

**WHERE THERE IS A WILL, THERE IS NO WAY:  
COVID-19 AND A CASE FOR THE RECOGNITION  
OF E-WILLS IN INDIA AND OTHER COMMON  
LAW JURISDICTIONS**

*Naman Anand\* & Dikshi Arora\*\**

ABSTRACT

*The question of providing due recognition to E-Wills is not a new one. As industries across the world increasingly rely upon technology during the global outbreak of COVID-19, it should come as no surprise that legal professionals have renewed their interest in the present topic. However, at the outset, we must view the present situation with a simultaneous sense of both caution and excitement. If we keep the technological dangers apart (in arguendo), the present situation opens the door for courts to intervene and to bring about a sudden overhaul of the ancient Family and Succession Law regime in commonwealth nations. But on the other hand, numerous hurdles exist—namely with regard to the recording and testing of the genuineness of an E-Will, for example. The question of the validity of an E-Will in probate cases under the Succession Acts of various common law countries is also an interesting one. This article seeks to move a step ahead from Ghatak by analyzing how two years on from her 2017 publication, the COVID-19 crisis has, in all probability, made major common law jurisdictions (with a focus on India, the most populous and judicially overburdened of them all) move into the uncharted territory of recognizing E-Wills as a necessity. Further, this article addresses how the courts can retain their active role and thus obviate the need for a legislative process (presumably, a hushed ordinance) in order to formalize the inclusion of digital methodology.*

KEYWORDS: COVID-19, Comparative Law, Common Law, Family Law, E-Wills, Probate

I.	INTRODUCTION.....	78
II.	MAKING LAWS PANDEMIC PROOF .....	79
III.	ADMISSIBILITY BEFORE LAW .....	80
IV.	A LEGISLATIVE ANALYSIS OF RECENT DEVELOPMENTS RELATED TO E-WILLS ACROSS SIX COMMON LAW JURISDICTIONS.....	81
	A. <i>The United States</i> .....	81
	1. <i>Taylor v. Holt: A Convolutd Scholastic Precedent</i> ..	82
	B. <i>South Africa</i> .....	84
	C. <i>Canada</i> .....	85

1. “Dispensing Powers”.....	86
D. United Kingdom.....	87
E. New Zealand.....	88
F. Australia.....	89
V. E-WILLS, THE RIGHT TO PRIVACY, AND THE CLOUD CONUNDRUM: AN INDIA PERSPECTIVE.....	90
VI. CONCLUSION.....	92

## I. INTRODUCTION

Since the World Health Organization’s declaration of the COVID-19 outbreak as a pandemic,<sup>1</sup> the usage of technology has surely risen to the forefront of legal affairs.<sup>2</sup> From online dispute resolution<sup>3</sup> to rescue mergers,<sup>4</sup> legal professionals are now reorganizing their lives over the “World Wide Web.”<sup>5</sup> Thus, it does not require a “Sherlock Holmes” to infer that individuals today would like to make sure that their legal documents, such as wills or codicils, can be signed, uploaded, and stored online so that when the time comes, the benefactors could access them with ease.<sup>6</sup> Wills are documents that can easily influence the legacy of

---

\* Naman Anand is the Founder and Managing Editor of the Indian Journal of Projects, Infrastructure, and Energy Law (IJPIEL). He is presently a third-year B.A. LL.B. (Honours) student at the Rajiv Gandhi National University of Law (RGNUL), Punjab and is a Nominated Member at the RGNUL Financial and Mercantile Law Review (RFMLR). He can be reached at namananand.esq@gmail.com. Special thanks to Dr. Paramjit S. Jaswal (Hon’ble Vice Chancellor, RGNUL) and Dr. Ruchi Anand (Dept. of Commerce, DAV College, Chd.) for their active support and guidance.

\*\* Dikshi Arora is a Junior Editor at the Indian Journal of Projects, Infrastructure, and Energy Law (IJPIEL). She is presently a second-year B.A. LL.B. (Honours) student at the Rajiv Gandhi National University of Law (RGNUL), Punjab. She can be reached at dikshiarora@rgnul.ac.in.

