raise the necessary funds in a manner consistent with his state of affairs to carry out the necessary funeral rites.
- They have debts to settle as well as assets to manage.
- Before dispersing assets, the executor can and must settle creditors' debts when they become due.
- Also, the executor is in charge of submitting an estate tax return, paying any outstanding state and federal taxes, and paying estate taxes. An accounting record must be kept for the court and all payments must be supported by documentation.
- During this time, the executor is required to list all of the estate's assets.
- When all debts have been paid, the executor is responsible for distributing the remaining assets to the beneficiaries and heirs in line with the stipulations of the will.
- Although a will's provision for payment may be changed by the probate court,

this happens regularly.

Succession laws in India

The law has also set rules for adherents of other religions, which must be followed, in accordance with the Indian Succession Act of 1925, the Hindu Succession Act of 1956, and Sharia law.

1. Hindu man (covered under Hindu Succession Act)
 - "First, the property will devolve upon relatives indicated in Class I";
 - "If there is no Class I successor, then upon Class II relatives";
 - "In case there's no Class II heir, then upon agnates"
 - "On the cognates, if there isn't an agnate."
2. Female Hindu
 - Initially, the husband, sons, and daughters (including the children of any deceased son or daughter) shall all inherit the land equally;
 - Pertaining to the heirs of the spouse;
 - If the husband has no heirs, on the parents;
 - On to the heirs of the father;
 - On to the mother's heirs, lastly.
3. Christians (Indian Succession Act)
 - The wife will receive a third of the remaining property, with an equal share going to the children (including the children of any deceased son or daughter).
 - If there is no wife, the property will be split equally between the husband's family and the wife, as well as between the husband's family and any children, if any.
 - It will go to the deceased's parents last
4. Parsis (Indian Succession Act)
 - If there is no wife, the children receive an equal share of the property. The deceased person's parents receive the assets if neither the wife nor the children survive.
5. Muslims (covered under Shariat Act)
 - A list of the deceased person's property that must be divided amongst the wife and children is compiled by the Gazi (judge acting in line with Islamic religious law), who also takes into consideration the cost of the funeral.
6. HUF (by survival)
 - The assets of a HUF are lost by survivorship. The property is passed down through four generations to the surviving members if the karta dies. According to Hindu law, the property will not be passed to the heirs, regardless of their religious affiliation.

FAQs

Can a will be challenged in court in India?

The Indian Succession Act of 1925 gave anyone the right for contesting a will in India or a grant of probate (Act). "The Act grants the right to file a caveat against the issuance of probate to anyone who has an interest in the testator's estate and wants to contest the Will's validity."

The grounds for contesting a will in India are as under:

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

What are the inheritance laws in India?

Some examples of succession laws in India include the Hindu Succession Act of 1956, the Indian Succession Act of 1925, and Sharia law. The legislation also outlines the rules that followers of other religions must abide.

Can a person change their will in India?

A will may be amended or revoked by the testator as many times as desired during his or her lifetime. If the original will was registered, the amendment or alteration must also be documented. A codicil is an official document produced in connection with a will that explains, modifies, or adds to the dispositions in the will.

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