



WHY PEOPLE ARE UNWILLING FOR A WILL

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Introduction

A very controversial interview was recently up on everyone's Google feed in India. Amid the chaotic separation procedures of Raymond MD and Chairman, Gautam Singhania and his spouse, Nawaz Modi Singhania, the previous chief of the company and Gautam Singhania's father, Vijaypat Singhania, has shared his experiences with the current situation.¹

"By all means, give what you want to. I'm not telling you "don't give". I'm only saying, give it after you're gone, after your death. Don't give it in your lifetime because you may have to pay a hefty price." ² A shocked father commenting on his son and daughter-in-law's spat was not irrelevant.

It would not be unreasonable to mention that the same son had kicked out his father in 2015. Vijaypat Singhania thought he was keeping his billion-dollar textile empire in the family when he gifted control of the Raymond Group to his son Gautam three years ago not by a Will but while he was alive.¹

'Will' is a legal document and as the name suggests, it is the wish list containing the details of the properties and the family member who will inherit that property after a person's death.³

A 'Will' is "a legal document that says what is to happen to somebody's money and property after they die".⁴ It is not mandatory to make a 'Will' but is recommended.

The interview with a famous lawyer that I took and the public survey that people answered to, gave some very valuable insights.⁵

Digging in Deep

The "What" of a Will

Will is a document, a piece of paper that has to have 4 components to be deemed valid-

1. Executor,
2. Beneficiaries,
3. Assets and
4. Signatures.⁶

- 1. An executor may be an individual who is capable of taking care of your property and resources after your passing away. .. the assets are distributed according to your wishes as expressed in the 'Will'. The executor must make sure that all the obligations and taxes owed by the decedent are paid, and any legal matters related to the assets are settled.⁶
- 2. Beneficiaries are people who get your property and resources after your passing. It Leaves no room for confusion or debate among family. If one has minor children, it is additionally fundamental to mention a guardian for them within the 'Will'.⁶
- 3. Assets are the property left behind after your passing. It is important to list all of your resources within the 'Will' and to be particular about who should receive each resource.⁶

- 4. The testator's signature is a basic component of the 'Will'. It makes it lawfully official. The testator must sign the report before two witnesses who can confirm the testator's signature.⁶

The laws related to Inheritance

When a person dies, there are two ways to go about it.

- a) The basic logic requires the deceased to have a valid 'Will'.
- b) **If he/she doesn't have a 'Will'** and is a Hindu, Jain, Sikh, or Buddhist then the estate is divided keeping in mind the Hindu Succession act.⁸ But if he/she is Christian, Jew, or a Parsi (do keep in mind that we are talking about the laws that apply only inside the border of India. Yes, different countries have different laws.) then the Indian Succession Act will be applicable.⁷

Here all the religions except Islam come under the Indian Succession Act. For Muslims again the applicable law is the Muslim law.¹⁰

The Hindu Succession Act, of 1956, was amended in the year 2005 to include daughters. there were many judgments on this amendment.⁹ The court rulings have clarified that the amendment will apply retrospectively. The daughters cannot be denied the right to equality as provided by Section 6 of the Act⁵ This means that if a Hindu male dies intestate(without making a 'Will') then his property could be divided just like four equal pieces of a pizza, if the deceased individual has a surviving widow, a son, a daughter, and his mother.^{9 210}

This is just one example of the law's protection regarding the civilian's hard-earned money and prized possessions.

To take a step forward people also select a nominee on any kind of legal paper.⁵

As per the current regulations in India, inheriting properties can be a cumbersome and expensive process for successors. As explained by a famous lawyer on a popular website- For instance, in my scenario, if I were to pass away without leaving a 'Will', my assets would be divided equally among my spouse and children, according to the applicable personal law.¹¹ However, I have taken the precaution of creating a 'Will'.¹⁵ Nevertheless, it is crucial to note that nomination comes with a limitation known as the 'nominee as a trustee' rule. In this case, my husband would be considered a trustee and remain accountable to my two children until my 'Will' goes through the probate process in court.¹⁶

Interestingly, life insurance policies are exempt from this limitation. An amendment to Section 39 of the Life Insurance Act in 2015 states that if there is no 'Will', and the spouse, parent, or children are named as nominees, they will receive full ownership of the policy amount.¹⁷

