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Will under the Islamic Law

There are enormous ways to make disposition of property in Hindu law as well as in Islamic Law. Under Islamic law, a Muslim can dispose of his property by gift, by creating a wakf or by exercising his testamentary powers i.e. by making a Will.

The concept of a Will under Islamic law is a sort of bargain between two different propensities. One, the view of the prophet is clear that after the death of a person, his property has to be distributed to his heirs and this rule is considered as divine law and any interference to it is unacceptable. On the other hand, it is a moral duty of every Muslim to make appropriate arrangements for his property after his death.

Meaning and nature of Will

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 favour the Will is made is known as 'legatee' or 'testatrix'. A very famous Muslim scholar '*Ameer Ali*' defined a Will from the point of view of Mussalman as a divine institution because its exercise is regulated by the Holy *Quran*. At the same time, Prophet had proclaimed that such testamentary powers must not exert any damage to the lawful heirs.

There is a strict rule in Islamic law that governs the validity of a Will. According to this rule, a Muslim can make a Will in favour of anyone, only to the extent of one-third of his total property. If the Will is made beyond one-third of the property, the consent of the legal heirs is mandatory no matter in whose favour the Will is made.

It can be hypothesized that a Will is a kind of gratuitous transfer of ownership made through a testamentary document which comes into play after the death of the legator. As far as the legal concept of Will is concerned, basically it is a gift testamentary.

Essentials of a valid Will

If we talk about the legal validity of a Will under Muslim law, there are certain requisites which make a Will apt and capable of taking effect. Thus, the following discussed requirements must be satisfied:

- The legator must be competent to make a Will.
- The legatee must be capable of taking such endowment.
- The property which is endowed by the legator must be a bequeathable property.
- Free consent of the legator and the legatee.
- The legator must possess testamentary rights over the property.

Who can make a Will?

In order to constitute a valid Will, the competency of the legator is the foremost requirement. A legator is considered to be capable to make a Will if he holds the following discussed features.

○ **He must be a Muslim**

A Will made by a Muslim only is considered as an authentic Will under Islamic law. If a legator is Muslim at the time of execution of the Will then only the Will is governed by the Muslim Personal Law.

In a case where a Muslim has married under the [Special Marriage Act, 1954](#), the Will made by such Muslim is regulated by the provisions of the [Indian Succession Act, 1925](#) and not by the Muslim Personal Law.

A situation may arise where the legator is a Muslim when he executed the Will but afterwards renounced Islam, thus recognized as a non-muslim at the time of death. A Will created by such a Muslim is considered as a valid Will under Muslim law.

Since there are two schools of Muslim with different views, so, it must be noted that a Will is governed by the rule of that school to which the legator belongs at the time of the declaration of the Will. For example, if a legator is a Sunni Muslim at the time of the creation of the Will, then the Sunni Laws of Will is pertinent.

○ **Soundness of mind**

When the Will is being made, the legator must be sane. Under Muslim law, it has been quoted that a legator must possess a perfect 'disposing mind' at the time of execution of a Will. In other words, a legator must be competent to understand his actions and the legal consequences of what he is doing not only for the particular time period when the Will is being made but also sustain the same till his death.

If a legator is of sound mind when the Will is declared and subsequently turns insane and remains the same till death then, the Will made by such legator becomes void. On the other hand, if a legator executed a Will while he is insane then also the Will is considered as null and void even if he recovers the insanity afterwards and remains the same till death.

A Will made by an insane during his lucid interval will remain valid only if the insanity does not last for more than a period of 6 months. An insane person cannot ratify the Will after reattaining his sanity.

- **Age of majority**

The legator must attain the age of majority at the time of execution of the Will. In general, the age of majority under Muslim law is regulated by the [Indian Majority Act, 1875](#), with the exception in the case related to marriage, dower and divorce.

Under the Indian Majority Act, the age of majority is specified as 18 years in ordinary case and 21 years if the person is under the supervision of Courts of Wards. Any Will executed by a minor is considered to be void. The validity of such Will is suspended till the legator attains majority. Therefore, in order to create a valid Will, a legator should be of 18 years or 21 years as the case may be. As soon as the legator turns into a major and ratifies the Will, the Will becomes valid in nature.

- **Attempt to suicide by Legator**

If a Will is executed by a person who has attempted to commit suicide, such a Will is contemplated as void under the Shia law. The logic behind this rule is that if a person has attempted suicide, he cannot be held in his normal state of mind rather, he is assumed to be mentally unstable and disturbed.

For example, a person who takes poison or seriously hurt himself and executes a Will before his death then, the Will is declared as null and void.

However, under Sunni law, a Will executed in such circumstances is completely valid. Moreover, both Shia and Sunni law upheld the validity of a Will declared by a legator before attempting to commit suicide.

○ **Consent of Legator**

While executing a Will, the free consent of the legator is mandatory. Any Will, if found to be executed by a legator under coercion, undue influence or fraud Will be treated as null and void and the legatee Will not be entitled to get any property under that Will.

The free consent is generally presumed by the law unless proved. But in case of pardanashin lady, the free consent is not presumed and the legatee has to prove that the Will has been executed by the lady exercising her independent discretion.

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| 1. | | | A legal declaration of intention of a testator With respect to his property | A legal declaration of intention of a testator With respect to his immovable property | A legal declaration of intention of a testator With respect to his immovable property |
| 2. | What is will – | To sale the property Means instrument made in relation to a will | A legal declaration of intention of a testator With respect to his property | A legal declaration of intention of a testator With respect to his immovable property | A legal declaration of intention of a testator With respect to his immovable property |
| 3. | What is codicil ? | | Means instrument made in relation to family settlement | Means instrument made in relation to gift | All of the above |
| 4. | Tagore vs Tagore is a leading case on – | Will | Divorce | Sale | mortgage |
| 5. | The main sources of Muslim law are | Sunnat and Ahadis | Koran, Ijma and Qiyas | Both (a) and (b) | Neither (a) nor (b) |
| 6. | What is limit of testamentary power by Muslim is: | One eighth | One third | One fifth | None of these |