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EXAMINING WILLS UNDER HINDU AND MUSLIM LAW THROUGH A COMPARATIVE LENS

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Abstract:

The paper attempts to study the theory of wills and trace its development in legal jurisprudence in Islamic and Hindu Law as has been codified in the Indian Succession Act, 1925 and the poignant judicial developments in the field. The objective of the paper is to showcase the impugned theories and substantively draw a coherent conclusion after undertaking an analysis of similarities and difference in the theoretical frameworks of wills under Hindu and Muslim law.

The research would help in painting a clearer picture of the subject of wills in both the existing legal regimes in the country- the Indian Succession Act, 1925 (governs Hindu) and the Islamic law. The study would showcase the similarities and the aspects in which both the laws differ which would help in lucid interpretation of wills. The study would also help in drawing the conclusion to the age-old debate of personal law versus uniform law. it would be of use and interest to legal scholars, academicians, policy makers or anyone interested in evolving jurisprudence in family laws.

Introduction

A Will is an instrument with the help of which the owner of a property makes a disposition which takes effect after his death, and is revocable by its very nature. Under the Indian Succession Act, the general law of testamentary succession for Indians, a will is defined as "*the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death.*"[1] The person who expresses his wish in the will is referred to as the "testator", the person to whom the estate is given until the final delivery is called the "executor" and the person(s) who receives such a share in the property is referred to as the "inheritor" or "beneficiary".

[1] Indian Succession Act, 1925, §2, No. 39, Acts of Imperial Legislative Council, 1925 (India).

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There exists no prescribed form of writing a will even though it is a legal document. Any major person with a sound mind is allowed to make a will and there are no specific requirements as such. If the will has been written by an individual who is sane at the time of creating the will, such a will is considered to be valid. It is important that the testator understands the result of his actions as well as the legal consequences of the same while making the will.

There is no compulsion to register it and the testator is completely at discretion regarding it. However, registration erases all doubts and concerns over legality.[2]

Research Design

Hypothesis

The following hypothesis has been framed to complete the Research:

H1: The Conceptual Matrix of Wills under both the legal regimes- Hindu and Islamic Share Similarities in their basic essence

H2: There is conflict within the Islamic Laws as there are different schools of thought within

H3: There is a positive relationship between codification and clarity of concerned laws

Scope and Limitation

The scope of the paper extends to the legal analysis of wills via gift *vis-à-vis* Islamic theory and Indian Succession Act with the help of pertinent judicial dicta.

A major limitation of the study has been the paucity of resources, materials and previous researches on the discourse of theory of transfer of property via gifts which could have served as the literature.

Research Questions

1. What is will as per the Indian Succession Act, 1925?
2. What is will as per the Muslim Law?

[2] Narain Singh v. Kamla Devi, AIR 1954 SC 280.

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3. What are the general rules that have to be followed in the making of a valid will as per the Indian Succession Act, 1925?

4. What are the general rules that have to be followed in the making of a valid will as per the Muslim Law?

5. What are the similarities and dissimilarities between the concepts of wills under, Muslim law and the Indian Succession Act, 1925?

Sources of Data

The researcher for the purpose of this paper has primary relied on primary sources like the Indian Succession Act, 1925, Indian Contract Act, 1872 and Islamic Personal laws. The researcher has also used books, and articles by scholars, academicians, lawyers along with an array of case laws from the Indian jurisprudence in order to examine the impugned subject of the theory of gifts in a comparative light of the codified Indian legislation and personal laws.

Mode of Citation

The researcher has used 20th Harvard Bluebook uniformly throughout the research paper.

