WE ALL KNOW HOW TO CREATE WEALTH, HOW TO MANAGE WEALTH, NOW WE LEARN HOW TO DISTRIBUTE WEALTH!

We are born, and then death is certain. So before the death we can predetermine the disposal of our wealth by making A WILL.

Chapter 1: WILL

A Will is an important document which enables the individual /any living person to rightfully leave his assets and wealth to whoever he chooses to, after his death. In a way a person can ensure that his wishes with respect to his assets and property are followed after his death. There often arise complexities when a person dies without a Will. Some people execute writings, prepared by themselves or with the help and advice of well-meaning friends or relatives. The crux is that the absence of a will or the invalidity of a will or parts of a will often generates problems for the legal heirs and successors. After the death of a person, his property devolves in two ways:

- According to the respective law of succession, when no will is made- i.e. intestate
- By way of will i.e. testamentary

THE LAW APPLICABLE TO WILLS:–

India has a well developed system of succession laws that governs a person's property after his death. The Indian Succession Act 1925 applies expressly to wills and codicils made by Hindus, Buddhists, Sikhs, Jains, Parsis and Christians but not to Mohammedans as they are largely covered by Muslim Personal Law. The laws applicable are as under:

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

WHAT IS WILL?

A Will is a legal declaration made by a person during his lifetime with regard to disposal of his properties after his death. The Will does not take effect from the date of its execution. It speaks from the death of the testator. During the Testator's lifetime, the Will is an ambulatory document, revocable at any time and having no legal effect.

There are two essential characteristics of a Will:-

(i) It must be intended to come into effect after the death of the testator: A gift to take effect the life lime of the donor is a deed of settlement and not a Will.

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. 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.

WHO ARE THE PERSONS COMPETENT TO MAKE A WILL?

According to Section 59 of the Indian Succession Act,

Persons competent to make a Will			
Every person of sound mind, not being a minor may dispose of his property by will. There is an exception to this general rule that the testator must not be a minor.	A married woman may make a Will of her property which she could alienated by her own act during her life time.	Deaf or dumb or blind person can also make a will if they are able to know what they do by it.	An ordinarily insane person may make a will during an interval in which he is of sound mind.

The following persons cannot make a will:

1. A person who is in such a state of mind whether arising from intoxication or from illness or from any other cause that he does not know what he is doing i.e. Lunatics, insane persons.
2. Married woman, aliens and convicts are not debarred from making a will.
3. Minors i.e. below 18 years of age. In case a guardian is appointed to a minor, such minor reaches age of maturity only at the age of 21 years.
4. Corporate bodies, by their very nature, are incapable of making a will, though they may benefit under the will of an individual partner.

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, they are as follows-

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. 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 to the 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.
4. 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.
5. 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 two major sects of Muslims – Shias and Sunnis. Both of them have different laws of inheritance.

HOW TO PREPARE A WILL?

1. Will must be in writing:

   All religions except Muslims, the will must be made in writing. The only exception provided under the law are the members of the armed forces employed in an expedition or engaged in actual warfare and mariner at seas who are permitted to make an oral will. Such will is known as "Privileged Will".

2. Muslims can make oral will:

   Muslims are permitted by their personal law to make a oral will.

3. No particular form of will:

   There is no particular form of will prescribed by law. The language employed should be as simple as possible and should be free from technical words.

4. Will need not be on Stamp Paper:

   It is wrong to say that a will has to be executed on a stamp paper as there is no such stipulation under the Indian Stamp Act. A will can therefore be made on any plain sheet of paper which must of course, be of durable quality.

5. Typing is not essential but desirable:

   A will need not be typed. It can be made in testator's own hand using a ball pen or fountain pen. A handwritten will is known as holograph and is valid in the eyes of law. However, n a handwritten will some confusion is bound to be caused by illegible handwriting of the testator. It is therefore advised that will should be neatly typed with margins on both sides of the pages.

6. Precaution In drafting a will:

   a) Prepare a list of all your assets and property which remain after taking into account all debts, liabilities and expenses to get a clear picture of how you wish to distribute the estate.

   b) The Will should be drafted in the language best understood by the testator so as to give the impression that the contents were fully understood by the testators wishes and intentions.

c) In case the testator is illiterate the will should be executed in a language which the testator can comprehend. And the attesting witness or third attesting witnesses.

d) Unusual characters of the will should be explained and clarified in the main body of the will itself. Thus where a testator bequeaths all his property to his daughter disinheriting and excluding his wife and other two sons or bequeaths his entire property to charity disinheriting his entire family it is desirable that in such circumstances reasons are clearly stated in the will itself.

WHAT ARE THE LEGAL REQUIREMENTS FOR MAKING A WILL?

Section 63 of the Indian Succession Act provides as under –

Every testator, not being a soldier employed in a expedition nor engaged in actual warfare, or an airman so employed or engaged or a mariner at sea, shall execute his will according to the following rules:

a) The testator shall sign or shall affix his mark to the Will, or it shall be signed by some other person in his presence and by his direction.

b) The signature or mark of the testator, or the signature of the person signing for him shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a will.

c) The will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the will or has seen some other personsign the will,in the presence of and by the direction of the testator, or has received from the testator a personal acknowledgement of his signature or mark,or of the signature of such other person; and each of the witnesses shall sign the will in the presence of the testator, but it shall not be necessary that more than one witnesses be present at the same time ,and no particular for of attestation shall be necessary”

WHAT ARE THE DIFFERENT KINDS OF WILL?

Privileged and Unprivileged Wills:

Wills executed according to the provisions of section63 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. As a matter of rule, the wills have to be made in writing. However, a soldier during his engagement in an actual warfare or an airman so engaged or a mariner being at sea, may pronounce his will by or of mouth before two witnesses. The will so pronounced by such persons are called privileged wills.

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.
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 two 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 from 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.

WHO CAN BE THE EXECUTOR/WITNESS OF A WILL?

An executor is the person appointed ordinarily by the testator's by his will or codicil.

- To administer testator's property and
- To carry into effect the provision of the will

Casual selection of the witnesses to be will prove fatal in the event of the proof of the execution of the will at future date. It should be clearly understood that the attesting witness may on some future occasion be required to appear as a witness in court in order to prove the execution of Will.

WHAT IS A CODICIL AND HOW TO MAKE ALTERATIONSIN THE NAME OF THE EXECUTOR?

An instrument made in relation to a Will, Explaining, altering or adding to its dispositions, It shall be deemed to form part of the Will. If the Testator wants to change the names of the Executors by adding some other names, in that case this could be done by making a Codicil in addition to the Will, as there may not be other changes required to be made in the main text of the Will. It may be that the Testator wants to change certain bequests by adding to the names of the legatees or subtracting some of them. It may be some Beneficiaries or Executor may be dead and the names are required to be removed. All these can be done by making a Codicil. The Codicil must be reduced to writing. It must be signed by the Testator and attested by two Witnesses.

WHAT ARE THE FORMS & FORMALITIES TO MAKE A WILL?

Form of a Will:

There is no prescribed form of a Will. In order for it to be effective, It needs to be properly signed and attested. The Will must be initialed by the testator at the end of every page and next to any correction and alteration.

Stamp Duty:

No stamp duty is required to be paid for executing a Will or a codicil. A Will need not be made on stamp paper.

Attestation:

A Will must be attested by two witnesses who must witness the testator executing the Will. The witnesses should sign in the presence of each other and in the presence of the testator. However, according to Hindu Law, a witness can be a legatee. Under Parsi and Christian law, a witness cannot be an executor or legatee. A Muslim is not required to have his Will attested if it is in writing.

Registration:

Under section 18 of the Registration Act the registration of a will is not compulsory. It is strong legal evidence that the proper parties had appeared before the registering officers and the latter had attested the same after ascertaining their identity. A Will is to be registered with the registrar/sub-registrar with a nominal registration fee. The testator must be personally present at the registrar's office along with witnesses.

WHEN THE WILL MUST BE EXECUTED?

On the death of the testator, an executor of the will or an heir of the deceased testator can apply for probate.

The court will ask the other heirs of the deceased if they have any objections to the will. If there are no objections, the court will grant probate.

A probate is a copy of a will, certified by the court. A probate is to be treated as conclusive evidence of the genuineness of a will.

