

HelpAge is able to reach out to 1 million
needy elders, i.e. just 1% of the 100 million.
More than ever, we need your support.

**HELP US MAKE A DIFFERENCE...
LEAVE A LEGACY OF SECURITY, LOVE,
AND SUPPORT FOR OLDER PEOPLE!**

WILL INFORMATION BOOKLET

**Issued in Public Interest by
HelpAge India**



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poverty, neglect
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HelpAge India | Fighting isolation,
poverty, neglect

Reaching the poorest and the farthest, serving millions of India's elderly, spreading millions of smiles!

Dear Reader,

HelpAge India has been working persistently for the welfare of the elderly since its inception in 1978. Through our interventions in the fields of Rights, Advocacy, Health, Relief and Shelter we have striven to bring dignity to the older generation of India. We voice the needs of India's 100 million (current estimate) "grey" population, and directly impact the lives of lakhs of elders through our services every year.

HelpAge India is always on the lookout to address issues which matter to the elderly, and recently we have received an increasing number of requests from senior citizens seeking assistance/advice in matters of property and writing their Will.

Writing a Will is a very important part of one's financial planning and ensures that your assets are distributed as per your wishes. It is also very important that you write a Will before 50 years of age, considering that life is uncertain and you will be passing on an uncertain legacy to your family.

As a service to the public HelpAge India has culled out information from various sources and put together this comprehensive Will Information Booklet to help you in writing your Will. You may feel the need to seek assistance from a professional in writing your Will, in that case you can use this information to write a draft Will, which could be further worked upon.

In case you have complications in distributing your assets we recommend that you seek advice from your Chartered Accountant or your personal Lawyer. In some cases HelpAge India may be able to give contacts of Lawyers and Chartered Accountants known to us.

I hope this booklet is helpful to you.

Yours Sincerely



Mathew Cherian
Chief Executive Officer
HelpAge India

A. WHAT IS A WILL?

A **'Will'** defined under 'Section: 2(h)' of The "Indian Succession Act, 1925", means the legal declaration of the intention of a person with respect to his property which he desires to be carried into effect after his death. The person making the Will is called the **"Testator"** and the person or entities benefitting under the Will are called **"Beneficiaries"**. . Succession to immovable property in India is regulated by Indian law whereas succession to movable property of a person is regulated by the country in which the person was domiciled at the time of his death (Section 5 of the Indian Succession Act)



Or, more simply, a Will is a legal document that clearly states the intention of what a person wishes to do with his possessions and properties after his or her demise.

B. WHY SHOULD YOU MAKE A WILL?

The importance of making a Will cannot be overstated. It is a crucial part of your financial planning. A properly drafted legally valid Will is the only way to make sure that your property, savings and possessions go to the people and causes you care about.

It is not enough to simply tell people of your personal wishes. If you die **"intestate"** i.e. without making a Will, your assets will be distributed as applicable under Indian laws of succession.

Wills apply to self-acquired assets and property. Joint Family and Hindu Undivided Family property cannot be willed; even by the Karta (Hindu Undivided Family is an entity in tax law, which owns/holds property for the common good of a family. The head of the family is referred to as the "Karta"), except to the extent of your share in the property.

FACTS

- 80% Indians die without making a Will
- According to the Law anyone over 18 years can write their Will
- Experts recommend that you **MUST write a Will if you own assets or whenever you start earning**
- You can always update or change your Will later

C. WHAT MAY HAPPEN IF YOU DO NOT LEAVE A WILL?

Legal & Financial Implications of not having made a Will

•If you die 'intestate' and have no family or relatives, all your savings and possessions will pass to the State. If you have heirs, your assets are then

shared according to the laws applicable to intestate succession. *Generally, intestate succession in India is covered by religion based laws (e.g. Hindu Law, Muslim Law) and other applicable Indian laws.*

- The Hindu Succession Act 1956 covers succession for Hindus and the Indian Succession Act 1925 is the general law that deals with succession in India.
- Your next of kin would have to apply to the courts for partition of your estate. To do so, they would normally have to seek professional legal advice. This can be expensive and the costs would come from your estate so it would reduce the value of your estate left to your kin
- Not having a Will also can lead to delays while everything is being sorted out. Bank accounts may be frozen and this may also accumulate interest on any unpaid debts you might have.