I. Nature of Will

The essential features of a will are that it is a legal declaration and is a disposition of a property which takes effect after death. 'Legal declaration' implies that the will must be in conformity with the law and executed by a person legally competent to make it. The declaration of such intention must be regarding the testator's property. Will being a legal document, has a binding force upon the family. Disposition of property essentially means that in a will, the testator bequeaths or leaves his property to the people he chooses for the purpose. Will comes into effect after the death of the testator which implies that unlike any other disposition, like a sale or a gift deed, a will takes effect from the date of the death of the testator. Till the testator is alive, she is the owner of the property and is empowered to exercise full control over it and the intended beneficiary under the

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will cannot interfere in any manner in her power of enjoyment of the property which includes power of disposal.[3]

A will by its very nature is revocable and can be revoked by a formal cancellation or destruction and also be automatically revoked if the testator executes another will of the same property. Poonam Pradhan has described this feature of revocability as a distinguishing feature that delineates wills from other dispositions of property by the owner[4]

II. Types of Wills

Privileged and Unprivileged Wills

The Indian Succession Act provides certain privileges to a soldier, an airman or a seafarer at sea employed in an excursion or engaged in actual warfare. These privileges are conferred keeping in mind the complicated dilemma a soldier finds herself in during the tenure of her service. Such wills are called Privileged Wills and the provisions related to such privileges are mentioned in section 65[5] of the Act. Under such privilege, word of mouth in presence of witnesses or written instructions after the death of a soldier are considered as a valid will.

Section 63 of the Act speaks about Unprivileged Wills. Wills made by a testator who is not a soldier, an airman or a mariner at sea employed in an excursion or engaged in actual warfare are known as Unprivileged Wills.

Contingent/Conditional Wills

The will which depends on the happening or non- happening of an uncertain event is known as a contingent or conditional will. Conditional will have been dealt with under Section 120 of the Act. The will may take effect or be rendered defeated depending on whether such an event takes place. If the happening of the event stated in a will is the reason why it is made, then it is unconditional. However, if the testator intends to dispose of her property in case the event takes place, the will is conditional. In the case of *Rajeshwar v. Sukhdeo*[6], the

[3] 2 KUSUM & POONAM PRADHAN SAXENA, FAMILY LAW LECTURES STUDENT SERIES 895 (Lexis Nexis, 2nd ed. 2008).
[4] *Id.* at 894.
[5] Indian Succession Act, 1925, §65, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[6] Rajeshwar v. Sukhdeo, AIR 1947 Pat 449.

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court held that sometimes it may be not be clear whether the testator intends to make a conditional will or not and, in such circumstances, the language of the document has to be taken into account.

Joint Wills

In Kochu Kaimal v. Lakshmi Amma[7], Supreme Court defined a joint will as "a will made by two or more testators and contained in a single document to be duly executed by each testator by disposing of either their separate properties or their joint property." Such wills are generally created by married couples who have an intention to pass on the property to their spouse after either of them die.

Mutual Wills

Mutual wills are those where two people agree to frame a will on mutually agreeable terms and conditions. Generally, married couples create such wills to insure the interest of their children out of their first marriage. The terms and conditions contained in the will remains binding on the surviving partner even after the death of the first partner. Mutual Will in such cases ensures that the property passes on to the children of the deceased and not to a new spouse of the surviving partner in case they decide to remarry.

Duplicate Will

A duplicate will is one which is made by the testator for safekeeping with an agency, executor or bank.[8] Duplicate wills are considered strong and valid proof of testamentary objectives unless the original will is not brought on record. There is a strong presumption in favour of its regularity and execution and the same has been held in various judicial pronouncements as well that if there are no suspicious circumstances attached to the will, very little evidence is required to prove due execution and attestation of such a will.[9]

Holograph Will

A will formulated in writing by the testator himself is considered a holograph will.

Sham Will

[7] Kochu Govindan Kaimal & Others v. Thayankoot Thekkot Lakshmi Amma, AIR 1959 SC 71.
[8] *Types of Wills in India*, INDIA FILLINGS (May 03, 2020, 5:30 PM), https://www.indiafilings.com/learn/types-wills-india/.
[9] Shashi Kumar Banerjee v. Subodh Kumar Banerjee, AIR 1962 SC 567.

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A will that is executed but is held invalid as it is made against the intentions or wish of the testator by way of coercion or fraud is a sham will.

