Testamentary Succession

"I leave my house to my wife for her lifetime, and thereafter to my children."

What is a Will?

Section 2(h), Indian Succession Act, 1925

"A Will is 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."

In plain words

A Will is your written instruction about who is to receive your property after your demise, set out in a form the law will enforce.

1. **It takes effect only on death**
   You may prepare it during your lifetime but it comes into effect only upon your demise.
2. **It gives legal effect to your intention**
   It records how you intend your estate to devolve after your lifetime.
3. **It remains revocable during your lifetime**
   You may change, replace or revoke it while you retain the capacity to do so.
4. **It deals with your estate**
   It governs property and interests that form part of your estate and are legally capable of being bequeathed.
5. **It allows you to decide the succession of your estate**
   It enables your intention to guide the distribution of your estate, within the limits of the law.

A Will is simply your instructions about your property, written in a form the law will enforce.

Why is a Will Important?

IF THERE IS NO WILL

- Your estate devolves according to the applicable personal laws.
- The personal law determines the framework for distribution.
- That framework is designed as a general rule, not a personalized succession plan.
- Individual circumstances, priorities and intentions may not be reflected.

A WILL ALLOWS YOU TO PLAN FOR WHAT THE LAW CANNOT PERSONALISE

- **Different financial needs within the family**
- **Financial security of a spouse or a dependent**
- **Continuity of a family business**
- **Blended families and changing family structures**
- **Specific sentimental or valuable assets**
- **Charitable and philanthropic intentions**
- **Assets situated across jurisdictions**
- **Digital and emerging forms of property**

Laws governing wills in india

Which law applies to your Will?

THE LAW THAT GOVERNS YOUR WILL DEPENDS ON THE PERSONAL LAW THAT APPLIES TO YOU

Hindus, Buddhists, Sikhs and Jains

Hindu Succession Act, 1956

- Section 30 confirms that a Hindu may dispose of his or her property by Will, as per the provisions of Indian Succession Act, 1925.

Indian Succession Act, 1925 (ISA)

- Sections 57 of the ISA clarifies that the provisions in relation to a Will specified in Schedule III under the ISA applies to all Wills and Codicils made by any Hindu, Buddhist, Sikh or Jain.

Christians, Parsis and Jews

Indian Succession Act, 1925

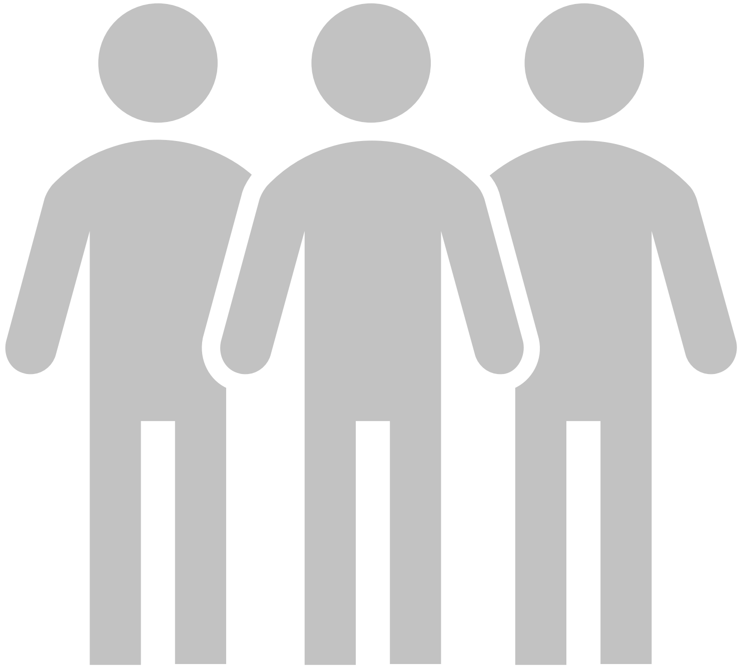
- The ISA governs the making, interpretation and proof of the Will.
- Some separate rules apply to Parsi intestate succession, but the rules on Wills are largely common.

Muslims

- **Muslim personal law**
- A Muslim may normally give away up to one-third of the estate by Will. Anything beyond that requires the consent of the heirs.
- A Will may be oral, but proving what was said is difficult.

