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"The Last Testament – Will": An Analysis of its Constitution in India and France

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ABSTRACT

The Purpose of executing the will is to transfer the property by a owner to the heir the owner wishes. Though the objective is good, it creates litigation if any heir is omitted from the beneficiary list. The significance of composing a substantial will can't be subverted. The presence of a won't just makes domain arranging productive and powerful yet additionally empowers the relatives of the departed to keep away from superfluous family fights and case. In addition, it assists with getting the interests of legitimate successors to the departed from any family members or petitioners who might emerge post the passing of the departed to guarantee their portion.This being so, the will is governed by many procedures according to the law of the land. Starting from the capacity of testator till the ultimate beneficiary, the will is subjected to many processes. Composing a will as an instrument empowers the main beneficiaries and over comers of the departed to acquire the property in the manner the departed needed. Wills in India help complex family structures by gifting of the property genially without questions and the requirement for suit. A peculiar system of execution of wills is in force in India and in France. Since India is a country of different religions and separate personal laws is in existence for people, each religion has its own mode of formulating a will. In France also similar distinction arose depending on the legal heirs. So I have discussed in this article about the various requirements for execution of a will in India and France to have an broader outlook.

***Keywords**: India, France, Intention, Testator, Beneficiary, Capacity, Execution.*

I. INTRODUCTION

The concept of making wills in general depends on the willingness of the testator for gifting the property on his own wish. There is a typical misinterpretation that wills are just made by people during their later stages throughout everyday life or as they age and are in terrible wellbeing. Its direness is obvious as wills accommodate the desires of the individual composing it to be done in an efficient way as per the singular's desires in his nonappearance. The longing to safeguard one's property and guarantee the conservation of the equivalent for the ages to continue to save the family heritage and name has involved pride for well-off families the whole

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way across the world. The History of 'Will' has its origin from ancient times. It is fascinating to take note of that in 1705, in the US of America; even slaves framed a piece of the items in a will as they were viewed as the individual property of their proprietors. Wills could only be written by aristocrats and noblemen known as "Patricians" under ancient Roman law. The Roman head Justinian changed and merged the law of Rome which framed the premise of the Common regulation custom rehearsed by European nations even today. The minimum age at which a person could make a will was 14 years old for boys and 12 years old for girls under Justinian's law.

II. PRESENT STATUS IN INDIAN WILLS

The male person writing the will is called Testator and the female person writing the will is called Testatrix. The writing the will is called Testator's mark, or some other characteristic of distinguishing proof in the event that he/she can't sign because of any impediment, is required ideally toward the final paragraph of the will. Beneficiary is the receiver of property. The Testator's property after the death of testator shall go to him as gift. The Testator shall appoint an executor, if necessary, if there exists any minor beneficiary or conditions in the will. The will has to be attested by two witnesses. Attestation is the interaction by which at least two people truly witnessing the testator composing the will and whose marks are additionally expected toward the last content of the will. If the will is attested by only one witness, then the will is not valid. Held in Gopal Swaroop Versus Krishna Murari[2]. Indian Succession Act, 1925 shall apply to the wills made by Hindus and Christians. Similarly, Mohammedan Law applies for Muslims..

The Indian Succession Act, 1925 authorises two various types of Wills, in particular, (I) privileged Wills and (ii)Unprivileged Wills. The will executed by a person in actual warfare of army, navy and air force is having the priviledge of making an oral will. But it is valid for 30 days only. If the testator is alive after 30 days, then the privilege will is not valid The will executed by all other persons are called Unprivileged Wills. Any adult of sound mind may make a Will to dispose of his or her property. An person who is hard of hearing/imbecilic/visually impaired can make a Will, if he/she can figure out the thing he/she is doing; and A person can make a Will during the period when he is of sound brain; and Any person who isn't equipped for understanding what he/she is doing by reason of disease/inebriation/some other explanation, can't make a Will. The Will is revocable during the lifetime of the testator. The Testator can sell and do all kinds of transfer before his/her death. The Will may be either registered or not

[2] 2003 Supreme Court

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registered. It can be written even on a plain paper. Probate (Certificate from the court that the will is genuine) has to be obtained from a competent court for all Wills/ Codicils as per section 213 of ISA. But not applicable for Christians and Muslims. Applicable only for notified metropolitan city Hindu properties. If the will is not legally executed as per the provisions then it will be presumed by the court that the testator/testatrix had died intestate. In Muslim Law, the execution of a Will is referred to as "Wasiyat" . The individual who executes the Will is called 'legator' or 'testator' and the individual in whose favor the Will is made is known as 'legatee' or 'testatrix'. There is a severe decide in Islamic regulation that oversees the legitimacy of a Will. As per this standard, a Muslim can make a Will for anybody, just to the one-third of his total property. Assuming the Will is made above one-third of the property, the assent of the lawful beneficiaries is obligatory regardless of in whose favor the Will is made. Oral will is also valid under Islamic Law. Thus in Indian Law of Wills the conditions are interesting for gifting the property by a owner through will.