III. Wills under Hindu Law

The origin of will amongst Hindus is not known. According to Jagannatha, the Sanskrit expression of Will is Sankalpa.[10] The Hindu Wills Act was enacted in 1870 after which it was replaced by the Indian Succession Act in 1925. The Indian Succession Act deals with Intestate as well as Testamentary succession. In the landmark ruling of *Tagore v. Tagore,*[11] the testamentary power of Hindus to make a gift by way of a Will was recognised for the first time. The Act provides for both the types of wills – Privileged Wills[12] as well as Unprivileged Wills[13]. This act applies only to those wills which are made by Hindu, Buddhist, Sikh or Jain.[14]

Registration

According to Section 18 of the Registration Act, registration of a will is not compulsory. In the significant ruling of Narain Singh v. Kamla Devi[15], the apex court held that the mere non-registration of the will must not be taken to be an inference against the genuine nature of it. Yet, it is advisable to enlist the will as registration serves as a solid lawful proof regarding its legality. After registration, the will can only be provided either to the testator, or in case of his death to the person who is authorized after producing the death certificate of the testator.

Capacity to Make a Will

Section 59 of the Act which deals with the capacity of a testator to make wills, states that, *"every person who is of sound mind and not a minor may dispose of the property through a will".* Therefore, the general prerequisites are a sound mind and the attainment of the age of majority[16]. The word "minor" in Section 59 implies those persons who have not attained the age of 18 years and this understanding holds the same influence as under Section 12 of the Indian Contract Act, 1872.

[10] 5 MADRAS UNIVERSITY, TAMIL LEXION, 30, 84 (rev. ed., 2012) (1924).
[11] Tagore v. Tagore, (1872) 9 Beng. L.R. 337 .
[12] Indian Succession Act, 1925, §65, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[13] Indian Succession Act, 1925, §63, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[14] Indian Succession Act, 1925, §57, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[15] Narain Singh v. Kamla Devi, AIR 1954 SC 280.
[16] Indian Succession Act, 1925, §59, No. 39, Acts of Imperial Legislative Council, 1925 (India).

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By "sound mind", the law does not expect a person to be fully fit, or in a perfect state of health, or one who is able to give clear instructions regarding the distribution of her property. The phrase "sound mind" only means that the testator should be able to understand that her property is being distributed, the persons among whom the property is being so distributed and claims from people who are excluded from such transaction. In *Swinfen v. Swinfen*[17], it was laid down that the testator must possess a degree of understanding to comprehend what she is doing and must have a volition or power of choice over her decision.

The various explanations provided under Section 59 of the Indian Succession Act also provide for other persons who are legally entitled to prepare a will. Marriage does not disqualify one from testamentary capacity and physical incapacity is also not regarded as a disqualification for making a will, if the person in question are fully aware of what they choose to do via their actions.[18] Essentially, the test here concerns the ability to know and not actual knowledge which is in contrast with the provisions related to 'state of mind'.[19] The explanation also provide for those persons who are of unsound mind but are of sound mind while making the will and such a will is deemed to be valid.[20] A will which is made by a person who is either intoxicated or is suffering from a disease because of which he is unable to understand the consequences of his actions at the time of making it is deemed to be invalid.[21]Broadly, it can be said that this requirement resembles the English notion of a 'sound disposing state of mind'.[22]

Revocation of Will

Section 62 of the act provides for the revocation or alteration of the will during the lifespan of the testator. Law Commission in its 110th Report pointed out that this section brings out the flexible character of a will and recommended no changes in this provision.

The revocation of a will should be real and not mere intentional. If a will has to be revoked, it should be stated in writing and there must be a clause stating that the prior will has been revoked. If the will is torn or burnt by the testator or a representative of the testator, then it will be considered revoked provided it is burnt entirely. If

[17] Swinfen v. Swinfen, (1856) 1 CBNS 364.
[18] Indian Succession Act, 1925, §59, Expl. II, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[19] Law Commission of India, One Hundred and Tenth Report of the Law Commission on "THE INDIAN SUCCESSION ACT, 1925," (Issues on February 25, 1985).
[20] Indian Succession Act, 1925, §59, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[21] Indian Succession Act, 1925, §59, No. 39, Acts of Imperial Legislative Council, 1925 (India).
[22] Law Commission of India, One Hundred and Tenth Report of the Law Commission on "THE INDIAN SUCCESSION ACT, 1925," (Issues on February 25, 1985).