The questions ISA answers

Who may make a Will	**Section 59**	The Will must be your own free choice	**Section 61**
You may change or cancel it at any time	**Sections 62 and 70**	How it must be signed and witnessed	**Section 63**



KEY PERSONS INVOLVED IN A WILL

Who is involved in a Will?

1 **Testator / Testatrix**

The person who makes the Will and decides how his or her estate is to be bequeathed.

2 **Beneficiaries**

The people or institutions who receive property or a benefit under the Will. They are also called legatees.

3 **Executor**

The person appointed by the testator under the Will to collect the estate, pay what is owed, and carry out the testator's wishes.

4 **Witnesses**

The two or more persons who witness the testator sign the Will. They may later be called to prove how the Will was made.

Choosing the right people matters as much as the words of the Will

- A beneficiary may also be the executor. The two roles are different, but one person may hold both.
- Always name a second, alternate executor, in case the first is unable or unwilling to act.
- Choose witnesses who are younger than you, in good health, and easy to trace many years later.

The Testator: The person making the Will

Section 59, Indian Succession Act, 1925 — Every person of sound mind, not being a minor, may dispose of his property by Will.

Who may make a Will

- Any person aged 18 years or above.
- Any person who is of sound mind at the time of signing.
- A married woman, in respect of property she is free to dispose of.
- A disabled person, provided he or she knows what is being done.

Who may not make a Will

- A minor — that is, a person below 18 years of age.
- A person who, at that particular moment, is in such a state of mind, through illness, medication, intoxication or any other cause, that he does not know what he is doing.

A practical point

A Will need not be made on any special paper, in any special language, or before any official. What matters is that the testator understood it, intended it, and signed it in the presence of two or more witnesses.

The law asks very little of a testator — age and understanding. Everything beyond that is a matter of care.

The Beneficiaries: The people who receive

Who may be a beneficiary

- Family members, relatives, and persons outside the family, alike.
- A minor child, with a guardian or trustee named to hold the gift until the child is of age of majority.
- A charity, religious institution, trust or company.
- A person may be both a beneficiary and the executor. The roles remain distinct.

Describing a beneficiary clearly

- Use the full name, the relationship to you, and, where two people share a name, an address or date of birth.
- Avoid loose descriptions such as “my children” or “my grandchildren” without saying whether you mean those living at the date of the Will or at the date of your death.
- Always include a residuary clause, saying who is to receive anything not specifically given away. It is the single most useful clause in a Will.

The Executor: Who actually does the work

WHO IS AN EXECUTOR

Section 2(c) of ISA - “Executor" means a person to whom the execution of the last Will of a deceased person is, by the testator's appointment, confided.

Section 211 of ISA - The executor represents the estate of the testator and is, for legal purposes, the testator’s legal representative.

What the executor actually does

- **Secure the estate**
  - Locate and safeguard the original Will.
  - Identify, collect and preserve the assets of the estate.
- **Understand the estate**
  - Identify the liabilities and outstanding obligations.
  - Deal with creditors and statutory dues.
- **Administer the estate**
  - Manage and administer the estate pending distribution.
  - Distribute the estate in accordance with the Will and applicable law.

A beneficiary receives under the Will. An executor administers it. One person can be both, but the roles remain distinct.

Choosing the right Executor

What to weigh

- Integrity and trustworthiness.
- Ability to handle financial, legal and administrative matters.
- Age, health and likelihood of being able to act when required.
- Relationship with the beneficiaries and potential conflict of interest.
- Independence and neutrality, particularly where disputes are foreseeable.
- Availability and practical ability to administer the estate.
- Willingness to act – discuss the appointment with them in advance.

Does it need to be a family member?

- Not necessarily. Familiarity with the family can be valuable but it can also create complications. A family member may:
  - Have a personal interest in the outcome;
  - Be drawn into disputes between beneficiaries;
  - Face competing family loyalties;
  - Lack the time, expertise or independence the estate requires.

Ways to structure the appointment

- A single executor.
- Two or more executors acting together.
- A professional executor, where the estate requires specialist administration.
- An alternate or substitute executor, if the primary executor is unable or unwilling.

Your Will should provide for what happens if the named executor is unable, unwilling or unavailable to act.

