

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume II Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

EDITORIALTEAM

EDITORS

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi. (2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019



Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr.Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

UNDERSTANDING WILLS AND WASIYAT: A COMPARATIVE LEGAL STUDY.

AUTHORED BY - SIDHARTH SINGH

Rajiv Gandhi National University of Law, Patiala, Punjab,

L.I.M. (2024-25).

Abstract

Testamentary succession in India is shaped by a plural legal framework, where secular, Hindu, and Muslim laws coexist, each reflecting distinct philosophical and jurisprudential foundations. The concept of a Will, governed under the Indian Succession Act, 1925, provides individuals—particularly Hindus, Sikhs, Buddhists, and others—with broad autonomy to determine the distribution of their property after death. In contrast, the Islamic notion of Wasiyat is rooted in moral and religious obligations, imposing legal limits on testamentary freedom, most notably through the one-third rule.

A Will under secular or Hindu law allows for near-complete testamentary discretion, subject to formal requirements such as attestation, soundness of mind, and the absence of coercion. The procedure includes execution, possible revocation, and, in certain jurisdictions, probate. In contrast, Wasiyat permits bequests only up to one-third of the estate without heirs' consent and generally prohibits gifts to legal heirs unless posthumous approval is obtained from other heirs. Oral declarations are valid under Muslim law, provided the intention is clear and supported by credible testimony.

Comparative analysis reveals key differences in formalities, autonomy, eligibility of beneficiaries, and the influence of religious doctrine. Wills emphasize individual volition and can be used to reshape familial inheritance patterns. Wasiyat, while allowing moral discretion, protects the Qur'anic scheme of fixed inheritance shares. Judicial interpretations across both systems have sought to balance doctrinal fidelity with procedural fairness.

The coexistence of these frameworks poses challenges in cases involving interfaith families, gender equity, evidentiary disputes, and the absence of codification in Muslim testamentary law. Addressing these issues requires procedural safeguards, greater awareness, and potential

reform that respects both constitutional principles and religious identities.

Keywords: Testamentary Succession, Indian Succession Act, Will, Wasiyat, Hindu Law, Muslim Law, One-Third Rule, Probate, Inheritance, Personal Laws in India.

Chapter 1: Introduction

Testamentary succession is one of the most essential elements of personal law, reflecting an individual's autonomy to direct the devolution of their estate after death. In India, where personal laws are governed largely by religious traditions, the concepts of Will under secular and Hindu law, and Wasiyat under Islamic law, coexist under a complex legal regime. Each is rooted in distinct philosophical and jurisprudential foundations, leading to nuanced interpretations and applications that affect inheritance rights and family dynamics. This chapter introduces the paper's objectives, significance, and outlines its scope.

The term Will refers to a legal declaration made by a person during their lifetime, outlining how their assets are to be distributed after death. In India, the Indian Succession Act, 1925 governs wills made by Hindus, Sikhs, Jains, and Buddhists, while Parsis and Christians are also brought within its fold. However, Muslims are exempted from its application unless they voluntarily choose to be governed by it. Instead, Islamic testamentary succession is governed by religious laws, encapsulated in the concept of Wasiyat, which imposes certain moral obligations and legal limitations on the testator.

Another critical aspect is the question of autonomy. While secular wills allow near-complete testamentary freedom, Muslim law restricts this freedom through the one-third rule, which allows disposition of only one-third of the property without heirs' consent¹. In contrast, Hindu and secular wills grant the testator significant flexibility, subject only to procedural requirements and the capacity to make a will. This difference underscores a broader question about balancing individual autonomy with familial and religious obligations.

¹ A.A.A. Fyzee, *Outlines of Muhammadan Law* 310–15 (5th ed. 2008, Oxford Univ. Press).

Chapter 2: The Concept and Legal Framework of Wills in Hindu and Secular Law

The concept of a Will is deeply embedded in the legal structure of personal law in India, particularly under Hindu and secular legal frameworks. A will enables a person, referred to as the testator, to exercise posthumous control over their estate by specifying how their property should be distributed after their death. In India, the Indian Succession Act, 1925 serves as the principal statute governing wills for non-Muslims, especially Hindus, Sikhs, Jains, Buddhists, Christians, and Parsis. However, the applicability of the Act to different religious communities varies and is subject to several caveats. This chapter will examine the essential features, legal principles, and statutory requirements for wills under Hindu and secular law, while also discussing the practical challenges and judicial interpretation surrounding testamentary succession.

