

LAW OF WILLS IN INDIA

BY

Vijay Pal Dalmia, Advocate
Partner Vaish Associates Advocates

Phone: +91 9810081079 email:- vpdalmia@vaishlaw.com www.vaishlaw.com

A Will is made for disposition of property according to the wishes of the testator, after death.



WHEN A WILL TAKES EFFECT?

Will takes effect only after the death of the testator.



A WILL CAN BE MADE BY

A **MAJOR** person of **SOUND MIND**.

A person with a disability (impaired hearing, vision or speech).

An insane person in a lucid interval of sanity.

Foreigners and convicts.



A WILL CAN NOT BE MADE BY

A person who is intoxicated or ill to a level that hampers his comprehension.

Corporate bodies are incapable of making a Will.



BASIC CRITERIA FOR MAKING A WILL (Section 59 of the Indian Succession Act)

The person making the Will should have
the testamentary capacity,
sound disposing mind,
knowledge of contents of the Will,
Free from undue influence/ fraud/ coercion,
and the making of a Will should be a Voluntary act.



CONDITIONS FOR MAKING OF A VALID WILL

The testator should sign or affix his mark (e.g., thumb mark),
The Will must be attested by 2 or more witnesses,
The witnesses must have seen the testator sign or affix his mark to the Will; or
Received an acknowledgment from the testator that he has signed the Will; and
Each witness shall sign the Will in the presence of the testator.

The witness should not be a beneficiary under the Will.

The witness can also be appointed as an executor under the Will.



PAPER ON WHICH WILL CAN BE MADE

A Will can be made on a plain paper. No stamp paper is required.



IS NOTARIZATION OF WILL REQUIRED?

Notarization by Notary Public or Attestation by an Oath Commissioner is not required.



REGISTRATION OF WILLS

Not Compulsory.

But, it is always advisable to get the Will registered as,
If registered and not contested after the death of the testator, probate of the Will may not be necessary.
Transmission of properties becomes easy.
Higher authenticity is attached to the Will.

PROCEDURE FOR REGISTRATION OF WILL

A Will can be registered at the office of the Sub- Registrar.



REGISTRATION OF WILL AFTER DEATH

Yes, registration of Will even after death is possible.
(Sec. 40 of the Indian Registration Act, 1908)



REVOCATION AND ALTERATION OF WILL (Section 62 of the Indian Succession Act, 1925)

A Will can be altered or revoked by its maker anytime,
(Section 67-73 of the Indian Succession Act)

By execution of a new Will.

By revocation of the earlier Will.

By registration of the new Will (only in case the old Will is registered).

By the destruction of the old Will.

By the inclusion of a codicil.

In case of the marriage of a Parsi or a Christian testator, his/her Will stands revoked
(this, however, does not apply to Hindus, Sikhs, Jains, and Buddhists).



