
TESTAMENTARY SUCCESSION AND WILLS UNDER THE LAW OF INHERITANCE AND SUCCESSION IN INDIA: VALIDITY, PROOF AND JUDICIAL SCRUTINY.

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ABSTRACT

Through testamentary succession a person can put an end to the rules of intestacy and ensure that his property is distributed according to his wishes. In India, this freedom to distribute one's property after his/her demise is governed by a complex, layered system of laws, which include, the Indian Succession Act 1925, the Hindu Succession Act 1956, uncodified Muslim personal law, law of evidence, and the Registration Act 1908. This paper, taking a doctrinal approach, discusses what is valid will, restrictions placed on testamentary freedom under different personal-law systems, and the legal standards of proof to be established before a court. Analysing statutes and leading Supreme Court decisions including *H. Venkatachala Iyengar v B.N. Thimmajamma*, *Jaswant Kaur v Amrit Kaur*, *Derek A.C. Lobo v Ulric M.A. Lobo* and *John Vallamattom v Union of India*. The courts frequently differentiate between the validity of a will and its truth, mandating that the propounded disprove any necessary circumstance; registration and attestation do not inherently dispel doubt. Testamentary freedom is unqualified for Christians, Hindus and Parsis, but is restricted to one-third in the case of Muslims. The report concludes that will law is fundamentally settled but actually contestable. It proposes that they will be more precisely distinguished and that safe deposit and registration be enlarged and that old testators be protected.

KEYWORDS: Indian Succession Act, 1925, testamentary succession, will, probate, suspicious circumstances, testamentary capacity.

INTRODUCTION

All legal systems require succession of the owner's estate to be directed on his death either by law, or by the owner. Testamentary succession, the form of devolution, will be given effect to the owner's expressed desire in the will, provided it satisfies certain conditions. The Indian Succession Act, 1925 (the 1925 Act) defines will as "a legal declaration of the intention of the testator with regard to his property which he desires to be carried into effect after his death."¹ Most of the law that has grown up around a will can be accounted for by the nature of a will. First, a will is ambulatory: it speaks only after death and can be revoked at any time by a testator with capacity.² Secondly, the law attempts to make up for the silence of the testator by requiring a higher standard of form, attestation and proof than would normally be required by a private document, for the reason that the most knowledgeable witness to the document is, by definition, dead. The situation in India is further aggravated by the presence of more than one personal law. The Indian Succession Act (INA) 1865 was applied to Hindus in limited regions by the Hindu Wills Act (HWA) 1870, whereas the law of wills.³ was codified by the 1925 Act⁴. Section 30 of the Hindu Succession Act (HSA) 1956 established that, any Hindu can will.⁵ away a property. Muslim testamentary succession is not governed by Part VI of the 1925 Act, but by uncodified personal law. Consequently, the body of law is at variance in some matters, in particular testamentary freedom, and unified in others, for example in relation to the evidence of wills. The Supreme Court has examined the question of evidence of wills umpteen times, with the latest being in 2023, 2025 and 2026. Most will litigations in India do not challenge the existence of testamentary freedom and or the genuineness of a document. Accordingly, this essay compares limitations of testamentary freedom across communities, traces the legislative landscape, discusses essentials of a valid will, assesses the evidential standards prescribed by the Supreme Court and provides contemporary reform proposals.

¹The Indian Succession Act 1925, s 2(h).

²The Indian Succession Act 1925, s 62 (a will or codicil is liable to be revoked or altered by its maker at any time when he is competent to dispose of his property by will).

³The Hindu Wills Act 1870 applied selected provisions of the Indian Succession Act 1865 to wills of Hindus, Buddhists, Sikhs and Jains in the Presidency towns and in Bengal territories; these provisions were later carried into the 1925 Act through s 57 and its Schedules.

⁴The Indian Succession Act 1925, s 58(1); the Muslim Personal Law (Shariat) Application Act 1937, s 2.

⁵The Hindu Succession Act 1956, s 30.

MATERIALS AND METHODS

This study adopts a doctrinal (black-letter) methodology supported by analytical and comparative techniques, which is the method appropriate to questions about what the law is and how courts have interpreted it. The research is qualitative and desk-based; it does not rely on fieldwork or empirical case-file data.

