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TYPES OF WILL UNDER THE HINDU SUCCESSION ACT- Yatri Trivedi¹**ABSTRACT:**

A will is a legal instrument that allows the testator to direct the management and distribution of his or her inheritance after death. Property is divided into two kinds in Hindu law. Separate properties have two successions in the separate proper: 1. ancestral property and 2. separate properties. The two types of succession are intestate and testamentary succession. Intestate succession does not allow for the creation of a will, whereas testamentary succession does.

According to section 2(h) of the Indian Succession Act, anyone can make a will. Concerning the loss of one's possessions.

A Will can be written at any point in a person's life. A Will can be modified as many times as necessary, and there are no legal limitations on how many times it can be changed. It can be revoked at any moment throughout the life of the person who creates the Will. A Will must be witnessed by two or more people, each of whom must have seen the testator sign the document.

A Hindu's testamentary power was initially recognized in Bengal, then in Southern India, and finally in the former Indian state of Bombay. In general, a Hindu will be treated in the same way as a gift is treated.

INTRODUCTION:

Property is divided into two kinds in Hindu law. Separate properties have two successions in the separate proper: 1. ancestral property and 2. separate properties. The two types of succession are intestate and testamentary succession. Intestate succession does not allow for the creation of a will, whereas testamentary succession does.

According to section 2(h) of the Indian Succession Act, anyone can make a will. Concerning the loss of one's possessions.

A will is a legal instrument that allows the testator to direct the management and distribution of his or her inheritance after death. A will can be used for many different things. It permits a

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person to choose his heirs rather than having them chosen for him by state laws of descent and distribution, which may include people the testator dislikes or is unfamiliar with, even if they are family members.

BASIC TERMINOLOGY OF WILL:

- 1. Executor:** Unlike an administrator, who is appointed by the court, the testator appoints the executor. If the Will provides them the ability to collect outstanding debts, pay debts, and manage the estate, the individual may be deemed an executor by implication.
- 2. Probate:** Probate is proof of the executor's appointment and, unless rescinded, definitive evidence of the executor's authority. The executor's grant of probate, on the other hand, does not grant him possession of the property.
- 3. Letter of Administration:** A Letter of Administration is a certificate issued by a competent court to an administrator in the case of a Will authorizing him to administer the deceased's estate according to the Will. If the Will does not identify an executor, an application for Letters of Administration for the property can be filed with the court.
- 4. Codicil:** A codicil is an instrument created in connection with a Will that explains, modifies, or adds to its dispositions and is considered to be a part of the Will.

ESSENTIAL POINTS FOR A WILL:

A will can be written by anyone at any moment in their lives. There are, however, some limitations.

1. Any person of sound mind who is a major can make a will, according to section 59 of the Indian Succession Act.

explanation 1. During her lifetime, a Hindu married lady can only dispose of property that she can alienate by will.

explanation 2: A person who is deaf, dumb, or blind can form a will if they can show that they were aware of what they were doing.

Mentally ill or insane people are covered by the explanation. 3. On the other hand, subsequent insanity does not invalidate the will.

i.e., if a person makes a will when he is of sound mind and then becomes insane later, the will remains legal and is not invalidated by his insanity. A person of unsound mind can also

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form a will during his lucid interval. During the testator's lifetime, the will can be modified as many times as he or she wishes.

REVOCABILITY OF WILL:

A will can be canceled or changed at any time during the testator's lifetime, according to section 62 of the Indian Succession Act. Section 70 of the ISA describes how it can be revoked. The revocation must be in writing and signed in the presence of two witnesses, with both witnesses swearing to the revocation. The old 'will' will be ineffective for the sections that clash with the new will if the new will contains a revocation clause; if the new will does not contain a revocation clause, the old 'will' will be ineffective for the parts that conflict with the new will. If there are no contradictions, both 'wills' will be read as a single will.

- **LEGALITY:**

The will should be legal regarding the testator's property.

- **DISPOSITION OF PROPERTY:**

Previously, the testator (will-maker) could only donate or bequeath his separate property, but today, section 30 of the Hindu Succession Act specifies that if the testator (will-maker) had a coparcenary interest, he can dispose of it in his will.

- **ENFORCEABILITY:** A will is only valid after the testator's death.

