

<https://www.myadvo.in/blog/how-to-make-and-register-a-will-in-india/>

With Due credits to the author: **Prachi Darji, myadvo.in**

## What is Will?

A Will is a legal declaration of a person on a document regarding the distribution of his assets after his death. It is a unilateral document that takes effect upon the death of a person allowing you to make an informed decision on how your wealth, **property** and assets will be distributed on your death.

Will is a legal document but there is no prescribed form of it as it can be handwritten or typed on any document and not just the stamp paper. A Will may be revoked or altered by the owner at any time prior to his/ her death.

### Table of Content:

1. Types of Will
2. Essentials of a Will
3. Who can make a Will?
4. How to make and execute a Will in India?
5. Execution of a Will:
6. What should be included in a Will?
7. What are the rules governing the transfer of a property through a will?
8. What are the grounds for challenging a Will?
9. What is the procedure for challenging a Will?
10. FAQs

## Types of Wills

According to the India Succession Act, there are two types of wills, Privileged and Unprivileged will.

- Privileged Wills are those Wills which are made by soldiers who are employed in an expedition or a war-like situation or an airman or mariner. These types of Wills do not have many legal formalities and they can be made in writing or orally.
- Unprivileged Wills are all other kinds of Wills and in the execution of these Wills, a lot of formalities need to be carried out from verification of signatures till attestation of witnesses.

In this article, we shall mostly be discussing unprivileged wills.

## Essentials of a Will

A Will has the following essential characteristics:

1. The intention of the testator must be to take effect after his death
2. A Will is a form of the legal declaration of such intention
3. The declaration must involve the manner of disposal of the property
4. The Will can be revoked or altered during the lifetime of the testator

## Who can make a Will?

As per Section 59 of the Indian Succession Act, 1925, the person making the Will must be of: -

1. Age
2. Sound mind

Furthermore, the section states that a person ordinarily of unsound mind may make a Will during the interval of the soundness of his/her mind. The section prohibits a person from making a Will when in a state of intoxication or illness which makes him/her incapable of understanding the consequences of the act.

## How to make and execute a will in India?

### Get Started

1. **STEP 1:** Firstly, all the essentials of a will as mentioned need to be adhered to.
2. **STEP 2:** It is advisable to consult the family lawyer before drafting the will. A will can either be drawn by the testator himself or through his lawyer.
3. **STEP 3:** A will is executed by ensuring the signature of the testator in the presence of the two witnesses and their signatures as well.
4. **STEP 4:** It would be beneficial if a will is registered and properly stamped as it helps in ensuring proper execution.

### Execution of a Will:

For starting the process of execution of the will, a **Probate in India** needs to be obtained from the court. A **Probate of will** is a legal certification of the genuineness of the will. It can be obtained by filing a petition before the court along with a schedule of the property and annexing a copy of the will to the petition as well. It should be expressly prayed to the court to grant probate to carry out the intention of the testator.

"A will needs to be drafted by taking into consideration the implications that shall follow the beneficiaries and it is better to keep the beneficiaries informed of the same," says Advocate Koonal Tanwar.

"A proper method of preserving the will can be done by ensuring that it is registered as it would give it a two-fold benefit, one of having a documentary presence and two of ensuring the legal validity over an unregistered Will," adds Advocate Koonal.

### What should be included in a will?

In a will the following details are to be included:

1. **Details of the testator-** The name, age, address and other details which shall help in identifying who is making the will and when is it being drawn.
2. **Declaration** - It is very important that the testator declares that he/she is of sound mind and free of any coercion while drawing the will.
3. **Details of the beneficiary** - The details of who shall be benefitting out of this will and to whom shall the assets be divided should be given as their name, age, address and relation to the testator.

4. **The executor of the will** - It is very important to appoint an executor who would ensure that the will is carried out according to the directions provided by the testator. The name, age, address and relation to the testator should be specified as well.
5. **Details of property and assets** - It is pertinent to list out all the details of the assets and properties that a testator has, and which are the ones that shall be covered in the will. He/she can also list out any specific assets that are there.
6. **Division of share** - The share that each beneficiary has on the property or the specifics of who shall get what is to be listed in full detail. If the asset is to be given to a minor, then a custodian for the minor should also be listed in the will.
7. **Specific Directions** - The testator should give directions in terms of executing the Will and should specify if there are any instructions
8. **Witness** - There should be a signature by the testator in the presence of at least 2 witnesses. The witnesses do not need to know the details of the will they just have to verify that the signature by the testator was done before them.
9. **Signature** - The testator should sign with the date on the will after the last statement.