2.1 Legal Definition and Nature of a Will

Section 2(h) of the Indian Succession Act, 1925 defines a Will 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”². It is a unilateral, ambulatory, and revocable document, meaning it takes effect only after the testator’s death and can be modified or revoked at any time during the testator’s lifetime. A will becomes operative only when the testator dies, and until then, it has no legal effect.

Under Hindu law, prior to codification, the concept of wills was not prevalent. Traditional Hindu law did not recognize the power of testamentary disposition. However, the Hindu Wills Act of 1870 extended the provisions of the Indian Succession Act to Hindus in the presidency towns, and later the 1925 Act brought about a broader, more uniform application³.

2.2 Who Can Make a Will?

According to Section 59 of the Indian Succession Act, any person of sound mind who is not a minor can make a will. The law permits even a blind, deaf, or dumb person to make a will if they are aware of the nature of the disposition and are capable of understanding its implications. However, a person of unsound mind can make a will only during lucid intervals.

² Indian Succession Act, 1925, § 2(h), No. 39, Acts of Parliament, 1925 (India).

³ J.D.M. Derrett, *Introduction to Modern Hindu Law* (Oxford Univ. Press 1963).

The Act specifically prohibits a person who is intoxicated or under undue influence at the time of making the will from executing a valid testament⁴.

2.3 Essential Elements and Formalities

For a will to be valid under the Indian Succession Act, the following formalities must be satisfied:

- **Intention of the Testator:** The will must reflect the free and voluntary intention of the testator. It should not be made under coercion, fraud, or undue influence.
- **Execution:** As per Section 63 of the Act, the will must be signed by the testator or by someone else in his presence and under his direction. The signature should be placed in a manner indicating that it was intended to give effect to the writing as a will.
- **Attestation:** The will must be attested by at least two witnesses, each of whom must have seen the testator sign the will or must have received a personal acknowledgment from the testator that he signed it. Both witnesses must also sign the will in the presence of the testator⁵.

2.4 Revocation and Alteration of Wills

A will is revocable at any time during the life of the testator. Revocation can be express (by executing a new will or codicil), implied (by the marriage of the testator under certain conditions), or by destruction of the will with the intention to revoke. If two wills exist, the latter will generally revoke the former, unless explicitly stated otherwise⁶.

A codicil, defined under Section 2(b) of the Act, is an instrument made in relation to a will and explaining, altering, or adding to its dispositions. It must follow the same formalities as a will.

2.5 Probate and Administration

Probate is a legal process that validates a will in a court of competent jurisdiction. Under Sections 219 and 222 of the Act, probate is compulsory in the territories of Bengal, Madras, and Bombay for wills executed by Hindus, Buddhists, Sikhs, and Jains if the property lies within those territories. The probate confers authority upon the executor to administer the estate of the deceased. In other regions of India, obtaining probate is optional unless otherwise

⁴ Indian Succession Act, 1925, § 59, No. 39, Acts of Parliament, 1925 (India).

⁵ Indian Succession Act, 1925, § 63, No. 39, Acts of Parliament, 1925 (India).

⁶ Indian Succession Act, 1925, § 70, No. 39, Acts of Parliament, 1925 (India).

required by law or challenged⁷.

Chapter 3: The Concept and Legal Framework of Wasiyat in Muslim Law

The Islamic concept of Wasiyat (Will) forms a significant part of Muslim personal law and serves both legal and moral functions. Unlike the secular will governed under the Indian Succession Act, 1925, Wasiyat is deeply embedded in religious obligations, where the testator is considered to be performing a moral duty towards non-heirs, the poor, or specific causes. It reflects the broader Islamic principles of social justice, balance, and responsibility even after death. This chapter explores the origin, nature, legal limitations, formal requirements, and judicial interpretations of Wasiyat, with attention to differences between Sunni and Shia practices.

3.1 Conceptual Foundations of Wasiyat

Wasiyat in Islamic jurisprudence is a declaration made during the lifetime of a Muslim, directing that a part of their property be utilized for a specified purpose or benefit after death. It is a voluntary act that reflects a testator's benevolence and concern for non-heirs, spiritual obligations, or specific causes. Although not mandatory (fard), making a wasiyat is considered highly recommended (mustahab), especially for Muslims who have unsettled obligations, such as unpaid debts, unperformed Hajj, or unfulfilled vows⁸.