Primary sources were the Indian Succession Act 1925 (Part VI and the probate provisions), the Hindu Succession Act 1956, the Hindu Adoptions and Maintenance Act 1956, the Special Marriage Act 1954, the Registration Act 1908, the Indian Evidence Act 1872 and its successor the Bharatiya Sakshya Adhiniyam 2023 (in force from 1 July 2024), and the Information Technology Act 2000, together with Supreme Court judgments retrieved from the Court's portal and recognised law reports. The judgment of decisions on execution, attestation, capacity, proof, testamentary freedom, and probate was chosen for specific reasons; the primary cases from 1951 to 1977 were read with cases from 2019-2026 and complemented with standard commentaries. The sources for Muslim law from secondary sources is included in the study for 1951-1977, where no codification exists, limited to Indian law, and study does not include the Goa civil code. Because some of the 2025-2026 decisions is recent, their explanations for the decided principles is based on the reported decision summaries and the final decision should be compared to the reported reasoning; from 2023 onward, the decisions are cited with neutral citation where a report citation could not be verified.

RESULTS AND DISCUSSION

1. The Statutory Framework of Testamentary Succession

In the first, it may be observed that there is no single code of testamentary succession in India. Testamentary succession is made subject to conflicting rules. In essence, the basic rules for Part VI (dealing directly.⁶ with the making, construction, revocation and operation of wills) and its probate rules are provided by the 1925 Act. Sect. 57[4] applies Part VI (subject to Sch.III) to the wills of Buddhists, Hindus, Sikhs and Jains, while sect. 58[5] excludes Muslims, and Christians and Parsis come under Part VI itself. All except Hindus, Buddhists, Sikhs and Jains.⁷who marry under the Special Marriage Act, 1954 are under the 1925 Act.

The dissolution of individual testamentary power and the Mitakshara conception of joint-family assets is achieved in s 30 of the Hindu Succession Act. The Supreme Court in

⁶The Indian Succession Act 1925, ss 57 and 58 and Sch III. Section 57 identifies wills by place and date (Presidency towns after 1 September 1870; elsewhere, under clause (c), on or after 1 January 1927).

⁷The Special Marriage Act 1954, s 21, and its proviso.

Radhamma v.H.N.Muddukrishna held that the legislature has eased the bar to alienation through a will.⁸ A coparcener could not will his undivided share till 1956 as it was acquired by survivorship which was abolished by Explanation to s 30. A daughter is a coparcener by birth having the same rights as a son's.⁹ Vineeta Sharma v. Rakesh Sharma-CI 2 of 2005 also used gender neutral language.

A simple clarifying change would rule out any ambiguity. The quote still uses the phrase of "male Hindu" while a daughter's passage may be equally subject to wilful utilization on a purposive reading. A will can't be utilized as proof unless at any rate a duplicate attesting observer who should be alive and also capable has demonstrated the performance of the will since the wills should be proven. This proportion, which was already incorporated into piece 68 of the Indian Evidence Act, 1872 and is given in part 67 of the Bharatiya Sakshya Adhiniyam, 2023. wills.¹⁰ are not attacked by the statement which reasons attesting co-proprietors from enrolled records. Case law under the 1872 Act therefore remains directly relevant.

2. Testamentary Capacity and Free Agency

As Section 59 of the 1925 Act provides, "Any person of sound mind not a minor may, by will, dispose of his property". This section, by way of its explanations, reveals that a married woman may dispose of property which she could alienate during her lifetime, that a blind, deaf, or dumb person may, if he understands what he is doing, make a will and that a person of 'insane' mind may, during a lucid interval.¹¹, may make a will. Capacity therefore is functional and time specific- the testator's state of mind at the time of execution of his will is relevant and not the generic predicate given to his state of mind. Section 61 states that "any will or any part of a will" which prevents the testator from exercising his free agency.¹² choice either by fraud, duress or importunity is void. Importance is slight because love and gratitude and legitimate persuasion do not invalidate a will, but argument of a weak and susceptible person, however, no doubt involves some adroit pressure, even though there may be no actual fraud or intimidation, as hereinafter explained.