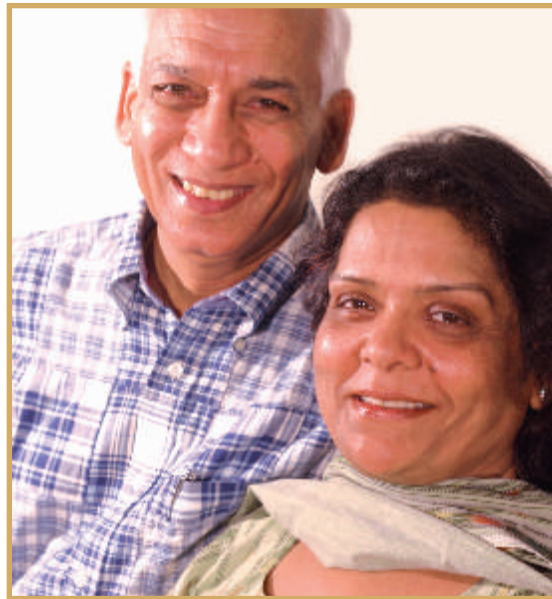
Intestacy Law is complex. There are, however, two important things you need to know:

(i) If you die intestate, your wife, children and other relatives like mother are usually entitled to a share of your estate as per applicable law of succession.

(ii) Many people assume that everything will automatically pass to their husband or wife when they die. This isn't necessarily the case and property is divided amongst all heirs. Sometimes assets and Property are not capable of satisfactory division and items with special meaning for those close to you may then have to be sold. In some instances, the surviving spouse's family home may even have to be sold to realize the money that the children, mother or other family members are legally entitled to.

(iii) If you have no heirs, everything will go to the State after your death. And worse still, it might be usurped by some undeserving and unknown people after your death in the absence of any direction (Will) from you.

To put it simply without a Will, you could leave behind a great deal of



confusion and worry at a time when your loved ones are in emotional distress. Savings and possessions might not go to the people and causes you care about.

D. MAKING THE WILL

You can make a Will using simple language on a plain paper bequeathing your properties and valuables to one or more persons. This document should be signed by you in the presence of two witnesses, who cannot be beneficiaries (i.e. persons or people who inherit anything under the Will) and should be over 18 years of age. Witnesses should also sign the Will in your presence.

There are three main types of legacy that you can make in your Will:

•**Pecuniary legacy:** is a fixed sum of money. If you are considering making a pecuniary legacy, bear in mind that it is likely to decrease in terms of real value due to inflation as time passes.

•**Specific legacy:** is the gift in your Will of something other than money. Examples could include property, stocks and shares, the proceeds of a life assurance policy, a car, furniture or personal items such as jewelry, expensive apparel and family heirlooms.

•**Residuary legacy:** The residue of your estate is the amount of money that's left after all debts, taxes and expenses have been paid, and after distributing assets as per your Will. A residuary legacy is the gift of the total residue of your estate, or a share or percentage of that residue.

If you wish, you can leave a combination of different types of legacy to any beneficiary.

E. THINGS TO CONSIDER WHILE MAKING YOUR WILL

Individual beneficiaries: the people you want to leave a legacy to

Make a list of the people you would like to benefit from your Will, and the type of gifts you wish to leave them. State your relationship with each person and give their full address and age if possible. Consider what you want to be done if any or all of them die before you.

Write down to whom you'd like to leave specific items. Describe the items as clearly as you can, so that there is no confusion. You can also Will by category like all furniture to someone or all investments to a certain other person.

F. DETAILING YOUR WILL

How to Value your estate if you wish to make a detailed Will

The easiest way to do this is to

1. List all your assets (what you own)

2. List all your debts/liabilities (i.e. what you owe) which you have to discharge at their current value
3. Add together everything you OWN and subtract everything you OWE. You can then decide how to distribute the amount

Also take into consideration

- Whether you are a member of any schemes under which a lump sum or any pension benefits are payable in the event of your death before retirement age. Prepare a detailed list. Information may be obtained from your employer, or your pension authority.
- If you are a beneficiary of any trust or estate under which you currently receive income, list it separately.
- If you are likely to benefit financially due to the death of some other person (wife/husband/ parent etc.), make a note of it.
- List any people who are financially dependent on you, including an ex-spouse, relatives or children/step-children.
- Consider appointing a guardian for children or dependent relatives.
- You might also consider setting up a Trust for your dependents in consultation with your lawyer.