Witnesses and Attestation

Section 63(c), ISA — A Will must be attested by two or more witnesses.

1 **Each witness must see the testator sign the Will or affix their mark, or**

2 **Each witness must receive a personal acknowledgement from the testator of that signature or mark**

3 **Each witness must sign the Will in the presence of the testator**

What a witness is really for

- To attest that the Will was executed in accordance with the law.
- A witness need not know or approve of the contents of the Will.
- A witness may later be called upon to prove the circumstances of execution.
- Where the Will is contested, the witness may become critical evidence of the testator's capacity, understanding and voluntariness.

Choosing witnesses well

- Independent of the beneficiaries
- Reliable and credible
- Capable of understanding what they are witnessing
- Able to recall the circumstances of execution
- Not closely connected to an anticipated dispute

Witnesses do more than satisfy a legal formality. Years later, they may be the most important evidence of how and in what circumstances the Will was signed.

What should a will contain?

What should a Will contain?

1 Introductory declaration

Your identity, testamentary intention, and that the document is intended to operate as your last Will.

2 Revocation of earlier declarations

In case of declaration of a new Will, a clause should be included revoking earlier Wills.

3 Relevant personal and family details

The relationships and circumstances relevant to the estate.

4 Appointment of executor

A primary executor, and an alternate.

5 Identification of Estate and Specific bequests

Provide description of estate held and specific bequeathment of identified assets amongst beneficiaries.

6 Residuary estate clause

Who receives everything not otherwise effectively disposed of.

7 Contingency provisions

What happens if a beneficiary dies before you, disclaims a bequest, or cannot take it.

8 Special provisions

Guardianship, life interests, business, digital assets, trusts.

9 Execution and attestation

Signature, date, and two or more independent witnesses.

What can you leave under a Will?

You can only give away property that forms part of your estate and that you are legally entitled to dispose of.

Immovable property

- Residential property
- Commercial property
- Land
- Other transferable interests

Movable property

- Bank balances
- Jewellery
- Vehicles
- Art and collectibles

Financial assets

- Shares
- Mutual funds
- Bonds and debentures
- Other investments

Business interests

- Shares in private and public companies
- Partnership interests, subject to the governing agreement
- Other transferable business interests

Intellectual property

- Copyright
- Royalties
- Trademarks and other transferable proprietary rights

Contractual rights

- Subject to whether the right is personal to you or capable of being transferred

Assets that need special care

1	**Jointly held property**	The nature of the co-ownership must first be examined to determine whether the deceased's interest forms part of the estate.
2	**Nomination-based assets**	A nomination does not necessarily determine the ultimate succession to an asset.
3	**Family business assets**	Testamentary succession must be considered alongside the legal and contractual framework governing the business.
4	**Coparcenary and ancestral interests**	Only the interest that is legally capable of testamentary disposition may be dealt with under a Will.
5	**Assets outside India**	Succession of overseas assets may be subject to the laws and procedural requirements of another jurisdiction.

Identifying the asset is only the first step. The next question is always: what legal restrictions govern its succession?

Digital Assets

WHAT COUNTS AS A DIGITAL ASSET?

- **Cryptocurrency and other virtual digital assets**
- **NFTs and tokenised assets**
- **Cloud accounts, data and records**
- **Digital photographs, videos and voice notes**
- **Domain names**
- **Online businesses and e-commerce interests**
- **Monetised social media accounts**
- **Digital wallets and payment accounts**

DIGITAL ASSETS RAISE TWO SEPARATE QUESTIONS

1. Who is legally entitled to inherit the asset?
2. How will that person actually obtain access to it?

AMONG THE FIRST INDIAN DECISIONS TO TREAT DIGITAL ASSETS AS INHERITABLE PROPERTY

Smt. Sadhna Shaishav Shah & Anr. v. Nil

Civil Miscellaneous Application No. 17 of 2026 · 3rd Additional Senior Civil Judge, Gandhinagar · order dated 5 May 2026

What happened

- A man died in Gandhinagar in April 2025 without leaving a Will. His widow and daughter were his only Class-I heirs. His estate included an iPhone and the linked Apple ID and iCloud account, holding family photographs, videos, voice notes, documents and contacts. The service provider would not release access unless a court first appointed a legal representative.

