The Indian Succession Act, 1925

The Indian Succession Act, 1925 can be broadly divided into several parts :

1. Title & Definitions [Section 1, 2 & 3]
2. Law Of Domicile [Section 4 -19]
3. Marriage [Section 20, 21 & 22]
4. Concept of consanguinity [Section 23 - 28]
5. Intestate Succession [Section 29 - 56]
6. Testamentary Succession [Section 57 - 166]

The Indian Succession Act, 1925 deals with both intestate and testamentary succession. When a person dies by leaving behind a will it is known as testamentary succession.

Will

As per definition under Section - 2 (h) of The Indian Succession Act, 1925
"Will" means 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.

Description :
A will or testament is a legal declaration which authorizes the testator to name the people who would inherit his estate after his death. He can specify his intentions which he wishes to be fulfilled after his death and clarify all confusion regarding the distribution of his property. A will once made can be revoked by the testator only during his lifetime. It cannot be changed or disregarded after the event of his demise and thus it is the best way to dispose off one's property. However, one thing has to be kept in mind. A testator can only make declarations regarding his self acquired property by way of a will. He cannot give away the joint family property or any other property not solely belonging to him.

The Indian Succession Act applies to all religious communities across the board. This act however does not apply to **Muslims** who are governed by their personal laws.

A person is deemed to die intestate in respect of all property of which he has made testamentary disposition i.e document of 'Will', etc. which is capable of taking effect, Section 30.

A person is said to have died testate when he or she left his or her 'Will'.
The man who makes a 'Will' is called **'testator'**. The woman who makes a 'Will' is called **'testatrix'**.

Essential characteristics of a valid Will :

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1. **Legal Declaration** - The document purporting to be a will or testament must be legal. It means that, it must satisfy certain legal requirements relating to a will. In other words, such a document must be in conformity with the provisions relating to execution, signature and attestation formalities prescribed under law.

2. **Disposition of the property** - The declaration should be regarding the disposition of property of the testator. If there is no reference to the disposal of the property the document shall not amount to a will.

3. **The testator must be the owner of the property** - The property proposed to be disposed off, must belong to the testator.

4. **Document intended to take effect after death of testator** - Testator must have statutory or lawful power to dispose. It must be intended to come into effect after the death of the executant, it is ambulatory and revocable during his life.

5. **Document is revocable during the life-time of the testator (Revocability)** - The essential characteristic of a will is that, it is always revocable at any time during the life-time of the testator.

6. **Will may be conditional** - A will may be so expressed as to take effect only in the event of the happening of some contingency or condition, and if a will is so expressed and the contingency does not happen or the condition fails, the will is not entitled to probate.

Conditions for a Valid Will (Section 63 of the Indian Succession Act, 1925)

- The testator should sign or affix his mark (e.g., thumb mark)
- The Will must be attested by 2 or more witnesses
- The witnesses must have seen the testator sign or affix his mark to the Will
- Each witness shall sign the Will in the presence of the testator.
- The witness should not be a beneficiary under the Will.

Types of Will

1. Joint Wills

When two or more people agree to make a conjoint will, such testamentary documents are known as Joint Wills. These are generally created between married couples, with an intention to leave the property to their spouse after one of them dies. A joint will can also be created with an intention to take effect after the death of all the testators. In such Joint Wills till all the testators are alive, a single testator cannot revoke the will alone. He/ She would require the consent of other testators to revoke their joint will. Only when all other testators have died, the sole surviving testator can revoke the will alone.

2. Mutual Wills

Mutual wills are the kind of wills in which two people agree to formulate a will on the mutually agreed terms and conditions. The testator creates the other person as his/her legatee in these wills. Generally, married couples who have children from their first marriage create such wills to ensure the interest of those children. The terms and conditions of the will remain binding on the surviving partner after the death of the first partner. Mutual Will helps to ensure that the property passes on to the children of the deceased and not a new spouse of the surviving partner in case they remarry.

3. Contingent/Conditional Wills

Execution of these wills are dependent on the happening of an event and if that event occurs in the future only then the will is to become effective. These wills are created for multiple purposes. If the testator wants to motivate a loved one for doing something good, like 'my son will get my property only if he graduates from his law school with a 70% score' or want to make safe appropriations of his property in case of his death while touring abroad[6], he can make a contingency regarding the same in his will. Any condition which is contrary to the law or is invalid in nature cannot be incorporated in a will.

5. Holograph Wills

Wills which are handwritten by the testator himself are known as Holographic Wills. These kinds of will have their own merit. Due to the fact that they are completely handwritten by the testator himself, raises a strong presumption[9] pertaining to their regularity and execution. It is held in various judicial pronouncements that "*If there is hardly any suspicious circumstances attached to the will, it will require "very little" evidence to prove due execution and attestation of such a will*".

5. Privileged and Unprivileged Wills

Indian Succession Act, 1925 provides certain privileges to a soldier, an airman and a mariner at sea employed in an expedition or engaged in actual warfare. These privileges are enacted keeping in mind the complicated predicament a soldier is in during the tenure of his service. Provisions pertaining to such privileges are mentioned under section 66 of the Act and such wills are called Privileged Wills (Section 65 of the Indian Succession Act, 1925). Provisions allowing word of mouth in presence of witnesses to be considered as valid will and written instructions to be considered as a valid will after the death of a soldier are some of the prime examples of such privileges. Wills created by a testator not being a soldier, an airman and a mariner at sea employed in an expedition or engaged in actual warfare are known as Unprivileged Wills. Unprivileged Wills are governed under section 63 of the Act.

