The law of property is often regarded as relating to matters purely of interest to lawyers, and in that sense, it is described as a technical branch of the law. Almost everyone is, at some time or other, likely to be a holder of property. Also, it is a mistake to suppose that the transfer of property Act, 1882 is concerned only with immovable property. Not an inconsiderable portion of the Act is concerned with movable property. Not only do certain general principles contained in Chapter 2 apply to all property, but also certain specific chapters of the Act are very much concerned with movables. For example, the proposition that one can make a gift of the small things of life to one’s nearest and dearest is an elementary postulate; but its legal validity is entirely derived from the chapter on gifts, particularly sections 122 and 123.

Similarly, the rule that one who gives legal tender money guarantees, its genuineness, is expressly enacted in the Act, in section 121.

Apart from this legal aspect, several branches of the law of property deal with questions affecting human values. The human element becomes relevant, for example, in a formulation of the rules of the law of perpetuity, gifts to unborn persons and the like. It is only because many proprietary transactions are ordinarily entered into in a business-like manner and in calm and cool surroundings
after reflection, that the human element appears as secondary. Unlike the criminal law, there is hardly any drama in the factual situations on which the law of property operates. Also, it is true that the definite variety of human relationships that constitute the backdrop against which cases in the law of torts resent themselves is not to be met with in the law of property. Even then, it should not be overlooked that rules of the law of property—like the rules in any other branch of law—are intended to regulate human relationships.

It may also be mentioned that the level of culture of a civilization may impose restrictions on the transfer of property. Concepts of property change with social concepts. Rules belonging to the domain of the law of property may appear to be overlaid with the weight of law, because they speak the language of rights and liabilities; but, in reality, they derive their roots from current social notions.

Apart from this human aspect, there is the intellectual appeal of the law of property, in so far as it touches on the fields of economics and sociology—for example, where it seeks to define what property cannot be transferred.¹

Thus, the legal, moral and social importance of the law of property is much deeper than may appear at the first blush.

As far as the political aspect of the property is concerned, in Arndi v. Grigg,² a case dealing with the

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Nebraska ‘quiet-title” statuta, the Supreme Court of the United States observed:

“The sovereignty of the State (gives it) control over property within its limits..., and the condition of ownership of real estate therein, whether the owner be stranger or citizen, is subject to its rules concerning the holding the transfer, liability to obligations, private or public, and modes of establishing title thereto.”

Codification of the law of property may not have a long history; but it may be pertinent to point out that some of the rules of law relating to property are of great antiquity. Noyes has observed³:

“Property is not an idea nor an instinct. It is an elaborate social institution which present a continuous sequence of development from the first record of the customs and organization of early society. If we were able to accept the extreme legalistic view that it is created by law and exists only in the contemplation of the law, an analysis of the institution for economic purposes would be a relatively simple matter. For, then we would only need to adopt such definitions as are provided ready to hand in legal doctrine and practice. However, the most cursory examination of the history of legal systems must convince us that such a view is untenable. The law finds the institution of property in existence, as well at the cattiest as at all later stages of growth, and, far from creating its varieties, is occupied only in defining, maintaining and validating them.”

³ http://lawcommissionofindia.nic.in.
Property thrives in a particular environment. That property rights are moulded within, and influenced by, the environment may be illustrated from early English Law and by other examples. In Rome, for example, the peculiar cast given to the institution of property was due to its origin within that nearly self-sufficient social unit called the "familia". On the other hand, the principal contribution of pure English character arose from the dependent relation - between families, called the "feed". The two social organizations were wholly different. The Roman consisted of independent groups, on a somewhat equal footing, each represented by the person of the head of the familia.

The early English society consisted of a hierarchy. In Rome on the other hand, the social organisation was different, in some respects. The result was that in Rome the property relation, so far as it came within the purview of the law (i.e. was presented as disputes over property), was concerned primarily will, a collateral relationship between independent and equal units, while, in England, it was concerned very largely with a lineal relationship between dependent and ranked units.4

A similar phenomenon was witnessed in India in regard to the joint family. Property rights in the context of the joint family have been changing from time to time, and we have variations even from region to region.