⁸*Radhamma v H.N. Muddukrishna* AIR 2019 SC 643 (Khanwilkar and Rastogi JJ), decided 23 January 2019; the case arose from a 1976 partition suit and concerned a testator who died in 1965.

⁹*Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1; the Hindu Succession (Amendment) Act 2005.

¹⁰The Bharatiya Sakshya Adhiniyam 2023, s 67, corresponding to the Indian Evidence Act 1872, s 68; the related provisions on proof where no attesting witness is found or the witness denies execution are ss 68 to 70 of the 2023 Act, corresponding to ss 69 to 71 of the 1872 Act.

¹¹The Indian Succession Act 1925, s 59 and its Explanations.

¹²The Indian Succession Act 1925, s 61.

3. Formalities of Execution and Attestation

Section 63 states what it takes to make an unprivileged will, the testator's signing requirement and attestation requirement, which is as follows: The testator has signed or has been signed in his presence and by his direction in order to give effect to the will, and the will has been attested to by two witnesses or more, who have seen the testator either sign the will or has received from him a personal acknowledgment of his signature, and who has signed the will in the testator's presence.¹³ There is no specific form of attestation or technical style of language and the witnesses need not have signed in each other's presence required.¹⁴ Courts will not require formalities unnecessarily and do not require anything more than attestation in strict compliance. The Supreme Court in *Janki Narayan Bhoir v. Narayan Namdeo Kadam* observed that the witness would not satisfy it.¹⁵ the requirement of section 63 if the only evidence is that he saw the testator sign the will. Disinterested witnesses are essential because under section 67 of the 1925 Act a bequest is invalid, to the extent that it may affect an essential.¹⁶attesting witness or his spouse. Registration of wills is not essential and it may be deposited with Registrar.¹⁷ under Registration Act, 1908. In *Gainedi Kaliprasad's case* (supra) a will, though sealed, was not registered. It was held that registration cannot give validity to a will; it can be proved only in terms of S. 63 of Act 1925 and the Evidence Act.¹⁸ That state of affairs is quite different from common law position that a will cannot be challenged if registered. In *Leela v. Muruganantham* (supra), the rule was applied to a will allegedly favouring a second wife and her sons, stressing scrutiny of the beneficiaries' role in procuring it.¹⁹

4. Proof of Wills and the Doctrine of Suspicious Circumstances

Proof of the Will Law of proof is considered the most developed part of law of wills. The Supreme Court has observed in *H. Venkatachala Iyengar v. B.N. Thimmajamma* that 'wills are proved in the same way as documents in the administration of personal estate, with this significant exception, that the person who seeks to establish the document as a will has not

¹³The Indian Succession Act 1925, s 63(a) to (c). Privileged wills, made by soldiers employed in an expedition or engaged in actual warfare, airmen so employed and mariners at sea, are separately governed by ss 65 and 66 and are exempt from these formalities.

¹⁴The Indian Succession Act 1925, s 74.

¹⁵*Janki Narayan Bhoir v Narayan Namdeo Kadam* (2003) 2 SCC 91.

¹⁶The Indian Succession Act 1925, s 67.

¹⁷The Registration Act 1908, s 18(e) and ss 42 to 46 (deposit and withdrawal of wills); the Act's provisions on compulsory registration in s 17 do not extend to wills.

¹⁸*Moturu Nalini Kanth v Gainedi Kaliprasad* 2023 INSC 1004 (Supreme Court of India, 20 November 2023), Civil Appeal No 2435 of 2010.

¹⁹*Leela v Muruganantham* 2025 INSC 10 (Supreme Court of India, January 2025), following *Moturu Nalini Kanth* (n 18) and *Derek A.C. Lobo v Ulric M.A. Lobo* 2023 INSC 1093.

only to make out its terms but also to establish that it was the work of a effect.²⁰ With sound and capable mind possessed of the requisite knowledge. The Court added that where there are suspicious circumstances, the onus is on the propounder to explain them to the satisfaction of the court before the will can be accepted. That statement has been repeated in nearly every subsequent decision.²¹

Although the heads of suspicious circumstances are indefinite, the pattern of the cases is found: in inordinate, unnatural, and improbable intention to exclude natural heirs; an uncertain signature or a feeble mind at the time of execution; and, above all, active participation by a principal beneficiary in the preparation or execution of a will, as in *Jaswant Kaur V. Amrit Kaur*.¹ The ratio of *Bharpur Singh V. Shamsheer Singh* is to be reiterated that the presumption against the will leaving the natural heirs is not lost merely because the will is registered or attested.²² The testator can discriminate among children, and exclusion of natural heirs is not necessarily fatal. But in cases where the departure from intestacy is inexplicable, further probe is required.