6. Concurrent Wills

Normally a testator prepares a single will for his/her testamentary declarations. The testator according to his wish or for the sake of convenience can make different wills for the property located in different geographical locations. Hence, co-existing wills, dealing with testamentary declarations of a single testator are known as Concurrent Wills.

7. Duplicate Wills

As the name suggests, when there are two copies of a will, then those wills are called Duplicate Wills. There are two copies of the will although it is considered as a single will. It is very simple to create a duplicate of the will. The testator has to make a second copy of the will and shall sign it and get it attested in the way that he did for the original will as per Section 63 of the Indian Succession Act, 1925. One copy can be kept with the testator and the other might be kept in safe custody somewhere like in a bank locker, with a trustee, the drafting attorney or with the executor. The testator with an intention to protect the execution of the will after his death makes a copy of the will. If the testator destroys the copy of the will that he has in his custody then, that would automatically revoke the other will.

Duplicate wills are strong and valid proof of the testamentary objectives until the original will is not on record. Otherwise, the authenticity of the duplicate will remain questionable. Presumption that the original will stands revoked will prevail in case original will is not filed with the duplicate copy in petition for probate.

Testamentary Capacity

The testamentary capacity is to be considered with reference to the perticular Will in question where the testamentary capacity of testator is proved by evidence of competent and disinterested witness, is sufficient evidence of testamentary capacity.

1. Sound Mind -
   A person is incapable of making a valid Will unless he is of sound mind, memory and understanding. A man is competent to make his Will if he has sufficient memory and intelligence to be able to perform the mental acts.

2. Minor -
   Where the party opposing the Will alleges that the testator was a minor at the time it was executed, the onus of proving that the testator was not a minor lies on the party propounding the Will and not on the person challenging it.

3. Deaf, Dumb, Blind Persons -
   One who is a deaf and dumb from his nativity is in presumption of law incapable of making a Will, but such presumption may be rebutted and if he underst and what a testament means and has a desire to make on, then he may by sign and tokens declare his testament.

4. Lunatic - during Lucid intervals
   If a lunatic person has clear or calm intermission (usually called lucid intervals) then during the time of such quietness and freedom of mind he may make his testament, appointing executors and disposing of his goods at pleasure.

5. Drunkenness -
   If at the time of execution of the Will the testator was not under the excitement of liquor, he was to be considered capable at the time of making his Will and therefore it was therefore valid.

6. Old age illness, infirmity, etc -
   A person suffering from paralysis and infirmity which makes his physical movement difficult is still competent to make a Will, if he is perfectly conscious and fully understands what he is doing at the time .

Testamentary guardian [Section - 60] -
A father, whatever his age may be may by Will appoint a guardian or guardians for the child during minority.

Will Obtained by fraud, coercion or importunity [Section - 61] -

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

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent1, with intent to deceive another party thereto or his agent, or to induce him to enter into the contract

'Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Importunity means any act, gesture or conduct which takes away from the testator free agency. It must be such an importunity as he is too weak to resist.

'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Will may be revoked or altered -

A Will is liable to be revoked or altered by the makers of it at ny time when he is competent to dispose of his property by Will.

So long as a testator is living he may at any moment cancel his Will and make a totally different disposition on his property. This power he possesses upto the hour of his death, provided, he is competent then to execute a valid Will.

Note

1. Check Will case
2. Check sections
3.

Advantages

1. The most important thing about a will is that it leaves comprehensible and explicit instructions about the deceased's property and estate.

2. A will specifies the inheritor of each share of the property and lessens the scope of any confusion that might arise in future. It therefore helps in mitigating family disputes.

3. A will lets one choose those people whom one would like to inherit their property after their death. In case one dies intestate, the property devolves by intestate succession under the Hindu Succession Act and those people whom one might not like may also inherit the property.

4. A person making a will creates a safety garb for his minor children. He can appoint a guardian of his choice and also make any financial arrangements for them.

5. A will can be instrumental in protecting one's business. One can pass on their company and power of attorney to one's preferred heirs thereby reducing friction in business ventures.

6. In case of remarriage, a will helps one to ensure that the children from the first marriage are not left out from inheritance in any manner.

7. Wills may not only specify the inheritance in favour of friends and family members but may also include a charity or any other organisation.

8. The best thing about a will is that it is not an irrevocable instrument. A will can be revoked during the lifetime of the testator. A will can also be modified. If circumstances change and the testator becomes dissatisfied with the behaviour of any of his relatives, he can exclude his name from his will.

9. If a person dies intestate then laws of inheritance and succession apply. Such laws are extremely complicated and difficult to interpret. They are vague like any other personal laws and people interpret them according to their own interests. This results in a lot of family feuds with respect to the deceased's property. To add to it all, these laws vary among people of different religions.

10. Another advantage of will is that one can make one's own will. There is no legal requirement to get a will made by a lawyer. Thus the pain of visiting the lawyer everyday can be done away with.