If social notions do not remain static, no less can the law, Particularly in modern times, the law of property has undergone a great change. Formerly, the principal object of

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the law seemed to be to regulate “real” property in all its various artificial modifications, while little or no attention was bestowed upon the rules which govern personal property and rights. The mercantile law has since arisen, like a bright pyramid, and is now far more important in practice than the rules which refer to real estate. The law of immovable property, too, has changed, New and unknown arrangements of sharing proprietary rights have come into being.

It follows that what is “property” and what is “transferable” property, are changing concepts The reason for this will be clear when one examines the nature of a proprietary right. A “thing” is any “piece property”—an interest. Property law is not concerned with, and men are for the most part not dealing in, material objects. What is dealt with both in law and in economic life is one and the same. It is such “things’ or interests which are bought and sold, treasured protected, fought over. It is these “things” which are measured against themselves in exchange and which give rise to the notion of economic value. The law hardly needs a term for material objects— the objects of rights. What it needs are terms for these immaterial “things”, these bundles of rights, these interests.

That considerations not purely legal have an impact on proprietary rights could be illustrated in a different manner. Property in a thing may be recognized in one aspect, and not in another.

Reforms in the law succeed if they substantially reflect the current notions. The rationalization that was introduced into Hindu law by Vijnaneshwara in regard to property rights is well-known. It may safely be inferred that what was chiefly instrumental in giving Vijnaneshwara a pre-eminent position must have been not this or that adventitious circumstance, but the substantial merit of the system that he propounded, its suitability to the needs of the time and its general agreement with the convictions of the people. Great master as he was in the art of balancing and explaining tats.—if the need be, even of distorting them—he constantly raised the discussion above the dull level of wordy warfare by appealing to high, reason and morality.

If one bears all these aspects in mind, one would immediately perceive the objectives of the law of property and those of any reforms that may be introduced therein. The law defines, maintains and validates the varieties of property. The reform of the law should see that the content of the law keeps step with changes in society. A well designed law of property sets before itself certain objectives which it seeks to achieve in the regulation of the proprietary affairs of citizens. In regard to the aspect of transfer, the objective should be to ensure that transfer is not unduly hampered—thus avoiding one extreme,—and yet is not so unconfined as to harm society—thus avoiding another extreme. This approach should find reflection not only in the substantive rules regulating transfer, but also in the rules as to the machinery of transfer.
The fact that one grows old is a harsh reality that we all have to face and accept as time goes on. There is a factor of insecurity that creeps into one’s mind. One wants to make sure that the life he has led has been meaningful and dignified in all aspects. A will is a very important legal document, which consists of the rights of an individual after his death. It enables the individual to rightfully leave his assets and wealth to who ever he chooses to.

According to the respective law-of succession, when no will is made i.e. intestate, or if an individual dies “intestate”, the laws of succession come into play. In India, two important statutes govern succession.6 These are the Indian Succession Act, 1925 and the Hindu Succession Act, 1956.

Under the Indian Succession Act, 1925, a will has been defined as follows:

“A will is the legal declaration of the intention of the testator, with respect to his property which he desires to be carried into effect after his death”.

According to Section 59 of the Indian Succession Act, any person of sound mind who has reached the age of majority can make a will. A person who is ordinarily insane may make a will during the time he is sane.

The Indian Succession Act 1925 applies expressly to wills and codicils made by Hindus, Buddhists, Sikhs, Jains, Parsis and Christians but not to Mohammedans.

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Every law of succession defines the rules of distribution of property in case a person dies without making a will. These rules provide for a category of persons and percentage of property that will develop on each of such persons. However, it must be remembered that it is preferable that one should make a will to ensure that one’s actual intension is manifested.

Moreover, one can take into account special circumstances in the family. However, it often happens that, due to ignorance of law, people fail to make a proper, enforceable will. Consequently, confusion ensues and often, the rightful heirs do not receive their fair share.

A will can be made at any time in the life of a person. A will can be changed a number of times and there are no legal restrictions as to the number of times it can be changed. It can be withdrawn at anytime during the lifetime of the person making the will. A will has to be attested by two or more witnesses, each of who should have seen the testator signing the will.\(^7\)

A will is always revocable during the lifetime of the testator, though the will is stated to be irrevocable. But it must be revoked in manner stated in section 70 of the Succession Act, No unprivileged will or codicil nor any part thereof shall be revoked otherwise than by marriage or by another will or codicil”.

