

Rules of inheritance in the forces

A will executed by a soldier, airman or mariner under certain circumstances is known as a privileged will. Such wills require no attestation

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Rules governing succession and inheritance fall broadly under two categories – testamentary succession and intestate succession. An individual is said to die intestate if he does not leave a will. In such a case, his properties will be distributed amongst his legal heirs in accordance with the personal law applicable to him.

On the other hand, testamentary succession refers to the distribution of an individual's properties as per his desire as stated in his last will. In India, testamentary succession is governed by the Indian Succession Act, 1925 (Act). For smooth distribution of the properties of the deceased, it is important to bear in mind legalities that ensure validity of a will.

A will is essentially a legal declaration of one's intention with respect to succession of one's properties after one's death. Under normal circum-

stances for a will to be valid, the testator (person writing the will) must be a major (ie, above 18 years), of sound mind and capable of exercising his free will and judgment. The testator must execute and sign his will in the presence of at least two witnesses, who in turn must attest/sign the will in the presence of the testator.

However, as an exemption to this general rule, in certain cases, a will executed by a soldier, airman or a mariner employed in an expedition or engaged in actual warfare, is valid even if it does not fulfill the essential criteria of an ordinary will, and such wills are called privileged wills. The following wills falls in the category of privileged wills:

A will written by such soldier, airman or a mariner shall be valid even if it is not signed or attested by the witnesses. Further, where the will is written by another person on behalf of such soldier, airman or a mariner, but signed by him, then no attestation is required. Also in cases where such will is not signed but it can be shown that the will was written on his instructions or that he recognises it as his will,

such will shall be valid. In the event of a soldier, airman or a mariner writing instructions or giving verbal instructions for preparation of his will in the presence of two witnesses and such instructions being written in his lifetime, his instructions shall then constitute his will even if he dies prior to preparation of the will. Such a soldier, airman or a mariner may also make a will by word of mouth in the presence of two witnesses at the same time.

Such privileged persons can ensure valid distribution of their properties as per the terms stated in their wills even if such wills do not fulfill essential requirement of an ordinary will.

It is pertinent to note here that the benefits of a privileged will are applicable to Hindus, Buddhists, Sikhs and Jains. The Law Commission of India, in its 110th report on the Indian Succession Act, 1925 pointed out that "at present, the capacity of soldiers professing the Hindu, etc religion to make wills has become extremely doubtful". It further pointed out, "There is no reported case discussing the applicability or non-applicability of the section to soldiers who belong to the exempted categories, including,



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in particular, Hindus."

In its report, the Law Commission recommended that it is necessary to extend Section 65 of the Act to Hindus

etc by amending Third Schedule to the Act.

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