1. Rachel Rettner, *Coronavirus outbreak finally declared a pandemic, WHO says*, LIVE SCI. (Mar. 11, 2020), <https://www.livescience.com/coronavirus-pandemic-who.html>.

2. Lyle Moran, *Will the COVID-19 pandemic fundamentally remake the legal industry?*, ABA J. (Aug. 1, 2020), <https://www.abajournal.com/magazine/article/will-the-covid-19-pandemic-fundamentally-remake-the-legal-industry>.

3. Bhaven Shah & Mehak Vohra, *Justice in 2020: BC (Before Corona), DC (During Corona) and AC (After Corona)*, LAWYERED (Apr. 6, 2020), <https://www.lawyered.in/legal-disrupt/articles/justice-2020-bc-corona-dc-during-corona-and-ac-after-corona/>.

4. Paolo Palmigiano, Louisa Penny & Pauline Bénézet-Toulze, *Competition law and coronavirus: what’s the connection?*, TAYLOR WESSING (Apr. 2, 2020), <https://united-kingdom.taylorwessing.com/en/competition-law-and-coronavirus-whats-the-connection>.

5. See Moran, *supra* note 2.

6. See Simon Goldring & Simon Gibb, *Where There’s a Will There’s a Way – Executing Wills During COVID-19*, MCDERMOTT WILL & EMERY (Mar. 27, 2020), <https://www.mwe.com/it/insights/where-theres-a-will-theres-a-way-executing-wills-during-covid-19>.

the person who writes it as well as the lives of those who were related to him or her.<sup>7</sup> The plot gets murkier when we consider the fact that there is a global pandemic going on.<sup>8</sup> With “lockdowns” turning into the new normal,<sup>9</sup> the probate registration procedure is also delayed, with its legal ramifications being debated and enumerated by experts across the world.<sup>10</sup> This is especially true across common law jurisdictions rife with archaic family law legislations dating back to the times of the British Empire.<sup>11</sup> Hotly contested legal claims over both intestate and testamentary succession are a common phenomenon in India, with litigation periods spanning across over two decades in certain cases.<sup>12</sup> For example, one of the authors witnessed a Regular Second Appeal concerning a succession dispute filed in 1984.<sup>13</sup> When we take into account the effects of the ongoing pandemic, the process of recognizing digitized wills is indeed neither unwarranted nor an act that should be delayed.<sup>14</sup>

## II. MAKING LAWS PANDEMIC PROOF

Although the Indian Succession Act came into force only six years after the end of the world’s last major pandemic—the Spanish Flu of 1918–19 totaling over seventeen million deaths in India<sup>15</sup>—the

---

7. See Ben Geler, *What Is a Will, and How Do You Write Your Own?*, SMARTASSET (Feb. 24, 2020), <https://smartasset.com/estate-planning/what-is-a-will>.

8. Rettner, *supra* note 1.

9. Zahrah Mazhar, *Humans Under Lockdown*, DAWN (May 22, 2020), <https://www.dawn.com/news/1558250>.

10. Corina S. Weigl et al., *Pandemics, Policy, Probate, Powers of Attorney and Private Client Services: We’re Here to Help*, FASKEN (Mar. 25, 2020), <https://www.fasken.com/en/knowledge/2020/03/24-covid-19-pandemics-policy-probate-powers-of-attorney>.

11. Marry Ann Glendon et al., *Common Law*, ENCYC. BRITANNICA (Nov. 29, 2019), <https://www.britannica.com/topic/common-law>; *Divorce law: Plans to overhaul ‘archaic’ laws revealed*, BBC (Sept. 15, 2018), <https://www.bbc.com/news/uk-45525979>.

12. Vishal Gada, *Succession is the biggest challenge being faced by Indian families*, CAMPDEN FB (Jan. 24, 2019), <http://www.campdenfb.com/article/succession-biggest-challenge-being-faced-indian-families>; Ashwini Kumar Sharma, *3 steps to take when you inherit a property*, MINT, <https://www.livemint.com/Money/57stHYz0srQrzTOrujoOfM/3-steps-to-take-when-you-inherit-a-property.html> (last updated Dec. 23, 2015).