G. DRAFTING /WRITING YOUR WILL

Once you have planned your Will by completing the previous steps, you can write your Will in simple and unambiguous language. As per Section 74 of the Indian Succession Act, 1925 *"It is not necessary that any technical words or terms of art be used in a Will, but only that the wording be such that the intentions of the testator can be known therefrom."* As per Section 89 of the Act *"A Will or bequest not expressive of any definite intention is void for uncertainty."*

If you have doubts or need advice you can contact a qualified professional, generally a lawyer - to draw up the final document. Using a professional helps to ensure that your Will is legally valid and covers every eventuality. *By preparing a Draft Will properly you will need to spend less time with the professionals, which could help reduce the fees you may have to pay.*

H. REGISTRATION OF THE WILL

It is strongly recommended that you register your Will with the local Registrar or the Sub Registrar to avoid any complications with regard to distribution of your assets.

Along with the persons who witness your Will, you would need to go to the Registrar's/Sub-Registrar's office with two original signed sets of the Will, two photographs and proofs of identity (Voter Card/Pan

Card/Passport/Driving License/Adhar Card) of yours and of the two witnesses. Registration can be done for a small fee and does not take a long time (generally first half of the day)

Please check where the nearest Registrar Office is to you, and the procedure of registering your Will with them.

I. SIGN THE WILL AND GET IT WITNESSED

Two people over the age of 18 are required to witness your Will.

Each of them should see you (the testator) sign the Will. ***Each of them must sign after you have signed the Will.***

Under each Witness's signature, their full name, age, current address and occupation must be clearly written.

Therefore, your signature and signature of your two witnesses (referred to as attestation of your signature) should be completed in a single session, with all of you in the same room at the same time and date.

Someone who will benefit from the Will or his or her spouse cannot be an attesting witness. If this happens your Will would be valid in respect of other legatees but your bequest would be void so far as concerns such person/s (in respect of the gift to attesting witnesses or attesting spouses of the proposed beneficiaries) as per Section 67 of the Indian Succession Act, 1925.

J. EXECUTORS

When you make a Will, you might appoint one or more Executors (the legal representative for all purposes of a deceased person who represents the estate of a deceased person and holds it in trust to ensure that it gets transferred to all beneficiaries as per the Will) to administer and distribute your estate in accordance with your wishes. ***This task can be very time consuming and thus Executors should be chosen very carefully. The Executor is also responsible for filing a petition for probate of your Will after your death (if probate is necessary – probate is necessary only in certain cases)***

Executors can be a family member or friend

- Should be younger, honest, capable and would probably outlive you
- Non-professional Executors (such as family and friends) are only entitled to out-of-pocket expenses. If, however, they then



decide to use a solicitor or other professional to carry out all or part of the administration for them, the professional's fees will be paid from your estate

- We strongly recommend that you get permission from them first because being an Executor can be very time consuming, and many people are not fully aware of the work it involves

- Can be one of the beneficiaries of your Will. For example, if your son is a beneficiary in the Will he can also be the Executor, but he has to perform the role of an Executor after your death with complete faith and trust for the benefit of all the intended beneficiaries under your Will. The law imposes certain strict duties on an Executor.

Using a Professional Executor

These can be a lawyer, accountant or bank official. There will be a fee for this and it will be paid from your estate.

K. SITUATIONS/REALITIES TO CONSIDER

What happens if you leave something to someone who pre-deceases you?

In that case, the specific money or asset or residue left by you to the person who has pre-deceased you, will be distributed as per the relevant law of succession. However, if you specify the distribution in such circumstances, your wishes will prevail.

Store the Will Document

It is important to keep your Will safe and to let your trusted relation, friend or Executor(s) know where it is kept. Many people choose to keep it with their bank, Registrar or Sub Registrar, solicitor, along with other important papers. Before storage, you may wish to make photocopies for yourself or next of kin.

L. LIST OTHER IMPORTANT DOCUMENTS AND ITEMS THAT MAY BE NEEDED AFTER YOUR DEMISE

It is advisable to make lists (or notes) indicating where important items and documents can be found and leaving instructions to your heirs and family. These notes and lists do not have legal sanctity as does your Will so you can choose to write them in your own manner. These lists/notes should be kept in a safe place, and you should tell your Executor(s) and/or next of kin where to find them. These lists/notes could include:



- A copy of your funeral instructions (which may be needed before your Will is read)

- Any wishes you have about donations to charity

- A list of people who should be notified about your death and funeral.

- Where to find other important documents/items such as certificates, passport, licenses, policies and deeds

- Where important keys can be found.