In case any objections are raised by any of the heirs, a citation has to be served, calling upon them to consent. This has to be displayed prominently in the court.

Thereafter, if no objection is received, the probate will be granted.It is only after this that the will comes into effect.

Chapter 2: NOMINATION

WHAT IS NOMINATION?

Nominion means an act of nominating. To nominate means to appoint a person who will look after the property of the person after his death. e.g.: LIC/GIC,BANK etc.

WHO CAN NOMINATE?

Nomination can be done only by a Investor or Policyholder who is major holding account/investment certificate/policy Bond in his own Name. And the nomination facility is available only to individuals in their own capacity singly or jointly.

WHEN THE NOMINATION CAN BE DONE?

Nomination can be done at the time of investment and after that filing relevant form.

WHETHER CHANGE OF NOMINATION ALLOWED ANYTIME AND IF SO HOW MANY TIMES IT'S ALLOWED?

Yes, Old nomination can be cancelled and new nomination can be made without informing previous nominee.

TO WHOM THE NOMINATION FACILITIES ARE PROVIDED?

Nomination is available to Individual (Major, Minor cannot nominate).

1. HUF/Reg. Firm/Company can't nominate
2. Nominee can't nominate
3. Holding Assets on representative capacity (like Trustee, Liquidator, Treasurer, Manager of Bank of Baroda)

WHO CAN BE APPOINTED AS NOMINEE?

A nominee can be adult or a minor .If a minor is appointed as a nominee a guardian has to be appointed till the minor attains the age of majority and further the date of birth of the minor also should be mentioned, so that the actual date of attaining the majority could be easily ascertained. A nominee also can be relative or a friend or a well-wisher. It is not necessary that the nominee should be in a blood relative.

WHAT ARE THE RIGHTS OF A NOMINEE?

Under nomination, the nominee gets only the right to receive the policy moneys in the event of the death of the Policyholder. Nomination does not pass on the property in the policy. If the Nominee dies when the policyholder is still surviving then the nomination would be ineffective. Nomination has no effect if policyholder is surviving. If nominee dies after the death of the policyholder, but before receiving policy moneys, then also Nomination becomes ineffective and the money can be claimed only by the legal heirs of the policy Holder.

<u>NOMINATION IN CO. OP. SOCIETY</u>.

A) WHAT IS PROCEDURE FOR NOMINATION?

A member can file nomination in -

- Form no. 15A In case of a single Nominee.
- Form no. 15B More nominee-Were percentage of each nominee is required to be mentioned.

The Form is to be filed and signed by the party in presence of two witnesses.And 3 copies are to be filed,One as Acknowledge receipt, Second to be received by the party after necessary entry is recorded in the society's record and the original to be kept in society office.(entered within 7 days from meeting of managing committee).

B) WHAT IS THE FEES FOR RECORDING THE NOMINATION?

There is no charge for recording the nomination for the first time. However if the earlier nomination is revoked and new nomination is given to the society for each subsequent nomination Rs.5/- will be charged by the society.

C) WHEN SOCIETY TRANSFER PROPERTY IN NAME OF NOMINEE?

After death of person society can transfer property in name of nominee. Nominee will write to society along with copy of death-certificate and various forms (application, undertaking 500 sq. ft.), used for residence.

(i) Single nominee

(ii) More than one nominee (nominees will decide who will represent society).

Now after new model Bye-law, also allow Joint Ownership in society which was not permitted earlier. Earlier 1st person was treated as member and other were as associate members.

D) If the nomination firm is not filed then

for transfer purposes society may insist for probate/succession certificate which involve lot of time & expenses.

i) once application is made society can invite objection in one month (notice board of society public notice in two newspapers).expenses to be borne by legal heirs.

ii) Indemnity bond for future claim if any.

iii) more than one legal heir then who will be 1st who will represent in society.

E) If nominee is not able to find share certificate then can apply to society for duplicate-

Nominee takesthese steps

a) first file application to society,

b) second give advertise in two newspapers,

c) Indemnity Bond

then duplicate certificate can be issued and original will be treated as cancelled. like railway ticket –if duplicate is issued –original is of no use.

WHAT IS THE DIFFERENCE BETWEEN WILL & NOMINATION?

A nomination is not a will.

When there is a nomination already filed with the Society, the normal impression is that the Nominee on the death of the Member, automatically becomes a member by filing an application .However, The Supreme Court of India has ruled in 1984 that "a Nominee is a mere Trustee with whom society can initially deal with after the death of a member. All the legal heirs of the deceased Member have a right of succession to the property of the deceased member and a Nominee cannot exclude the other legal heirs".

Thus the nominee merely acts as the trustee. In some instances, the nominee and the beneficiary of the will is the same person. At all times, the provisions of the will prevail over the nomination. It is advisable to have the same person as the nominee and the beneficiary of the will, so as to prevent future disputes.

A nomination, in order to be effective, need not be executed as a will but must be in accordance with the formalities required by the particular provision applicable.

WHETHER WILL ALSO TO BE EXECUTED WHEN NOMINATION IS GIVEN TO THE SOCIETY?

Any transfer of interest of the deceased member in the Co-operative housing Society is governed by the section 30 of Maharashtra Co-operative Societies Act,1960. Section 30(1)" On the death of a member of a society, the society shall transfer the share or interest of the deceased member to a person or persons nominated in accordance with the rules or, If no has been nominated, to such person as may appear to the committee to be the heir or legal representative of the deceased member.

Provided that, such nominee, heir o legal representative, as the case may be, is duly admitted as a member of the society:

Provide further that nothing in this sub –section or in section 22, shall prevent a minor or person of unsound mind from acquiring by inheritance or otherwise, any share or interest of a deceased member in a society"

From interpretation of the above section we understand the following thing.

It is very clear on the plain reading of the section that the intention of the section is to provide for who has to deal with the society on the death of the member and not to create a new rule of secession .The purpose of the society has to deal and create interest in the nominee to the exclusion of those who n law will be entitled to the estate. The purpose is to avoid confusion in case there are dispute between the heir and legal representative and to obviate the necessary of obtaining legal representation and to avoid uncertainties as to with whom the society should deal to get proper discharge.

Society has no power, except provisionally and for a limited purpose to determine the disputes about who is the heir, or legal representatives. It, therefore, follows that the provisions for transferring a share and interest to a nominee or to the heiror legal representative as will be decided by the society is only meant to provide for interregnum between the death and the full administration of the estate and not for the purpose of conferring any permanent right of such person to a property forming part of the estate of the deceased. The idea of having this section is to provide for a proper discharge to the society without involving the society into unnecessary litigation which may take place as a result of dispute between the heirs.

Even when a person is nominated or even when a person is recognized as a heir or a legal representative of the deceased member, the rights of the persons who are entitled to the estate or the interest of the deceased member by virtue of law governing succession are not lost and the nominee or the heir or legal representative recognized by the society, as the case may be ,holds the share and interest of the deceased for the disposal of the same in accordance with the law. It is only as between the society and the nominee or heir or legal representative that the relationship of the society and its member is created and this relationship continues and subsist only till the estate is administered either by the person entitled to administer the same or by the court or the rights of the heirs or persons entitled to the estate are decided in a court of law. Thereafter the society will be bound to follow such decision. (Gopal Vishnu Ghatnekar vs. Madhukar Vishnu Gatnekar).

The provisions of section 30 for transferring a share and interest into a nominee. The heir or legal representative as will be decided by the society, is meant to provide for interregnum between the death and the full administration of the estate, and no for the purpose of conferring any permanent right on such a person to a property discharge to the society without involving the society into unnecessary litigation which may take place as a result of dispute between the heirs, or uncertainty as to who are the legal heirs or representatives.

Even when a person is nominated, or a person is recognized as a heir or a legal representative of deceased member right of the person who are entitled to the estate of the interest of the deceased member by virtue of law governing succession are not lost, and the nominee or the heir or the legal representative recognized by the society, as the case may be, holds the share and interest of deceased for disposal of the same in accordance with law. (Gopal Vishnu Ghatnekar Vs. Madhukar Vishnu Gatnekar).

CHAPTER 3: FREQUENTLY ASKED QUESTIONS

Q.1 What is a Will and the benefits of making one?