What the Court held

- Digital data stored in the cloud is a valuable digital asset, and forms part of the estate of the deceased.
- The Indian Succession Act, 1925 is wide enough to treat such data as movable property, capable of being administered under succession law.
- The right to privacy is personal to the individual and does not survive death, so it cannot be used to keep lawful heirs from administering the digital estate.
- Where no nominee has been appointed, the right to access and manage the data passes to the legal heirs.

What the Court ordered

- Letters of Administration were granted to the daughter for the phone and the account, and the service provider was directed to assist her in recovering the data, so far as technically feasible.

An estate is no longer confined to physical property. In the digital age, inheriting an asset without access to it may mean nothing at all.

Preparing to pass on Digital Assets

1

Prepare an inventory

- Identify the digital assets held.
- Record where they are held.
- Consider their economic or personal value.
- Determine whether they are capable of transfer.

2

Distinguish succession from access

- The Will determines who is entitled to the asset.
- Access credentials should generally be addressed separately from the Will.

3

Review the applicable platform terms

- Terms of service and account restrictions.
- Licensing and transfer limitations.
- Jurisdiction-specific requirements.

4

Establish a secure access protocol

- Recovery mechanisms
- Information relating to digital wallets and private keys.
- Secure instructions for the executor or other authorized person.

5

Appoint appropriate assistance

- An executor or adviser capable of dealing with digital assets.
- Appropriate expertise in relation to wallets, private keys, authentication and platform recovery.

A digital estate plan needs three things: ownership, succession and access. Miss any one of them and the other two fail.

Keep the access record separate from the Will, and update it whenever credentials or holdings change.

Life Interests and Limited Interests

A Will need not confer absolute ownership

- A Will may create a life interest or another limited interest in property.
- The interest may be granted for a specified purpose or period.
- The testator may separate the right to enjoy an asset from the ultimate ownership of that asset.
- A life tenant may enjoy the property without acquiring an unrestricted right to deal with or dispose of the underlying asset.

IN PRACTICE, IT READS LIKE THIS

"I hereby bequeath all jewellery owned by me as on the date of my demise, to my wife for her use during her lifetime, and after her demise, to my daughter who shall be fully entitled to deal with and dispose of the same in the manner she deems fit and proper."

A life interest can protect one generation while preserving the asset for the next — but only if it is drafted with precision.

Types of wills

Types of Will

These are descriptions of form and circumstance, not separate legal categories. Each must still satisfy Section 63.

1 Oral (nuncupative) Will

- Testamentary wishes spoken rather than written down.
- Not valid under the ISA, except in the case of a privileged Will.
- Recognised under Muslim personal law, subject to proof of what was actually said.
- **The common risk:**
- The only evidence is what others say they heard. Such claims are very difficult to establish after death, and are frequently disputed.

2 Joint Will

- A single document containing the Wills of two or more persons, most often a husband and wife.
- It operates as the separate Will of each person, and takes effect on each death separately.
- Either person may revoke his or her own part during their lifetime.
- **The common risk:**
- Only one original exists, and it may have to be produced twice, many years apart. Separate Wills are usually simpler.

Whatever form is used, the court asks the same questions: capacity, intention, free will, signing, attestation and proof.

Types of Will

3 Mutual (reciprocal) Wills

- Two separate Wills made on an agreed basis, each person leaving property to the other, and then on to agreed persons.
- The real question is whether the two agreed not to change their Wills.
- If a binding agreement is proved, the survivor may not be free to depart from it.
- Courts require clear evidence of such an agreement. Two similar Wills, by themselves, do not prove one.
- If mutual Wills are intended, the agreement should be recorded expressly and in writing.

4 Conditional (contingent) Will

- A Will, or a gift within a Will, expressed to take effect only if a stated event happens.
- A common example: a Will made before a journey, expressed to operate only if the testator does not return.
- The condition must be clear and lawful. A condition that is impossible, illegal or immoral is void.
- The risk is severe: if the condition is not satisfied, the Will may fail entirely, and the estate passes as though no Will had been made.

5 Duplicate and concurrent Wills

- **Duplicate:**
- The same Will signed in more than one original, one kept at home, one with a lawyer or in a bank locker.
- **Concurrent:**
- Separate Wills dealing with assets in different countries. Each must be drafted so that it does not revoke the other.