- A list of organizations which should be notified about your death, such as your bank/building society pension provider and companies supplying you with services (electricity, gas etc.).

- A list of things that should be returned/cancelled after your death to the authorities that issued them (e.g. passport, driving license, PAN card, library card/books)

- Things to destroy (e.g. credit and debit cards after the companies have been notified of your death)

M. WHEN TO UPDATE YOUR WILL

When any major change occurs in your life, you should review your Will and consider whether it needs updating. Situations that may require you to review your Will include births or divorces in your family, a change to your financial circumstances, or if someone mentioned in your Will dies. If you get married, you must make a new Will. If you get divorced, anything left to your ex-spouse will be invalid, but the rest of the Will would prevail. Generally, it's wise to review your Will if you divorce.

You can change your Will as often as you like. However, you must not make changes to the original document as this will make it invalid. It's possible to change your Will by adding a Codicil (A further document making a change, or adding to an existing Will. It must comply with the same formalities as the Will). This must be signed and witnessed like the original Will (it may not necessarily be the same witnesses who attested the original Will). However, unless the change is minor, we recommend you make a new Will. You should preferably seek professional advice before drafting any Codicil or new Will.

N. STATUS OF NOMINEES

Most bank accounts and securities give the option of naming a nominee for that particular account or security. It should be understood that a nominee must be named in order that after a person's demise, the nominee can manage the account or deal with the security. It must be noted that a nominee is not the automatic beneficiary of that account or security but merely has the power to deal with the account or security in favor of the actual beneficiary as maybe identified

under the Will or otherwise as per law of succession. The nominee does not become the owner of the money in the bank account or in the securities. However, while a nominee is not automatically the beneficiary of that account or security, it is preferable for administrative purposes to make whoever is the intended beneficiary of that account or security the nominee for that account or security. For example, if you intend and have specified it in your Will that a specific fixed deposit in a bank is to be inherited by your daughter, then your daughter should be made the nominee for that fixed deposit. For this you need to contact your bank who will make you sign a short form and register the nominee for that account.

O. A GLOSSARY OF LEGAL TERMS

Here we explain the main legal terms associated with making a Will, plainly and simply. As you work through the steps described in this booklet, this glossary will be a useful reference point.

Ancestral Property- Property inherited from forefathers (grandfather and above)

Administrator(s)- People who deal with the administration of an Estate (see below) where there is no Will or where there is no Executor.

Bequest- See Legacy

Beneficiary- Anyone who benefits from your Will

Codicil- A further document making a change, or adding to an existing Will. It must comply with the same formalities as the Will.

HUF- Hindu Undivided Family is an entity in tax law, which owns / holds property for the common good of a family. The head of the family is referred to as the "Karta".

Estate- Your total assets (Immovable and Movable), at the date of death, net of any liabilities.

Executor- is the legal representative for all purposes of a deceased person (testator) and he/she holds all the property of a testator in trust for the benefit of the beneficiaries.

Intestacy- Dying without making a Will. A person is then said to die intestate.

Joint Family Property- Property acquired with the aid of joint family funds with the consent of all members of joint family. Or any individual property put in the hotchpotch of existing joint family property

Karta- See HUF above

Legacy- A specific item or sum of money or share of an estate, given in a Will. There are various types of legacies i.e.

•Pecuniary - A sum of money

•Specific- An item which is a tangible asset, e.g. gold watch

•Residuary - A legacy consisting of the residue of an estate, or share of it.

Legatee/Beneficiary- is a person who inherits the property under a Will.

Probate- Procedure whereby it is established formally whether you left a valid Will and who your administrators or Executors will be. A probate is only necessary in certain cases. Probate of your Will, if so required, is your Executors responsibility after your death.

Residue- What's left of your estate after payment of debts, expenses, tax and any legacies (leaving a specific item or a fixed sum of money) have been distributed.

The State- Where the money (your estate) goes if you did not make a valid Will and you have no surviving spouse, blood relatives or dependents as defined by the various laws in India.

Testator- You (the person making the Will).

P. CHECK LIST

Sample of Documents required for Registration in Delhi

1. Will document on plain paper (2 copies advisable)
2. Bank Draft of Registration fee required Rs. 600 (In Delhi)
3. Photographs of Testator
4. Original ID Proof(voter card, Pan Card, Passport, Driving License, Adhaar Card) of Testator and two witnesses
5. Undertaking on Rs.10/- stamp paper. This is a general affidavit format.