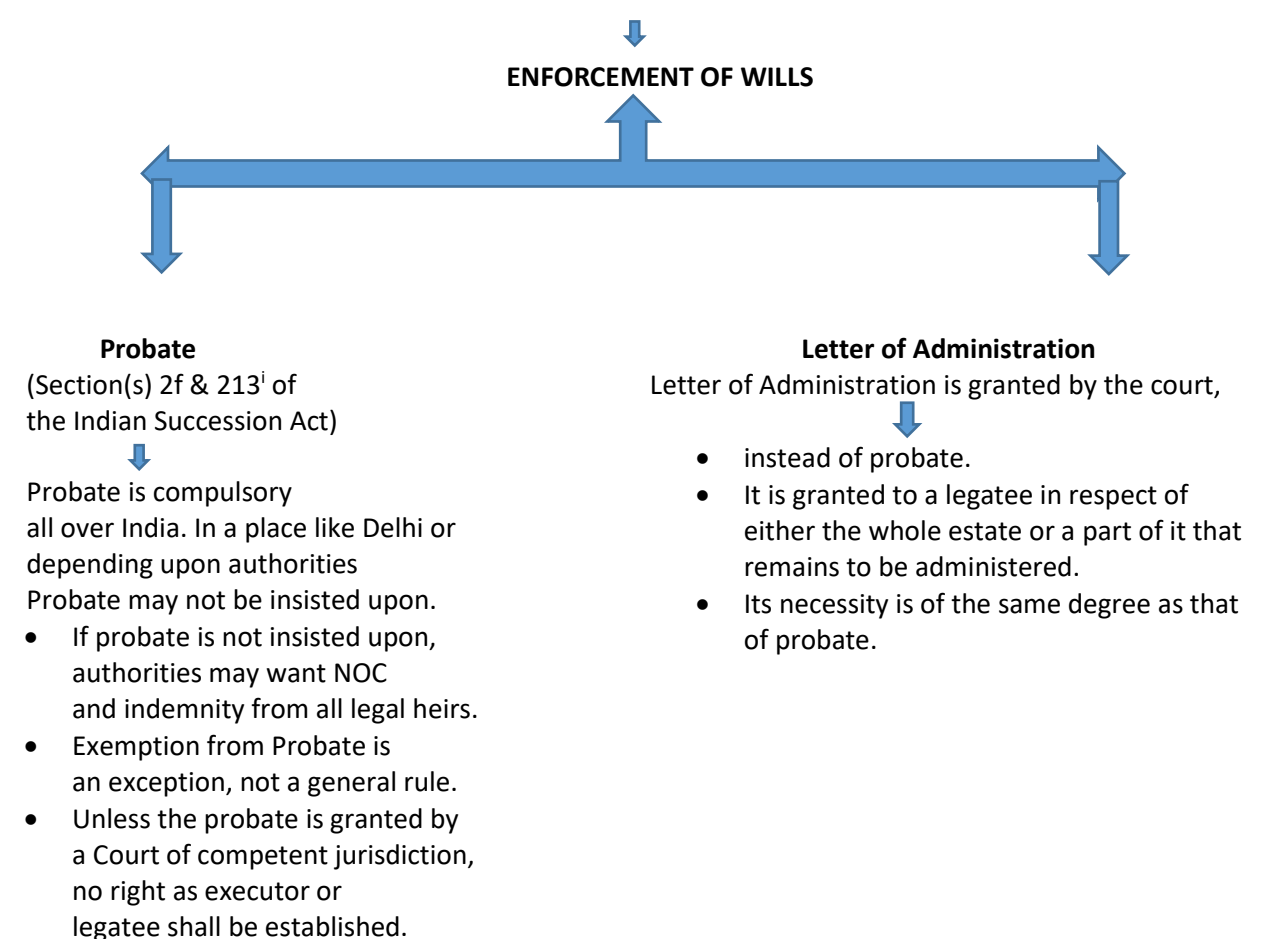
DIFFERENCE BETWEEN PROBATE, LETTER OF ADMINISTRATION & SUCCESSION CERTIFICATE

PROBATE is granted in case of a registered or unregistered Will, in which an EXECUTOR has been appointed.

Probate means the copy of a Will certified under the seal of a Court of Competent Jurisdiction,
holding the grant of administration to the estate of the testator, and
it validates all intermediate acts of the executor.

LETTER OF ADMINISTRATION is granted
when the deceased has left both Immovable & Moveable properties, BUT no will,
when a Will has been left without the appointment of an Executor of the Will,
when the executor is deceased after proving the Will but before administration,
when the executor does not have the legal capacity, and
when the executor dies before the testator and another executor is not appointed.

SUCCESSION CERTIFICATE is granted, when the deceased has left only Moveable properties.



Note(s):

- 1. Payment of court fee on the grant of probate, letter of administration and succession certificate:**
A probate, letter of administration or succession certificate is granted by the court subject to the payment of court fees, which varies from state to state.
- 2. Payment of stamp duty on transfer of securities:**
Under Section 56(2) of the Companies Act, 2013 the company has the power to register, on receipt of an intimation of transmission of any right to securities by operation of law from any person to whom such right has been transmitted. Hence, no stamp duty is payable on the transfer of shares/securities in case of probate, letter of administration and succession certificate.

BY

Vijay Pal Dalmia, Advocate

Partner Vaish Associates Advocates

Phone: +91 9810081079 email:- vpdalmia@vaishlaw.com

ⁱ Section 213(1) in The Indian Succession Act, 1925

(1) No right as executor or legatee can be established in any Court of Justice, unless a Court of competent jurisdiction in [India] has granted probate of the Will under which the right is claimed, or has granted letters of administration with the Will or with a copy of an authenticated copy of the Will annexed. This section shall not apply in the case of Wills made by Muhammadans [or Indian Christians], or and shall only apply—

(i) in the case of Wills made by any Hindu, Buddhist, Sikh or Jaina where such Wills are of the classes specified in clauses (a) and (b) of section 57; and

(ii) in the case of Wills made by any Parsi dying, after the commencement of the Indian Succession (Amendment) Act, 1962 (16 of 1962), where such Wills are made within the local limits of the 4[ordinary original civil jurisdiction] of the High Courts at Calcutta, Madras and Bombay, and where such Wills are made outside those limits, in so far as they relate to immoveable property situated within those limits.]

DISCLAIMER:

While every care has been taken in the preparation of this report/flowchart/presentation to ensure its accuracy at the time of publication, Vaish Associates or the author assumes no responsibility for any errors which despite all precautions, may be found herein. Neither this report/flowchart/presentation nor the information contained herein constitutes a contract or will form the basis of a contract. The material contained in this document does not constitute/substitute professional advice that may be required before acting on any matter. Professional advice must be taken before acting. This report/flowchart/presentation is for general guidelines only.

***COPYRIGHT NOTICE:-** © 2018, India. All Rights reserved with Vaish Associates Advocates, 1st & 11th Floors, Mohan Dev Building, 13, Tolstoy Marg, New Delhi - 110001, India