The Quran explicitly recognises testamentary freedom but within defined limits. Verse 2:180 states: "It is prescribed for you, when death approaches one of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon the pious." However, classical Islamic scholars and later juristic interpretations clarified that heirs already entitled to shares under Islamic inheritance law cannot receive additional benefits under Wasiyat unless all other heirs consent.

3.2 Who Can Make and Receive a Wasiyat

A person of sound mind and attained majority (as per Islamic law, typically upon reaching puberty or the age of 15) can make a wasiyat. The testator must have ownership and authority over the property being bequeathed. A wasiyat can be made orally or in writing, but it must be

⁷ Indian Succession Act, 1925, §§ 219, 222, No. 39, Acts of Parliament, 1925 (India).

⁸ Gulam Ahmed Rahim, *The Principles of Muhammadan Jurisprudence* 289 (4th ed. 2020).

clear in intent and capable of being executed after the testator's death⁹.

The legatee (legatee or wasiyy) must also be a person capable of owning property. There is no bar on non-Muslims or women receiving benefits under a wasiyat, though legacies to persons who murder the testator or convert from Islam may be invalidated under certain schools of Islamic law¹⁰.

3.3 Limitations on Testamentary Power: The One-Third Rule

One of the most unique and defining features of a wasiyat is the one-third rule. Under this rule, a Muslim can bequeath only up to one-third of their estate through wasiyat without the consent of heirs. Any disposition beyond one-third requires the unanimous consent of legal heirs after the death of the testator¹¹.

This restriction is derived from the famous Hadith of the Prophet Muhammad, where he advised: "One-third is much. To bequeath more than that is to deny your heirs their rights." The intention is to preserve the rights of sharers and residuaries as established under the Qur'anic inheritance scheme while allowing the testator limited freedom to address other moral or religious concerns.

3.4 Revocation and Modification

A wasiyat is revocable during the lifetime of the testator. Revocation can be express—by making a new will—or implied through contradictory acts such as disposing of the property or changing its nature. If the subject matter of the wasiyat is destroyed or transferred during the testator's lifetime, the bequest becomes void. A Muslim can also change the legatee or modify the amount or nature of the legacy¹².

3.5 Sunni and Shia Differences

The Sunni and Shia schools of law have some divergences in the administration and interpretation of wasiyat:

⁹ D.F. Mulla, *Principles of Mahomedan Law* (22nd ed. 2020, LexisNexis).

¹⁰ A.A.A. Fyzee, *Outlines of Muhammadan Law* 318 (5th ed. 2008, Oxford Univ. Press).

¹¹ *Id.* at 319.

¹² Faiz Badruddin Tyabji, *Muslim Law: The Personal Law of Muslims in India and Pakistan* 472 (4th ed. 1968, Bombay).

- Sunni Law (Hanafi School): Places great emphasis on the one-third rule and prohibits any bequest in favour of a legal heir unless all other heirs consent after the testator's death.
- Shia Law (Ithna Ashari School): Is more flexible. It allows wasiyat to be made in favour of an heir even without other heirs' consent, though the one-third limitation still generally applies. Shia law also permits more extensive oral bequests and has broader grounds for implied revocation.

These differences become critical in inter-sect family disputes or cross-community inheritance matters.

3.6 Formalities and Execution

There is no specific requirement for a written wasiyat in Islamic law, and oral declarations—if made in the presence of witnesses—are considered valid. However, in practice and for evidentiary purposes, written wills are encouraged and commonly notarised. The presence of witnesses is highly recommended but not always mandatory, particularly for oral wasiyat in Sunni law.

India does not have a unified statutory framework governing Muslim testamentary succession. Thus, Islamic principles are applied directly by courts based on authoritative texts, commentaries, and expert testimony. In practice, the implementation of wasiyat often falls within the jurisdiction of family courts or civil courts dealing with succession and partition suits.

Chapter 4: Comparative Legal Analysis: Wills vs Wasiyat

The coexistence of diverse religious and statutory legal regimes in India necessitates a thorough understanding of their similarities and divergences. The Indian legal system permits Hindus, Sikhs, Buddhists, and Jains to execute wills under the Indian Succession Act, 1925, whereas Muslims are governed by their respective personal laws regarding Wasiyat. Despite both “will” and “wasiyat” serving the common function of testamentary disposition, they are based on fundamentally different jurisprudential foundations. This chapter attempts a detailed comparative analysis of the two systems across several dimensions—such as autonomy of the testator, limitations imposed, formalities, eligibility of beneficiaries, gender implications, revocability, and judicial attitudes—highlighting both convergence and divergence.