In case of revocation, the testator should give it in writing that he has made certain changes or has revoked

\(^7\) http://www.legallight.in/Wills.html.
the will. It must be signed by the testator and attested by two or more witnesses.

- If the testator wants to revoke the will, he can do so by burning or tearing or destroying it completely. It must be done with the intention to revoke the will and mere symbolic destruction is not sufficient like cancellation etc.

- There should be a clause stating that the present will is the last will of the testator and any will made prior to this would stand revoked.

- The testator cannot revoke the will by just striking it off or scratching it. He must sign it and have it attested by at least two witnesses.

- The essence of a will is that its revocable nature cannot be lost even by a declaration that it is irrevocable or by covenant not to revoke it.

While executing a will, care must be taken that there are no additions or alterations made in the will and, if made, the testator properly initiates them. Section 71 of the said act provides that no obliteration or other alteration made in any unprivileged will after execution thereof, shall have any effect except so far as the words or meaning of the will have been thereby rendered illegal or undiscernibly unless such alteration has been executed in the like manner as required for the execution of the will. This applies if the alterations are made after the will is duly executed and attested, if made before the execution, this section won't apply. It is desirable to get the alterations signed by the testator. This is a reason for which a form is prescribed by
the High Court at Bombay, for the affidavit required to be made by an attesting witness in support of the petition for probate with the will annexed, is required to state, that the alterations or erasures made in the will were made prior or at the time of the execution of the will by the testator.

Apart from different modes of transfer of property, as mentioned in the transfer of property Act, 1882, will is also an effective mode of transfer of property. The only difference between other modes of transfer and transfer by will is that the latter takes effect only after the death of the testator. However, will is also equally important mode of transfer of one's property.

As the most important tool used in estate planning, wills need always to be individualized to the creator's (or testator's) situation, estate, and desires. The written will is signed by the testator in the presence of witnesses: it operates at his or her death to distribute property according to specifications in the document itself. The law imposes certain obligations, including the primary duty to pay tax liabilities, debts, funeral expenses, and the costs of administration. The law also provides for a surviving spouse's legal rights in a decedent's estate and refuses to recognize, on public poll grounds provisions discouraging marriage, wasting assets, or tying up wealth for unreasonable periods of time.

Wills may be short and simple or long and complex. But in all, cases 'certain essential requirements must be met. The will must, for example,' be signed and witnessed to be valid. For his or her own peace 'of mind, a testator
should have a lawyer prepare the “last will and testament;” “Do-it-yourself” wills, and ‘wills written on standard forms, are generally inadvisable, largely because so many of them lead to legal problems later.

The person who dies intestate—without having made out a will—already has a kind of will: state laws governing intestacy. These laws comprise a “standard” will reflecting the Legislature’s conception, of the deceased’s probable objectives. Under intestacy laws, property left by a decedent passes to survivors according to rules fixed by the deceased’s: state of residence.

Such rules never operate as would an individual will made out according to a person’s wishes. The rules frequently lead to serious shrinkage of the estate—and often to a distribution of assets quite different from what the deceased probably wanted. If the estate is large, long and costly litigation, may follow the person’s death; If the estate is small, It may be divided among various survivors in portions too small to help anyone. If the deceased leaves minor children they will inherit part of the estate along with his widow.

The laws of intestacy provide in other ways for minor children. A guardian is usually appointed for the children, a process that involves ‘expensive and time-consuming Court proceedings The guardian has to post a bond renewable annually at a substantial premium The guardian is supervised by the Court and must account to it annually resulting in more expense and loss of time All of these procedures are designed to protect the children—and none
takes into consideration the fact that the guardian may be the children's mother 'and the deceased's widow.

Intestacy laws have other effects. They make it impossible for all assets to go to the, widow if there are children too. Nor do the Jaws consider the needs of the deceased's parents if a widow or child survives. Children are treated equally even though their needs may be quite unequal. Under the laws, faithful loving spouses and mere legal mates are treated exactly alike so are helpless widows and surviving spouses who are capable in business affairs.

In brief, the time and expense involved in making out a will is infinitesimal in comparison with the problems that may come with intestacy. The "will you already have" is always inferior to the will you ought to have—even though the laws represent the States best efforts to protect and provide for survivors.

