What is Will

Will is a legal declaration of the intention of a testator with respect to his property, which he desires to be carried into effect after his death. It includes codicil and every writing making a voluntary posthumous disposition of property. It is testamentary instrument by which a person makes disposition of his property to take effect after his death, and which, in its own nature, is ambulatory and revocable during his life. Thus, a Will can be changed by the executant as and when he so likes. It is a secret and confidential document which the executant is never ordered to produce.

There are tow essential characteristics of a Will:-

(i) It must be intended to **come into effect after the death of the testator**; and

(ii) It must be **revocable by the testator at any time**. Although Wills are usually made for disposing property, they can also be made for appointing executors, for creating trusts and for appointing testamentary guardians of minor children. In one case, the Andhra Pradesh High Court has held that contents of the Will must indicate that it is intended to come into effect **after death of testator** and that it is revocable at any time prior to his death and a document cannot be treated as a Will by a mere reading of heading of it.

A gift to take effect the life lime of the donor is a deed of settlement and not a Will. Section 63 of the **Indian Succession Act, 1925** provides that a Will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will.

When a person dies **without having made a Will**, he is said to have died intestate. His property is then inherited by his legal heirs in accordance with the law of inheritance applicable to him. It must be noted here that legal heirs generally include close family members such as one's spouse, children, parents, brothers and sisters.

WHAT IS THE NEED OF A WILL ?

If one does not make a Will then his property will be inherited by legal heirs in accordance with the laws of inheritance applicable to him. However, most of the people would like to dispose of their property according to their own wishes. Thus, there arises the need for making one's Will. Apart from it there are certain distinct advantages of making a Will.

1. When a person dies **without having made a Will,** there is often confusion amongst the family members and relatives as to whether the deceased did make any Will prior to his

death or not, but if a Will is available, the only question that needs to be ascertained is whether it is the last Will of the testator.

2. A Will be absolutely personal document. More than anything it is an expression of the relationship with the members of family or relatives, etc. The views, opinions and feelings, etc., are indicated in this document. A **Will allows the devolution of property in a personalized manner** rather than letting the impersonal rules of inheritance take effect.

3. ***Many disputes can be resolved at the very outset if there is a clear disposition of one's property in a Will***. It will not be out of place to mention the imbroglio of Late Mrs. Indira Gandhi and her daughter-in-law Manekar Gandhi, who were embroiled in a litigation concerning the assets of the late Sanjay Gandhi. Had Sanjay Gandhi left behind a Will, the possibility of any dispute surfacing between the mother and his wife would have been very remote.

4. By means of a Will, one can appoint in writing, a testamentary guardian for his infant children. A testamentary guardian is person, who is appointed b a testament or a Will. This point needs further clarification. In the event of the death of a parent the law would ordinarily uphold the right of surviving natural parent to be the guardian of the child. However, if there is no surviving parent, the law attaches great importance tot eh Will of a parent in deciding who to appoint as a guardian. This is a matter of great importance with regard to the future of the children and therefore, this issue must be discussed in details with the proposed guardian before appointing him testamentary guardian.

5. A Will provides more room inter se the laws of inheritance, which sometimes do not cater to the special needs and requirements of the members of a family. For instance, a father has two sons. One is healthy but the other is handicapped due to any chronic disease since childhood. The laws of inheritance would treat both these children on an equal footing. But by means of a Will one can have somewhat greater provision for a handicapped son, a widowed daughter or an invalid parent. Not only that by means of a Will, one can make some provision for a faithful servant, a nurse a friend in need of money, and so on. All such people could never receive any benefit whatsoever under the laws of inheritance in the absence of a Will.

6. **In the absence of a Will** even the most unwanted son, who had left the house for disobedience, fraud, violence, etc. may turn up to claim his share of estate from his father's property. Similarly, an adulterous wife might demand her share as per inheritance laws.

There are however, some disadvantages also in making a Will and they are mostly psychological. In many cases it has been observed that people lose all their interests in life and idem such before the time they would have lived.

