

Wills in India: **Essential Elements and** **Legal Requirements**

“Will” refers to a legal document or declaration that a person during his lifetime makes in order to plan the distribution of his assets and properties in a way he wants. Writing a will as an instrument enables the heirs and survivors of the deceased to inherit the property in the way the deceased wanted. Wills in India help complex family structures divide the property amicably without disputes and the need for litigation. Wills in India are legal documents and have no such strict requirement of a set format. Writing a will can even be done on plain paper without registration or even a handwritten document can be termed as a will.

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Essential Elements Of A Valid Will

There are various essential elements of an Indian will as per will law in India which are laid down by the Indian Succession Act, 1925[1], and are as follows:

1. Every person who writes a will must be of sound mind and above 18 years of age. This bars people of unsound mind and minors from drawing a will.
2. Any person who is incapable of making a valid judgment or is in an inebriated

state of mind by the reason of intoxication or illness where he is unable to understand the consequences of his acts is not allowed to draw a valid will.

3. Any part of a will that has been forced or induced to be made by force, coercion, or threat or whatever has not been drawn while writing a will with free consent is invalid and not enforceable by law.

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Listing of Assets- Each will must state a list of all assets which include property owned by the person making the will (testator), the savings, shares, stocks, bonds and other financial assets owned. This should be done with utmost care and caution in order to not leave out any material information.

Division of Assets – Once the listing of assets owned by the individual is complete, the will should state a clear and unambiguous system of division of assets listed in the will so that no item is missed and there is no unnecessary dispute when the will is set to be used. In case a minor has been given some asset, it is mandatory to appoint a custodian for the minor.

Adding sign and witnesses to the will – After the will has been drawn up and completed, it is necessary to sign it along with mentioning the date.

Moreover, it is necessary to get it attested by two witnesses who merely need to witness that you have signed the will in their presence. Witnesses add credibility to the will in the eyes of law and are therefore a mandatory step.

Importance Of A Valid Will

The importance of writing a valid will cannot be undermined. The presence of a will not only makes estate planning efficient and effective but also enables the family members of the deceased to avoid unnecessary family feuds and litigation. Moreover, it helps to secure the interests of legal heirs of the deceased from any relatives or claimants who may arise post the death of the deceased to claim their share.

The most important purpose that a will serves is the differentiation of the nominee from the beneficiary. A nominee is that individual who holds the property before its final allocation as per the lines of the will drawn, while the beneficiary is the one who receives the property ultimately. A will helps the testator to efficiently allocate a nominee for the distribution of assets as per will.

One of the major benefits of a will is that it helps to plan out funds and guardians for minor children or dependants. In absence of a will, it becomes the sole discretion of the courts to allocate funds and appoint guardians in case of unfortunate death of parents. However, using a will, parents or a single parent can appoint guardians and allocate funds for their children's future and education.

In the present day, where digital presence is a major source of revenue for social media personalities, a will helps to appoint executors to manage the social media presence of the deceased after their death and govern the revenue generated from that source.

Issues Faced In Absence Of A Will

Since the importance of having a will cannot be undermined, there are various issues which are faced in absence of wills in India that are as follows:

1. Not having a valid will leaves the family of the deceased vulnerable to unwanted legal exposure in form of conflicts in division of assets between the family members.
2. There is a high risk of poaching the assets of the deceased by distant

- relatives or creditors.
3. Very often the total assets of the deceased are not known to the family members, who in turn are unable to use them after his death.
 4. There is a risk of identity theft in the case of social media presence of the deceased in case no one has been appointed for the management of the same.

Writing A Will And Common Mistakes

There are various mistakes that testators or their lawyers make while writing a will such as using complex legal terminology or jargon which is tough to decipher or interpret by the executors and beneficiaries. Therefore, it is suggested that wills should be written in plain simple language to avoid any discrepancy while executing it.

Secondly, many times wills are not updated. This means that new assets acquired or assets disposed of are still listed in the will which makes it obsolete and prone to legal difficulties. More often, people often transfer their tenancy rights which are not legal to do so. This renders it difficult to execute.

Role Of An Executor

The role of an executor is extremely essential without which the will ceases to serve its purpose. Executors are responsible to transfer the assets to the nominated beneficiaries. The executors are often trusted family members or friends of the testator who enable a smooth transition and transfer of titles from the testator's hand to the beneficiary.

The executor has to sort finances, check legal requirements for transfer and ensure that there is no lacuna in the transfer process which may defeat the purpose of the entire will.

Conclusion

Having a will makes it easier for an individual to divide their property and valuable possessions and plan their finance and estate accordingly. It has been one of the key modes of avoiding disputes in the family and making sure that the wishes of the testator are honoured.

The process of making a will is convenient and offers many benefits to the individual. A will secures the legacy of the testator. Therefore, one must carefully draw their will keeping note of the legal requirements and essential elements of the same to avoid any disputes in the future.

FAQs

What makes a will invalid?

A will is invalid when it has been drawn up by a person incompetent to create it due to the reason of insanity, illness or age. It also ceases to have legal value when it is drawn up using force, fraud or coercion.

What are the most important factors of a will?

The most important factors of a will are division of assets, appointment of guardians for children and appointment of executors for a will.

How do you write a strong will?

A strong will can be written with an amalgamation of a proper listing of assets, division of assets unambiguously, keeping the will updated and having a trusted executor.

[1] <https://www.indiacode.nic.in/bitstream/123456789/2385/1/a1925-39.pdf>

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