Ans: A WILL is a written document in which you provide for:-

a. the administration of your estate/assets when you die; and

b. the distribution of your possessions in specific proportions to specific people whom you wish to have a share of your estate/assets;

c. appoint a person or persons of your choice to administer your estate; and

d. appoint a guardian or guardians for your infant children (if any).

In other words it a document where you direct, who is to receive your property upon your death. If you have any real property (land) or personal property (cars, jewelry, money) that you want to give to a specific person than you must have a will.

Q.2 Should everybody – working or non-working person, man or woman makes a will? and What if you die without making a Will?

Ans: "Where there's a Will, there's a way....Where there is no Will, there will probably be family bitterness/family disputes..." If people die without a WILL, then the law will decide to whom the property of the deceased person should go to.

Thus, every person whether working or non working , man or women should make a will.

Q.3 When should people make a will? At what age on an average?

Ans: Every adult, no matter what age, should have a Will. Most preferably a person above the age 50 should have a will. And while making a Will a person must be of sound mind.

Q.4 How do they make this will? Is there a process to making a will? What kind of paper is to be used? What language do they write it in? Do they need other people to witness the will?

Ans: No prescribed form for a Will; only needs to be signed and attested

- Can be in any language; no technical words need to be used
- Two witnesses must attest a Will; one preferably a doctor
- They should sign in the presence of each other and the person making the Will.
- In India, the registration of Wills is not compulsory
- The Will should provide for the appointment of executors, though not mandatory.
- No stamp duty is required to be paid for executing a Will.

Q.5 Where should they keep the will when they finish writing it? Should somebody in the family/or friends know where they have kept this paper/will?

Ans: Keep the original in a safe place where it may be found easily after your death. Leave a copy with the attorney who wrote it for you or with a copy with your family friend, CA or Advocate.

Q.6 Can a will be verbal like told to a person before death, or does it have to be written?

Ans: A Will has to be written but a verbal will is permitted in Defence Personal. However, a verbal will is not valid if you have a valid, written will. If you have no written will, a verbal will can be valid with regard to any property you own, except land. Property that can be transferred under a verbal will includes stocks, bonds, cars, coin collections, jewelry and appliances. A verbal will is valid only if know you are dying and say what you want in your will to two competent, disinterested witnesses. The witnesses must put the will in writing and sign the transcription within ten days.

Q.7 We see lots of problems in families when the head of a family passes away without leaving a will. Is that true? Would things be easier if there was a will?

Ans: If you die without leaving a valid legal Will, you are said to have died 'Intestate'. The law dictates who will inherit your Estate and in what proportions. The law also decides who will have responsibility for administering your Estate (your Personal Representatives). Such an decision may create a disputes and some family hurdles among the family members.

Q.8 Should you keep the contents of a will a secret? Or, can they be shared with people?

Ans: It is advisable to keep the contents of a will secret. However, it is not necessary to keep it secret, it depend upon person to person and case to case.

Q.9 A husband may leave a will should a wife also make a will? Or Can a Husband and Wife make a Joint Will?

Ans: No it is not possible to have a joint Will they must be individual Wills. However "Mirror Wills" are quite common. A mirror Will is when a spouse or partner make almost identical Wills, or even identical Wills, leaving for example, everything to each other respectively should one partner perish and if both perish together then direct to children. If they have no children then to a named beneficiary's. This is where major differences often occur say, for example, the husband could leaves his possessions and estate to his siblings and the wife leaves her possessions and estate to her siblings!!!.

Q.10 Suppose a person makes a will leaving his/her assets and money not to family but to an outsider or perhaps to a charity – is this will to be honored?

Ans: Yes, basically a Will is a document that states or directs the will of the person, as to whom he/she wants his/her property to be handled after their death. So the person in whose name the assets are transferred can be any person a outsider or even an charitable trust etc.

Q.11 Wills are often contested by people. Can you enumerate three of the most common grounds on which they are contested?

Ans: Yes, Wills are often contested by peoples. Some common grounds on which wills are contested are as follows-

a) That the person was of not sound mind.

b) The Testator lacked testamentary capacity to sign a will.

c) The person was unduly influenced into signing a will/ a will is made under pressure.

d) The will was procured by fraud.

e) The Will is not signed before two witnesses.

f) The name of family members is not mentioned in will.

Q.12 Wills often result in bitterness in families and fragmentation – maybe somebody thinks they have not quite got what they wanted or lesser than the other person.

Ans: Yes, it might happen in various situations. In order to prevent such happening it is advisable to consult a lawyer which will help you to draft the will in the manner and giving the proper statements as to why only certain assets are given to a particular member instead of others.

Q.13 Have there been cases in which a will has been deliberately tampered with? Or, when maybe mentally unsound people have been fooled into making wills?

Ans: There are very few cases where the will has been deliberately tampered with or when the mentally unsound people have been fooled into making wills.

Q.14 Can a person change a will he has already made?

Ans: You can change your will any time you want to. However, make sure that when you make a new will, you mention that this will is the latest and supersedes all earlier wills. If you don't, it can complicate the situation, cause major confusion, make such matters go to the court of law and take several years before arriving at any final verdict

You can also make an addition to your will by signing a "codicil," with all the formalities of a will. The codicil must be in writing, dated and signed by you and two witnesses. You cannot change a properly executed will by writing revisions into the will, even if you initial and date the changes. Such changes are valid only if they occur before the will is signed and witnessed. If major changes are needed, consider making a new will.

Q.15 What would you advise? Always make a will with a cool head, never in a rash or impulsive manner – what should be a person's state of mind when they make a will?

Ans: A person should make a Will in a sound mind and should have the will Registered with the Registrar of Sub Assurances in presence of two witnesses registrar will also ask for Indentify proof, Doctor Certificate, Residential proof of person who makes Will, Identity proof of witness expenses are very nominal.

Q.16 Should they take the help of a lawyer when making a will or can they make it on their own?

Ans: The procedure of making a Will is very simple, if assets are few than the help of lawyer is not necessary but in case if the Assets are many and the family is big and if there is a possibility of disputes than it is advisable to take the help of the lawyer. As "Do-it-yourself" wills often do not contain all the necessary components as required by law and many times ruled as invalid by courts (for example no signatures from witness or no witness at all). Many a time, it can happen that while creating the will, you use such ambiguous language that it results in lengthy legal battles ("My House should go to Sunita." Now if both mother and wife are called Sunita, which Sunita ought to get it?. Anyone who might benefit from the ambiguity of the will can jump in to claim a share! And if the courts decide in his/her favour, you won't like that situation (not that, you'll be around!).

Q.17 Does marriage / entering into a civil partnership affect my Will?

Ans: Yes, if you marry or enter into a civil partnership, your Will is revoked. This is because there is an assumption that you would wish to provide for your new spouse or civil partner. There is an exception to this rule if you have made your Will 'in anticipation of' marriage / entering a civil partnership. If you are in any doubt about this, consult your Solicitor for advice.

Q.18 Does divorce / dissolution of civil partnership affect my Will?

Ans: Yes, if you divorce or your civil partnership is dissolved, any Will you have made is revoked but only to the extent that your ex-spouse or ex-partner is referred to. For example, any appointment of your ex-spouse or ex-partner as an Executor or beneficiary is revoked. However, your Will may still be valid and, again, you should consult your Solicitor for advice.

Q. 19. Property will be inherited to nominee under nomination?

Ans. No, Appointment of nominee is like appointing trustee .property will be inherited as per will/if no will then succession Act.

Reliance is placed on:
Ramdas Shivram Sattur Vs. Rameshchandra Bombay High Court ,order delivered by Justice A. P. Deshpande, order dated 9/4/2009.

I. Tarabai wife of Shivram was nominee sold property to builder.

II. Ramdas received property in 1976 family settlement (property not transferred in his name)
III. Builder filed case against Tarabai for specific performance.
IV. Ramdas filed case against mother & builder that he is owner.
V. Court ordered that all legal heirs are owner. Tarabai can just manage affairs.

Q. 20. If member is not in the capacity to attend society meeting than what he can do?

Ans. He can file form to make associate member, who represent member in society meeting. Membership of associate member remain till membership of original member. In case of death of member, membership of associate member also come to end.