4.1 Jurisprudential Foundation

The Hindu and secular concept of wills primarily stems from the Western liberal legal tradition emphasizing individual autonomy, freedom of disposition, and proprietary control beyond death. Testamentary succession under the Indian Succession Act, 1925, is grounded in the right to property and personal volition. In contrast, Wasiyat under Muslim law is rooted in religious obligation and social justice. It balances the testator's intentions with divine commandments and the collective rights of heirs, governed by faraid (fixed shares) prescribed in the Qur'an¹³.

4.2 Freedom of Testation

One of the most striking differences between the two systems lies in the degree of freedom granted to the testator:

- Under the Indian Succession Act (Hindus and others): The testator enjoys near-complete autonomy over their self-acquired property. There is no legal limitation on the portion of property that can be bequeathed unless the property is jointly owned or ancestral. Even disinheritance of legal heirs is permissible, subject to the absence of coercion or fraud¹⁴.
- Under Muslim Law (Wasiyat): Testamentary freedom is strictly limited to one-third of the estate. This limitation ensures that the fixed heirs under Islamic inheritance law are not deprived of their rightful shares. If the bequest exceeds one-third, it becomes valid only with the consent of the legal heirs after the death of the testator¹⁵.

This limitation in Wasiyat upholds the Islamic ideal of communal balance and familial responsibility, whereas secular wills reflect individualistic priorities.

4.3 Formal Requirements

- Wills (Secular/Hindu law): Require execution in writing, signed by the testator, and attested by at least two witnesses (Section 63, Indian Succession Act). Although oral wills are valid in some exceptional cases (e.g., soldiers on active duty), the formalistic approach ensures legal certainty¹⁶.
- Wasiyat (Muslim law): May be made orally or in writing, and formal witnessing is not mandatory but is recommended. The emphasis is more on the intention of the testator

¹³ Gulam Ahmed Rahim, *The Principles of Muhammadan Jurisprudence* 289 (4th ed. 2020).

¹⁴ Indian Succession Act, 1925, §§ 59–63, No. 39, Acts of Parliament, 1925 (India).

¹⁵ D.F. Mulla, *Principles of Mahomedan Law* (22nd ed. 2020, LexisNexis).

¹⁶ Indian Succession Act, 1925, § 63, No. 39, Acts of Parliament, 1925 (India).

than on procedural formality. Courts have validated oral wasiyat if witnesses confirm the statement and the intent is unambiguous¹⁷.

Thus, Wasiyat emphasizes substance over form, reflecting a more flexible, albeit risk-prone, procedural standard.

4.4 Eligibility of Beneficiaries

- Under Secular Wills: The testator can bequeath property to any person, including legal heirs, friends, charities, or institutions, without legal restrictions unless the property is jointly held or subject to family settlement. There are no restrictions based on religion, gender, or relation¹⁸.
- Under Wasiyat: A Muslim cannot ordinarily bequeath property to an heir already entitled to a fixed share unless all other heirs consent. The intent is to prevent distortion of Qur'anic shares and maintain equality. Bequests to strangers or non-Muslims are permitted within the one-third limit¹⁹.

This contrast underscores the community-centric nature of Islamic inheritance, where the rights of heirs are protected from arbitrary exclusion.

4.5 Revocation and Alteration

- Wills: Can be revoked or altered at any time by the testator during their lifetime. Revocation may be express or implied (e.g., by destruction of the will or execution of a new one). Courts uphold the latest valid will²⁰.
- Wasiyat: Also revocable during the lifetime of the testator, either expressly or by implication. However, in cases of oral wasiyat, the scope for revocation becomes complicated due to evidentiary uncertainties. Some schools of Islamic jurisprudence (e.g., Shia) recognize implied revocation through inconsistent conduct or subsequent declarations.

The conceptual similarity lies in both systems recognizing the dynamic will of the testator, but differences arise in enforceability and proof, particularly in the case of oral declarations.

¹⁷ A.A.A. Fyzee, *Outlines of Muhammadan Law* 321 (5th ed. 2008, Oxford Univ. Press).

¹⁸ N.D. Basu, *Succession Act* (10th ed. 2017, Eastern Book Co.).