If there is no Will, the property would be dealt with as per the laws of inheritance. For Hindus, Buddhists, Jains and Sikhs the **laws of inheritance** have been codified in the

Hindu Succession Act, 1956. For Christians the Indian Succession Act, 1925 will be applicable. Parsis have a different law of inheritance. Similarly, **Muslims have their own law**. That has, however, not been codified in nay legislation but is based on their religious texts. There are tow major sects of Muslims – Shias and Sunnis. Both of them have different laws of inheritance.

Types of Wills

No Need to mention here that **Wills are always effective after death, never in the life time of the testator**. Section 63 of the **Indian Succession Act, 1925** provides that a Will is liable to be revoked or altered by the maker of it at nay time when he is competent to dispose of his property by Will, Therefore, the essential characteristic of a Will is its revocability.

Privileged and Unprivileged Wills Wills executed according to the provisions of section 63 of the Indian Succession Act are called Unprivileged Wills and Wills executed under section 66 of the Act, by a soldier employed in an expedition or engaged in actual warfare, or by an airman so employed or engaged, or by mariner being at sea, are called Privileged Wills. It is provided in the Act that such a Will may be written wholly by the testator with his own hands and, in such a case, it need not be signed or attested; or it may be written wholly or in part by another person, in which case, it may be signed by the testator but need not be attested. If, however, an instrument purporting to be a Will is written wholly or in part by another person and is not signed by the testator, it shall be deemed to be his Will, if it is shown that it was written by the testator's directions or was recognised by him as him Will. if, on the face of it, the instrument appears to be incomplete, it shall nevertheless, be demand to he the Will of ht testator, provided the fact that it was not completed, can be attributed to some cause other than the abandonment of the testamentary intentions expressed in the instrument. Further, if such a soldier, airman or mariner has written instructions for the preparation of his Will, but has not died before it could be prepared and executed, the instructions shall be deemed to be his Will; and if such a person has, in the presence of two witnesses, given verbal instructions for the preparation of his Will, and such instructions have been reduced to writing in his lifetime, but he has died before the Will could be prepared and executed, then such instructions are to be considered to constitute his Will, although they may not have been reduced into writing in his presence, nor read over to him. It is also provided that such a soldier, airman or mariner may make a Will by word of mouth by declaring his intention before two witnesses present at the same time, but such a Will shall become null at the expiration of one month after the testator, being still alive, has ceased to be entitled to make a privileged Will.

An unprivileged Will like Codicil can be revoked by the testator only by another Will or by some writing declaring an intention to revoke the same and 3executed in the manner in which an unprivileged Will can be executed under the Act or by burning, tearing or destroying of the same by the testator or by some other person in his presence and by his directions with the intention of revoking the same.

Mere loss of a Will does not operate as a revocation but where a Will is destroyed by the testator or with his privacy or approbation, it is to be deemed to have been revoked.

No obliteration, interlineations or other alternation made in any unprivileged Will after the execution thereof, can have any effect except so far as the words or meaning of the Will have been thereby rendered illegible or unidiscernible, unless such alteration has been executed in the same manner as is required for the execution of the Will; but a Will, as so altered, shall be deemed to be duly executed if the signature of the testator and the subscription of ht witnesses is made in the margin or some other part of the Will opposite or near to such alternation, or at the foot or end or opposite to a memorandum referring to such alteration, and written at the and or some other part of the Will.

A privileged Will or Codicil may be revoked by the testator by an unprivileged Will or codicil, or buy any act expressing an intention to revoke it and accompanied by such formalities as would be sufficient to give validity to a privileged Will, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his p[resence and by his direction with the intention of revoking the same. In such cases, it is not necessary that the testator should, at the it time of doing the act which has the effect of revocation of the Will or Codicil, be in a situation which entitles him to make a privileged Will.

Every Will is revoked by the marriage of the maker, except a Will made in exercise of a power of appointment, when the property over which the power of appointment is exercised, would not, in default of such appointment, pass to his or her executor or administrator, or to the person entitled in case of intestacy.

This rule as to revocation of a Will by marriage, does not, however, apply to Wills and codicils executed by Hindus, Buddhists, Sikhs or Jains.

An unprivileged Will which has once been validly revoked cannot be received otherwise than by the re – execution thereon with the prescribed formalities, or by a codicil executed with such formalities and showing an intention to revive the same. When a Will or a codicil, which has been partly revoked and afterwards wholly revoked, such revival cannot extend to so much thereof as has been revoked before the revocation of the whole thereof, unless and intention to the contrary is shown by the Will or codicil.