Chapter 4: FORMAT OF WILL

WILL

I ……………………….. aged…..years, an male Indian Inhabitant, residing at…………………………………………………………………………………………….. I Do hereby revoke all my former will, codicils or other Testamentary dispositions and hereby declare this to be my last will and Testament made at Mumbai this……. day of ………………., 2013.

1. I am maintaining good health and I am possessed of sound mind. This will is made by me of my own independent decision and free violation and in perfectly sound health and sound mind, I have not been influences, cajoled or coerced by any person.

2. My family consist of the following members:

   i)____.

   ii) ____.

   iii) ____.

   iv) ____.

   v) ____.

3. I have during my life time acquired properties and I am possessed of assets in the shape of Movable and Immovable Properties and chooses in action. Keeping in view the dissentions in the family and possible disputes, which may arise relating to inheritance opening out at my demise and in order to save the assets from unnecessary litigation amongst my relatives and others. I so hereby devise and declare all the estate which I am holding at present/or which I may acquire in future in the manner as mentioned herein below.

4. I hereby appoint my wife namely ………………… the Executor of this my Last will in case my wife…………………………….. predeases me then my son … ………………………will be executor of my this will.

5. I direct that the said Executor shall pay my funeral and other expenses for obsequies ceremonies, just debts, taxes and other liabilities, out of the property that I have at the time of my death and the balance of my total properties shall be bequeathed .

6. I devise and bequeath all my Immovable and Movable Properties to my Wife … ……………………… and she will be owner for her life time and will be able to make her will as her desire.

7. In case my wife …………………….. predeceases me then all my Immovable and Movable property will bequeathed as follows :

(A) IMMOVABLE PROPERTIES

All my immovable property will be bequeathed to my son namely ……………………………

(B) MOVABLE PROPERTIES

i) Rs. …………… to be given to my daughter namely…………………

ii) Rs……………………………… to given to my granddaughter i.e sons daughter.

iii) Rs……………………… to be given to my grandson i.e my daughters son

And after above amounts are paid whatsoever left including any assets which I may acquire in future or I may dispose of Some Assets will be given to my son …………………………………..

Signed by the within named Testatrix)

…………………………………………………………..)

Acknowledged by her as her last will and)

Testament in the presence of each have)

WITNESSES:

1. …………….
2. …………….

CHAPTER 5 : FAMILY ARRANGEMENT

1. It is arrangement between member of a family descending from a common ancestor or near relation trying to sink their differences and disputes, settle and solve their conflicting claims once and for all to buy peace of mind and bring about harmony and goodwill in the family by an equitable distribution or allotment of assets and properties amongst member of the family.

FAMILY IN A FAMILY ARRANGEMENT HAS A WIDER MEANING

2. The Supreme Court in *Ram Charan Das v. Girja Nandini Devi (AIR 1996 SC 323, 329)* held that : " Court give effect to a family settlement upon the broad and general ground that it's object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in this context is not to be understood in the narrow sense of being a group of person who are recongnised in law as having a right of succession or having a claim to a share in the property in dispute." While it is necessary that there should be some common tie between the parties to such family arrangement, it need not be between persons who are commonly understood as constituting a Hindu Family or for that matter, a family in any restricted sense. It is not necessary that there should be a strictly legal claim as member of the same family. It is enough if there is a possible claim or if they are related, a semblance of a claim *(Krishna Beharilal v. Gulabchand AIR 1971 SC 1041, 1045).*

   A family arrangement wherein an adopted son was a party was held to be valid though he turned out to be a stranger as the adoption was subsequently held to be invalid in the case of Shivamurteppa Gurappa Ganiger v. Fakirapaa Basangauda Channappagaudar (AIR 1954 Bom. 430) C.G.T. v. Smt. Gollapude Saritammn (116 ITR 930, 936 AP.)

   It is possible that married daughters or sisters who are not treated as members of the family of a parent/ brother on their marriage may still be considered as members of the family for purposes of a family arrangement.

ESSENTIALS OF A FAMILY ARRANGEMENT

(i) The family arrangement should be for the benefit of the family in general.

(ii) The family arrangement must be bonafide, honest, voluntary and it should not be induced by fraud, coercion or undue influence.

(iii) The purpose of the family arrangement should be to resolve present or possible family dispute and rival claims not necessarily legal claims by a fair and equitable division of the property amongst various members.

(iv) The parties to the family arrangement must have antecedent title, claim or interest. Even if a possible claim in the property which is acknowledged by the parties to the settlement will be sufficient.

(v) The consideration for entering into family arrangement should be preservation of family property, preservation of peace and honour of the family and avoidance of litigation. Kale v. Deputy Director of Consolidation (AIR 1976 SC 807)

(vi) **Family peace is sufficient consideration**

A question arises as to what is the consideration for allotment of property under a family settlement. It is said that a family settlement is arrived at between the members of the family with a view to compromise doubtful and disputed right. It, therefore, follows that the allotment of shares under a family settlement is not what a person is legally entitled to since some of the members can be allotted a much lesser share of asset than what they are entitled to under the law, while others a much larger share than what they are entitled to , yet some others may get a share to which are not legally entitled to since the main consideration is surely and certainly purchase of peace and amity amongst the family members and such a consideration cannot be deemed as being without consideration.

Antecedent title, claim or interest or even a possible claim:

The members who may be parties to the family arrangement must have some antecedent title, claim or interest or even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the Court will find no difficulty in giving assent to the same. Kale v. Deputy Director of Consolidation (AIR 1976 SC 807).

But where the person, in whose favour certain properties have been transferred under the guise of a family arrangement, has no and cannot have any claim or possible claim against the transferor, & therefore, the same cannot be regarded as a family arrangement.

- CED v. Chandra Kala Garg 148 ITR 737 (All.)
- CIT v. R.Ponnammal 164 ITR 706 (Mad.)

In the case of **Roshan Singh v. Zile Singh (AIR 1988 SC 881**) the Supreme Court held that the parties to family arrangement set up competing to the properties and there was an adjustment of the rights of the parties. By family arrangement it was intended to set at rest competing claims amongst various members of the family to secure peace and amity. The compromise was on the footing that there was an antecedent title of the parties to the properties and the settlement acknowledged and defined title of each of the parties.

1. A family settlement is considered as a pious arrangement by all those who are concerned and also by those who administer law. A family settlement is not within the exclusive domain of the Hindu Law but equality applies to all families governed by other religions as well. Thus, it shall apply to Muslims, Christians, Jews, Parsees and other faiths equally.
2. The concept of family arrangement is an age old one. It is not only applicable to Hindus but also to other communities in which there is a common unit, common mess and joint living. In the case of **Bibijan Begum v. Income Tax Officer (34 TTJ 557),** the Gauhati Bench of the Appellate Tribunal in a very elaborate judgement held that there is no bar for Mohammedans to effect a family arrangement. In that case the assessee had an absolute right over her Mehr property and in exchange of that land the assessee received another land over which a multi-storeyed building was to be constructed. The assessee's two daughters and two sons had antecedent right to the properties in the capacity as her heirs though their shares were not specified. The Tribunal held that by a family arrangement the rights of those children had been specified. The family arrangement by which the assessee and her four children received 1/5th share each in the multi-storeyed building was, therefore, valid. The Tribunal therefore, held that the assessee lady could not be assessed in respect of that share of house property which was given to her children pursuant to the family arrangement.
3. Three parties to the settlement of a dispute concerning the property of a deceased person comprised his widow, her brother and her son-in-law. The latter two could not under the Hindu Law be regarded as the heirs of the deceased, yet, bearing in mind their near relationship to the widow, the settlement of the dispute was very properly regarded as a settlement of a family dispute – Ram Charan Das v. Girija Nandini Devi AIR 1996 SC 323 at page 329.
4. A family arrangement differs from partition in as much as in a family settlement there can be a division of income without the distribution of assets and there is no bar to a partial partition. The provision of section 271 of the Act, which places restriction on a partial positions do not apply to a family settlement.
5. The Gauhati High Court in the case of Ziauddin Ahmed v. CGT, 102 ITR 253 held that the family arrangement amongst the members of Mohammedan family is valid and therefore, the shares given by a father to his sons at less than market value in order to preserve the family peace is not liable to gift tax.