¹⁹ Faiz Badruddin Tyabji, *Muslim Law* 471 (Bombay 1968).

²⁰ Indian Succession Act, 1925, § 70, No. 39, Acts of Parliament, 1925 (India).

4.6 Gender and Social Justice Implications

- Wills: Can be a powerful tool for correcting gender biases that may exist in intestate succession. A Hindu father, for instance, may use a will to ensure that a daughter receives an equal or even larger share than her brothers, overriding patriarchal customs²¹.
- Wasiyat: Cannot be used to disturb the Islamic rule of inheritance that prescribes daughters receive half the share of sons. A bequest to a daughter beyond her Qur'anic share would require the consent of other heirs. Nonetheless, a Muslim testator may use wasiyat to benefit female relatives or outsiders not entitled to Qur'anic shares, thereby contributing to equity within religious boundaries.

Therefore, while both systems allow testators to promote justice and fairness, secular wills offer greater latitude in reshaping family dynamics, whereas wasiyat remains more doctrinally constrained.

4.7 Probate and Legal Validation

- Wills: In certain jurisdictions (e.g., Bengal, Bombay, and Madras), probate is compulsory for wills made by Hindus, Sikhs, and others if the property is located within these territories. Probate ensures judicial authentication and protects beneficiaries from subsequent disputes.
- Wasiyat: Does not require probate under Indian law unless contested. However, family disputes or ambiguities often lead to litigation, especially when the will is oral or informally documented.

The formal requirement of probate in the secular system adds a layer of legal certainty that is often missing in the informal wasiyat framework.

Chapter 5: Judicial Interpretation and Case Law Review

The judicial interpretation of testamentary instruments—both wills and wasiyat—plays a pivotal role in the development and application of succession laws in India. Courts have consistently acted as the final arbiters when disputes arise concerning the validity, execution, revocation, and enforceability of wills and wasiyat. This chapter presents an analytical survey of prominent judicial decisions that have clarified legal ambiguities, reinforced procedural safeguards, and attempted to balance religious customs with principles of justice and fairness.

²¹ Flavia Agnes, *Law and Gender Inequality* 145 (Oxford Univ. Press 1999).

While both secular and religious wills are treated with respect, the judiciary also exercises vigilance against misuse, fraud, and exclusionary practices.

5.1 Judicial Scrutiny of Wills under the Indian Succession Act

The Indian judiciary has laid down rigorous standards for proving the validity of a will under Sections 59 and 63 of the Indian Succession Act, 1925. The testator must possess testamentary capacity, the will must be voluntarily executed, and it must be attested in accordance with law. In *Jaswant Kaur v. Amrit Kaur* (1977) 1 SCC 369, the Supreme Court emphasized that the propounder of the will bears the burden of proving due execution. If suspicious circumstances surround the will—such as a drastic change in the mode of inheritance or exclusion of natural heirs—then the burden is heavier. The court stated, “Mere proof of execution of the will is not sufficient; the propounder must also dispel any suspicious circumstances.” This case set a high evidentiary threshold to prevent manipulation of testamentary instruments²².

Similarly, in *S.R. Srinivasa v. S. Padmavathamma* (2010) 5 SCC 274, the Court held that if a will is shrouded in suspicious circumstances, the courts must examine the background and relationship between the testator and the beneficiary. The judgment reinforced that suspicious circumstances must be fully explained by the propounder through cogent evidence, especially when the will substantially deviates from the natural line of succession²³.

In *Gurdev Kaur v. Kaki* (2007) 1 SCC 546, the Supreme Court reiterated that undue influence, coercion, or fraud invalidates a will. Where a beneficiary dominates the testator due to old age, infirmity, or emotional dependence, the court may presume undue influence. This decision underlined that a free and conscious intention of the testator is central to the validity of any will²⁴.

These cases show the judiciary’s commitment to safeguarding the principles of fairness, transparency, and consent in testamentary succession under secular law. Courts treat the will as a solemn document but are not reluctant to set it aside when irregularities appear.

²² *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369.

²³ *S.R. Srinivasa v. S. Padmavathamma*, (2010) 5 SCC 274.

²⁴ *Gurdev Kaur v. Kaki*, (2007) 1 SCC 546.

5.2 Interpretation of Wasayat in Indian Courts

Given that Muslim personal law is not codified for testamentary succession, courts refer to authoritative texts and established doctrines while interpreting wasiyat. The emphasis lies on ensuring that bequests are made within the prescribed one-third limit and that heirs are not unfairly deprived of their Qur'anic shares.