The latest decisions further categorized the requirements of formal and legal validity into that of authenticity (whether the testament is a free and voluntary expression of the testator) and legality (whether the will is in accordance with the provisions of 63 and 67 of the 2023 Act). The tests laid down have been compiled in *Shivakumar v. Sharanabasappa*; and *Kavita Kanwar v. Pamela Mehta* has reiterated the necessity to satisfy judicial conscience in absence of doubt. *Murthy v. C. Saradambal* has set aside a will where the mental capacity of the testator was not removed.²³ Or contemplated; and *Derek A.C. Lobo v. Ulric M.A. Lobo* has rejected by the existence.²⁴ Suspicious circumstances alone, the execution by an attesting witness. The Supreme Court recently reversed the High Court and restored the judgments of the lower courts in *Sardari Lal v. Bishan Dass* (6 July 2026). The High Court had concluded that the attestation and registration were enough evidence, despite the will being signed in 1974 by an illiterate farmer who knew how to mark his thumb print. The Supreme Court determined that a will had more than signature and attestation, and the propounder was under

²⁰*H. Venkatachala Iyengar v B.N. Thimmajamma* AIR 1959 SC 443.

²¹*Shashi Kumar Banerjee v Subodh Kumar Banerjee* AIR 1964 SC 529; *Rani Purnima Debi v Kumar Khagendra Narayan Deb* AIR 1962 SC 567; *Jaswant Kaur v Amrit Kaur* (1977) 1 SCC 369; *Bhagwan Kaur v Kartar Kaur* (1994) 5 SCC 135. All follow *Venkatachala Iyengar* (n 20).

²²*Bharpur Singh v Shamsheer Singh* (2009) 3 SCC 687; see also *Pentakota Satyanarayana v Pentakota Seetharatnam* (2005) 8 SCC 67 and *Sridevi v Jayaraja Shetty* (2005) 2 SCC 784 on the examination of attesting witnesses and the treatment of suspicion.

²³*Derek A.C. Lobo v Ulric M.A. Lobo* 2023 INSC 1093 (Supreme Court of India, December 2023); *Murthy v C. Saradambal*, Civil Appeal No 4270 of 2010 (Supreme Court of India, 10 December 2021).

²⁴*Shivakumar v Sharanabasappa* (2021) 11 SCC 277; *Kavita Kanwar v Pamela Mehta* (2021) 11 SCC 209.

an obligation to give a satisfactory rebuttal against any suspicious circumstances to them.²⁵. The Court would not allow the sincerity inquiry to be discarded in favor of a strict formal proof.

Table 1. Principal Judicial Principles on Proof of Wills.

Principle	Leading authority	Practical implication
Statutory compliance is mandatory	Janki Narayan Bhoir (2003); Moturu Nalini Kanth (2023)	Witness must depose to all elements of s 63; registration alone does not prove a will
Propounder bears the onus	Venkatachala Iyengar (1959); Shashi Kumar Banerjee (1964)	Party relying on the will must prove sound and disposing mind and free execution
Suspicion shifts a heavier burden	Rani Purnima Debi (1962); Jaswant Kaur (1977); Bharpur Singh (2009)	Suspicious features must be explained by cogent evidence
Beneficiary involvement is a red flag	Jaswant Kaur (1977); Leela v Muruganantham (2025)	Beneficiaries should not procure, draft or manage execution of the will
Validity is not genuineness	Derek A.C. Lobo (2023); Sardari Lal (2026)	Proof through an attesting witness does not end the inquiry where doubt persists