Intestacy laws work in parallel ways in specific situations. For example here a husband leaves a widow but no children or parents, the widow inherits the entire estate—after deductions for various expenses that a proper will could have avoided. Where only the decedent's parents survive, the parents usually receive the whole estate—though in some States brothers and sisters also receive shares. As indicated, where a deceased leaves as survivors both wife and parents, the wife usually receives everything even if she is financially independent and the parents are aged and destitute. In a few States, however, the parents receive up to half of their son's estate regardless of the widow's needs.
If the wife and one child survive, each, usually, takes half the estate—but in some jurisdictions the child may take two-thirds or even virtually the entire estate under certain circumstances. Where the wife and two or more children survive, one-third of the estate generally goes to the wife and the remaining two-thirds are divided equally among the children.

The various State laws may obviously, work great hardship or Injustice. Further, the laws are subject to change without notification. A will, by contrast, can be changed only by the person making it out or under the circumstances already noted. A will should be reviewed from time to time, for example when a testator moves to another State: but the will remains the best available means of disposing of property after death.

7.2 Suggestions:

I. The researcher is of the firm belief and opines that there should not be any sale of any immovable property only on the basis of any agreement to sell/general power of attorney as these are the transactions of the nature which do not convey any title and also do not amount to transfer. Moreover, these transactions cannot be recognized as valid mode of transfer of immovable property because such transactions cannot be treated as completed or concluded transfer or as conveyance as these transactions neither convey any title nor create any interest in an immovable property. So necessary provisions should be made in the transfer of proper
Act, 1882, by amending the same so as to curb this practice of sale of immovable property through agreement to sell or through general power of attorney.

II. The study has also found that most of the civil litigation which is pending in the subordinate courts is related to disputes arising out of agreement to sell with regard to sale of immovable property. Researcher has found, during her study, that in such cases one of the parties to the agreement to sell fails to perform its part of contract which gives rise to litigation. As per the provisions of the law (The Registration Act, 1908) an agreement to sell is not required to be compulsorily registered rather it is optional and its registration solely depends upon the sweet will of the parties to an agreement to sell. Therefore, it is suggested that if the registration of an agreement to sell is made compulsory then the civil litigation arising out of the disputes regarding an agreement to sell can be curtailed down to a great extent. Therefore the researcher opines and suggests that the requisite and necessary amendment may be carried out in the present law by the law makers and incorporate the necessary provisions by making the registration of the agreement to sell to be compulsory.

III. During the present study the researcher has also found that no time limit has been prescribed under the present law regarding execution of an agreement to sell. While entering into an agreement to sell, it has come across in the study, the parties generally fixed a
long time for the registration of the sale deed of immovable property after taking the earnest money from the purchaser. During this long period for execution of the agreement to sell the prices of the property used to increase upto a considerable level due to which the seller changes his mind for selling the property and steps back from the agreement to sell which sets the base for litigation. By putting limitation on the time limit for execution of an agreement to sell as well as the other modes of transfer of property, the litigation arising out of the disputes on such like matters can be put to rest. It will also have a check on the so called property dealers who used to sell the property many a times on the basis of the agreement to sell alone before it could be registered in favour of the actual and genuine buyer/purchaser after executing the agreement to sell. Therefore, the researcher strongly suggests that the legislation may think on this issue and carry out necessary amendment in the law dealing with the subject matter.

IV. The researcher in her study has also found the necessity and importance of a good system of conveyancing. Conveyancing is to the law of property what pleadings are to the law of civil procedure. Although, today land is principally a mercantile commodity and soleability is a primary incident of its ownership, the modes of conveyancing remain essentially those that originated hundred of years ago, for no compelling reasons. There is a need for proper
training in conveyancing. This subject, nevertheless, is of utmost importance. During the study, it came to the notice of the researcher that one reason for the present state of affairs is the fact that there are no legal journals dealing with the theory and practice of conveyancing in India. Though, there are a few books yet these are not enough to focus an attention on development in law and practice concerning conveyancing and do not deal with intricate examples of drafting of interest to those mythical and overburdened creatures. Therefore, the researcher suggests that necessary steps may be taken by the policy makers in this direction and a good and healthy system of conveyancing be set up strictly by keeping in mind the present scenario and new and effective modes of conveyancing be created/adopted to meet the need of the hour.  