13. *Jagir Singh v. Dalip Kaur*, AIR 1996 PH 158 (India).

14. See Kyle B. Gee, *The COVID-19 Pandemic Raises the Importance of Understanding Whether and When Documents May Be Signed Electronically and Witnessed or Notarized Remotely*, BAKER HOSTETLER (Mar. 23, 2020), <https://www.bakerlaw.com/alerts/the-covid-19-pandemic-raises-the-importance-of-understanding-whether-and-when-documents-may-be-signed-electronically-and-witnessed-or-notarized-remotely>.

15. I.D. Mills, *The 1918-19 Influenza Pandemic: The Indian Experience*, 23 INDIAN ECON. & SOC. HIST. REV. 1, 7–10 (1986).

legislation had no specific provision to deal with the execution of wills in case of a pandemic.<sup>16</sup>

This lacuna and its effect, particularly on section 63,<sup>17</sup> was noted by the 110th Law Commission of India Report in 1985, which recommended easing the formalities relating to the execution of a will in situations where the individual wishing to execute a will perceives a very high threat of death, and that situations of “pestilence” must be considered and suggested an amendment.<sup>18</sup> Sadly, the same was never done and the law—as it stands today—possesses no provision as to safeguard the interests of individuals in the case of a pandemic.<sup>19</sup>

This paper shall progress in three parts. It shall first look at the challenges that traditional governance structures in India might face in the recognition of electronic wills (E-Wills). The second part shall address how to deal with the same. The third part shall contain a concluding note and the author’s own analysis.

### III. ADMISSIBILITY BEFORE LAW

In common law nations, three broad requirements are needed in order for a court to consider a will as legitimate.<sup>20</sup> The requirements are:

- 1) the will must be rendered in writing;
- 2) the will must be signed; and
- 3) the will must have been attested to by a stipulated amount of individuals, who shall act as witnesses.<sup>21</sup>

It is interesting to note that, in India, even an illegible or incomplete mark can be considered as signifying the intent of the testator.<sup>22</sup> The same has also been further held to possess evidentiary value.<sup>23</sup> It is even more appreciable to note that wills in India do not require a stamp duty or notarization, which has turned into a legal hurdle in jurisdictions, such

---

16. Radhika Gaggar, *India–Wills in the Time of Corona: Challenges And Solutions*, CONVENTUS L. (Apr. 2, 2020), <http://www.conventuslaw.com/report/india-wills-in-the-time-of-corona-challenges-and>.

17. *Id.*

18. *Id.*

19. *Id.*

20. John H. Langbein, *Substantial Compliance with the Wills Act*, 88 HARV. L. REV. 489, 490 (1975).

21. *Id.*

22. K.H. Kaji & Manish K. Kaji, *The Entire Law On The Making Of Wills*, ITATONLINE 1, [https://itatonline.org/articles\\_new/wp-content/files/The\\_Entire\\_Law\\_On\\_The\\_Making\\_Of\\_Wills.pdf](https://itatonline.org/articles_new/wp-content/files/The_Entire_Law_On_The_Making_Of_Wills.pdf) (last visited Sept. 17, 2020).

23. *See Rakesh Mohindra v. Anita Beri*, (2015) 16 SCC 483, 6 (India).

as in the United States.<sup>24</sup> Excluding wills that are intermingled with religious laws, a vast majority of laws relating to succession in India are attributable to the British Raj—originating from the Wills Act of 1837.<sup>25</sup> Thus, an analysis of the United Kingdom and other common law jurisdictions is necessary as legislators continuously vie to shoehorn E-Wills into the existing framework of things.<sup>26</sup>

