

FAQs

Q.1. What is a Will?

Ans. Will is a written declaration by a person about his/her wishes for all matters such as distributing his/her properties /assets, wealth to family, relatives, outsiders, charities etc. after his/her death. A Will should be signed in the presence of two witnesses to give a legal effect as per Indian laws.

Q.2. What is the benefit of preparing a Will?

Ans. Preparing a will ensures that all your assets and properties are distributed and disposed of **as per your wishes** after your death avoiding disputes/misunderstanding or any legal interference within the family. Also, if you wish to give more share to some of your relatives/heirs and want to ensure that certain person must not get any of your assets and properties, then will is the only effective document to do the same. For example – if one wishes to donate organs, give flat to wife, give more/less to any particular son/daughter, give some amount to parents or also care taker/friend etc., such wishes can be mentioned in a Will which shall be binding to all - family, relatives, all laws, all courts including the Supreme Court of India. Individuals following Muslim religion may have to follow Sharia laws for succession of wealth instead of writing a Will.

Q.3. What will happen if I don't make a will?

Ans. When one dies without writing a Will (called “intestate” in legal language), all your properties, assets, wealth is distributed as per Succession Laws applicable to your religion/personal law, like The Hindu Succession Act etc.. You must know that such succession laws have defined fixed proportion to be distributed to all/several family members which may not be as per your wishes. There could be chances of delay in distribution of properties and may lead to legal cases, disputes amongst family members etc.

Q.4. Who can make a will?

Ans. Any person above the age of 18 years can make a Will with sound mind, i.e., capable of understanding his actions and is free from any undue influences.

Q.5. Why you should not wait till old age to make a Will?

Ans. In today's world of uncertainty where untimely death due to accidents, heart ailments, terror attacks are becoming 'a way of life' which is also why many people take insurance at a young age of 25 or earlier. You should make a Will soon after attaining 18 years of age and owning even a single asset like flat or insurance policy or bank account or shares.

If one takes insurance at a young age to provide financial support to the family in case of untimely death, why not make a Will which is an instruction in writing to the family as on 'how to distribute insurance claim or other properties / assets'. Hence everyone should make a Will at any age above 18 years.

Q.6. How to make a will?

Ans. Will can be handwritten or typed, however typed Will is preferred on a plain paper as Stamp paper or stamp duty payment is exempted in India for a Will document. A Will should be in any language which is suitable to the person who has made the Will. A Will should cover details of your family, your properties/assets, your liabilities, your wishes, your bequeaths (property distribution wishes), names of two witnesses, date and place of signing, sign of the person who has made the Will and both the witnesses on each page.

Q.7. When can I make an oral will?

Ans. This is called a Special Will which is only allowed to soldiers, airmen, and navy persons. Also, some Muslims are allowed to make oral wills as per their personal laws.

Q.8. Are the laws different for different religions?

Ans. Yes, this relates to the Succession laws where there are different laws applicable as per the religion of the deceased person.

For example – for Hindus, it is the Hindu Succession Laws,

For Parsis and Christians, it is the Indian Succession act,

For Muslims it is as per the Sharia Laws (different rules for Shia, Sunni, Khoja etc.)

Q.9. What is the rule for the witnesses of the Will?

Ans. As per the law, a Will should be signed in presence of minimum Two Witnesses. It is **not necessary for witnesses to read the content of the Will**, they are just to confirm that the Will was signed in their presence. As per the law, witnesses can be called by courts in the event of any question on legality/authenticity of the Will. Nowadays, it is also advisable to do a video recording while the Will is being signed and clip can be kept in a safe manner along with the original Will so that it can be legal evidence, if required to prove legality of the Will.

Q.10. What is an Executor? Is it necessary to appoint an Executor to a Will?

Ans. Though it is not mandatory to appoint an Executor, however it is recommended to appoint an Executor in Will document for smooth and faster distribution of assets. Executor is a person who is appointed by the person making a Will to be authorized to take action on all the wishes as per the Will. An Executor can be any person who is a beneficiary in the Will or any trusted person like family friend, lawyer or CA who can assist the family to act as per your wishes in the Will.

Q.11. Is it mandatory to ‘Notarise’ or ‘Register’ a Will? What are the benefits?