6 Codicil — not a Will, but a change to one

- A short document that adds to, alters or explains an existing Will. It is read together with the Will.
- A Codicil must be signed and attested in exactly the same way as a Will.
- Useful for a single small change, a new executor, a changed address, one additional gift.
- For anything more, a fresh Will is safer. A Will followed by several codicils becomes difficult to read as a whole, and invites dispute.

STEPS AFTER CREATION OF A WILL

Notarization vs Registration

Is notarization / registration of a Will mandatory?	No. Neither notarization nor registration is mandatory for the validity of a Will.

What notarization can help with

- Can help with confirmation that the Will was actually signed by the testator.
- Deter any forgery claims: The official notary seal and signature make it much harder for someone to claim the signature was faked or altered later.
- Notary acts as an impartial witness.
- Notary can help in verification your mental state at the time of execution of the Will.

What registration can help with

- A registered document carries high evidentiary value in court.
- A copy is kept in safe government records at the Sub-Registrar's office.
- Can make allegations of post-death fabrication or substitution more difficult to sustain.
- Creates an additional formal trail that may be useful if the Will is later challenged.

What notarization / registration do NOT prove

- That the testator possessed testamentary capacity.
- That the Will was executed free from coercion, fraud or undue influence.
- That the testator understood and approved every disposition in the Will.
- That the Will is free from suspicious circumstances.
- That all requirements for a valid Will were otherwise satisfied.

Safeguarding the Original Will

Legal validity is only half the exercise. The original Will has to be capable of being produced and acted upon.

If the original goes missing

- Questions may arise as to whether the Will was ever created or revoked during the lifetime of the testator.
- If only a copy of the Will is available, there may be evidentiary difficulties in proving the authenticity and/or contents of the Will.
- Delay and additional complexity in administration.

Where to keep the original

- Secure custody with a lawyer or other professional custodian.
- A secure bank locker, with appropriate arrangements for access.
- With the executor of the Will.
- With a trusted person or a confidante.

Your executor should know that a Will exists and how to find it, but need not know everything in it during your lifetime.

Who should know that your Will exists?

There is no legal duty to tell anyone about your Will. It is a private document during your lifetime, and no one, not even the beneficiary, has a right to see it while you are alive.

The executor MUST know

- That a Will exists.
- Where the original is kept, and how it can be obtained.
- Whom to contact – your lawyer, bank or custodian.
- The executor need not know the contents during your lifetime.
- **Without this, a perfectly valid Will may never be found, and the estate will be dealt with as though you had died without one.**

Reasons to tell the beneficiaries

- It removes the element of surprise and with it, much of the suspicion.
- It makes it harder to allege later that the Will was fabricated.
- It prevents relatives from proceeding on the footing that you died without a Will.
- It reduces the risk of the Will being ignored or suppressed.

Reasons for caution

- The biggest concern is the pressure from the family members to disclose the disposition under the Will.
- Family members may apply pressure to receive certain property under the Will;
- May create friction in the family.

A common middle course: tell the family that a Will exists and who holds it, tell the executor how to find it, and keep the contents to yourself.

The greater risk is not that everyone knows. It is that no one does.

Changing the Will – Restatement or a Codicil

A Codicil is is usually enough when the change is small, self-contained, and does not affect the rest of the Will. If the changes are substantial, restatement is better.

Codicil – How it is made and what it is used for

- A Codicil is an instrument made in relation to a Will, explaining, altering or adding to its dispositions, and is deemed to form part of the Will.
- Formed exactly in the same manner as a Will: in writing, signed by the testator, and attested by two or more witnesses.
- It should identify the Will it amends by its date, and state clearly which clause is being changed.
- It should confirm the rest of the Will in all other respects.
- Codicil should be kept with the original Will.

Restatement of Will

- If the changes made to the Will are substantial in nature, the testator may consider restating and replacing the old Will.
- Formed exactly in the same manner as a Will: in writing, signed by the testator, and attested by two or more witnesses.
- It should categorically specify that the bequests under the old Will are revoked and the old Will is superseded in entirety by the restatement Will.