### What are the rules governing the transfer of a property through a will?

In the Indian Legal scenario, the laws governing the transfer of property through a will can be seen through these legislations,

1. The Indian Succession Act, 1925
2. The Code of Civil Procedure, 1908

3. The Indian Registration Act, 1908
4. The Indian Stamp Act, 1899

## What are the grounds for challenging a will?

A will can be challenged on the following grounds:

1. **Presence of coercion, fraud or undue influence-** There needs to be a presence of these elements to establish that the Will was not drawn with a clear intention and the testator was under pressure.
2. **Presence of a suspicious nature-** There may be a presence of certain elements in the Will which could give a reasonable understanding that there was some transgression with it.
3. **Absence of testamentary intention or capacity-** This means that the Will may not depict an intention on behalf of the testator to carry out the Will or execute it. Lack of testamentary capacity implies that the testator might not be of sound and reasonable mind while drawing the Will.
4. **No proper execution-** If the signature of the testator along with those of the two witnesses are not present then it can be a ground to challenge the validity of the Will.
5. **Absence of knowledge-** If the testator did not have knowledge of signing the Will then it can be taken to be a ground for challenging the validity of the Will.



## What is the procedure for challenging a Will?

In a court of law, under the above-mentioned grounds, a will can be challenged by:

1. **STEP 1:** Filing a suit in a valid civil court.

2. **STEP 2:** Issuing Vakalatnama, which gives the lawyer the authority to act on your behalf and pay the required court fee
3. **STEP 3:** Initiation of the proceedings and filing of a written statement by the other party
4. **STEP 4:** Documents like Legal Heir Certificates and other documents essential to the case to be filed before the court

### How can a Will be challenged after probate?

Yes, there can be a challenge to a will after probate on the following grounds:

1. If there was a fraudulent grant of probate by concealing facts or deceiving the court
2. If probate was granted by a false allegation of fact
3. If there was a defect in the proceedings to grant a probate
4. If the grant of probate has become useless due to certain situational changes

### Can there be a waiver of the right to challenge a Will?

Yes, there can be a waiver of the right to challenge a Will, but it needs to be done by entering into a contract with all members who have vested interests. This, however, requires that there should be an intention of relinquishment of their right, conscious abandonment of it, clear and unambiguous intent to not exercise this right and complete knowledge of the waiver of such right.

What is the process of intestate succession in the absence of a Will?

**Intestate succession in India is done when a person passes away in the absence of a will. In India inheritance is dealt with in 2 scenarios.**

1. Under Personal inheritance laws which have a religious undertone
2. Under the Indian Succession Act, 1925

Under the Personal Laws, we have the Hindu Succession Act, 1956 and the Muslim Personal Laws (Shariat) Application Act.

### What is the process of revocation of a will?

**The process of revocation means the cancellation of a will. This can be done in the following ways:**

1. If the will cannot be found after the death of the testator and was last seen in his possession, then it shall be presumed to be destroyed
2. If there is an execution of a subsequent will the previous will automatically be revoked
3. If there is a declaration of intention to revoke the will by the testator in written then it can be taken to uphold the new will and revoke the previous one
4. Destroying the existing will by tearing, burning or by other means by the testator. This means that the testator has shown the intent of destroying the will through action.
5. Presence of an unprivileged will upon the privileged will. This means that if there is an unprivileged will that is created at a later stage of time then it shall overrule the prior privileged will because it is made in a situation where the person may or may not survive.

6. If the testator gets married after the will then the old will shall be deemed to be revoked. This is an important principle under the Indian Succession Act and is done to safeguard the interests of all the relevant parties.

---

## FAQs

### **Why should I make a Will?**

To prevent disputes amongst the legal heirs and distribute your assets as per your wishes/choices, you should always get a Will drafted. A well-drafted Will can provide for the distribution of assets in a specified proportion among your spouse, children, parents, friends, and associates.

### **Who is the executor of Will?**

The executor of a Will is the person who will overview the entire process appoint to ensure that the directions in the Will are carried out as per your wishes. An executor can be any person who is not a beneficiary in the Will, or any trusted person such as a family friend, a lawyer or a chartered accountant.

