



FREQUENTLY ASKED QUESTIONS ON "WILL"

Q.1 What Is a Will?

- A. Will is a written declaration of a person in presence of two witnesses about his wishes to after his death for all matters including distributing his/her properties, assets, wealth to family, relatives, outsiders, charities etc.

Q.2. What is the benefit of preparing the will?

- A. By making a Will a person can ensure that all his/her assets and properties are distributed and disposed of **as per his/her wishes** after his/her death without disputes within family or without any legal hassles/delays.

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

- A. When a person die without a Will (called as "intestate" in legal language), all properties, assets, wealth of died person is distributed as per Succession Laws applicable to him like Hindu Succession Act, Indian Succession Act etc. One should know that such succession laws has fix proportion to distribute properties to all / many family members which may not be as per wishes of person died. Such situation sought for "Letter of Administration" or " Succession Certificate" from court could delay in distribution of properties, substantial legal expenses, chances of disputes / debonding within family.

Q4. Who can make a will?

- A. Any person above age of 18 can make a Will with sound mind i.e capable of understanding his actions and is free from any improper influences.

Q5 Why should one make a Will at any age and not wait for old age?

- A. Yes, one should make a Will at any age after 18 years since in today's world of uncertainty where untimely death due to accidents, heart ailments, terror attacks are becoming 'way of life' that is why many people take insurance at young age of even 25. If one takes insurance at the young age to provide financial support to family for untimely death, why not make Will which is an instruction in writing to family 'how to distribute insurance claim or other properties / assets.' Hence everyone should make a Will at any age above 18.

Q.6. How to make a will?

- A. Will can be handwritten or typed however typed Will is preferred. No need for any stamp paper hence it can be on plain paper. Will should be in any language which is

understandable to person who has made Will. Will should cover minimum 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 person who has made Will and witnesses on all pages.

Q7. When can I make 'oral' will?

- A. No, this is called a Special Will (Privileged Will) which is allowed only to soldier, airman, navy persons. Some of Muslims are allowed to make oral wills as per their personal laws.

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

- A. Yes, this relates to Succession laws where there are different laws applicable as per religion of a person died. For example – for Hindu it is Hindu Succession Laws, for Parsi and Christians it is Indian Succession act, for Muslims it is as per Sheriat Laws (different rules for Shia, Sunni, Khoja etc.)

Q.9 What is the rules for Witnesses for Will?

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

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

- A. Executor is a person who is appointed by person making a Will to be authorized to take action on all wishes as per Will. An Executor can be any person who is beneficiary in Will or any trusted person like family friend or lawyer or CA who can assist family to act as per wishes in Will. It is not mandatory to appoint an Executor however it is preferred.

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

- A. No, Notarisation or Registration of Will is **Not Mandatory**. However Registration of a Will is possible during life time of person who has made Will. Such registration is to have Govt Dept as an additional witness of Will.

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

- A. It is advisable to mention all single / joint properties, wealth, assets, receivables as well as all liabilities/loans in a Will, including movable, immovable and intangible properties and assets. Movable properties will include cash, jewels, FDS, Bank accounts, insurance policies, vehicles & all your furniture and fixture etc. Immovable properties will include all you land, building, flat, shop, office, plot, and garage etc.

Q13. Can joint properties be included in Will?

- A. Yes, person owning any joint property is allowed to mention his wishes in Will for his part in Joint Property. It is necessary to mention about all joint property titles to avoid unnecessary disputes.

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

- A. Yes, legally a nomination is just a facility to claim property by a nominee in the event of death of owner and nominee will only act as Trustee for temporary period till legal heir is established as per Will or as per Succession Act thereafter nominee has to handover those properties to legal heirs. Nominee can be said as legal heir. However, there is an exception to this hence one has to clarify all nomination in Will if possible.

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

- A. No, tenancy rights are not a property or asset hence it can not be bequeathed in Will.

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

- A. Yes, long term leasehold rights which are deemed-ownership is allowed to be bequeathed in a Will but short lease arrangement is not allowed to be bequeathed since it is not an ownership.

Q. 17 Can an ancestral or properties got as legal heir in past is allowed to bequeath by Will?

- A. No, Ancestral properties which are co-owned by all family is not allowed to be bequeathed.

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

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

Q.19 Can share in HUF is allowed to be bequeathed?

- A. Yes, co-parcener share in Hindu Undivided Family can be bequeathed.

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

- A. One can bequeath pets, paintings, antiques, electronic items, furniture & fixtures, intellectual properties like Trademark, Patents, Copyrights, licenses, social media accounts, personal belongings, books, digital assets etc.

Q. 21 How to protect minor children?

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

Q 22. What about assets which got missed / forgot to mention in Will or future assets?

- A. A general clause is included in a Will for residual properties / assets (miscellaneous / assets which was forgot to mention) which specify who to give 'residual assets' and similarly a general clause is added for 'all future assets'.

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

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

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

- A. Legally 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 locker or with trusted person or with professional 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 of your will.

Q 25. Can properties in foreign countries is allowed to be bequeated?

- A. Yes. However 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 other with properties in foreign countries. 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?

- A. Yes it is allowed where both spouse bequeath all properties to other each other and final bequeath are mention by which properties are distributed to family, relatives etc. as per Joint Will, however, such joint Will can take effect only after death of both and not during lifetime of either one. Many a time husband and wife prepare 'Mirror Will' which are separate individual Will where each spouse gives all his / her property to other spouse.

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

- A. "Beneficiary" is a person to whom the properties are distributed or "bequeathed" under the will, i.e a person who gets the benefit under Will. Any person, body, trust, charitable institute, society etc can be a beneficiary under Will.

Q 28. Who can be termed as my legal heirs?

- A. Legal heir is a person; male or female, who is entitled to succeed to properties of 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 no such heirs even in Class 2 the properties are given to Agnates and lastly to Cognates. If no one is available – all properties is taken away by Government.

Q 29. When and How Will can be cancelled ?

- A. One can cancel/ revoke the Will at any point of time or even by making a fresh Will. One a Will is made all past / old Will gets cancelled. The will can be revoked by following ways:-
- By execution of a subsequent Will;

- By writing and declaring an intention to revoke the Will
- By burning, tearing or otherwise destroying the Will;

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

- A. No, as of date in India any property received under the Will does not attract any tax including capital gain tax.

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

- A. Muslim are mainly governed by their personal laws in respect to will and inheritance and only certain part of general succession law in India, known as Indian Succession Act applies to them. As a general rule Muslims can make a Will of only 1/3 rd of his/her properties and the remaining properties are distributed as per the intestate succession as per Shariat Act.

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

- A. In case of Christians and Parsi the Will gets cancelled / revoked on marriage. A Parsi is entitled to give all his property for charity by Will.

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

- A. Probate is a legal certificate issued by a Court after it is proved about validity of Final Will. An executor nominated under 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.

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

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

Q 35. What is difference between beneficiary and nominee?

- A. Nominee is merely a trustee of the property and he/she is required to hand it over to the legal heir and beneficiary is the person entitled to receive the properties under the will.

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

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

Q37. Is it necessary to take help of a lawyer to prepare a Will?

- A. No for making simple Will one can take all precautions and Do It Self, however one has to be careful in wordings to avoid any vagueness or contradiction in Will to avoid unnecessary misunderstanding / quarrel amongst family / relatives.