



Indian Wills

The expression 'Will' is defined under the Indian Succession Act, 1925 to mean the legal declaration of the intention of the testator with respect of his property which he describes to be carried into effect after his death. A codicil is of similar nature to a will as regards both its purposes and the formalities relating to it. The chief characteristics features of a will are:

- a) Capacity of the testator. The Testator must be a person in full possession of his senses and powers, able to make a testament and not disabled for any special cause in respect of his person, mind, condition or the property concerning which the testament is to be made.
- b) Intention to dispose. As it is the free mind and not the words that give life to a testament, so a free mind and clear conscience to dispose, rather a firm determination, are essential for validity of a will.
- c) If the testator is living out of India, the form and order of law should be observed regarding signature, notarisisation and legislation etc.
- d) If the will is in a language not known to the testator, the same should be read over and explained to him by some competent person so that he may fully understand the nature, contents and implication of the document and the person so explaining shall make an endorsement on the will to that effect.

A will or any part of a will, the making of which has been caused by fraud or coercion, or undue influence or by such importunity as takes away the free agency of the testator, is void.

A will may be revoked or altered by the maker of it by another will made at any later time when he is competent to dispose of his property. Every testator must execute his will according to the following rules:

- 1) The testator must sign in his own handwriting or affix his mark to the will, or it must be signed by some other person in his presence and by his direction.
- 2) The signature or mark of the testator, or the signature of the person signing for him, must be so placed that it will appear that it was intended thereby to give effect to the writing as a will.
- 3) The will must be attested by two or more independent witnesses each of whom has seen the testator sign the will and these witnesses sign the will in the presence and by the direction of the testator.
- 4) Each of the witnesses must sign the will in the presence of the testator.
- 5) For wills executed overseas the testator and the two witnesses must sign before a Notary Public. The Will, will not be valid in India unless and until the will is legalised (as provided under the Hague Convention) Furthermore legislation at the Indian High Commission is recommended as the Hague Convention is not fully implemented in all the states in India.

It is not necessary that the will should be registered; nevertheless it is also prudent to have the same registered in India. In case the original will is lost, probate may easily be obtained of a certified copy of the same. A testator may deposit his will for safe custody with the registrar of the court where the person is ordinarily a resident in India. A will requires registration if it creates a family settlement of the properties of the testator.

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