

## **Testamentary Succession (Will) - Muslim law**

- **Meaning of Testate Succession**
- In some cases, a person leaves behind a Will, which specifies property distribution after their death. In such cases, the Will controls succession.
- When succession takes place in this manner, it is known as **testamentary succession**.
- Conventionally, a Will, also called 'testament' is an implement which enables a person to dispose of his own property to someone whom he wants to give after his death. A Will comes into effect only after the death of the person who created the Will. A Will is a legal declaration of transfer of property by a person after his death.
- In Islamic law, a Will executed by a Muslim is known as '**Wasiyat**'. The person who executes the Will is called '**legator**' or '**testator**' and the person in whose favor the Will is made is known as '**legatee**' or '**testatrix**'.
- No formality, No writing, Even no words are necessary as long as the intention of the testator is sufficiently ascertained, though the burden of proof is heavy when the will is not written.
- If the will is in Writing, It is called '**Wasiyatnama**'
- Instructions of the testator written on a plain paper, or in the form of a letter, that in clear cut terms provide for distribution of his property after his death would constitute a valid Will.
- The Prophet has declared that the power of making a will should not be exercised to the injury of the lawful heirs. If you make the will in favour of an heir then it would be an injury to the heir who was supposed to get the favour through laws of inheritance. So there are rules in regards to the will

## One Third Rule

- The general rule under Muslim personal laws in India (Shariat) is that Muslim may, be his will, dispose only up to **one-third of his property** which is left after payment of funeral expenses and debts without the consent of his heirs.



## Essentials of a valid Will

1. The **legator** must be competent to make a Will.
2. The **legatee** must be capable of taking such endowment.
3. The **property** which is endowed by the legator must be a bequeath able property.

### **1. The testator must be competent to make the Will.**

- a) Major (**18+ or 21** + if he is under supervision of court of wards).
- b) Will made by **minor** is void, though if he ratifies the will after he becomes a major then it is valid.
- c) **Sound mind** at the time of making the will should have a 'disposing mind' i.e., he should understand properly the consequences of what he is doing.
- d) Will made under apprehension of death is a valid will.
- e) Shia law- A will made after attempt to suicide is a void will.
- f) Will made under undue influence, coercion or fraud is not valid.

## **2. The legatee must be competent to take the legacy or bequest.**

- Any person of holding property (Muslim, non-Muslim, insane, minor, a child in its mother's womb, etc.) may be the legatee under a will. Thus, sex, age, creed or religion is no bar to the taking of a bequest.
- A bequest to a person unborn person is valid. **( if child born within 6 monts ( Sunni) 10 months ( Shia) )**
- A bequest may be validly made for the benefit of 'juristic person' or an institution (but it should not be an institution that promotes a religion other than the Muslim religion viz. Hindu temple, Christian church etc.).
- A bequest for the benefit of a religious or charitable object is valid. It is unlawful to make a bequest to benefit an object opposed to Islam.
- A person who has caused the death of the legato cannot be a competent legatee.
- Joint Legatees- If no specific share of any of them has been mentioned, the property is divided equally amongst all the legatees.
- The legatee has the right to disclaim the bequest.

## **3. The subject (property) of bequest must be a valid one (Qualitative requisite).**

- The testator must be owner of the property to be disposed by will;
  - It can be movable or immovable, corporeal or incorporeal property
  - The property must be capable of being transferred;
  - The property must be in existence at the time of the time of **testator's death**, it is not necessary that it hold be in existence at the time of making of will.
  - The bequest should be **unconditional**, if there is a condition the bequest will exist and the condition only will be void.
  - **Alternative bequest** is valid ( given to son, if son not alive then give to wife, if wife not alive give to charity, this is valid)
- ✓ **The bequest must be within the limits imposed on the testamentary power of a Muslim (Quantitative requisite).**
- One Third Rule applies, two third estate will devolve via intestate succession ( unless there is consent of other heirs)

- The '1/3 rd limit' rule will not apply if a Muslim marries under the Special Marriage Act, 1954 because then he has all the powers of a testator under the Indian Succession Act, 1925.
  - Bequest of entire property to one heir to the exclusion of other heirs is void.
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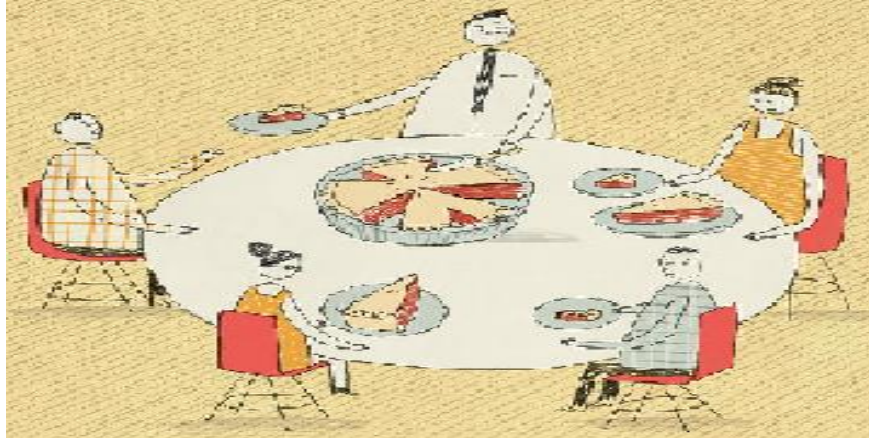
### **Rules of Chronological Priority/Preferential distribution (Shia Law)**

- According to Shia law, if several bequests are made through a Will, priority would be determined by the order in which they are mentioned or by the point of time. Thus, legacies take effect in order of preference.
- The legatee mentioned first in the will gets his share as mentioned under the will. After giving his share, the remaining goes to the second legatee. If there still remains something, it goes to the third and as soon as the one-third property is exhausted, the distribution is stopped and the next legatee does not get anything.
- Thus, here a legatee either gets his share or gets some share or gets nothing at all.



### **Rule of Rateable Abatement (Sunni Law)**

- Where a bequest of more than one-third of property is made to two or more persons and the heirs do not give their consent, the shares are reduced proportionately to bring it down to one-third, or in other words. The bequest abates rateably. The above rule applies in Sunni law only.



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## Revocation of will

- A Muslim testator may revoke, during his life-time; any will made by him expressly or impliedly.
- **Implied Revocation**: If the testator sells, makes gift of the subject of bequest or deals with the same in any other manner,
- A will can be revoked by a simple and clear declaration to that effect or by a formal deed of cancellation or revocation of will. Not necessary that a new will must be made to revoke to earlier one
- **Death of legatee**: Under Sunni law where before the will can operate, the legatee dies, the bequest will lapse and the property bequeathed would remain with the testator and on his death will go to his heirs in absence of any other disposition by him.
- Under Shia law, the legacy will lapse only if the legatee dies without leaving an heir or if the testator, after the death of the legatee, revokes the Will.