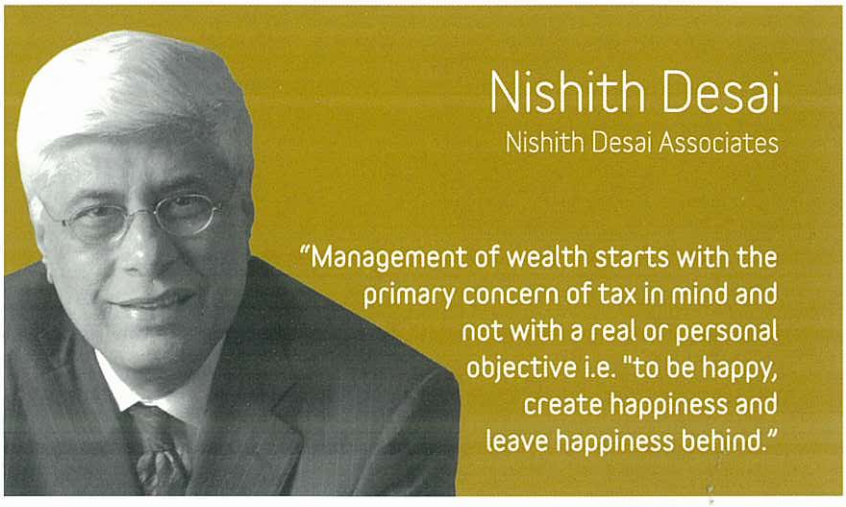

While there are valid reasons to change a will, including frequent changes of mind, further acquisition of properties, changes in marital or family status, people need to be careful when executing multiple wills though, as there is uncertainty around the validity of multiple wills when earlier wills have not been properly revoked.

The Indian Succession Act provides that wills cannot be revoked otherwise than "...marriage, or by another will or codicil, or by some writing declaring an intention to revoke the same and executed in the manner in which an unprivileged will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his directive with the intention of revoking the same."

Leading law firm Amarchand & Mangaldas provides an interesting example of a case in the Bombay High Court, where a testator leaves behind a number of executed wills on different dates, without expressly revoking any of the previous wills. The Court held that all the wills must be read together, and the sum total must be treated as the final will of the deceased testator.

However, in another case from the Supreme Court of India, the second or later will made the earlier/ previous will redundant, implying it was not necessary for the later will to carry a specific provision cancelling the earlier will. However, the final legal position on this issue still remains unclear.

To help deal with such problems which could arise, Rishabh Shroff, senior associate at Amarchand & Mangaldas recommends that wills are properly drafted with the help of professional advice, and that every will should carry an express clause revoking all previous wills and codicils.

He also recommends that any previously executed wills be physically destroyed.

A foreigner owning assets in India is not required to create an Indian will for his Indian assets and can have all his Indian assets covered in a foreign will itself. However, the will need to be probated/ certified by a foreign court that has appropriate jurisdiction over such assets, and thereafter, filed with the Indian court of appropriate jurisdiction for execution.

Process of probate

Probate refers to the legal process of administering an estate after an individual's death.

It typically involves an executor (when there is a will) or a court-appointed administrator (when there is no will) verifying, managing and distributing the deceased person's assets.

The Indian Succession Act requires wills in certain Indian cities to be probated before the distribution under the will can be effected by the executor.
Probate is the official evidence of the executor's right to represent and dispose of the testator's estate as per the terms of the Will. In the absence of an executor, the inheritors apply to the court for the appointment of an executor.

Executor is a person named by probate courts or wills to administer the estate of a deceased individual according to directions provided.

The executor is thereafter asked to establish the, proof of death of the testator, proof that the will has been validly executed by the testator and proof that the will is the last will and testament of the deceased. Proof of death is usually shown by submission of original death certificate.

Letters of administration entitle the administrator to all rights belonging to the intestate individual. To obtain letters of administration, the beneficiary must apply to the court. The court on receiving satisfactory proof of valid execution of the will issues letters of administration to the executor or to the beneficiaries in the absence of the executor.

IN THE ABSENCE OF A WILL

Intestate succession refers to when a person dies without leaving a valid will and the spouse and heirs will receive the possessions by the laws of descent and distribution and marital rights in the estate which may apply to a surviving spouse. Collectively these are called the laws of intestate succession. Like everything about India, there are multiple laws that can apply, 45, according to Ashvini Chopra of Universal Trustees, in a situation where someone dies without a valid will.

The Indian Succession Act, 1956, is the main applicable law. It outlines the process and beneficiaries in case a person dies intestate. However, it does not apply in the case of the intestacy of a Hindu, Muslim, Buddhist, Sikh, Jain, Indian Christian, or Parsi. Hindus have a unique concept of the 'Hindu Undivided Family' (HUF). A HUF or joint family is an extended family arrangement prevalent among Hindus, consisting of many generations living under the same roof. Essentially, the male members of the family continue living together, joined by their wives and unmarried daughters.

The family is headed by a patriarch, usually the oldest male called 'Karta', who makes decisions on economic and social matters on behalf of the entire family. All money goes to the common pool and all property is held jointly. Different sects of Hindus, hailing from different parts of the country, follow different traditions on the issue of inheritance. Muslims follow Sharia laws which have forced heirship, i.e. individuals cannot leave their entire estate according to their own wish. The rules require at least 2/3 of the deceased's estate to be inherited by the line of succession. But again there are different sects of Muslims or special instances, to which the forced heirship rule doesn't apply. Parsis also have their personal laws which doesn't allow inheritance to daughters who marry outside their community.

Intestate succession laws for Hindus and Muslims

	Males	Females
Hindu Personal Laws	Class I heirs include son, daughter, widow, mother, son of a predeceased son, daughter of a predeceased son, son of a predeceased daughter, daughter of a predeceased daughter, widow of a predeceased son, son of a predeceased son of a predeceased son, daughter of a predeceased son of a predeceased son and widow of a predeceased son of a predeceased son. All these heirs inherit simultaneously. If heirs of Class I are not available, the property then goes to the enumerated heirs specified in Class II of the Schedule, wherein an heir in a higher entry is preferred over an heir in a lower entry. If there is no preferential heir of any of the two classes, then the deceased's property passes to his relatives who are agnates (descended from the male line) and finally if there if there is no agnate, then upon his relatives who are cognates (descended from the female line).	Property will devolve to, firstly, upon her sons and daughters (including the children of any pre-deceased son or daughter) and her husband; secondly, upon the heirs of the husband; thirdly, upon the mother and father; fourthly, upon the heirs of the father and lastly, upon the heirs of the mother. However, any property inherited by her from her father or mother will devolve upon the heirs of her father, and any property inherited by her from her husband or father-in-law will devolve upon the heirs of her husband.
Muslim Personal Laws	Sharers will take a specified portion of the deceased's estate irrespective of anything else. A Residuary will take whatever is left over, once the Sharers have taken their specified shares. Consequently, the rule of succession is - Spouse only (one-half of estate), descendants and spouse (two-thirds), descendants only (one-half or two - thirds, depending on number of descendants), ascendants and spouse (two-thirds), parents only (one-half), and other ascendants only (one-third).	