

**WHERE THERE IS A "WILL" THERE IS A WAY** (or at least a much easier way). It is imperative that the importance and significance of a Will is not taken lightly. In recent times almost everyone, irrespective of their age, owns significant assets in India and abroad. In fact, many of us may have property in India but may be residing abroad. In such circumstances there is a need to prepare a Will to ensure that our property, movable and immovable wherever situated and /or our personal effects are bequeathed in accordance with our wishes.

## WHAT IS A WILL?

***A Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death [\[1\]](#).***

## WHEN AND WHY DO YOU NEED TO MAKE A WILL?

- If you are under the impression that a Will is required to be prepared only post retirement and/or old age, you are mistaken. If you are not a minor and if you have property you must make a Will to ensure that in the event of any unforeseen circumstance your immediate family and legal heirs which would include your dependents are properly safeguarded.
- By making a Will you set out your intentions to dispose of your property according to your wishes and desires. Under the Will you can decide on your executor/s to administer your estate after your death and carry out your wishes as per the Will. You may bequeath your property under the Will to the beneficiaries as you decide upon and in the manner that you may deem fit and proper. You may also make a provision to look after a minor child, if any, and appoint guardians to ensure his/her wellbeing.
- A residuary clause is also provided in a Will to include properties which have not been expressly/specifically disposed of by other provisions of the Will. It refers to that portion of the estate which has remained after all specific gifts and bequests have been made. It is vital for a Will to contain a residuary clause to safeguard properties which may be inherited by a person or which may come to the share of a person after the execution of a Will.

Further, with changing times lot of us stay in nuclear families away from our parents and/or children, in India or abroad. A provision under the Will may ensure that your family members are able to enjoy your property peacefully. In many an instance, the immediate family members are also unaware of the details of your assets. In this event, the Will sets out in a proper manner the details of your immovable and movable property and the person/s to which the same is bequeathed.

Of course the art is in the drafting. So it would be prudent to seek legal

assistance for drafting a Will so that it is in accordance with the laws prevalent in India or abroad, and effectively administers your estate in accordance with your wishes. Leaving behind a Will may help to a certain extent to maintain family peace and harmony; and it will help your family members to trace and administer your estate more effectively and thus will lead to the preservation of family wealth which is of utmost importance. With the escalation in real estate prices an individual owning a single flat is also of a substantial worth. Thus, a Will ensures that your property is handled in a prudent manner after your death and is not frittered away, or locked in long drawn legal matters.

## **WHAT KIND OF PROPERTY CAN BE BEQUEATHED?**

Under the Indian law, you can bequeath movable and immovable property which you may possess including your self acquired property, inherited property, joint family or HUF property, etc. Apart therefrom you may also bequeath your personal effects such as paintings, jewelry etc. The scope of Wills is no longer restricted to movable and immovable property but has invariably extended to intellectual property too. Consequently, the notion of digital legacy/inheritance has inevitably evolved. The Law Society of England and Wales [\[2\]](#) has recently opined that as technology has evolved, so has the way information is stored and it is imperative that people leave clear instructions with regard to their social media, online accounts like Twitter, etc. after their death with a view to safeguard important or sentimental material. However, one must carefully consider the need to impart information relating to the online accounts along with the passwords to the right person lest the same is misused and causing grave harm to you whilst your lifetime.

## **HOW DO I MAKE AND EXECUTE MY WILL?**

- Although, making a Will is simple, one needs to be cautious and may seek assistance of a legal professional who is aware of the laws prevalent in the country that you reside in/where you are in possession of immovable and movable property. In India, a Will can be made by Hindus, Buddhists, Sikhs or Jains. However, Mohammedans can dispose of their property only in accordance with Muslim Law.
- A Will does not require to be executed on a stamp paper. A person making a Will who in legal terms is called a Testator is required to sign or fix his mark to the Will. The signature or mark of the person should be placed in a manner whereby it appears it has been intended to give effect to the writing as a Will.
- Barring a few exceptions, it is otherwise compulsory under the Indian Law that a Will is attested by two or more witnesses each of whom should have seen the testator sign or affix his mark on the Will. Each of the witnesses should sign the Will in the presence of the testator and further no particular form of attestation is necessary.
- A Will may be handwritten and/or typed but the same should provide clarity to your last wishes and be unambiguous.

## **DO I NEED TO REGISTER MY WILL?**

In India, Registration of a Will is not compulsory. Its genuineness cannot be doubted simply because it is not registered. There is no time limit for registration of a Will. Another procedural aspect is that at the time of registration of a Will, (though not strictly required by the law), the office of the Registrar may insist on a doctor's certificate to be attached along with the Will. A registered Will may be revoked later by making another Will.

There is also a provision in law where a Testator may either personally or by

duly authorized agent, deposit with any Registrar his Will in sealed cover superscribed with the name of the testator and that of his agent (if any) and with a statement of the nature of the document [\[3\]](#). This however is no longer very common.

## **REGISTRATION OF WILL AT YOUR RESIDENCE UNDER SPECIAL CIRCUMSTANCE**

The Office of the Registration Inspector, General & Stamp Duty Controller, Maharashtra State Pune vide its circular dated 12 June 2013 [\[4\]](#) inter-alia laid down guidelines for persons who wish to register his/her Will at their residence as under:

- The registration process is required to be documented audio-visually at the expense of the concerned party.
- The concerned party is required to present all the requisite documents and provide good quality footage on CD of the shooting to all other parties involved.
- The Sub Registrar is required to provide such details as the CD number, venue of shooting, document number and party involved, and the CD is to be sealed and kept on permanent record.
- Minutes of the house visit, including the shooting, are to be recorded in the minute book of the Registrar, with details of the persons who have carried out shooting to be entered in the house visit application, along with a short statement of the party, confirming the identity.

## **CAN I CHANGE THE PROVISIONS OF MY WILL?**

Certainly, a person can revoke his Will at any time by either executing a new Will or by burning, tearing or destroying the Will. A Will can also be modified /varied by making a Codicil which records such modification/variation to the original Will. So if your assets change and /or you change your mind about any bequest there is no problem. However, you must ensure that the last will mentions that the same is your Last Will and Testament and all the Wills made prior thereto stand revoked by you.

## **CONCLUSION**

***Whilst doing your financial planning, the making of a Will which would include your investments and finances ought to be given paramount importance.*** A Will properly drafted, giving clear instructions of the intention of the Testator reduces a fair amount of burden on the rightful legal heirs. Also preferably your close family must be made aware of the whereabouts of the Original to enable them to access the same easily after your death. Moreover, you may consider letting your beneficiaries know about the provisions made by you under the Will so that they know about your intention and can avoid unwanted fights in the family after you.

It is time we simplified our lives as also the lives of our legal heirs after death and therefore we must make a Will ourselves to protect our estate as also persuade parents and other family members to make a Will.

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[1] Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002

[2] "While drafting your will, include digital legacy too", Times of India, 18 April 2014

[3] Section 42, The Registration Act 1908

[4] See "Circular about Audio Video Shooting of Home Visit Proceedings" available at <http://iqmaharashtra.gov.in/writedata/PDF/circularforHomeVisit.pdf>.

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