In *Abdul Wajid v. Amina Bi*, AIR 1966 Mad 376, the Madras High Court ruled that a bequest exceeding one-third of the estate to an heir was void to the extent of the excess unless other heirs gave posthumous consent. The court reiterated the centrality of the one-third rule and confirmed that the limit is a safeguard to preserve the Islamic principles of fixed inheritance²⁵. In *Samsam-ud-daula v. Maharaja of Bijapur* (1905) 32 IA 80 (PC), the Privy Council held that a Muslim testator's will must be judged by the standards of Muslim law, not by the Indian Succession Act. The case also clarified that oral bequests could be valid if the testator's intention was clearly established, and credible witnesses could testify to it. This ruling acknowledged the substantive validity of wasiyat without being bound by formal procedural standards of secular wills²⁶.

The decision in *Khatun Bibi v. Rajjab Ali* (AIR 1924 Cal 488) is another important precedent where the Calcutta High Court upheld a wasiyat made in favour of a non-heir within one-third of the estate. The court observed that testamentary instruments under Muslim law are intended to promote equity and allow a degree of social and spiritual fulfilment through the testator's posthumous benevolence²⁷.

These decisions affirm the judiciary's sensitivity towards the religious tenets of Muslim law while ensuring that testamentary dispositions are not misused to circumvent mandatory inheritance rights.

Chapter 6: Challenges, Ambiguities, and Need for Reform

While wills and wasiyat serve as fundamental instruments of testamentary succession in India, their legal application is fraught with numerous challenges and ambiguities. These issues range from procedural inconsistencies, evidentiary difficulties, and outdated legal formalities to

²⁵ *Abdul Wajid v. Amina Bi*, AIR 1966 Mad 376.

²⁶ *Samsam-ud-daula v. Maharaja of Bijapur*, (1905) 32 IA 80 (PC).

²⁷ *Khatun Bibi v. Rajjab Ali*, AIR 1924 Cal 488.

broader structural problems like religious pluralism, gender bias, and the absence of a uniform succession framework. This chapter critically examines these challenges and suggests the need for reform, both judicial and legislative, to promote equity, certainty, and inclusivity in the domain of testamentary succession.

6.1 Procedural and Evidentiary Challenges

One of the most persistent challenges in the implementation of wills and wasiyat arises from procedural lapses and evidentiary complexities. Many wills fail to comply with formal requirements under the Indian Succession Act, such as proper attestation, clear signature placement, or proof of sound mental capacity of the testator. This often leads to disputes and prolonged litigation, especially in cases where the will significantly deviates from natural succession patterns.

Similarly, wasiyat under Muslim law suffers from the lack of codified procedural standards. Oral wasiyat, though permissible, are notoriously difficult to prove in courts due to reliance on witness testimony and lack of documentation. This creates an evidentiary vacuum and increases the risk of manipulation and forgery. The informal nature of wasiyat makes it more vulnerable to family disputes, especially in cases of polygamous or extended families where multiple heirs stake claims.

6.2 Ambiguities in Interfaith and Mixed-Community Cases

India's plural legal system often encounters interpretive dilemmas in cases involving interfaith marriages or mixed-religion families. A key challenge arises when testators belonging to different faiths draft wills or wasiyat, leading to ambiguity about the applicable law. Courts must then navigate overlapping religious doctrines and statutory provisions, often without clear legislative guidance.

For example, in a marriage between a Muslim and a Hindu governed by the Special Marriage Act, 1954, the question arises whether testamentary succession should follow the Indian Succession Act or personal law. Such uncertainty complicates inheritance planning and leads to unpredictability in judicial outcomes. The absence of uniformity affects not only litigants but also legal practitioners who must advise clients on applicable inheritance norms²⁸.

²⁸ J.D.M. Derrett, *Religion, Law and the State in India* (Oxford Univ. Press 1968).

6.3 Gender Discrimination and Patriarchal Interpretations

Testamentary instruments, although capable of being tools of equality, are often manipulated to entrench gender-based exclusions. In both secular wills and wasiyat, there is frequent use of testamentary discretion to disinherit female heirs or assign them meagre shares. The issue is more acute in Muslim wasiyat, where doctrinal limitations on female inheritance (such as daughters receiving half the share of sons) are often preserved or minimally adjusted.