WHETHER REGISTRATION OF DOCUMENT IS REQUIRED FOR EFFECTING FAMILY ARRANGEMENT

1. Family arrangement as such can be arrived orally or may be recorded in writing as memorandum of what had been agreed upon between the parties. The memorandum need not be prepared for the purpose of being used as a document on which future title of the parties be founded. It is usually prepared as a record of what had been agreed upon so that there be no hazy notions about it in future. It is only when the parties reduce the family arrangement in writing with the purpose of using that writing as proof of what they had arranged and, where the arrangement is brought about by the document as such, that the document would require registration as it would amount to a document of title declaring for future what rights in what properties the parties possess. Tek Bhadur Bhuji v. Debi Singh AIR 1966 SC 292 . Also see Awadh Narain Singh v. Narian Mishra, AIR 1962 pat. 400; Mythili Nalini v. Kowmari, AIR 1991 Ker 266; Klae v. Dy Director of Consolidation AIR 1976 SC 807.
2. Another aspect that attracts our attention is whether family arrangement, if recorded in a document, requires registration as per the provisions of section 17(1)(b) of the Indian Registration Act, 1908. Section 17(1)(b) lays down that a document for which registration is compulsory should, by its own force, operate or purport to create declare, assign, limit or extinguish either in present or in future any right, title or interest in immovable property. Thus if an instrument of family arrangement is recorded in writing and operates or purports to create or extinguish rights, it has to be compulsorily registered. But where a document, merely records the terms and recital of the family arrangement after the family arrangement had already been made which **per se** does not create or extinguish any right in immovable properties, such document does not fall within the ambit of section 17(1)(b) of the Act and so it does not require registration.
3. According to the Supreme Court in Roshan Singh v. Zile Singh AIR 1988 SC 881, the true principle that emerges can be stated thus 'If the arrangement, of compromise is one under which a person having an absolute title to the property transfers his title in some of the items thereof to others, the formalities prescribed by law have to be complied with, since the transferees derive their respective title through the transferor. If, on the other hand, the parties set up competing titles and the differences are resolved by the compromise, then, there is no question of one deriving title from the other and therefore, the arrangement does not fall within the mischief of section 17 (1) (b) it read with section 49 of the Registration Act as no interest in property is created or declared by the document for the first time.
4. Family Arrangement does not amount to transfer : The transaction of a family settlement entered into by the parties bonafide for the purpose of putting an end to the dispute among family members, does not amount to a transfer Hiran Bibi v. Sohan Bibi, AIR 1914 PC 44, approving, Khunni Lal v. Govind Krishna Narain, (1911) ILR 33 All 356 (PC). It is not also the creation of an interest. For, as pointed out by the Privy Council in Hiran Bibi's case AIR 1914 PC 44, in a family

settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other party. It is not necessary, as would appear from the decision in Rangaswami Gounden v. Nachiappa Gounden AIR 1918 PC 196, that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a resemblance of a claim on some other ground as say, affection. Ram Charan Das v. Girija Nandini Devi, AIR 1966 SC 323.

5. It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case memorandum itself does not create or extinguish any rights in immovable properties and therefore does not fall within the mischief of section 17 of the Registration Act and is, therefore not compulsorily registrable –Kale v. Dy. Director AIR 1976 SC 807.
6. The family arrangement will need registration only if it creates any interest in immoveable property in present in favour of the party mentioned therein. In case however no such interest is created, the document will be valid despite its non-registration and will not be hit by section 17 of the Indian Registration Act, 1908. Maturi Pullaih v. Maturi Narasimhan AIR 1966 SC 1836.
7. Even a family arrangement, which was registrable but not registered, can be used for a collateral purpose, namely, for the purpose of showing the nature and character of possession of the parties .In pursuance of the family settlement. Kale v. Director of Consolidation AIR 1976 SC 807, (1976) 3 SCC 119.
8. To record a family arrangement arrived at orally, a memorandum of family arrangement-cum-compromise is required to be drawn up wherein the properties and assets belonging to the parties to the family arrangement are required to be specified. Thereafter the fact of arriving at family arrangement sometime in the past with the help of well-wishers and family friends is required to be mentioned. In the operative portion of the Memorandum of Family Arrangement-cum-Compromise the properties and business which have been allotted to different parties are required to be specified.

In addition to the Memorandum of Family Arrangement –cum-Compromise, other documents like affidavits of each of the parties to the Family Arrangement are required to be obtained wherein each of the parties confirms on oath that he has received a particular asset and the family arrangement is arrived to his total satisfaction and it is binding on him. In such an affidavit the party giving up his right in other properties which are allotted to other parties to the Family Arrangement states that the said other properties may be transferred in the records of the registering authorities without notice to him. On the basis of the affidavit which is required to be executed before a Notary Public; mutation entries can be made by the concerned authorities.

In order to enable the member of the family to whom a particular property is allotted on arriving at a family arrangement, a power of attorney is required to be given by a member in whose name the said property was standing prior to the family arrangement to enable the party receiving the property to deal with the property as his own. Depending on the facts of each case, various other documents may be required to be drawn up to effect a proper and binding family arrangement.

9. Family arrangement is arrived at for a consideration namely, to resolve the dispute amongst the parties, to preserve the family peace and harmony and to avoid litigation and therefore, the provisions of Gift Tax Act are not attracted.
G.T.O. v. Bhupati Veerbhsadra Rao (9 ITD 618)
C.G. T. v. Pappathi Anni (123 ITR 655, Mad)
Ziauddin Ahmed v. CGT (102 ITR 253 Gau.)

In the case of N. Durgaiah v. C.G.T. 99 ITR 477 (AP), the assessee executed a registered deed of settlement on March 26, 1962, conveying certain immovable properties to his five sons and two daughters out of whom one of the sons was a minor in whose favour a house worth Rs. 64,800/- was settled. The assessee contended before the G.T.O. that the transaction was in the nature of a family arrangement which does not amount to a taxable gift under the G.T.Act. The G.T.O. A.A.C. and the Tribunal rejected the contention of the Assessee.

When the matter reached the High Court, the Andhra Pradesh High Court held that in order to constitute a family arrangement, there must be an agreement or arrangement amongst the members of the joint family who wish to avoid any plausible or possible disputes and secure peace and harmony amongst the members. Where one of the parties executes a document styled as settlement deed where under some of the properties exclusively belonging to him as his self-acquired properties are settled in favour of the other members of the family, the terms of such document do not amount to a family arrangement. There is no family arrangement as the same is only a unilateral act.

Hence a purely voluntary act of giving up one’s right in property without compelling circumstances indicating an existing or a possible dispute resulting in a compromise may well constitute a conveyance by way of gift and not valid family arrangement. It is, therefore, necessary that the preamble to the family arrangement should advert to the existence of difference which are likely to escalate to possible litigation and cause lack of peace and harmony in the family and likely to bring dishonor to the family name and prestige.

In the case of Ram Charan Das v. Girja Nandini Devi (Supra), the Supreme Court held that a compromise by way of family settlement is in no sense an alienation by a limited owner of the family property and since it is not an alienation it cannot amount to a creation of interest.

The definition of the term “transfer” contained in section 2(47) of the Income Tax Act, 1961 prior to its amendment by the Finance Act, 1987 with effect from 1.4.1988 has been considered by the Supreme Court in the case of Dewas Cine Corporation (68 ITR 240), Bankey Lal Vaidya (79 ITR 594) & Malbar Fisheries Co. (120 ITR 49) wherein the High Court, was called upon to consider whether on dissolution of a firm there is a transfer of assets amongst the partners. The Supreme Court in all the decisions unequivocally held that on dissolution of a firm there is a mutual adjustment of rights amongst the partners and therefore, there is no transfer of assets by sale, exchange, relinquishment of the asset or extinguishments of any rights therein.

Their Lordships of the Supreme Court in the case of Sunil Siddharthabhi v. CIT (156 ITR 509) after considering the decisions of their Court in the case of Dewas Cine Corporations, Bankey Lal Vaidya & Malbar Fisheries Co. and the Gujarat High Court decision in the case of Mohanbhai Pamabhai (91 ITR 393) held, that when a partner retires or the partnership is dissolved, what the partner receives is his share in the partnership. What is contemplated here is a share of the partner qua the net assets of the partnership firm. On evaluation, that share in a particular case may be realized by the receipt of only one of all the assets. What happens here is that a shared interest in all the assets of the firm is replaced by an exclusive interest in an asset of equal value. That is why it has been held that there is no transfer. It is the realization of a pre-existing right.