It has already been stated that in the case of Hindus, Buddhists, Sikhs and Jains a Will could validly be made orally and no formalities for the execution of a Will are required. This rule, however, did not apply to Wills made by Hindu, Buddhists, Sikhs or Jains, on or after the 1 st of September, 1870, within the territories which were subject to the Provincial Government of Bengal or in the local limits of the ordinary civil jurisdiction of the High Courts of Judicature at Madras and Bombay, and also, to all such Wills and codicils made outside those territories or limits so far as they related to immovable property situated within these territoes or limits. The execution of such Wills was previously regulated by the Hindu Wills Act (XXI of 1870). Except in the cases mentioned in that Act, oral Wills could be made by person’s professing the Hindu,

Buddhist, Sikh and Jain religions. A question, however, arises whether the Indian Succession Act, 1925 has the effect of depriving such persons of the privilege of making oral Wills, or whether the previsions of section 63 of the Act do not merely provide for the formalities which must be observed, if any of such persons chooses to 'execute' a Will, i.e., chooses to reduce his testamentary dispositions to writing. It will be observe that section 63 of the Act provides for the manner of 'execution' of unprivileged Wills, it does not deal with the question of the 'making' of such Wills.

That the Act seems to make a distinction between the 'execution' and the 'making' of Wills, will appear from a comparison of the phraseology of sections 63 and 66 of the Indian Succession Act, 1925. While section 63 refers to the 'execution' of unprivileged Wills, section 63 refers to the 'execution' of unprivileged Wills, section 66 prescribes the 'mode of making' and rules for executing Privileged Wills'. A distinction, therefore, seems to be contemplate between the 'execution' and the 'making' of a Will. The former expression apparently applies to cases where the Will is to be reduced to writing, and the expression 'making of a Will' includes the execution of a Will and also an oral declaration by the testator of his testamentary disposition of his estate, if such declaration legally amounts to a Will. The matter is a debatable one, and no definite opinion, therefore, need be expressed on it at this stage.

Conditional or Contingent Wills A Will may be expressed to take effect only in the event of the happening of some contingency or condition, and if the contingency does not happen or the condition fails, the Will is not be legally enforceable. Accordingly, where A executes a Will to be operative for a particular year, i.e.,. if he dies within that year. A lives for more years, after that years. Since A does not express an intention that the Will be subsisting even intestate. A Conditional Will is invalid if the condition imposed is invalid or contrary to law.

Joint Wills A Joint Will is a testamentary instrument whereby two or more persons agree to make a conjoint Will. Where a Will is joint and is intended to take effect after the death of both, it will not be enforceable during the life– time of either. Joint Wills are revocable at anytime by either of the testators during their joint lives, or aster the death of one, by the survivor.

A Will executed by two or more testators as a single document duly executed by each testator disposing of his separate properties or his joint properties is not a single Will. It operates on the death of each and is in effect for tow or more Wills. On the death of each testator, the legatee would become entitled to the properties of the testator who dies.

Mutual Wills A Will is mutual when two testators confer upon each other reciprocal benefits by either of them constituting the other his legatee. But when the legatees are distinct form the testators, there can be no position for Mutual Wills.

Duplicate Wills A testator, for the sake of safety, may make a Will in duplicate, one to be kept by him and the other to be deposited in the safe custody with a bank or executor

or trustee. If the testator mutilates or destroys the one which is in his custody it is revocation of both.

Concurrent Wills Generally, a man should leave only one Will at the time of his death. However, for the sake of convenience a testator may dispose of some properties in one country by one Will and the other properties in another country by a separate will.

Sham Wills If a document is deliberately executed with all due formalities purporting to be a Will, it will still be nullity if it can be shown that the testator did not intend it to have nay testamentary operation, but was to have only some collaterally object. one thing must be born e in mind that the intention to make the Will is essential to the validity of a Will.

Holograph Wills Such Wills are written entirely in the handwriting of the testator.

Courtesy : http://www.vakilno1.com/wills/What-is-a-Will.php