5. Testamentary Freedom and its Limits across Personal Laws

Testamentary Freedom The law concerning Hindus, Buddhists, Sikhs and Jains is more liberal, with no requirement to maintain certain persons. There is no apportionment and a testator can disinherit a natural heir in regard to a property which is not inalienable as against an alienee, including self acquired property and, since the Explanation to sec. 30 of the Succession Act, the undivided interest of a coparcener. Property which is inalienable is all property in which the testator does not have any disposal interest. Claims of dependants such as an aged parent.²⁶ Including father or widow daughter-in-law, are also protected under the Hindu Adoptions and Maintenance Act 1956. The law is not like this in the case of Muslim law. A Muslim could do no more than leave a third of the net estate, after debts and funeral expenses; an estate larger than that, or made in favour of an heir, only becomes operative if the other heirs agree after the testator's death. There is no need for a Muslim to do this in

²⁵*Sardari Lal v Bishan Dass* (Supreme Court of India, 6 July 2026) (Misra and Viswanathan JJ), reported in the legal press on 7 July 2026. The account of the reasoning is drawn from published summaries of the judgment.

²⁶The Hindu Adoptions and Maintenance Act 1956, ss 21 to 28 (dependants, maintenance from the estate, and the effect of transfer of property on the right to maintenance). Whether a legatee, as distinct from an heir, is bound by these obligations depends on the facts, and the question deserves separate study.

writing. Normal handbooks, commentaries,²⁷ describe these uncodified rules, and the ceiling protects the predetermined quotas of the Quranic heirs. For Christians and Parsis the 1925 Act applies directly and imposes no cap. Section 118 formerly restricted Christian testators with a nephew, niece or nearer relative from bequeathing to religious or charitable uses unless the will was executed at least twelve months before death and deposited within six months; in *John Vallamattom v Union of India* the Supreme Court struck it down under Article 14.²⁸ The decision shows that personal-law rules on wills must satisfy equality review. The position is summarised in Table 2.

Table 2. Comparative Overview of Testamentary Freedom.

Community	Governing law	Testamentary limit	Key formalities
Hindu, Buddhist, Sikh, Jain	Hindu Succession Act 1956, s 30; 1925 Act, Part VI via s 57 and Sch III	No fixed limit; includes coparcenary interest (s 30 Explanation); subject to maintenance claims	Written and signed; two attesting witnesses (s 63); registration optional
Muslim	Uncodified personal law; Shariat Act 1937; 1925 Act excluded by s 58	One-third of net estate; excess or bequest to an heir needs consent of other heirs	Writing not essential; oral will permitted
Christian	1925 Act, Part VI	No fixed limit; s 118 struck down in Vallamattom (2003)	s 63 formalities
Parsi	1925 Act, Part VI	No fixed limit	s 63 formalities

6. Probate, Letters of Administration and Jurisdiction

When a will was proved to be genuine and duly executed and such Probate was given to the executor named in the will, such Probate was known as proving a will. Sec. 213(2) limits this part for Hindus, Buddhists, Sikhs and Jains to wills specified in clauses (a) and (b) of section 57 and entirely excludes Muslim will altogether.²⁹ from this rule. Sec. 213(1) prohibits setting up the existence of right as an executor or a legatee without probate. It follows, therefore, that a legatee or an executor before filing suit under a Hindu will made in a Presidency town, has to give probate of such will, but a Hindu will made elsewhere can be used in a regular suit without probate.

²⁷See Mulla, *Principles of Mahomedan Law* (LexisNexis, latest edn), chapter on wills; Tahir Mahmood, *The Muslim Law of India* (latest edn). The rules apply to Muslims by virtue of the Muslim Personal Law (Shariat) Application Act 1937, s 2, with the 1925 Act excluded by s 58(1).

²⁸*John Vallamattom v Union of India* (2003) 6 SCC 611.

²⁹The Indian Succession Act 1925, s 213(1) and (2). The provision concerns the establishment of a right as executor or legatee; it does not bar an heir from defending title in a suit.

Only the validity of the will and the manner of its execution are subject to determination by a probate court. Title or constructional.³⁰ problems are not. Probate will not determine conflicting claims to particular properties. When issued, the grant of probate is a judgment in rem which is final as to its validity against all persons/ world,³¹ This is good cause for attacking the will at the very beginning of the probate proceedings.