With effect from 1.4.1988 sub-clause (v) is added to the definition of the term “transfer” in section 2(47) of the Income Tax Act which provides that any transaction involving the allowing of the possession of any immovable property to be taken or retained in part performance of a contract amounts to a transfer. Sub-clause (vi) which is added to the definition of the term transfer provides that transaction which has the effect of transferring or enabling the enjoyment of any immovable property amounts to a transfer for the purpose of Income Tax Act.

Whether distribution of assets amongst the members of the family amounts to transfer pursuant to the amended definition of the term transfer ?

In the case of Ramgowda Annagowda Patil v. Bhausaheb (AIR 1927 PC 227), the family settlement was between parties which included the brother and son-in-law of a widow of the deceased. Though the widow was a necessary party, her brother and son-in-law were not, but they had been allotted shares in the properties which formed the subject-matter of the family arrangement. It was held that in view of the closeness of the relationship between the persons who were disputing the right over the property with one another, the arrangement between them was legal and enforceable (Mehdi Hasan v. Ram Ker AIR 1982 All. 92).

CHAPTER 6: DAUGHTERS RIGHT IN PROPERTY OF HUF

1. INTRODUCTION

In a landmark judgment, **Vineeta Sharma vs Rakesh Sharma decided on 11 August, 2020,** the Supreme Court of India **aimed at ensuring "right of equality"** and it was held that a daughter coparcener would have equal coparcenary rights in Hindu Undivided Family (HUF) properties or **equal right to family property by birth** irrespective of whether the father coparcener passed away before or after 9th September 2005 i.e, the day when Parliament recognised this right by amending the Hindu Succession Act of 1956. The three-judge bench, led by Justice Arun Mishra, opined that Section 6 of the amended Hindu Succession Act bestowed upon the daughter an equal coparcenary status, along with its rights and liabilities, akin to a son coparcener. This right of the daughter was one bestowed by her birth, and would remain unaffected by the date of the father's demise. This has finally settled the issue of applicability and scope of Sec.6 of the Hindu Succession Act, 1956 as amended by the Hindu Succession (Amendment) Act, 2005.

In its decision, the Supreme Court has clarified two points:

- coparcenary rights are acquired by daughters on their birth; and
- fathers need not have been alive when the 2005 amendment to the Hindu Succession Act 1956 was passed.

Through this ruling, the Supreme Court has now categorically ruled that the daughters' right flows from their birth and not by any other factor such as the existence of their fathers.

Though the judgment envisages rectifying one of the discriminatory social practices, it would require no less than a behavioral change in the mindset of the Indian society to fulfill the goal of gender parity.

2. WHAT IS THIS HINDU SUCCESSION (AMENDMENT) ACT OF 2005?

- The Mitakshara school of Hindu law, a personal law, codified as the Hindu Succession Act,1956 used to govern the succession and inheritance of property in Hindus.
- Under this law, only male were recognised as the legal heirs or coparceners and women were not a coparcener in the family and thus were denied the right to inherit their father's property.
- As a result of this discrimination, Section 6 of the Act was amended in the year 2005 to make a daughter of a coparcener also a coparcener by birth in her own right in the same manner as the son.

- The law also gave the daughter the same rights and liabilities in the coparcenary property as she would have had if she had been a son.

  The Table below lays down the different rules of Hindu law which are as follows:-

Mitakshara Law School	**Dayabhaga Law School**
The term Mitakshara is derived from the name of a commentary written by Vijnaneswara, on the Yajnavalkya Smriti.	The term Dayabhaga is derived from a similarly named text written by Jimutavahana.
It is observed in all parts of India and subdivided into the Benares, the Mithila, the Maharashtra and the Dravida schools.	It is observed in Bengal and Assam.
A son, by birth acquires an interest in the ancestral property of the joint family.	A son has no automatic ownership right by birth but acquires it on death of his father.
All the members enjoy coparcenary rights during the father's lifetime.	Sons do not enjoy coparcenary rights when the father is alive.
A coparcener's share is not defined and cannot be disposed of.	The share of each coparcener is defined and can be disposed of.
A wife cannot demand partition but has the right to a share in any partition between her husband and her sons.	Here, the same right does not exist for the women because the sons cannot demand partition as the father is the absolute owner.

The 2005 amendment was passed to confer equal status on both sons and daughters of coparceners. Prior to the 2005 amendment, coparcenary rights were granted only to male descendants (ie, sons) of coparceners. However, while the 2005 amendment sought to grant equal rights to sons and daughters, the wording gave rise to various lacunae, which led the Supreme Court to issue contradictory rulings on this issue.

Until the Supreme Court Judgement of Vineeta Sharma vs Rakesh Sharma, equal status was granted only to daughters whose fathers (coparceners) were alive when the amendment came into force on 9 September 2005.

3. WHAT IS COPARCENER & COPARCENARY PROPERTY?

- In a layman's language, coparcener in relation to a Joint Hindu family means a person who is entitled to demand partition of his share in the Coparcenary property.

- A coparcener is the one who shares equally in the inheritance of an undivided property.
- Coparcenary property is one which is inherited by a Hindu from his/her father, grandfather or great-grandfather i.e ancestral property.
- Only a coparcener has the right to demand partition of property. Share in a property increases or decreases by death or birth in a family.
- Before 2005 women were not a part of the coparcenary and hence couldn't claim or inherit the property of the father.

4. COPARCENERS VERSUS MEMBERS

In an HUF there are two categories of persons (ie, members and coparceners). The judgment affects only coparceners.

A 'coparcener' is someone who:

- acquires rights to their father's property on their birth; and
- can claim partition of the coparcenary at any time.

A 'member' is entitled only to maintenance and is granted no inheritance or partition rights in the coparcenary.

COPARCENER OF AN HUF	MEMBER OF AN HUF
• A person who acquires an interest in HUF property at birth (eg, children who are born into the family). • Limited to three degrees of lineal descendants (ie, great-grandchildren). • Can request partition.	• A wife becomes a member of her husband's HUF on account of her marriage into the family. • Entitled to maintenance but cannot request partition.

5. DIFFERENT CONFLICTING VIEWS ON THE ISSUE BY THE SUPREME COURT:

Although since 2005, it has been the law that the women are also successor to their father's property but the position of a woman to succeed to her father's property whose father was dead on the day of the enforcement of the law was not very clear.

- In **Prakash V/S Phoolwati** (2016) 2 SCC 36 case, a two-judge Bench headed by Justice A K Goel held that the benefit of the 2005 amendment could be granted only to "living daughters of living coparceners'' as on September 9, 2005 (the date when the amendment came into force). The Apex Court had held that Section 6 was prospective in nature and would apply only if the coparcener and daughter were *both* alive as on 9 September 2005.

- In **Danamma *v Amar***, (2018) 3 SCC 343, the Apex Court had held that Section 6 would apply retrospectively. In this case, the father had died in 2001, leaving behind two daughters, two sons and a widow. The Court had held that *"it is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by birth",* and consequently observed that the two daughters being coparceners, were entitled to equal share in the coparcenary property even though the father was not alive when the substituted Section 6 came into force in 2005.

6. HIGHLIGHTS OF THE LANDMARK SUPREME COURT JUDGEMENT VINEETA SHARMA VS RAKESH SHARMA

The three-judge Bench headed by Justice Arun Mishra ruled the following:

- That a Hindu woman's right to be a joint heir to the ancestral property is by birth and does not depend on whether her father was alive or not when the law was enacted in 2005.
- The Hindu Succession (Amendment) Act, 2005 gave Hindu women the right to be coparceners or joint legal heirs in the same way a male heir does. Since the coparcenary is by birth,it is not necessary that the father coparcener should be living as on 9.9.2005.
- If a daughter is alive on the date of enforcement of the Amendment Act, she becomes a coparcener with effect from the date of the Amendment Act, irrespective of the date of birth earlier in point of time.
- Daughters cannot be deprived of their right of equality conferred upon them by Section 6.
- The judges also used the common saying that a son is a son until he gets a wife while a daughter is a daughter throughout her life.
- The judgment noted that several cases on this issue were pending before different courts and were already delayed.
- The court requested the pending matters to be decided, as far as possible, within six months.