Points that must be considered

- No alteration shall be made to the Will by hand after it has been signed.
- An alteration that is not itself signed and attested has no effect.
- Several codicils make the Will hard to read as a whole, and inconsistencies between them invite dispute.

A codicil is a scalpel, not a substitute for a rewrite. Where there is any doubt, make a new Will and revoke the old one cleanly.

DISPUTES SURROUNDING A WILL

What actually triggers dispute in a Will?

1. Unnatural or unexpected dispositions
2. Wills executed shortly before death
3. Questions concerning testamentary capacity
4. Significant involvement of a Beneficiary in creation of Will
5. Multiple or inconsistent Wills
6. Defective execution or attestation
7. Absence of the original Will
8. Ambiguity in the terms of the Will

An unusual disposition is not automatically suspicious. Courts examine whether the circumstances, taken together, create legitimate doubts that require an explanation.

Suspicious Circumstances: Who has to prove the Will?

CIRCUMSTANCES THE COURTS HAVE TREATED AS SUSPICIOUS

A shaky or doubtful signature

A testator who was feeble, or seriously ill

A gift that is unnatural on its face

The main beneficiary took an active part in making the Will

Natural heirs excluded without any explanation

The Will kept secret, or produced long after the death

Who is the "propounder"?

- The propounder is simply the person who puts the Will forward and asks the court to accept it as genuine.
- In practice this is usually the executor named in the Will, or the principal beneficiary under it.
- Anyone who relies on a Will to have property transferred, is propounding it.
- The person opposing the Will is described as the caveator or the objector.

What the propounder must establish

- That the testator signed the Will.
- That the testator was of a sound mind while disposing the Will.
- That two witnesses attested the Will in the manner required by Section 63.
- Where suspicion arises, the propounder must go further and explain it to the satisfaction of the courts.

Suspicion does not by itself invalidate a Will. But once genuine suspicion arises, the propounder must explain it to the satisfaction of the court.

Suspicious circumstances: what the courts have said

H. Venkatachala Iyengar v. B. N. Thimmajamma

Supreme Court, November 1959 — the leading decision

- A Will is proved much like any other document except as to the special requirements of attestation prescribed by section 63 of the Indian Succession Act.
- The propounder must prove the signature, a sound disposing mind, and due attestation.
- Where there are suspicious circumstances surrounding the execution of the Will. The propounder must remove the said suspicions from the mind of the court by cogent and satisfactory evidence.
- The Court gave examples: a shaky signature, a feeble mind, an unnatural disposition, and a propounder who took a leading part in the making of the Will.

Sardari Lal v. Bishan Dass

Supreme Court, July 2026 — recent decision

- If the testator is an illiterate person, the burden is heavy on the propounder to satisfy the judicial conscience of the Court that the Will was executed by the testator with free will and full understanding of its contents.
- Disposition in favour of the Respondents, who were not close relatives, while disinheriting the widow i.e., the sole Class I heir of the testator, was unnatural and raised suspicion.
- The exercise of proving the Will is not confined to proving its execution, it is the first step in that exercise. The exercise is complete when the propounder satisfies the Court's conscience that the testator had signed the Will with free will, being aware of its contents, and after understanding the nature and effect of the dispositions in the Will.

Where most disputes are won or lost

Section 74, ISA — The words of a Will are to be interpreted according to the intention of the testator.

A Will should be

- Clear, leaving as little room for ambiguity as possible
- Internally consistent - no clause contradicting another
- Comprehensive, addressing the matters that matter to the estate and family
- Precise, without being unnecessarily technical
- Forward-looking, written for the estate as it will be, not only as it is

The danger of a borrowed template

- References to assets that are not in existence
- Provisions that contradict each other
- Executor powers that do not suit the estate
- A family or asset structure the template was never designed to address
- Tax, succession or regulatory consequences the template does not address

FOR EVERY CLAUSE, ASK:

"If the testator is no longer here to explain this sentence, will two reasonable people read it the same way?"

Key Takeaways

1 Establish testamentary capacity

2 Take instructions directly from the testator

3 Select witnesses with care

4 Ensure strict compliance with legal formalities

5 Provide appropriate context for unusual dispositions

6 Use clear and internally consistent language

7 Review the Will periodically

8 Preserve the original Will securely

Most Will disputes do not arise because someone made an unpopular decision. They arise because the circumstances make it hard to establish that the decision was genuinely and freely made.