Stereotypes

In traditional family systems where there is patriarchy, the father's assets are to be distributed among the children but in conservative social groups, the children do not dare to talk to their fathers and forefathers about a sensitive topic like a Will. It is a taboo. It is considered a disrespect of the highest order and the child asking to raise the topic is deemed ungrateful.¹²

The questions that I asked in the public survey have a specific question on this point and the result is insightful. For the the new generation of middle-class families which are more open-minded, Will-making is slowly being accepted. Also, it is felt that a Will should always be prepared under the guidance of a legal practitioner, which is a good point, to avoid unintentional mistakes. Choosing a lawyer who could be trusted with such confidential details and is easily approachable is another hassle, when one decides to draft it and leads to procrastination.¹³

Not just about the document (women empowerment)

The laws of inheritance are not in a watertight compartment of inheritance. It also brings along gender equality and women empowerment. 'Will'-making is a type of decision-making. When we move from labor market participation to women's representation in decision-making positions, the gender gaps are exacerbated. Even in countries in which women participate in the labor market in high numbers, only a minority make it to the highest positions.¹⁴ The mention of women in a Will empowers them. Wills shouldn't be seen as just related to the financial assets of an individual. But they have a huge impact on the social fabric as well, the society

becomes more civilized with each well-drafted 'Will'. They reduce conflicts within families and create less burden in courts of law. This will also reduce family feuds and crime in society.¹³

Women are under-represented in decision-making positions around the world. Be that as it may, sex uniformity and differing qualities are recognized to have useful impacts on organizations, education, and by and large, on society and the economy. Subsequently, they must be included within the 'Will' making handle.¹⁴

Written on stone walls (in our history)

The importance of stating how you would like to distribute your properties and assets is a part of Indian scriptures as well. The Mahabharata is one of the most famous and epic tales of ancient India, filled with themes of inheritance and succession. The story begins with two sets of cousins - the Kauravas and the Pandavas - who are in a power struggle over the throne of the kingdom of Hastinapur.¹⁹ The question of inheritance and succession is raised as the Pandavas seek to establish their rule over the kingdom. However, they face opposition from the Kauravas, who refuse to recognize their claim to the throne.¹⁸ The eldest Kaurava, Duryodhana, feels that he is the rightful heir to the throne, and seeks to eliminate his Pandava cousins to secure his claim. This leads to a long and brutal war between the two sides, in which many warriors are killed, and the Pandavas ultimately emerge victorious.¹⁸ An inheritance-related confrontation between the two sides, in which the Kauravas are defeated, and the Pandavas establish their rule over the kingdom is the main theme of the story of the Mahabharat.²⁰

Throughout the story of the Mahabharata, themes of inheritance and succession are central, as the two sides struggle to gain control over the kingdom and its resources. Ultimately, the story of the Mahabharata is a rich and complex meditation on the nature of power and the challenges of inheritance and succession.²⁰

Suggested Courses of action

- A sample will is what everyone needs to go through to remove the fear of making a Will.
- The movies and spy series on media show the will as shrouded in a mystery and makes or mars the future of characters and show family feuds following it. Familiarity with its process would help reduce the friction in families.
- The electronic and print media should raise awareness in public to encourage them to make a Will.
- The Government should take proactive steps. It would not be out of place to mention that the Government has made it mandatory to name the nominees while investing in India. In many financial products like Mutual Funds, it is compulsory to mention who would be the nominee. The accounts in banks and demat accounts holding the precious money and investments of people have a mandate to collect the names and details of the person being nominated.
- A sample Will should be displayed on the main pages of citizen-centric pages of the Government to be copied and used by the common public. An e-certificate of appreciation can be downloaded by them that they have acted responsibly for their family.
- A carrot and stick method can further be explored to collect a little extra fee somewhere if no Will is drafted and a little benefit, an incentive in the form of a small tax saving for Will-makers would help people to accept it fast.
- A good WILL can ensure the reduction of litigation and court cases. Hence each person who is fighting with his family members for the inheritance of a property in a court should give an undertaking that they have made a Will. They would not want their children to suffer the way they did.

Conclusion

The concept of Will is to be disseminated among the public to make them aware, and responsible for their loved ones. A well-drafted Will can save years of court proceedings or bitterness among members of the same family. It is the duty of each person who has even a little property, even if it was received as a gift, to name the person who will inherit it after he/she passes away. The Government, the social groups, and the media can make a drive to raise awareness on this topic. I propose that the 2nd April of each year be observed as a "Will Day".

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