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another will or codicil is framed after the original will, it is an implied revocation. If a marriage or birth follows the making of the will it does not lead to the revocation of the will.

Alteration of Will

S.71 of the act applies to alterations if they are made after the Will is executed but not before it. It provides that any elimination, interlineations or other alteration made in a will after its execution is inoperative unless it is accompanied by the signature of the testator and the attesting witnesses or by a memorandum duly signed by the testator and the attesting witnesses referring to the alterations at the end of the will or any other part.

Thus, any changes which have to be made in the will must be made before the execution of the will and should have the signature of the testator as well as the attesting witnesses. A memorandum can also be made and signed by the testator. If these requirements are not taken care of at the time of making the changes, they would be deemed to be invalid.[23]

The changes are to be made in the will itself and have to be read as a part of the will, not distinct from it.

Reading the Will from the lens of the Testator's Intention

Section 74 of the act provides that the will can be made in any form and in any language. However, if upon reading the will two constructions are possible, then that which paves the way for intestacy should be avoided. The court should abide by the evident intention of the testator[24] unless it is in some way contrary to law.[25]That construction which postpones the endowment of property should also be avoided.

Judicial decisions by the apex court have also accentuated the importance of testator's intention as was held in *Gnanambal Ammal v. T. Raju Aiyar*[26] that *"the cardinal maxim to be observed by the Court in construction of a Will is the intention of the testator. This intention has to be gathered primarily from the language of the document, which has to be read as a whole."*

[23] Lalitaben Jayantilal Popat v. Pragnaben Jamnadas Kataria & Ors., (2008) 15 SCC 365.
[24] Nathu v. Debi Singh, AIR 1966 Punj 226.
[25] Bhura v Kashi Ram, AIR 1994 SC 1202.
[26] Gnanambal Ammal v. T. Raju Aiyar, AIR 1951 SC 103.

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There are certain other factors also that the court must consider while ascertaining the intention of the testator like the surrounding circumstances, position of the testator, the family relationship, etc. to place interpretation on the words of the will.

The Different Restrictions on a Valid Will

A gift cannot be made to a person who is dead at the time of the death of the testator. Section 113 of the Indian Succession act also provides for the transfer of property under a will to an unborn person. The precondition for such a transfer is that an earlier interest in life must have been created in another person and the legacy must include the entire remaining interest of the testator. In *Girish Dutt v. Datadin*[27], the apex court decided that interest to be transferred to unborn person must be absolute and not fettered in any way for that would make the transfer void.

Section 114 of the act states that no bequest is valid where the vesting of the property bequeathed is delayed beyond the life of one or more persons living at the time of the testator's death and the minority of the same person who shall be in existence at the expiration of that period, and to whom the thing bequeathed is to belong if he attains full age. This is known as a **rule against perpetuity** and provides that the property cannot be secured for an indefinite period. The rule is based on the considerations of public policy which dictate that property is not to be made inalienable unless it is in the interest of the community at large. In the case of *Stanely v. Leigh,*[28] it was laid down that for the rule of perpetuity to be inapplicable, four conditions have to be satisfied; *firstly,* there has to be a transfer; *Secondly,* an interest in an unborn person has to be created *thirdly,* such interest must take effect after the life time of one or more persons and during minority; *lastly*, the unborn person in question should be in existence at the time of expiration of the interest

Another restriction lies in the scenario where transfer has to be made to a class; some of whom may come under the above-mentioned rules concerning unborn persons or that against perpetuity. Such bequest is rendered void according to Section 115 of the act in regard to those persons only and not in regard to the whole class.

Section 61 of the act provides for an **invalid will** which means a will which has been caused to be made by fraud or coercion and not by free will, and it has been declared void and is to be set aside. Section 127 of the

[27] Girish Dutt v. Datadin, AIR 1934 Oudh 35.
[28] Stanely v. Leigh, (1732) 24 ER 917.

