DR. Ajit Kumar Gond, Assistant professor of Law, YBN University, Ranchi

YBN UNIVERSITY

Established by the Act of Government of Jharkhand Act 15, 2017
Gazette Notification No. 505, Dated 17th July 2017
As per Section 2(f) of UGC Act. 1956

RAJAULATU, NAMKUM, RANCHI, JHARKHAND-834010

WILLS

Ch. 10.1 Vasiyyatnama:

Vasiyyatnama is the document which embodies the "will" of the testator. Vasiyya means the "will" of the testator. The *"Hedaya"* is the leading authority on Wills. A 'will' is a divine institution. (According to Bukhan, the tradition demands that a Muslim who has properties, should not steep even for two nights without writing a will)

Ch, **10,2** Essentials :' (***i) Form;***

A "will" may be oral or in writing. If it is oral, the burden of proof is heavy. If in writing, it need not be signed and if signed, it need not be attested (Koran). What is essential is that the "intention" must be clear.

(ii***) Capacity:***

Every Muslim, who is of sound mind is entitled to make a will. He must not be a minor. A Muslim attains majority at 15, But, according to the Indian Majority Act, he attains majority at 18, to make a will.

A will made under coercion, undue influence or fraud is invalid.

(iii**) Restrictions;** There are two main restrictions,

(a) He should not bequeath more than one third of his net estate. This is called the "bequeathabte third", and,

(b) He should not bequeath to his own heirs. (However, the bequest is valid, if other heirs give their consent on the death of the testator)

The will fails if these restrictions are not followed,

(iv) Object:

The will is invalid if the will is opposed to Islam, Hence, a will to build a Hindu temple, a Christian Church or a Jewish Synagogue, is void,

' . . • . '

(v) Bequests:

Under a will no Muslim may bequeath more than one-third of his net estate. The subject of the bequest must be in existence at the time of the testator's death. The bequest may be the corpus, or the usufruct or both.

If the bequest exceeds one-third of the estate, the consent of the heirs is necessary to take effect. Bequest may be made to *pious purposes,*

(vi) Legatee:

A bequest may be made in favour of any person, irrespective of his religion. It may be made to an institution, or for a religious charitable object not opposed to Islam, A legatee who has killed the testator is disqualified.

(vii) Revocation:

Expressly or impliediy, the testator may revoke a bequest, e.g. if A makes a will bequeathing his farm house to B and later sells it to C* there is implied revocation. if the testator makes a second will, the first will is superseded.

If the same thing is given to two different persons in the same will, then the bequest is to be shared equally.

(viii) Registration:

A Muslim "will" may be *sril* or *in writing.* If in writing **no registration is necessary (optional).**

Under the Special Marriage Act 1954, if a Muslim registers his marriage with the marriage officer, he will be governed by the Indian Succession Act 1925. Under this he need not follow the bequeathable third rule.

Ch, 10.3 Bequeathable third rule:

Under Muslim law, "will" (Vasiyya) is a divine institution. The "Hedaya" is the leading authoritative text on Muslim will. The document (will) is called Vasiyyatnama.

The will may be oral or in writing. It may be made by a Muslim who has attained majority (18 years), and who is of sound mind and understanding.

One major restriction imposed is on the bequest that may be made by the testator. This is called "bequeathable third."

According to Bukhari the origin is as follows :

The messenger of God "The Prophet", used to.visit Abi Waqquas. Abi was sick and desired to bequeath his vast property. He had only one daughter as heir, He asked the messenger, whether he could bequeath two-third or half his property. The messenger answered "Bequeath one-third" only. (There seems to be the influence of Roman law for this rule.)

Distribution

When the testator dies, funeral expenses, debts and other charges are to be met first. Then in the residue one third is the "bequeathable third." E.g., Rahman dies leaving 2 lakh Rupees. The funeral expenses, debts and others account for Rs. 80,000. Hence the balance is Rs. 1, 20,000 the bequeathable third is Rs. 40,000. Any bequeath above this amount is void (unless all the heirs agree.)