#### IV. A LEGISLATIVE ANALYSIS OF RECENT DEVELOPMENTS RELATED TO E-WILLS ACROSS SIX COMMON LAW JURISDICTIONS

##### A. *The United States*

The United States has been the pioneer of data protection laws across the world, enacting the Stored Communications Act (SCA) in 1986—as part of Title II of the Electronic Communications Privacy Act—to provide a regulatory framework for electronic communications held by third party Internet Service Providers (ISPs).<sup>27</sup> The Act has been criticized for being archaic and unable to meet the challenges of modern technology, particularly as to how useful it shall be in protecting the rights of individuals who choose to store their data, such as wills, with third party ISPs on the Internet.<sup>28</sup> Although certain progressive decisions, such as the Act's usage to disallow school authorities to spy on their students, have occurred,<sup>29</sup> United States courts have attained notoriety for rendering convoluted decisions by literally construing the existing statute as it stood in 1986 or by excluding the act altogether.<sup>30</sup> Thus, these terse

---

24. Shabnum Kajiji, *It is not necessary to register a Will for it to be valid*, MINT, <https://www.livemint.com/Money/x7Yh40v1N3m7qToh1uvCkP/It-is-not-necessary-to-register-a-Will-for-it-to-be-valid.html> (last updated June 15, 2015).

25. See generally Wills Act 1837, 7 Will. 4 & 1 Vict. c. 26 (Eng.); Stanley A. Wolpert, *British Raj*, ENCYC. BRITANNICA, <https://www.britannica.com/event/British-raj> (last updated Sept. 8, 2020); Shekhar Agrawal, *Succession Laws in India in a Nutshell*, L. POINT, [https://www.thelawpoint.com/post/succession-laws-in-india-in-anutshell?utm\\_source=Mondaq&utm\\_medium=syndication&utm\\_campaign=LinkedIn-integration](https://www.thelawpoint.com/post/succession-laws-in-india-in-anutshell?utm_source=Mondaq&utm_medium=syndication&utm_campaign=LinkedIn-integration) (last updated June 26, 2020); see generally Raj Rani, "Testamentary Succession: A Comparative Study of Family Laws in Indian Context" 1, 3–5 (Oct. 2010) (unpublished Ph.D. thesis, Maharshi Dayanand University) (on file with author) <https://shodhganga.inflibnet.ac.in/handle/10603/132452>.

26. Gee, *supra* note 14.

27. CHARLES DOYLE, CONG. RSCH. SERV., R41733, PRIVACY: AN OVERVIEW OF THE ELECTRONIC COMMUNICATIONS PRIVACY ACT 6 (Oct. 9, 2012); 18 U.S.C. §§ 2701–2712.

28. Meera Unnithan Sossasamon, *Subpoenas and Social Networks: Fixing the Stored Communications Act in a Civil Litigation Context*, 57 LOY. L. REV. 619, 635–36 (2011).

29. *Robbins v. Lower Merion Sch. Dist.* No. 10-655, 2010 WL 3421026, at 8, 18 (E.D. Pa. Aug. 30, 2010).

30. See *O'Grady v. Superior*, 139 Cal. App. 4th 1423, 1431–32, 1440–41 (Cal. Ct. App. 2006).

decisions have left individuals with little to no data protection or privacy.<sup>31</sup>

### 1. *Taylor v. Holt*: A Convoluted Scholastic Precedent

One of the earliest recognized common law cases pertaining to the recognition of E-Wills is the Supreme Court of Tennessee's 2003 judgment in *Taylor v. Holt*.<sup>32</sup> In this case, the testator wrote a will on his personal computer and signed the last page of the document by signing his name in a cursive font, thus, clearly distinguishing it from the rest of the document.<sup>33</sup> A legal battle then ensued between the decedent's girlfriend, the sole beneficiary of the electronic will, and the decedent's sister, who would have been the sole intestate beneficiary as per the laws of the State.<sup>34</sup> The Court held that the definition of the term "signature," as per the law, was "any other symbol or methodology executed or adopted by a party with intention to authenticate a writing or record."<sup>35</sup> On the basis of the aforementioned facts, the Court's decision seems highly liberal and progressive.<sup>36</sup> However, Boddery<sup>37</sup> very rightly notes the fact that most commentaries on this leading case ignore key details—that two disinterested neighbors, whom by sheer chance came to visit the testator at his residence, happened to witness the e-signature process, and that no remote witnesses were involved.<sup>38</sup> When these facts are analyzed in a proper manner, it seems highly evident that the Court's decision is possibly a convenient application of the "harmless error" rule<sup>39</sup> rather than the highly progressive quantum leap it is projected as by numerous legal scholars.<sup>40</sup> It is important to note that as of 2020, Nevada,<sup>41</sup> Arizona,<sup>42</sup> Florida,<sup>43</sup> and Indiana<sup>44</sup> remain the only states to make E-Wills