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act states that a bequest based upon illegal or immoral condition is void. Here, if the condition is contrary to, forbidden, or defeats any provision of law or is opposed to public policy, then the bequest is considered invalid"

IV. Wills under Muslim Law

Meaning

Under the Muslim law, "Wasiyat", which means will or testament has been defined as an instrument by which a person disposes of his property and which is to take effect after his death."[29] Tyabji defines it as conferment of the right of property in a specific thing or profit or advantage or gratuity which is to take effect on the death of the testator.[30]

Formalities for Making a Will

In the landmark case of Abdul Khan v. Mirtuza Khan[31], the general rule was reemphasized by the court that no formal procedure is required in making the will. There are no specific formalities for making a will as under Muslim law, a will can be written or even oral. In the case of oral will, the intention of the testator has to be adequately established and as compared to a written will which is easier to prove, the burden to prove an oral Will is heavier. A Will that is executed under Muslim law does not even require a probate. Although no additional formalities are required to be complied with in such cases, a Will in order to qualify as valid and effective must display a bona fide intention on part of the testator to bestow his property.

Essentials of a Valid Will

For a Will to be valid and capable of finding itself legitimate in law, the following four requirements must be satisfied *Firstly,* competency of the testator to make the will; *Secondly,* competency of the legatee; *Thirdly,* lawful subject-matter of bequest; *lastly*, bequest to be within permissible limits.[32]

- ***competency of the testator to make the will***

[29] 2, DR. ASHOK K. JAIN, FAMILY LAW-II (Ascent Publication, 3rd edn. 2019).
[30] 1, SYED AMEER ALI, MOHAMMEDAN LAW VOL 1, (5th edn, Law Publishing Company, 1976) 438.
[31] Abdul Manan Khan v. Mirtuza Khan, AIR 1991 Pat 154.
[32] KUSUM, *supra* note 3, at 897.

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Every Muslim who is of sound mind and has attained the age of majority can bequeath her property through a Will.[33] The age of majority is decided by the Indian Majority Act under which a person is said to obtain majority at the end of 18 years and in case of a child under the guardianship of the Court of Wards, the relevant age is 21 years. A will made by a minor is not valid in law but has to be ratified once the minor attains majority.

There are various implications that go hand in hand with the notion of competency of a testator. The testator must be mindful of the consequences at the time of making the will which implies that he must possess a "disposing mind". A will executed out of fear of one's death is valid, but in Shia law, the will is considered void if it has been executed after attempting suicide *(this line has been paraphrased)*. Will made under undue influence, fraud or coercion is also deemed void. Under Muslim law, the testator is also required to be Muslim at the time of making or executing the will. However, if at the time of her death, the testator ceases to be a Muslim, her wasiyat still stands valid in the eyes of law. The will is governed by the laws and rules of that Muslim school of law to which the testator belongs at the time of its execution.

- ***competency of the legatee***

The legatee is required to be capable of holding a property. It is not necessary for the legatee to be a Muslim and there is no bar on other grounds like sex, age or creed when the bequest is made to her. However, the legatee must be in existence at the time of making of will and so, a bequest made to an unborn child is invalid. Any bequest made to an institution or a "juristic person" is also considered valid but it can only be made to an institute which promotes Islam.[34] Bequest for charitable purposes is also valid provided it is towards Islam. A person will not be considered a legatee if her actions lead to the death of the testator even if the legatee had no knowledge whether he will be benefitted under the will or not at the time of performing such acts. If no specified amount of share has been mentioned in the will, the property is equally divided among the legatees.

- ***binding subject-matter of bequest***

[33] SHEIK HASAN ALI MARGHINANI,THE HEDAYA COMMENTARY ON THE ISLAMIC LAWS 673 (Charles Hamilton trans., Kitab Bhavan 2014); NEIL BAILLIE, A DIGEST OF MOOHUMMUDAN LAW 627 (Smith, Elder 1865); DINSHAW FARDUNJI MULLA, MULLA'S PRINCIPLES OF MAHOMEDAN LAW 100 (M. Hidayatullah and A. Hidayatullah ed., Lexis Nexis 2017) (1990); AQUIL AHMED, MOHAMMEDEN LAW 190 (17th ed. 1995).