V. The researcher also opines that the law of property should also be simplified. Where there is a conflict of decisions, of course, an amendment by way of a statement of the true legal position is almost always desirable. The ordinary citizen would expect that the most important matters would not be left to implication and that atleast the gist thereof would be found stated in the code. Therefore, it is suggested that ordinary citizen should be made aware about his rights and duties while dealing with any subject matter of the law of property. He should also possess the

minimum requisite information about the law of land regarding property and the goal can only be achieved by taking effective steps in this direction by the respective State Governments. In the first instance, free centers/counters may be opened in the office of every registering authority and it shall be made mandatory to both the parties to an instrument of property to visit that centre before executing the instrument in the office of the registering authority.

VI. It has also come to the knowledge of the researcher during the study that there is no uniformity regarding leveling of stamp duty on registered documents, particularly in the state of Haryana. The stamp duty applicable on registered sale deeds in the state of Haryana, in case of property being situated in urban area, is 7% on the sale consideration in case of transfer of property in favour of a male person. However, the stamp duty is leviable at the rate of 5% in case of registration of sale deed in favour of a female. The rate of stamp duty is 6% in case the sale deed is registered in favour of both male and female. Similarly in case of registration of sale deed of the property situated in rural area, in favour of a male the stamp duty is leviable at the rate of 5% on the sale consideration, whereas, the same is 3% on the sale consideration if the sale deed is registered in favour of a female. Moreover, the rate at which the stamp duty is being levied is also on the higher side. Thus, the present researcher suggests and opines that a uniform
method regarding levialtion of stamp duty on the registered documents should be followed and necessary steps in this regard should be taken by State Government and by the law makers. The uniformity in leviation of stamp duty will definitely curb the illegal transactions regarding registration of the document and there will also be complete transparency in the system as compared to the present one.

VII. The researcher is also of the firm opinion that the registration of the immovable property be made cashless by taking the system of e-governance a step further. In the present study, the researcher has come across various problems being faced by the applicants at the time of registration of their documents. The common problem which is being faced by the applicants is rampant bribery by the staff of the registering authority. The researcher is of the firm belief that once the cashless system of registration of immovable property is introduced then not only the corruption cropped up in the present system will be controlled rather it will also prevent the fake currency notes from being deposited by the applicants during the submission of registration fees at the tehsil office.

VIII. During the study, the researcher has also found it necessary and the immense need of the hour that the State Government should introduce the system of e-stamps to manage large volumes of property registrations so as to lessen the wait and hardship of
the people for registering the property. The necessity of e-stamps has arisen because of the tremendous development in various metro cities due to which the stamp duty collection has also increased. Moreover, introduction of e-stamping will also help in curbing the incidents of snatching and of misplacement of cash by the applicants. Therefore, the researcher suggests that e-stamping system should be introduced by enabling the applicants to obtain the stamp papers through internet by paying the stamp duty electronically.

IX. The researcher during her study founds that there exist a mammoth legal illiteracy amongst the majority of our populace regarding the usage, importance, registration and procedure of drafting wills particularly amongst the senior citizens hailing from the rural background. Keeping this in view the researcher proposes a state-driven legal aid movement for curbing the problems like this. The services of Legal Aid Clinics; to which the Supreme Court of India and National Legal Services Authority has been giving due importance, can be used in order to orient the masses about their legal rights relating to their powers and procedure of drafting the wills. More and more Taluk level workshops may be organized by the Legal Services Institutions for disseminating the legal knowledge amongst masses. This kind of mechanism may be fully funded by the State.

X. The researcher during her study also found that there exist gross violations of the rights of testators who
have been ignored by the family members after making them writing down their wills in their interest. These atrocities can be seen on the streets of holly city of Varindavan wherein the innocent unaware testators particularly widows from the south India, who after making their wills in favour of their kiths and kin have been left alone. Mr. Justice Altamas Kabir, Hon’ble CJI during his tenure as Executive Chairperson, NALSA took a *suo motto* action in this pathetic instance of forlorn women and directed the Mathura Legal Services Authority to conduct a study in this regard. Had these women been aware of their right of revocation of their wills, perhaps, they would not have been subjected to these pitiable conditions. The researcher proposes a mandate upon the Registrar that while registering will, he/she must orient the testators of their rights to revoke their will in the near future if need arises.