---

31. In re Order Pursuant to 18 U.S.C. 2703(d), 830 F. Supp. 2d 114, 127 (E.D. Va. 2011); Daniel Shickich, *What Your Tweet Doesn't Say: Twitter, Non-Content Data, and the Stored Communications Act*, 8 WASH. J.L., TECH. & ARTS 457, 472 (2013).

32. *Taylor v. Holt*, 134 S.W. 3d 830, 830–31 (2003).

33. *Id.* at 830–31.

34. *Id.* at 831.

35. *See id.* at 833 (quoting TENN. CODE ANN. § 1-3-105 (27) (1999)).

36. *See id.*

37. Scott S. Boddery, *Electronic Wills: Drawing a Line in the Sand Against Their Validity*, 47 REAL PROP. TR. & EST. L. J. 197, 197 (2012).

38. *Id.* at 202–03.

39. *Id.* at 203.

40. *Id.* at 202.

41. NEV. REV. STAT. § 133.085 (2019).

42. ARIZ. REV. STAT. § 14-2518 (LexisNexis 2020).

43. FLA. STAT. § 731.201(40) (2019).

44. IND. CODE § 29-1-21-1 (2020).

fully legal.<sup>45</sup> Additionally, Pennsylvania has temporarily suspended statutes requiring notaries to be physically present and has allowed remote notarization of estate planning, such as wills, during COVID-19.<sup>46</sup>

Despite the catastrophic loss of lives caused by COVID-19 in the country,<sup>47</sup> the future still seems bright for E-Wills in the United States as Wisconsin joined twenty-two other states in approving the Remote Online Notarization (RON) mechanism, widely seen as a gateway to permit E-Wills under a few state laws in the United States.<sup>48</sup> With the United States being the most affected nation across the world (with respect to the COVID-19 outbreak)<sup>49</sup> many state governments in the United States have introduced numerous emergency measures.<sup>50</sup>

Most notably, the Governor of Georgia, on April 8, 2020, issued an executive order enabling the suspension of the mandatory requirement of proceeding with notary and witness-related formalities until May 30, 2020.<sup>51</sup> Pennsylvania has also suspended in-person requirements for real estate related transactions.<sup>52</sup> Delaware also issued an eleventh modification to its “Declaration of a State of Emergency,” authorizing succession and notary activities via audio-visual means.<sup>53</sup> As of today, Vermont is the only state where e-recordings are not legally acceptable in any form, although the process of e-recording varies by state.<sup>54</sup> Certain

45. GERRY W. BEYER, ELECTRONIC WILLS—WHAT ESTATE PLANNERS NEED TO KNOW (Oct. 2019), <https://www.ti-trust.com/wp-content/uploads/2019/10/PT-Newsletter-October-2019.pdf>.

46. Amanda DiChello & Cozen O’Connor, *Pennsylvania Allows Remote Notarization Of Estate Planning Documents During COVID-19 Crisis*, JD SUPRA (Apr. 24, 2020), <https://www.jdsupra.com/legalnews/pennsylvania-allows-remote-notarization-72039>.

47. Marty Johnson, *U.S. Reports More Than 25,000 Deaths in July*, HILL (Aug. 1, 2020), <https://thehill.com/policy/healthcare/510103-us-posts-more-than-25000-covid-19-deaths-in-july>.

48. Sun Lee & Jeffrey Page, *UPDATE: E-Signatures and Remote Notarization*, JD SUPRA (May 14, 2020), <https://www.jdsupra.com/legalnews/update-e-signatures-and-remote-online-35244>.