[34] Badrul Islam Ali Khan v. Ali Begun, AIR 1935 Lah 251.

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The property dealt with in the will must be transferable after the death of the testator and must also be in existence at the time of her death. Such property is not required to be in existence at the time of making the will though. The transfer of property must be absolute and must not come with any conditions attached to it.

- ***Bequest required to be within permissible limits.***

A Muslim testator does not possess unlimited power while making the will and certain restrictions are imposed so as to protect the interests of the heirs. The property bequeathed must not be greater than one-third unless there is consent by heirs which is applicable in both Shia and Sunni laws[35].

Another side of these limitations is that if the whole property is bequeathed to only one of the heirs which excludes the other heirs, then such a will is void in nature. With respect to bequest of one- third to an heir, the consent is required only in Sunni law and not in Shia law[36]. Notably, if there is no heir to the testator then this one-third rule is not applicable. The testator may dispose of his property as he desires.

Under both Sunni and Shia law, bequest for charitable and religious purposes can only be up to one- third of one's property.

If marriage is performed under the Special Marriage Act, then also the one- third limit rule will not be applicable as the Indian Succession Act would be applicable in such cases.

Revocation of a Will

A testator may revoke a will made by them at any point of time while they are alive. It can be either expressly or impliedly revoked. Further a prior will gets revoked on making of a subsequent one. However, if new beneficiaries are added in the subsequent will with regard to the same bequest, it will be equally shared out among the beneficiaries.

The Clash of Two Schools of Muslim Law

The two schools of Muslim law – Shia and Sunni differ at various points with the concept of will. They are as follows-

[35] Ghulam Mohammad v. Ghulam Hussain, (1932) 34 BOMLR 510.
[36] KUSUM, *supra* note 3, at 905.

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SHIA SCHOOL	SUNNI SCHOOL
Consent is necessary for more than one -third of the property.	It is necessary to have consent of the heirs to bequest till one -third of the property.
Such consent can be given before and after the death of the testator	Consent has to be given post the death of a testator.
A will doesn't remain valid if the testator has committed suicide before execution of the will	The will still remain valid even if the testator has committed suicide prior to the execution of the will.
A will in the favor of an unborn child stands valid if the child is born 10 months after making of the will.	A child has to be born within 6 months from making of the will in order to be valid
In instances of bequests which exceeds 1/3rd to two or more people, chronological priority is applied. It means that the legatee who is referred first in the will get their share first. Following this, the remaining share goes to the subsequent one. Assuming if more shares are remaining, the shares go to the next legatee. This has to be in accordance with the one third rule.	In cases where bequests for more than one individual is more than 1/3rd of the property via the same will, relatable abatement of legacy applies. This implies that if bequest of more than one third of the property is made to 2 or more people, the legatee's shares are decreased proportionately to one -third.
The testator's death is immaterial, legacy can be accepted before or after the testator's death.	The testator has to be alive while accepting the legacy.
The validity of bequests to heirs extends up till one -third of the property.	It is invalid to bequest to an heir even till the extend of one -third of the property.
Legatee can't take the testators property, if death was intentionally caused by the legatee. However, in cases where death was caused negligently or accidentally, the legatee can take the property.	If the legatee has committed murder of the legatee or caused their death, the legatee can't take over the testator's property.

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On death of the legatee before the testator, the legacy will lapse only if legatee has died without leaving an heir or the Will is revoked by the testator themselves.	The legacy lapses if the legatee dies before the testator

V. Comparative Analysis of Wills under Hindu and Muslim Law

Though there are proofs of testamentary progression by Muslims, the Indian society is silent about the beginning of the concept of wills among the Hindus. The Indian Succession Act, merging the laws of intestate (with some exceptions) and testamentary succession overrides the previous Acts and applies to every Wills and codicils of Hindus, Buddhists, Sikhs, Buddhists, Jains throughout India. The Muslim testamentary progression was dismissed from the scope of use of this demonstration and is commonly regulated by the Muslim Personal Laws. The Muslims are not governed by the Indian Succession Act,1925. It is the Shariat or the Muslim Personal Law which prescribes the manner in which a property can be bequeathed.