- **REGISTRATION:**

You don't have to anger against your will. Registration provides strong evidence and can be written in any language; technical terms are not required

RESTRICTIONS A WILL ACCORDING TO ISA:

1. Section 113 of the Indian Succession Act prohibits the transfer of land to an unborn child.
2. A transfer under Section 114 of the Indian succession legislation to ensure perpetuity.
3. A bequest that is void under sections 113 and 114 is void only for the person who made it, not for the entire class.
4. A bequest that takes effect if a prior bequest fails (and is so null under section 113/114) is also null. (Section 116 of the Indian Succession Act.)

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5. Wills obtained through fraud, compulsion, or imposition are mentioned in Section 61.
6. According to Section 89, uncertainty renders a will or bequest void.
7. Bequest conditional on the occurrence of an unknown event with no time limit. (Code of Federal Regulations, Section 124)
8. As indicated in section 127, bequests made under illegal or immoral circumstances are null and invalid.

A person who has created a Privileged Will cannot create an Unprivileged Will. Apart from this, anyone can create the Unprivileged Will. Either the person who creates the Will needs to sign the document or else some other person can do it in the presence of the creator.

TYPES OF WILL:

1. Concurrent will:

Things that have been as soon as taken into consideration contemporaneous are no longer simply taking place on the identical time however also are just like one another. Multitasking laptop systems, for example, can seem in surprising tasks. We run the hazard of concurrent drug use while we take specific remedies on the identical time. Moreover, at any multiplex theatre, numerous movies are at the pass on the identical time.

2. Conditional/contingent will:

Conditional will relies at the prevalence or accident of some unsure events. When the desired occasion occurs, it has an effect or may be defeated. If the prevalence of an occasion referred to in a will is the purpose for the preference, it's miles a long way from unconditional. The preference is conditional if the testator plans to get rid of his or her property if the occasion occurs.

3. Joint will:

○ A joint will offers that:

1. while one partner dies, the survivor will inherit the whole thing, and
2. while the second partner dies, the whole thing will visit the kids.

The most joint will additionally consist of a provision declaring that neither partner can extrude or revoke the desire alone—this means that the desire cannot be modified after the primary

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partner dies. A traditional will is constantly revocable. But a joint will is in reality a binding criminal contract, which can not be revoked or modified after one partner has died.

A joint will seems to satisfy many couples' desires and deal with a number of their key concerns. First, as many couples want, it offers that the survivor will inherit all of the belongings of the primary partner to dies. Second, it is then confident that irrespective of what occurs after that, the kids will sooner or later inherit the whole thing. For example, if the survivor remarried, the kids would not fear that their inheritance could visit their new stepparent. Instead, due to the fact the phrases of the joint will could be locked in, they could be assured to inherit.

4. Mutual will:

A mutual will is a sort of will, usually completed thru manner of manner of a married or committed couple, that is on the identical time binding. After one party dies, the last party is sure thru manner of manner of the terms of the mutual will.

5. PRIVILEGED WILL:

Privileged Wills are Wills that may be in writing or made thru word of mouth thru those in lively services like a soldier, airman, or mariner. The jail requirement for the validity of a privileged Will has been reduced to permit nice human beings to speedy make a Will. The following conditions are applicable for a privileged Will. Privileged wills are casual wills with the equal capabilities and implications as testaments. You ought to be a member of an lively navy to make a privileged will. However, you may not be creating a privileged will amid a hotbed of controversy.

CASE LAW FOR PRIVILEGED WILL:

1. Sunita Shivdasani vs Geeta Gidwani And Anr. on 8 February 2007²

There are Privileged and Unprivileged Wills under the Indian Succession Act, 1925 (hence referred to as the Act for short). Unprivileged Wills must be in writing and adhere to the Act's Section 63 criteria. A soldier on an expedition or engaged in actual conflict, or a mariner at sea, can make a privileged will. Privy Wills are oral, but they must meet the conditions of Section

²<https://indiankanoon.org/doc/1137657/#:~:text=Privileged%20Will%20are%20oral%20but,if%20the%20testator%20is%20alive>

66 of the Act, which include the presence of two witnesses at the moment the oral Will is made, and a Will made by word of mouth is null. Ld. Single Judge has held that late Mr. K.D. Shivadasani could not have made a privileged will.



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