Wills for non-resident Indians

Wills for NRIs: Succession and FEMA

CONCEPTS THAT SHOULD NOT BE CONFLATED

Citizenship

NRI status

Residential status under FEMA

Common issues in an NRI estate

- Immovable property situated in India
- Immovable property situated outside India
- Overseas bank accounts and investment holdings
- Assets inherited or acquired in India
- Assets acquired using different sources of funds.

Questions that may arise under FEMA

- Is the non-resident permitted to acquire or hold the particular asset by succession?
- Are there restrictions on the subsequent holding, transfer or disposal of the asset?
- Do the applicable rules depend on the person's citizenship, residential status or the nature of the asset?
- To what extent and subject to what conditions, may sale proceeds be repatriated?

Succession by inheritance and an inter vivos transfer may have materially different consequences under FEMA.

Succession law answers who inherits. FEMA may decide what the inheritor can hold, transfer or repatriate.

One Will or two? Indian and Foreign Assets

The key question is not whether separate Wills are always necessary, but whether they are appropriate for the jurisdictions and assets involved

Why consider separate Wills?

- May simplify probate or succession process in each jurisdiction.
- Can reduce delays arising from the recognition of a foreign Will.
- Allows each Will to comply with applicable local formalities.
- May facilitate jurisdiction-specific estate and tax planning

THE PRINCIPAL DRAFTING RISK: UNINTENDED REVOCATION

"I hereby revoke all prior Wills and testamentary dispositions"

A general revocation clause in a Will executed in one jurisdiction may inadvertently revoke an earlier Will dealing with assets situated in another jurisdiction. The relationship between the two instruments must therefore be clearly addressed.

If separate Wills are used, each should clearly specify

- The assets or jurisdiction to which it relates.
- Its intended relationship with the other Wills.
- That it does not revoke the other Wills, except to the extent expressly intended.

The question is not whether one Will or two is better. It is whether the testamentary structure works coherently across every jurisdiction in which you own assets.

Trusts with NRI beneficiaries

The trust deed decides who is entitled. FEMA decides what that person may hold in India, and how much may leave the country. Both questions have to be answered before every distribution, not once, at the time the trust is settled.

1. Cash and income

- Distributions to an NRI beneficiary are credited to the beneficiary's NRO account.

Current income

- Rent, dividend, interest and similar current income is generally repatriable from NRO without a ceiling, net of applicable tax.

Corpus and capital

- Remittance is capped at USD $1 million per financial year per person, including assets received by inheritance, legacy or settlement.

2. Distributions in specie

Immovable property

- An NRI may acquire from a person resident in India or a person resident outside india any immovable property situated in india by way of inheritance irrespective of whether such property is residential, commercial, agricultural land, plantation or farmhouse.

Shares and securities

- An NRI is eligible to hold/own/transfer any Indian security if such security was inherited from a person resident in India.
- Sale proceeds remitted later count against the same USD $1 million limit.

What the authorised dealer bank will ask for

- The trust deed, and evidence of the beneficiary's entitlement and of the source - inheritance, legacy or settlement.
- Forms 15CA and 15CB, PAN, and the beneficiary's NRO account details.
- Some distributions need prior RBI approval.

Case laws

H. Venkatachala Iyengar v. B. N. Thimmajamma

AIR 1959 SC 443 · Supreme Court

What the propounder must prove

- That the testator signed the Will;
- that he was of sound disposing mind at that time;
- that he understood the nature and effect of the dispositions;
- that he signed of his own free will;
- and that two witnesses attested in his presence.

The three categories of suspicious circumstance

(i) A doubt arises about the testator's state of mind, notwithstanding his signature on the Will.

(ii) The disposition appears unnatural, improbable or wholly unfair in the light of the relevant circumstances.

(iii) The propounder takes a prominent part in the execution of the Will and receives a substantial benefit under it.

Jaswant Kaur v. Amrit Kaur
(1977) 1 SCC 369

Where a Will is surrounded by suspicion, the case is not an ordinary dispute between two parties. The court must satisfy its own conscience that the document is the last Will of a free and capable testator. Proof of the formalities alone will not do.