Ans. No, Notarisation or Registration of Will is **not mandatory**. A Will signed by two witnesses is a Legal Will. However, one can register the Will at any point of time till life-span after making it for which no fee is charged at Sub-Registrar’s office except some scanning charges. If Will is registered, it means the person who has made his/her Will in the presence of two witnesses will have visited the Registration Office physically and registered their Will in the presence of the Sub-Registrar (Govt. Official). Hence, the chances of questioning the authenticity of the Will amongst the family/relatives is avoided. To register a Will, maker of the Will has to personally visit along with two witnesses (it is not necessary for these witnesses to be the same who signed as witnesses to the Will signing). You also need to carry Original Will, latest MBBS Doctor’s certificate for mental fitness and an address proof.

Q.12. Which properties / assets can be mentioned in the will?

Ans. It is advisable to mention all single/joint properties, wealth, assets, receivables as well as all liabilities/loans in the Will, including movable, immovable, intangible properties and assets. Movable properties will include Cash, Jewellery, FD’S, Bank Accounts, Insurance Policies, Vehicles & all your furniture, fixtures etc. Immovable properties will include all your Land, Building, Flat, Shop, Office, Plot, Garage etc.

Q.13. Can joint properties be included in a Will?

Ans. Yes, person owning any joint property is allowed to mention his wishes in the Will for his/ her share in the Joint Property. It is necessary to mention about all joint property titles to avoid unnecessary disputes.

Q.14. Can properties/assets where Nomination are filled also be included?

Ans. Yes, as per Indian laws, a nominee is trustee and nomination arrangement is just a facility to claim property by a nominee in the event of death of owner. Nominee will only act as Trustee for temporary period till legal heir is established as per the Will or as per the Succession Act, thereafter nominee has to handover those properties to rightful legal heirs. Nominee can also be a legal heir.

Q.15. Can rented properties/tenancy rights be included in a Will?

Ans. No, tenancy rights is not a property or asset hence it cannot be bequeathed in a Will.

Q.16. Can long leasehold rights be included in a Will?

Ans. Yes, long leasehold rights can be bequeathed in a Will.

Q.17. Can an ancestral property or property received as a legal heir in the past be Bequeathed by a Will?

Ans. Ancestral properties in which title/ownership is legally transferred can be bequeathed by a Will.

Q.18. Can Business ownership in a firm/company can be bequeathed in a Will?

Ans. Yes, ownership as a proprietor in a proprietorship firm OR share owned in a company can be bequeathed by a Will. For share in partnership firm as a Partner, it is allowed to be bequeathed subject to conditions, if any, in the Partnership Deed.

Q.19. Can share in HUF be bequeathed?

Ans. Yes, share in Hindu Undivided Family can be bequeathed.

Q.20. Which other properties/assets can be bequeathed by Will?

Ans. One can bequeath pets, paintings, antiques, electronic items, furniture & fixtures, Intellectual properties like Trademark, Patents, Copyrights, Licenses, digital assets, Social Media Accounts, Personal Belongings, Books, etc.

Q.21. How to protect minor children?

Ans. One can nominate guardians for minor children who are beneficiary in the Will, and such guardian will be responsible to look after the minor children and protect their share until the child attains 18 years of age. Many a times, people create a Trust by way of Will for the benefit to all the legal heirs, friends, relatives or for charitable purpose.

Q.22. What about assets that you missed or forgot to mention in the Will, or future assets?

Ans. A general clause is included in a Will for residual properties/assets (miscellaneous assets that were missed) which specify who should receive 'residual assets' and similarly a general clause is added for 'all future assets'.

Q.23. Can a Will be changed in the future for addition / deletion or can a New Will be made?

Ans. A person can make a new Will as many times as he wants OR for few changes he/she can make a Codicil which is a Supplementary to the main Will. However, it is necessary to mention in your Will that 'This is the Last will and all past Wills, if any, to be treated as cancelled' since only the last Will is legally valid.

Q.24. Where can a Will be stored/kept?

Ans. Legally a will can be stored at any place. However it is advisable to store your will at a safe and secure location where it cannot be tampered with and it can be easily found by your family after your death. It may be kept in the safe custody of a locker, with a trusted person or with professionals like banker or solicitor who will take necessary steps to inform the executor after your death. Various banks and financial institutions offer custodian services for safe keeping your will.

Q.25. Can properties in foreign countries be bequeathed?