While secular law allows for gender-equal testamentary freedom, it also permits complete exclusion of female family members, provided the will is otherwise valid. Courts have rarely interfered with such exclusions unless procedural irregularities are evident. The lack of a progressive framework for examining the impact of testamentary instruments on gender justice remains a critical shortcoming²⁹.

6.4 Risk of Undue Influence and Exploitation

Elderly testators are often susceptible to coercion or undue influence from caregivers, family members, or close associates. In both wills and wasiyat, there are numerous instances where the testamentary document is engineered to favour one party at the expense of others. The burden of disproving such manipulation rests on the contesting party, who may lack access to evidence, particularly if the will is secretive or drafted without legal assistance.

Although courts have laid down principles to evaluate suspicious circumstances (as in *Jaswant Kaur v. Amrit Kaur*), the subjective nature of these assessments results in inconsistent judgments. There is a pressing need for legal safeguards that protect vulnerable testators and create presumptive protections where significant deviations from natural succession are alleged³⁰.

6.5 Lack of Awareness and Accessibility

Another major challenge is the lack of legal literacy and awareness about wills and wasiyat, especially in rural and semi-urban regions. Many people die intestate simply because they are unaware of their right to make a will or the procedures involved. In Muslim communities, the misconception that wasiyat is unnecessary due to the existence of fixed Qur'anic shares deters

²⁹ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* 137 (Oxford Univ. Press 1999).

³⁰ *Jaswant Kaur v. Amrit Kaur*, (1977) 1 SCC 369.

many from making thoughtful testamentary arrangements for non-heirs or charitable purposes. Moreover, the absence of affordable legal services, notarization, and online registration mechanisms further complicates the drafting and safekeeping of testamentary documents. This infrastructural deficit must be addressed through policy initiatives that promote legal inclusion and public awareness³¹.

Reforms should focus on introducing protective provisions for vulnerable testators and ensuring testamentary instruments align with the constitutional values of equality, non-discrimination, and justice. Finally, the broader debate around the Uniform Civil Code (UCC) should include the question of testamentary succession. Any move toward harmonisation must be sensitive to religious identities while promoting a baseline of legal clarity and gender justice.

Chapter 7: Conclusion

The comparative study of Wills under the Indian Succession Act and Wasayat under Muslim personal law reveals the complex tapestry of testamentary succession in India's pluralistic legal system. Both instruments serve a fundamental purpose: to enable individuals to express their posthumous wishes regarding the disposition of their property. Yet, their jurisprudential foundations, operational mechanisms, and normative implications diverge significantly.

Wills governed by secular and Hindu law emphasize individual autonomy, granting testators wide discretion to bequeath property to anyone, subject to procedural compliance. This flexibility, while a hallmark of modern liberal legal traditions, can also become a vehicle for exclusion, manipulation, and familial discord. In contrast, Wasayat is deeply embedded in Islamic ethical and theological constructs. It operates within clear religious limitations, most notably the one-third rule and the prohibition against bequeathing to legal heirs without the consent of other heirs. These constraints aim to safeguard the equitable distribution prescribed in the Qur'an and reflect the Islamic prioritization of familial solidarity over individualism.

Judicial interpretation has played a vital role in balancing formal compliance and substantive justice. Indian courts have shown deference to both systems, scrutinizing wills for authenticity, voluntariness, and absence of undue influence, while respecting the doctrinal integrity of

³¹ Law Commission of India, *209th Report on Proposal to Amend the Indian Succession Act, 1925* (2008).

Wasiyat. Nonetheless, courts have also been compelled to resolve contentious issues arising from interfaith marriages, procedural lapses, or attempts to subvert inheritance law through testamentary devices.

This analysis has also highlighted several persistent challenges: procedural ambiguity, lack of codification in Muslim testamentary law, gender discrimination, and inadequate legal awareness. These issues collectively demand a reformist response. Whether through piecemeal statutory amendments or the broader debate around the Uniform Civil Code, any reform must strive to harmonize personal autonomy with social justice, procedural clarity with religious sensitivity.

In conclusion, wills and wasiyat represent not only legal instruments but also reflections of cultural values, personal choices, and societal structures. A nuanced and balanced legal framework is essential to ensure that testamentary freedom is exercised responsibly, equitably, and in accordance with both the law and the conscience of the individual. The future of testamentary succession in India lies in preserving this delicate equilibrium between diversity and uniformity, autonomy and duty, tradition and modernity.