It can be observed through analysis that the concept of wills under the Hindu and Muslim Law are quite similar in nature with regard to the essential pre -requisites for making a will. However, there are certain dissimilarities that need to be underlined between the Muslims and Hindus. While in the Muslims the maximum of 1/3rd can be transferred to a particular heir, in Hindus the entire will or a part of it can be transferred to a particular heir. Under the Muslim law it is important to give the consent of the consent of the legal heirs but consent is not given importance under the Hindu Law.

The Hindu and Muslim laws of testamentary progression additionally contrast with respect to women. While women in Hindu law have the ability to distribute property, they have supreme proprietorship in through will at any rate and to anyone, the privileges of Muslim ladies are surely special cases to the general standards. For the most part, the portion of property passed on in Will cannot exceed the one-third rule except if is done with the assent of other legatees. Notwithstanding, if a Muslim lady has no blood relations and her significant other is to be the main beneficiary then she can bequeath 66% of her property in support of him. In addition, laws of testamentary progression under the Hindus and Muslims have different positions with regard to Women. Under the Hindu Law, women have the capacity to disseminate property over which they have supreme proprietorship, to anyone and at any rate.

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Furthermore, as underlined above in the point of differences between Shia and Sunni Muslims it can be comprehended those various differences prevail among the Hindus with regard to the concept of will. For instance, if the testator commits suicide before or after formulating the will, death occurred due to the conduct of the legatee, relatable abatement and chronological priority etc.

The concept is clear and well defined in both Hindu and Muslim laws. After the introduction of Indian Succession Act, 1925 the concept of will under the Hindus was codified properly.

VI. Findings and Recommendations

A careful analysis of both the conceptual frameworks under Hindu Laws and Muslim Laws, shows us that the major criterions that are needed to make a will under both legal regimes are similar. The testator and legatee under both laws have to pass the test of competency where two thresholds are same- age and sound mind. Meanwhile we saw from a clear side by side analysis that there are some clear differences in the Shia and Sunni School of Muslim Law when it comes to will. The difference revolved around some important points like the need for consent of the testator to bequeath a property, or the difference in requirements to make a valid will, etc. Most importantly, we can draw a corollary from this that codified laws as that of Indian Succession Act, 1925 accord better clarity then Islamic Laws where there are certain points of discord. Hence our entire three hypotheses are proved.

- ✔ **H1: Proved**
- ✔ **H2: Proved**
- ✔ **H3: Proved**

This steers us towards the authors' recommendations that the country's legislative body should consider about implementing a uniform civil code all across the nation especially in regards to the subject of wills. There are various intricacies and loopholes that need to be dealt with clarity and care as will is a legal document that spells put the testator's last personal wishes. Care must be taken to maintain a balance between legal acumen and cultural pluralism so that social justice prevails because there are certain complexities that might lead to political ramifications. However, the reforms can be introduced gradually without doing away with the diversity of these personal laws and the basic essence of Islamic Laws when it comes to wills.

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VI. Conclusion

As specified already, the idea of will did exist in the Hindus but the concept of will was present in the Muslims even prior to the Mughal Era. Over the years different issues of wills have been settled, therefore the Muslims are well refined with this concept. The origin of this concept among the Hindus can be traced to their Muslim counterparts and the Britishers who rule India post the Mughal regime and inserted their philosophies in the Indian minds. Thus, it is clear that the concept of Will in the Hindu Law is an amalgamation of both British and Muslim Laws. The Government of India as we found over the course of the paper should make efforts to create a uniform civil code that is harmonious with the cultural diversity of our country. An efficient codified law at the national level would be helpful in creating a symphony with the ever evolving social system

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