Ans. Properties situated in foreign countries are governed by local laws in those countries & the procedure to enforce Will in such countries would be different from India. Therefore it is advisable to prepare two separate wills - one dealing with properties in India as per Indian laws and the other with properties in foreign countries as per local laws. Such Wills are called as concurrent Wills and are treated independent of each other unless interlinked.

Q.26. Can husband & wife prepare one single Will as Joint Will?

Ans. Yes it is allowed where both the husband and wife bequeath all properties to each other and final bequeath is mentioned by which properties are distributed to family, relatives etc. as per Joint Will. However, such joint Will can take effect only after the death of both and not during the lifetime of either one. Many a times, husband and wife prepare 'Mirror Will' which are two separate individual Wills where each spouse gives all his/her property to their other spouse and mention third person as an Alternate Beneficiary.

Q.27. Who can be a beneficiary under a Will?

Ans. 'Beneficiary' is a person to whom the properties are distributed or "bequeathed" under the Will, i.e., a person who gets the benefit under the will. Any person, body, trust, charitable institute, society etc. can be a beneficiary under the will. A beneficiary under your will can be your family members, relatives, friends, servants, etc. and you can opt to give your properties in charity. However Law has set-out procedure to be followed if you have close relatives and want to give all your properties and assets for charitable purpose. This restriction is not applicable in case of Parsis who can give all his/her properties in charity.

Q.28. Who are legal heir?

Ans. Legal heir is a person; male or female, who is entitled to succeed to the properties of the deceased person under the applicable personal law for succession. As per Hindu Succession Act – if there is no Will the properties are allowed to be distributed to all Class 1 heirs equally, if there is no one in Class 1 heir, in such case properties are distributed equally to Class 2 heirs, if there are no such heirs in Class 2 also, the properties are given to Agnates and lastly to Cognates. If no one is available – all properties are taken away by the Government.

Q.29. When and How can a Will be cancelled?

Ans. One can cancel/revoke their Will at any point of time or even by making a fresh Will. Once a Will is made all the past/old Wills stand cancelled. A Will can be revoked in the following ways:-

- i) By execution of a subsequent Will;
- ii) By writing and declaring an intention to revoke the Will;
- iii) By burning, tearing or otherwise destroying the Will.

Q.30. Will I or my legal heirs be required to pay Income tax or any other taxes in respect to properties under the will?

Ans. No, as of date any property received under the Will does not attract any tax including capital gain tax. In past there was an Estate Duty tax which has been abolished in 1985 by India Government.

Q.31. What are special provisions in case of a Will by Muslims?

Ans. Succession related to Muslims are governed by their personal laws in respect to Will and inheritance. Generally, certain part of general succession law in India, known as Indian Succession applies to them. As a general rule, Muslims have to abide applicable Sharia laws for succession matters.

Q.32. What are special provisions in case of wills by Christians, Parsis and Jews?

Ans. In case of Christians and Parsis the Will gets cancelled / revoked on marriage. Parsis are entitled to give all his property for charity by Will.

Q.33. What is probate of a Will? Is it mandatory for all Wills?

Ans. Probate is a legal certificate issued by Civil Court of law in specified metro cities after the validity of the Final Will is proved. An executor nominated under the will can apply for probate. When the court grants the probate or certifies the Will, the executor would be entitled to take necessary steps to enforce the Will. Probate may not be required always, however when there are many immovable properties or assets are of high value, the probate is insisted before the title of owner is changed to avoid any disputes in future.

Q.34. What if there is no Will, how to establish legal heir?

Ans. In the event of 'No-Will' situation, if there are only movable properties, a Succession Certificate is to be obtained from Court. If the person has left behind immovable properties also, in such case Letter of Administration is to be obtained from the Court.

Q.35. What is difference between beneficiary and nominee?

Ans. Nominee is merely a trustee of the property and he/she is required to hand it over to the legal heir whereas beneficiary of a Will is called legal heir who is entitled to receive the properties under as per Will.

Q.36. When are properties distributed as per the Will?

Ans. The properties are distributed as per the Will **only after the death of its maker.**

Q.37. Who can help me to draft a Will?

Ans. A Will drafting can be done by any legal professional. In today's world of technologies, a Will can be made online with a software which is developed by a Will lawyers with IT engineering expertise. Drafting of a Will in simple and clear language with required legal clauses can avoid undue legal disputes / misunderstandings.