XI. The researcher firmly suggests that in order to have a relevant veracity of a will deed there may be a mechanism wherein the presence of two legal oriented persons (instead of any two persons as per the present law) may be made mandatory during the registration of will deed. The services of a magistrate and a Govt. medical legal practitioner may be made mandatory during registration of will deed by amending the present law.

XII. The researcher in the study also suggests that in the present world of Information & Computer Technology (ICT), more and more usage of computer technology
may be used in order to protect the data related to the will deed, which definitely will prove as a best method to store a subject matter of a will as compare to the tradition method, wherein paper work is largely in use which always poses a threat because of being perishable in nature.

XIII. A uniform format of a will deed may also be useful which *inter alia* covers all the description of the property to be bequeathed by the testator with all its liabilities. To meet this end, a provision for filing an affidavit along with the will, to this effect, may be made compulsory in drafting a will deed.

XIV. The researcher has also found during this study that under the present law (section 62, Indian Succession Act, 1925), there is no limit on the testator with regard to revocation of a will. As per the present law, a will is liable to be revoked or altered by the maker of it at any time when he is competent to dispose of his property by Will. Consequently, the researcher is of the opinion that some restrictions may be imposed by the policy makers with regard to the limit to the extent of which a testator can revoke his/her will. The researcher further suggests that necessary amendment to this effect may be carried out by the legislation in the present law by fixing the limit up to the extent of which a testator can revoke his/her will.

XV. The researcher has also found that it always remains a debatable point as to whether the testator was of sound mind and competent enough to dispose of
his/her property at the time of making the will. During study, the researcher has come across various cases decided by the Court of law wherein the subject matter of the dispute was to the effect that the testator was not in a healthy mind at the time of disposing the property by way of will. To meet this end, the researcher suggests that some age limit (preferably not exceeding 65 years) may be prescribed by the law makers to the extent of which a person can dispose of his/her property through will by suitable amendments in the present law. In this process the researcher also suggests that lest the present suggestion creates hardship in the present prevailing system regarding making of a will, provision should also be made regarding alteration of the will by the testator beyond the suggested limit by enabling the testator to alter or revoke the same only with the prior permission of the respective registering authority accompanied by an affidavit of the testator.

XVI. The researcher also opines that the present law regarding registration of wills (Section 18(e) of the Indian Registration Act, 1908) also needs to be modified and codified. During her study, the researcher has come across various vital aspects of the matter on the issue of registration of the wills. It is found by the researcher that most of the cases, in which wills are under challenge, the story of the cases revolves around the unregistered wills which is highly difficult task for the person who alleges the same to be
genuine and the last will of the testator, particularly when the opposite party relies on registered will duly executed by the testator. The researcher has also came across the various decisions rendered by the Honourable Supreme Court of India and by various Honourable High Court in which the subject matter of the dispute was genuineness of the will, wherein the honourable courts has observed that the presumption of truth and genuineness is attached with the registered will of the testator. Consequently the researcher is also of the firm opinion that since presumption of truth is highly attached to the register will, therefore, the necessary amendments should be carried out by the legislation in present law (i.e. Section 18(e) of the Indian Registration act, 1908) regarding registration of the wills by making it mandatory for the testator to get his will registered with the competent authority in accordance with the procedure prescribed therein.

XVII. During the present research, the researcher has further found that the role of executors of a will is responsible and demanding one as it involves handling of large sums of money. The researcher has come across various cases wherein coincidentally the testator died along with the executor of his will, for example in case of wife being the executor of the property of her husband and both dies together in a plane crash or car accident. Therefore, the researcher suggests that the requisite amendments should be
carried out in the present law by the law makers by specifying the list of executors to be appointed mandatory by the testator in various circumstances and situations. It may be left to the testator to appoint the executor of his choice from the list of executors specified therein.

XVIII. The researcher has also found in her study that in most of the cases, where the will was under challenge, the courts of law has came to the conclusion that the will in dispute has been fabricated and is forged one. In the present scenario of information and technology, to curb the forgery of wills, the researcher suggests that the event of execution and registration of the will by the testator should be videotaped. The researcher is of the firm opinion that in case the event of execution and registration of a will deed is made mandatory to be videotaped by the law makers by amending the provisions of the present law then the forgery and fabrication of the will can be reduced to a great extent.

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