7. Construction, Revocation and Lapse

The intention of the testator, to be collected from the will read as a whole, is paramount after probate. All parts of the will should be given effect to if possible, and no words should be so construed as to frustrate the scheme.³² plan which they clearly express. When the two clauses are incompatible, the later one takes priority if the 1925 Act, and a purpose is not to be defeated just because it cannot be carried into effect in its entirety prevails.³³ Section 70 provides that a will may be revoked by a later will or codicil, by burning, tearing or destroying the will with that intent, or by a written declaration of intention.³⁴ to revoke made as a will. So a will is not revoked by an independent statement that the testator has 'changed his mind'. If it is not otherwise.³⁵ directed in the will the legacy falls into the residue if a legatee dies before the testator.

8. Contemporary Challenges and Reform

The three problems are : 1. Electronic & video wills. Will do not form part of First Schedule to the Information Technology Act 2000, so even though Bharatiya Sakshya Adhiniyam 2023 amends the provisions regarding electronic records, a video recording cannot meet the requirements under Section 63 and an electronically signed will remains out of the Act's purview scope,³⁶. A written statement, even now, may play an important role in establishing competency and voluntariness. The second factor is vulnerability of dependent and old testators. Another common feature of these cases is that a major beneficiary actively manages the testator's affairs, and takes part in the draft planning and signing. Later: Even better

³⁰*Ishwardeo Narain Singh v Kamta Devi* AIR 1954 SC 280.

³¹*Chiranjilal Shrilal Goenka v Jasjit Singh* (1993) 2 SCC 507; the Indian Succession Act 1925, s 273 (conclusiveness of probate).

³²*Gnambal Ammal v T. Raju Ayyar* AIR 1951 SC 103; *Ramkishorelal v Kamal Narayan* AIR 1963 SC 890; *Navneet Lal v Gokul* (1976) 1 SCC 630.

³³The Indian Succession Act 1925, ss 87 and 88; a will or bequest that is uncertain is void under s 89.

³⁴The Indian Succession Act 1925, s 70.

³⁵The Indian Succession Act 1925, s 92; on the effect of the rule against bequests to persons not in existence at the testator's death, see ss 113 and 114.

³⁶The Information Technology Act 2000, s 1(4) and First Schedule, which lists a will as defined in the Indian Succession Act 1925, s 2(h), including any other testamentary disposition by whatever name called.

protection for the execution of the will can be achieved by receiving a contemporaneous medical certificate of capacity in the case of a frail testator, by obtaining independent legal advice, by having disinterested witnesses, by registration or deposit of the will, and by using a statutory safe-custody scheme. The suspicious-circumstances doctrine applies, in conjunction with the interested-witness doctrine, years after the witnesses are dead. The third is delay: some decisions ultimately issued date from cases brought some 40 years ago (wills probated in 2026 with a 1974 will, by which time witnesses or scribes may not have been around). A rebuttable presumption of regularity for registered wills, with contemporaneous tests, and early formulation of problems with time constraints for probate proceedings would be good.

CONCLUSION

This paper analysed the legal basis, legality, evidence, limitations on freedom and present problem on testamentary succession in India. Four conclusions can be drawn from this. The law of wills is based on the sections 59, 61, 63 and 70 of the Act, 1925 and section 30 of the HSA, First, the law of wills. Second, the doctrine of suspicious circumstances is what the courts employ for the real work. Official proof of execution hasn't put an end to the investigation from Venkatachala Iyengar in 1959 to Sardari Lal in 2026. Third, the door of testamentary freedom is one-half for other communities, limited to one-third for Muslims, and full for Christians, Hindus and Parsis. Vallamattom has made it clear that such rules are amenable to the law. Fourth, the legislations on the protection of senior testators, electronic wills, and litigation delays fall short in providing assurance. The Explanation to s30 should be amended by Parliament to refer specifically to women's coparcenary interests and should or explicitly state electronic wills are invalid or recognize them with safeguards. Lower fees and safekeeping will encourage registration and deposit of wills. Courts must adopt case management to resolve will disputes in a timely fashion. Most important of all, testators should employ disinterested witnesses and independent professional advice because the best will in the world is the best hedge against a contested one.

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