III. Status in French Law

The French Civil Code gives various sorts of will which an individual who is of sound mind and who has legitimate capacity might make wills. In general, France does not recognize the executor's role. In France a deceased person's resources vest naturally in the recipients right now of death. The necessity that an agent hold everything forthcoming goal of the progression is probably going to confuse matters. France doesn't by and large perceive trusts. The French attorney handling the French portion of the estate is likely to encounter difficulties as a result of the actual mechanics of an English Will. French law forces severe principles of progression, characterizing who is qualified for acquire. This isn't true in Britain, where you can ordinarily pass on ones resources for anybody. In France, kids have fixed interests in the home of their folks, and keeping in mind that this will frequently not be an issue, it isn't generally so. The primary worry here is that step-kids are not perceived similarly as normal youngsters. While in the UK it very well might be feasible to expect everything passing from express spouse to wife, with the wife then, at that point, passing on everything to her significant other's kids, this would lead to many issues under French regulation. The testator/testatrix can revoke his/her will as per his/her wish.

There are three types of wills in france.

a) **Holographic wills**: Holographic wills are hand written. They are the most well-known sort of will made in France. Article 970 of the French Civil Code gives that a holographic will isn't substantial except if "it is totally transcribed, dated and endorsed by the deceased " and that

there could be no different conventions required. It tends to be written in any language, not be guaranteed to in French, however should be transcribed and on a generally clear piece of paper. No other writing by hand ought to show up on the paper thus it should not be officially seen.

b) **Authentic wills:** Authentic wills are dependent upon greater custom and all the more intently looking like the conventions expected for English will. Articles 971 to 974 of the French Civil Code give that a valid will is drawn up by a notaire as per the directions of the departed benefactor: it should be perused by the notaire to the departed benefactor and afterward endorsed by the deceased benefactor within the sight of the notaire[3] and two observers who should likewise sign (and who should not be recipients). Valid wills are dependent upon greater convention and all the more intently look like the customs expected for an English will. Articles 971 to 974[4] give that an Authentic will is drawn up by a notaire as per the guidelines of the deceased benefactor: it should be perused by the notaire to the deceased benefactor and afterward endorsed by the deceased benefactor within the sight of the notaire and two observers who should likewise sign (and who should not be recipients of the will).

c) **Sealed or Mystic wills**: Article 976[5] takes into consideration sealed or mystic wills and are less much of the time utilized. The will is composed or written by hand by the deceased benefactor, endorsed prior to being shut, stepped and fixed and afterward introduced by the departed benefactor to a notaire within the sight of two observers. The notaire readies an endorsement to connect to the will or envelope expressing that it contains the last will of the deceased benefactor and all customs have been followed. The items in the will stay mysterious until it is opened on the passing of the departed benefactor. Curiously, Article 985 of the French Civil Code accommodates wills made "in a spot with which all correspondence is interfered with in view of infectious sickness, might be made under the steady gaze of an appointed authority of the neighborhood court or before one of the metropolitan authorities of the cooperative, within the sight of two observers". Deceased testator might repudiate their wills out of the blue by drawing up another will or, on account of a holographic will, by in a real sense destroying it.

IV. CONCLUSION

Thus the wills in india and france are more similar in nature except the writing before the notary in French wills **.** A person's ability to divide their property and valuable possessions and make appropriate financial and estate plans is made easier by having a will. It has been one of the

[3] a public official authorized by the state to attest and certify certain legal documents.
[4] French Civil Code
[5] French Civil Code

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most important methods for avoiding family arguments and ensuring that the testator's wishes are carried out. The process of making a will is easy and provides numerous advantages for the individual. A will gets the tradition of the testator. Hence, one must cautiously draw their will keeping note of the legitimate prerequisites and fundamental components of the equivalent to stay away from any questions from now on.

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