### **What happens if I don't appoint an Executor?**

The court will appoint an administrator to carry out the responsibilities of the executor.

### **Who will get my assets if I die without making a Will?**

Your assets will be divided and distributed according to the succession laws, which are based on the deceased person's religion. [Click here to read about Intestate Succession.](#)

### **What makes a Will legal?**

Ensuring the following makes a Will legal:

- The Will should be written with consent and free will of the testator.
- The Will should be signed by two witnesses who have seen the testator writing the Will.
- Will should be registered.

### **When should I make a Will?**

You can make a Will anytime after you attain the age of 18 (Eighteen) years. However, you should make a Will once you have married and have children, as these factors substantially drive the contents of the Will.

**What are the common mistakes that should be avoided while drafting a Will?**

**Following mistakes should be avoided while drafting a Will:**

- Not being specific about the assets.
- If there are changes in the status of assets, not making the necessary alterations in the Will.
- If you are making a new Will, not making declarations to revoke previous Wills made by you.
- Appointment of any interested party as executor.
- Not appointing a guardian for minor children.

**Is it important to register a Will?**

No. It is upon the testator if he wants to or not. However, if a Will is registered, it will be a document of proof that will be safe in the hands of the registrar as it cannot be tampered with thereafter.

**Can I change my Will after registration?**

As a testator (owner of the Will), you can change the Will at any time you deem fit. Once you have changed the Will or made a new Will, all preceding Wills are cancelled automatically.

**What are the advantages of getting a Will registered?**

Registration of a Will carries the following benefits:

- In case there is tampering of the original Will, it can be compared with the Will maintained in the office of the sub-registrar.
- In the event the original Will is destroyed or lost, a certified copy can be obtained from the office of the sub-registrar.
- If a Will is made regarding leasehold property, it can be used to edit entries in the mutation register, before probate is obtained.

**What assets can be covered / bequeathed under the Will?**

All the movable and immovable assets including but not limited to real estate property, fixed deposits, money in bank account(s), securities, bonds, proceedings of insurance policies, retirement benefits, art collection, precious metals (Gold, Silver, etc.), brand names/ trademarks and Intellectual Property Rights.

**Who can be a witness to the Will?**

Anyone who is above 18 years of age and of sound mind can be a witness of the Will. **It is generally recommended to not have beneficiary as a witness.**



**If the Will is signed by a single witness, will it be valid?**

No. There need to be two signed witnesses to a Will, after which it will be considered valid even if it is not registered.

**What happens to the validity of the Will if one among the two witnesses die?**

The Will will still remain valid but the heir to the Will may face problems trying to prove that the Will was without a doubt signed by the two witnesses before the unfortunate death of anyone of them. This is where the importance of getting a Will registered by a registrar, and overlooked by a professional lawyer, is deemed to be a wise choice.

**How much is the cost of making a Will making n India?**

Legal professionals may charge around Rs.4,000 - Rs.6,000 while experienced counsels may charge anywhere between Rs.10,000 - Rs.15,000.

**How can one avoid Probate?**

Some of the known ways to avoid Probate is either getting rid of your property or using joint ownership with rights or beneficiary designations.

**Can you update/ change your Will?**

Yes, you can update/ change your Will. It can be done by discarding the old Will and drafting a new Will. If the Will is filed before the Registrar then the agent appointed by the testator can apply for amending the registered will.

**Is handwritten Will legal in India?**

Yes, the handwritten Wills are legal in India. However, they need to be legible and should also follow the criterions or the essentials of a valid will.

**What is a valid Will in India?**

If any Will has the essentials mentioned in it along with the proper intention of the testator, it is valid. These essentials are the presence of an intention, details of the testator, details of the assets, details of beneficiary, details of the executor, signature of the testator and proper verification in presence of two witnesses.

Compiled by [paramanuseniorshealth.org](http://paramanuseniorshealth.org), email: [paramanuseniors@protonmail.com](mailto:paramanuseniors@protonmail.com)



## Myths and facts about legal last Will

<https://www.hdfcsec.com/Blog/Details/e-will-myths-and-facts-a-e-will-45109>

12<sup>th</sup> June 2018

People tend to get confused between Wills, Living Wills and trusts. The confusion often arises out of similarity between the laws and procedures or due to misconceptions owing to lack of knowledge. Here are some common myths and facts surrounding preparation of Wills.