7. MANNER OF ACQUISITION OF RIGHTS IN COPARCENARY PROPERTY POST THE 2005 AMENDMENT

The Court also categorically held that post the 2005 Amendment, interest in coparcenary property can be acquired only by birth or through adoption within permissible degrees, and not otherwise. Further, the Court has categorically held that survivorship as a mode of succession of a Mitakshara coparcener, has been abrogated since 9 September 2005, by virtue of Section 6 (3) of the 2005 Amendment.

8. HAS ANYTHING CHANGED FOR WIVES?

Daughters of coparceners will benefit from this judgment. However, the status of a coparcener's wife (who is a member of an HUF, as above) remains the same. Thus, wives have only limited rights of maintenance and cannot seek partition of their husband's property, among other things.

9. WHAT HAS CHANGED FOR DAUGHTERS?

Daughters will now be treated on par with sons of coparceners and will be granted equal coparcenary rights in their father's property on their birth. Further, daughters' marital status will not affect the rights conferred on them by the 2005 amendment – hence, they continue to be part of their father's HUF post-marriage.

Daughters can now request the partition of their father's coparcenary property and seek an equal share with their siblings and other coparceners. On acquiring a share in a coparcenary property, a female coparcener can bequeath her HUF share to any beneficiary that she chooses (and to the exclusion of others) in her will.

10. WHAT WILL BE THE REAL IMPACT OF THESE CHANGES?

Although this is a landmark judgment which has cleared up previous confusion and improved women's rights under the law, its real-world application is limited. The judgment applies only to HUF property and does not affect personal or self-acquired assets which are held individually.

Personal and self-acquired assets are passed on under will or intestate succession law. In reality, most personal wealth, including ownership rights in valuable family businesses, are held in the personal names of the patriarch or promoters or in private trusts, holding companies or limited liability partnerships. 'Older' business families may continue to hold some ancestral wealth in HUFs, but the scale and materiality of such holdings are usually limited. Few business families are setting up new HUFs and most existing HUFs are being dissolved. Hence, this judgment may not help to transfer real wealth into the hands of daughters. However, although more needs to be done, this decision is still a victory for daughters.

11. SIGNIFICANCE OF THE JUDGEMENT

- **Ended Legal Ambiguity:** The verdict has cleared the confusion about the law and made it clear that the amendment to the Hindu Succession Act, 1956 granting equal rights to daughters to inherit ancestral property would have retrospective effect.

- **Consonance in the Constitutional Spirit:** The court recognized that gender cannot be grounds for denying anyone their inheritance rights. This interpretation by the Supreme Court has removed male primacy over Hindu ancestral property.
- Giving the daughter equal coparcenary rights is in consonance with the spirit of equality, under Article 14 of the Indian constitution.
- **A Step Towards Women Emancipation:** It is a major push for women who lack economic resources and are often marginalised by male members of the family. The fact that a law and not just a will decides women's property rights is significant.

12. ASSOCIATED CHALLENGES

- **Patriarchal Nature of Indian Society:** While the ruling is a progressive step towards gender parity, it is by no means a guarantee that Indian families will willingly cede reins to their womenmembers.
  - This is because, passing on the succession of the family enterprise only to sons stems from deep-rooted tradition and the patriarchal notion in the society.
  - Given this context, it is quite likely that some business families after this ruling, will bypass this ruling, to park their assets or write wills to bequeath assets in favour of male heirs.
- **Lack of Awareness Amongst the Women:** There is a challenge in ensuring that women are actually empowered by this legal provision, as the majority of women are not aware about their rights.

13. CONCLUSION

Though the judgement is a progressive step in pursuit of creating a level-playing field in legal rights for women, bringing behavioural change in society will play a bigger role towards the goal of gender parity.

Thus, there is a need to bring a change in the patriarchal mindset of the society and ensuring that women have access to the same opportunities as men in acquiring educational qualifications and the training needed to run an enterprise.

Moreover, the fact that it has taken 15 years for the issue to be clarified highlights the urgent need for a clear civil code based on universal principles of natural justice and fundamental rights.

CHAPTER 7: FREQUENTLY ASKED QUESTIONS

Q.1 What Is a Will?

A. Will is a written declaration by a person about his wishes for all the matters such as distributing his / her properties, assets, wealth to family, relatives, outsiders, charities etc. after their death, to be made in the presence of two witnesses,

Q.2 What is the benefit of preparing the will?

A. Preparing a will ensures that all your assets and properties are distributed and disposed of **as per your wishes** after your death avoiding disputes or legal interference in the family. Also, if you wish to give more share to some of your relatives/heirs and want to ensure that certain person should not get any of your assets and properties, then will is the only effective document to do the same. For example – if one wishes to donate organs, give flat to wife, give more / less to any particular son/daughter, give some amount to parents or also care taker / friend etc., such wishes can be mentioned in a Will which shall be binding to all – family, relatives, all laws, all courts including the Supreme Court of India.

Q.3 What will happen if I don't make a will?

A. When you dies without writing a Will (called "intestate" in legal language), all your properties, assets, wealth is distributed as per Succession Laws applicable to you, could be like the Hindu Succession Act. You must know that such succession laws have - fixed proportion to distribute properties to all / several family members which may not be as per your wishes. There could be chances of delay in distribution of properties and may lead to legal cases, disputes amongst family members etc.

Q.4 Who can make a will?

A. Any person above the age of 18 can make a Will with sound mind i.e capable of understanding his actions and is free from any undue influences.

Q.5 Why should you not wait for old age to make a Will?

A. You should make a Will soon after attaining 18 years of age since in today's world of uncertainty where untimely death due to accidents, heart ailments, terror attacks are becoming 'way of life' which is also why many people take insurance at a young age of 25 or earlier. If one takes insurance at a young age to provide financial support to the family incase of untimely death, why not make a Will which is an instruction in writing to the family as on 'how to distribute insurance claim or other properties / assets.' Hence everyone should make a Will at any age above 18.

Q.6 How to make a will?

A. Will can be handwritten or typed, however typed Will is preferred. Stamp paper is not required hence it can be on plain paper. Will should be in any language which is suitable to the person who has made the Will. Will should at least cover minimum details of your family, your properties / assets, your liabilities, your wishes, your bequeaths (property distribution wishes), names of two witnesses, date and place of signing, sign of the person who has made the Will and the witnesses on each page-.

Q.7 When can I make an oral will?

A. This is called a Special Will which is only allowed to soldiers, airmen, navy persons. Also, some Muslims are allowed to make oral wills are per their personal laws.

Q.8 Are the laws different for different religions?

A. Yes, this relates to the Succession laws where there are different laws applicable as per the religion of the deceased person. For example -- for Hindu it is the Hindu Succession Laws, for Parsi and Christians it is the Indian Succession act, for Muslims it is as per the Sheriat Laws (different rules for Shia, Sunni, Khoja etc.)

Q.9 What is the rule- for the Witnesses of the Will?

A. As per the law, a Will should be signed in presence of minimum Two Witnesses. It is **not necessary for Witnesses to read the content of the Will**, they are just confirming that the Will was signed in their presence. As per the law, witnesses can be called by courts in the event of any question on legality / authenticity of the Will. Nowadays, it is also advisable to do a video recording of Will signature event and clip can be kept in a safe manner along with the original Will so that it can be legal evidence, if required to prove legality of a Will.

Q.10 What is an Executor? Is it necessary to appoint an Executor to a Will?

A. Executor is a person who is appointed by the person making a Will to be authorized to take action on all the wishes as per the Will. An Executor can be any person who is a beneficiary in the Will or any trusted person like family friend, lawyer or CA who can assist the family to act as per your wishes in the Will. It is not mandatory to appoint an Executor, however it is recommended.

Q.11 Is it mandatory to 'Notarise' or 'Register" a Will? What are the benefits?