Sridevi v. Jayaraja Shetty
(2005) 2 SCC 784

The onus of proving the Will lies on the propounder. But where fraud, coercion or undue influence is alleged, the burden of proving that allegation lies on the person who makes it. On the facts, age, death 15 days later and delayed registration were all explained, and the Will was upheld.

Kavita Kanwar v. Pamela Mehta
AIR 2020 SC 544 · 19 May 2020

A Will is not tested for fairness — unequal distribution is not by itself a ground to refuse probate. But where the propounder is also the executor and principal beneficiary and took an active part in making the Will, that must be explained. Here it was not, and probate was refused.

Savithri & Ors v. Karthyayani Amma & Ors

(2007) 11 SCC 621 · Supreme Court, 12 October 2007

The facts

- Sankaran Nair made a Will in 1971 leaving his property to his nephew and niece, who had looked after him, rather than to his son.
- He was suffering from cancer. From 1959 until his death in 1978 his son neither visited him, attended to him, nor met the cost of his treatment.
- The Will nevertheless made a small monetary provision for the son. It was challenged as surrounded by suspicious circumstances.

How the case travelled

Trial Court

- Held the Will was not genuine, doubting the testator’s testamentary capacity.

High Court

- Reversed. Mere disinheritance of a natural heir is not a suspicious circumstance.

Supreme Court

- Dismissed the appeal and upheld the High Court. The Will was valid.

What the Court held

- A Will is made precisely in order to alter the ordinary course of succession. By its very nature it will reduce or remove the share of a natural heir. If a person wanted his property to go to his natural heirs, he would have no need to make a Will at all.
- Depriving a natural heir of a share is not, by itself and without more, a suspicious circumstance. The background facts must be looked at.
- Suspicion means doubt, conjecture or mistrust. It must be a real doubt, not a disappointed expectation.
- The testator lived seven years after making the Will and never revoked it.
- The beneficiaries were the very people who had cared for him through his illness.
- The Will was registered, and Section 63 was satisfied — an attesting witness was examined.
- The propounder must still remove any suspicious circumstance that genuinely exists; here, none did.

Disinheritance disappoints. On its own, it does not make a Will suspicious.

Kavita Kanwar v. Pamela Mehta & Ors

AIR 2020 SC 544 · Supreme Court, 19 May 2020

The facts

- The testatrix died in 2006, leaving two daughters and a son. Her Will of 2003 made the younger daughter both the executor and the principal beneficiary.
- The elder daughter, a widow living in the same house, received very little.
- The son was excluded from the immovable property, with no reason given in the Will.

How the case travelled

Trial Court

- Refused probate, finding several circumstances surrounding the Will unexplained.

Delhi High Court

- Affirmed the refusal.

Supreme Court

- Dismissed the appeal. Probate was refused, and the estate passed as on intestacy.

What the Court held

- A Will is not examined for fairness or reasonableness. Unequal distribution is not, by itself, a ground for refusing probate.
- But where the propounder takes a prominent part in making a Will that confers a substantial benefit on her, that is itself a suspicious circumstance, which she must remove by clear evidence.
- Here the propounder was both executor and major beneficiary, played an active role in the making of the Will, and sought to conceal that role from the court.
- No reason was given anywhere in the Will for excluding the son from the immovable property.
- Taken individually, no single factor might have been decisive. Taken together and left unexplained, they meant the Court could not be satisfied that the document represented the free and informed mind of the testatrix.

Read with Savithri, the rule is a short one: an unequal Will is not suspicious. An unexplained one is.

Key Takeaways

1 **A Will is about intention — and about proving it.**

Without one, a statutory formula decides for your family.

2 **Wills fail on process, not on content.**

Capacity, execution, attestation and proof — in that order.

3 **Choose an executor who can actually do the job.**

And always name an alternate.

4 **Independent witnesses are your best evidence.**

Never a beneficiary, and never a beneficiary's spouse.

5 **Registration helps. It does not validate.**

It is evidence of a process, not proof of a state of mind.

6 **Review it as life changes.**

Marriage, birth, death, a business, a move abroad, a new asset class.

The purpose of estate planning is not to control the future. It is to make sure the decisions you made are the ones that survive you.

Thank You