**Myth:** A Last Will can be made by people above the age of 40.

**Fact:** Any person above the age of 18 years is eligible to make a Last Will as long as he or she is of sound mind and is free from stress and any form of illnesses.

**Myth:** The Last Will has to be drafted by a lawyer.

**Fact:** It is not necessary to get a Last Will made by a lawyer. However, it is always good to consult a lawyer or get it drafted by lawyers so that you get proper guidance and fulfill all the conditions. Last Wills, if not executed properly, are not enforceable in any court of law.

**Myth:** The certified copy of a Last Will is only available to the Testator and the Executor.

**Fact:** A certified copy of a registered will is available to the testator only during his lifetime. After his death, anybody can obtain a copy after producing proof of death of the testator.

**Myth:** The witnesses mentioned in the last Will and for registration of the last Will have to be the same.

**Fact:** Different persons can be witnesses to the Last Will and during its subsequent registration.

**Myth:** The Indian Succession Act applies to Muslims.

**Fact:** The Indian Succession Act does not apply to Muslims in India unless specified and to the extent that they are not in conflict with the recognized Muslim Laws. It governs Wills made by Hindus, Buddhist, Sikhs, and Jains.

**Myth:** Mentioning a nominee is enough. I do not need to write a Last Will.

**Fact:** The last Will prevails over a nomination. Mentioning a Nominee only assures a smooth transfer of the assets to the nominee. However, other legal heirs can stake a claim on that property. So it is always good to write a Last Will.

**Myth:** Stamp Paper is required to execute the last Will.

**Fact:** You do not require a Stamp Paper to prepare a Last Will. Stamp Duty is not payable on Last Will. You can prepare the last Will on any kind of paper. However, if you want to register a Will, it is necessary to use a stamp paper.

## Top 5 Reasons for not writing a Will



When it comes to writing a Will, most people procrastinate for as long as they can. In fact, will writing doesn't make it to the top 10 of our to-do list unless absolutely necessary.

There are many reasons why people don't make a Last Will. These are some of the reasons why people put off writing their will.

1. Inertia, postponing the act;
2. A belief that last Wills are meant only for the old;
3. Waiting for life-threatening illnesses to nudge you to it;
4. Believing that nothing's going to happen to them;
5. Don't know what to do or how to go about it.

Let's look at each of these closely and examine the truth in it.

**1. Inertia:** "I'll do it later." The only issue with this is that later seldom happens. The inevitable happens sooner.

**2. Thinking that last Wills are only meant for the old:** Wrong. Look at these celebrities.

- Princess Diana wrote her last Will at 32. She left us at 36.
- Marilyn Monroe wrote her last Will at 35. She left us at 36.
- Elvis Presley wrote his last Will at 42. He passed away at 42.
- Janis Joplin died at 27 updated her will 2 days earlier.
- Heath Ledger died at 28 but wrote a last Will at 23

**3. Waiting for a life-threatening illness to nudge you:** People suffering from life-threatening diseases have the opportunity to sort their affairs. Despite their unfortunate situations, they have the chance to take care of their family even after they're gone. Victims of sudden death may not have sufficient time at hand to write a last Will. Prepare beforehand even if there are no warning signs.

**4. Believing that nothing is going to happen to you:** Life's uncertain. Unexpected. Anything can happen. An occurrence like 9/11 or 26/11 could completely unravel your life or the lives of your loved ones. How many instances do we know of folks, who were here one day, but gone the next? The only thing we can do is be prepared. A last Will or a living trust can help your family through tough financial situations in your absence.

**5. Don't know what to do or how to go about it:** Did you know that anyone above the age of 21 could prepare a Will? The lack of knowledge and abundance of misconceptions tend to deter people from writing a Will. The scenario today has changed. Information about legal proceedings is available over the internet. Today, one can prepare their will in less than 5 steps. Don't believe us? Try e-Will to create an express will in 3 steps!

Will writing continues to be a sensitive topic in India. People tend to get squeamish while discussing this subject which is closely associated with death. A Will is a legitimate declaration of your intention in distributing your property to your legal heirs. A will acts as a safety blanket. Therefore the moral of the story remains: It always pays to write a Last Will, when the going's good. For your sake and for the sake of your family peace. **\*\*\*CREATE YOUR WILL NOW\*\*\***