A. No, Notarisation or Registration of Will is **Not Mandatory**. However one can register the Will, anytime after execution for which no fee- is charged at Sub-Registrar's office except some scanning charges. If Will is registered, it means the person who has made his Will in presence of two witnesses will have visit Registration Office physically and register their Will in the presence of Sub-Registrar (Govt. Official), hence the chances of questioning the authenticity of the Will amongst the family / relatives is avoided. To register a Will, maker of the Will has to personally visit along with two witnesses (it is not necessary for these witnesses to be the same who signed as witnesses to the Will signing) You also need to carry Original Will, last dated MBBS Doctor's certificate of for mental fitness and address proof.

Q.12 Which properties / assets can be mentioned in the will?

A. It is advisable to mention all single / joint properties, wealth, assets, receivables as well as all liabilities / loans in the Will, including movable, immovable and intangible properties and assets. Movable properties will include Cash, Jewellery, FD'S, Bank Accounts, Insurance Policies, Vehicles & all your furniture, fixtures etc. Immovable properties will include all your Land, Building, Flat, Shop, Office, Plot, Garage etc.

Q.13 Can joint properties be included in a Will?

A. Yes, person owning any joint property is allowed to mention his wishes in the Will for his share in the Joint Property. It is necessary to mention about all joint property titles to avoid unnecessary disputes.

Q.14 Can properties / assets where Nomination are filled also be included?

A. Yes, legally a nomination is just a facility to claim property by a nominee in the event of death of owner and nominee will only act as Trustee for temporary period till legal heir is established as per the Will or as per the Succession Act, thereafter nominee has to handover those properties to their legal heirs. Nominee can be a legal heir. However, there is an exception to this hence one has to clarify all nominations in Will, if possible.

Q.15 Can rented properties / tenancy rights be included in a Will?

A. No, tenancy rights are not a property or asset hence it can not be bequeathed in a Will.

Q.16 Can leasehold rights be included in a Will?

A. Yes, leasehold rights can be bequeathed in a Will.

Q.17 Can an ancestral property or property received as a legal heir in the past be bequeathed by a Will?

A. Ancestral properties in which title / ownership is legally transferred are allowed to be bequeathed by a Will.

Q.18 Can Business ownership in firm / company can be bequeathed in Will?

A. Yes, ownership as a proprietor in a proprietorship firm OR share owned in a company can be bequeathed by a Will. For share in partnership firm as a Partner is allowed to be bequeathed subject to conditions, if any, in the Partnership Deed.

Q.19 Can share in HUF be bequeathed?

A. No, share in Hindu Undivided Family can not be bequeathed.

Q.20 Which other properties / assets can be bequeathed by Will?

A. One can bequeath pets, paintings, antiques, electronic items, furniture & fixtures, intellectual properties like Trademark, Patents, Copyrights, Licenses, Social Media Accounts, Personal Belongings, Books, etc.

Q.21 How to protect minor children?

A. One can nominate guardians for minor children who are beneficiary in the Will, and such guardian will be responsible to look after the minor children and protect their share. Many a times, people create a Trust by way of Will for the benefit to all the Legal Heirs, Friends, Relatives or for Charitable Purpose.

Q.22 What about assets that you missed or forgot to mention in the Will,, or future assets?

A. A general clause is included in a Will for residual properties / assets (miscellaneous assets that were missed) which specify should receive 'residual assets' and similarly a general clause is added for 'all the future assets'.

Q.23 Can a Will be changed in the future for addition / deletion or can a New Will be made?

A. A person can make a new Will as many times as he wants OR for few changes,, he can also make Codicil which is a Supplementary to the main Will. However, it is necessary to mention in your Will that 'This is the Last will and all past Wills, if any, to be treated as cancelled' since only the last Will is legally valid.

Q.24 Where can a Will be stored / kept?

A. Legally a will can be stored at any place. However it is advisable to store your will at a safe and secured location where it cannot be tampered with and it can be easily found by your family after your death. It may be kept in the safe custody of a locker, with a trusted person or with professionals like banker or solicitor who will take necessary steps to inform the executor after your death. Various banks and financial institutions offer custodian services for safe keeping your will.

Q.25 Can properties in foreign countries be bequeathed?

A. Yes. However properties situated in foreign countries are governed by local laws in those countries & the procedure to enforce Will in such countries would be different from India. Therefore it is advisable to prepare two separate wills; one dealing with properties in India and the other with properties in foreign countries. Such Wills are called as concurrent Wills and are treated independent of each other unless interlinked.

Q.26 Can husband & wife prepare one single Will as Joint Will?

A. Yes it is allowed where both the husband and wife bequeath all properties to other each other and final bequeath is mentioned by which properties are distributed to family, relatives etc. as per Joint Will. , However, such joint Will can take effect only after the death of both and not during the lifetime of either one. Many a times,, husband and wife prepare 'Mirror Will' which are separate individual Wills where each spouse gives all his / her property to their other spouse.

Q.27 Who can be a beneficiary under a Will?

A. "Beneficiary" is a person to whom the properties are distributed or "bequeathed" under the will, i.e a person who gets the benefit under the will. Any person, body, trust, charitable institute, society etc can be a beneficiary under the will. A beneficiary under your will can be your family members, relatives, friends, servants,, etc.. and you can opt to give your properties in charity. However Law has set-out procedure to be followed if you have close relatives and want to give all your properties and assets for charitable purpose. This restriction is not applicable in case of Parsis who can give all his/her properties in charity.

Q.28 Who can be termed as my legal heir?

A. Legal heir is a person; male or female, who is entitled to succeed to the properties of the deceased person under the applicable personal law for succession. As per Hindu Succession Act – if there is no Will the properties are allowed to be distributed to all Class 1 heirs equally, if there is no one in Class 1 heir,, in such case properties are distributed equally to Class 2 heirs, if there are no such heirs in Class 2 also,, the properties are given to Agnates and lastly to Cognates. If no one is available – all properties are taken away by the Government.

Q.29 When and How can a Will be cancelled?

A. One can cancel / revoke their Will at any point of time or even by making a fresh Will. Once a Will is made all the past / old Wills get cancelled. The will can be revoked by following ways:-

i) By execution of a subsequent Will;
ii) By writing and declaring an intention to revoke the Will
iii) By burning, tearing or otherwise destroying the Will;

Q.30 Will I or my legal heirs be required to pay Income tax and other taxes in respect to properties under the will?

A. No, as of date any property received under the Will does not attract any tax including capital gain tax. In past there was an Estate Duty tax which was abolished.

Q.31 What are special provisions in case of Will by Muslims?

A. Muslims are mainly governed by their personal laws in respect to will and inheritance, and only certain part of general succession law in India , known as Indian Succession applies to them. As a general rule, Muslims can make a Will of only 1/3 rd of his/her properties and the remaining properties are distributed in tested succession as per the Sheriat Act.

Q.32 What are special provisions in case of wills by Christians, Parsis and Jews?

A. In case of Christians and Parsis the Will gets cancelled / revoked on marriage. A Parsi is entitled to give all his property for charity by Will.

Q.33 What is probate of a will? Is it mandatory for all Wills?

A. Probate is a legal certificate issued by the Court after the validity of the Final Will is proved. An executor nominated under the will can apply for probate. When the court grants the probate or certifies the Will, the executor would be entitled to take necessary steps to enforce the Will. Probate is not always necessary, however when there are many immovable properties or assets are of high value, the probate is insisted before the title of owner is changed to avoid any disputes in future.

Q.34 What if there is no Will, how to establish legal heir?

A. In the event of 'No-Will' situation, if there are only movable properties, a Succession Certificate is to be obtained from Court. If the person has left behind immovable properties also,, in such case Letter of Administration is to be obtained from the Court.

Q.35 What is difference between beneficiary and nominee?

A. Nominee is merely a trustee of the property and he / she is required to hand it over to the legal heir whereas beneficiary is the person entitled to receive the properties under the will.

Q.36 When are properties distributed as per the will?

A. The properties are distributed as per the Will **only after the death of its maker**.

Q.37 Is it necessary to take help of a lawyer to prepare a Will?

A. No for making simple Will one can take all precautions and Do It by themselves; however one has to be careful with words to avoid any vagueness or contradiction in Will and to avoid unnecessary misunderstanding / quarrel amongst family / relatives.