Kindly check with your local Registrar/sub-Registrar office for the list of documents and other requirements at the time of registration

LEAVING A LEGACY TO A CHARITY

After having taken care of loved ones and family, many consider leaving a gift for a charity of their choice.

You may wish to include HelpAge India in your Will

HelpAge India is a secular, apolitical, non-profit and nongovernment organization working for the cause and care of the elderly, with the aim of improving their quality of life. It is the only pan India charity working for senior citizens and disadvantaged older persons for the last 34 years. Over the years, HelpAge India has provided invaluable support to the elderly struggling with everything from poverty, neglect, illness and abuse. Without the kindness and generosity of people

who donate to us, our work could not continue. Of the 100 million elderly in India, a large number are amongst the poorest, abandoned by their families, without shelter, medical attention, and even food. As India's elderly population is set to rise to 350 million in 2050, the number of helpless old too is slated to rise sharply.

That's why, when you're making your Will, we would like to ask you to consider leaving a legacy to HelpAge India. Big or small, your legacy will enable us to support long-term projects and to achieve the aims we have set for ourselves.

If you do wish to leave us a gift in your Will, please let us know through email/ telephone. If we know in advance what funds will be coming to us, we can plan ahead with greater certainty and confidence. Please be assured that the information you give us puts you under no obligation, and will be treated in the strictest confidence.

LEAVE A LEGACY TO HELPAGE INDIA

Should you wish to leave a legacy to HelpAge in your Will, the wordings can be as follows:

'I give to HelpAge India, C-14, Qutab Institutional Area, New Delhi-110016 (Registration No. S.9270 of 1978)

You may wish to give HelpAge India a Residuary Legacy. This is a share in, or all of what's left of the value of your estate after all bills have been paid and all other legacies have been distributed. To leave a Residuary Legacy, use the following wording, and state the percentage you wish the Charity to receive, for example:

' _____% of the residue of my estate absolutely to HelpAge India...'

Instead of, or as well as, a Residuary Legacy, you may wish to give HelpAge India a particular amount of money (a Pecuniary Legacy). If so, use the following wording and state the amount you wish the Charity to receive:

'..... the sum of Rs. _____ absolutely to HelpAge India'

If you would like to leave the Charity something other than money, describe the items fully. For example:

'.... My freehold / leasehold property No. _____, consisting of a plot of.....sq. yards and construction thereon, or flat No. _____ located at _____ to HelpAge India' _____.

APPENDIX 1

Applicable laws & Special provisions

Applicable Laws:

- The Indian Succession Act, 1925.
- Hindu Personal Laws.
- Muslim Personal Laws.
- The Indian Registration Act, 1908.

Special Provisions for Hindus, Sikhs, Jains and Buddhists:

- A Will is not revoked upon the marriage of a Hindu, Sikh, Jain or Buddhists.
- A probate is mandatory in the event that a Will is executed in the cities of Mumbai, Calcutta or Chennai, to the extent that the Will pertains to immovable property in Mumbai, Kolkata or Chennai.

Parsis and Christians:

- A probate is mandatory in the event that a Will is executed in the cities of Mumbai, Calcutta or Chennai, to the extent that the Will pertains to immovable property in Mumbai, Calcutta or Chennai.
- On the marriage of a Parsi or Christian testator, his/her Will stands revoked.

APPENDIX 2

Muslims :

Muslim Personal Law governs a Muslim testator's power to make a Will, the nature of the Will, its execution and attestation thereof etc.

Under the Muslim Personal Law, a Muslim testator can make a Will orally or in writing and no form is required for such writing. However, it is preferable to have a written Will. If the Will is in writing it need not be attested. It may be noted that the provisions of the Indian Succession Act do not generally apply to a Muslim testator unless specifically stated in the Act.

In India, a person who is a major and of sound mind can make a Will and he can dispose of all or any part of his property by Will. However, there are two basic restrictions on the power of a Muslim testator to make a Will.

A Muslim can bequeath only one-third of his property by Will.

The heirs of a Muslim testator may consent to bequest in excess of one-third of the testator's assets.

A Muslim may change his Will during his lifetime or cancel any legacy.

A Will may also become void if a Muslim testator, after making the Will, becomes unsound of mind and continues to be so till his death.

Similarly, a bequest which is contingent, or conditional or in the future or is alternative to another, pre-existing one, would be void.

If an executor is appointed by a Muslim testator, the powers and duties of the executor will be in accordance with the provisions of the Indian Succession Act which have been discussed elsewhere.