49. *U.S., the world’s hardest-hit country, reaches 5m coronavirus cases*, ALJAZEERA (Aug. 9, 2020), <https://www.aljazeera.com/news/2020/08/world-hardest-hit-country-reaches-5m-coronavirus-cases-200809143758394.html>.

50. *State Data and Policy Actions to Address Coronavirus*, KFF, <https://www.kff.org/health-costs/issue-brief/state-data-and-policy-actions-to-address-coronavirus/> (last updated Oct. 23, 2020).

51. Exec. Order No. 04.09.20.01, GOVERNOR BRIAN P. KEMP OFF. GOVERNOR (Apr. 9, 2020), <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders>.

52. Charles Morris, Lauren Capitini, & Maddie Bailey, *Remote online notarization and COVID-19*, REJOURNALS (Apr. 14, 2020), <https://rejournals.com/remote-online-notarization-and-covid-19>.

53. EXEC. DEP’T DOVER, ELEVENTH MODIFICATION OF THE DECLARATION OF A STATE OF EMERGENCY FOR THE STATE OF DELAWARE DUE TO A PUBLIC HEALTH THREAT (2020), <https://governor.delaware.gov/health-soe/eleventh-state-of-emergency>.

54. *The Basics of E-Recording*, AM. LAND TITLE ASS’N. BLOG (June 25, 2019, 1:11 PM), <https://blog.alta.org/2019/06/the-basics-of-e-recording.html>.

states, such as Hawaii, have mechanisms to validate e-recordings for numerous purposes, including wills.<sup>55</sup>

In addition to the state law amendments, a valiant effort has also been made to enact a federal law paving the way for completing legal formalities through virtual means.<sup>56</sup> On March 18, 2020, Kevin Cramer—a Republican Senator from North Dakota—introduced The Securing and Enabling Commerce Using Remote and Electronic Notarization (SECURE) Act of 2020.<sup>57</sup> The Act shall empower every registered public notary in the United States to perform their jobs via the RON mechanism.<sup>58</sup> What is particularly appreciable is the Act’s utilization of “multi-factor authentication” in order to prevent fraudulent practices,<sup>59</sup> which can indeed turn out to be a pioneering effort in case this bill becomes law.<sup>60</sup> As of now, it has been read twice and referred to the Committee on the Judiciary.<sup>61</sup>

### B. South Africa

The Electronic Communication Transaction Act (ECT) is the central legislation pertaining to all matters related to data stored in an electronic form in South Africa.<sup>62</sup> The Act was passed in 2002 and amended once in 2008<sup>63</sup> to recognize electronic data transmission and “promote universal access to electronic communications . . . transactions[,] and the use of electronic transactions by SMMEs [Small, Medium and Micro Enterprises].”<sup>64</sup> However, section 4(4) of the ECT Act places several restrictions before any form of electronic data can be recognized as a valid will under the Wills Act 7 of 1953.<sup>65</sup> The two most major restrictions are: (1) conclusive proof of the fact that the testator has indeed made the will by his or her own self, or of their own volition; and (2) the document was accepted by the testator as final and not as a draft

---

55. *Bureau of Conveyances E-RECORDING*, ST. OF HAW. BUREAU OF CONVEYANCES, <https://dlnr.hawaii.gov/boc/e-recording> (last visited Sept. 11, 2020).

56. Securing and Enabling Commerce Using Remote and Electronic Notarization Act, S.3533, 116th Cong. § 3 (2020).

57. *Id.* § 1.

58. *Id.* § 3.

59. *Id.* § 4 (describing multiple factors used in authenticating electronic wills); David Strom, *Exploring multifactor authentication benefits and technology*, SEARCH SECURITY (Jan. 2019), <https://searchsecurity.techtarget.com/feature/The-fundamentals-of-MFA-Multifactor-authentication-in-the-enterprise>.

60. See generally S.3533; Strom, *supra* note 59.

61. S.3533.

62. See Electronic Communications and Transactions Act 25 of 2002 (S. Afr.).

63. Consumer Protection Act 68 of 2008 § 1 (S. Afr.).

64. Electronic Communications and Transactions, *pmbi.* (S. Afr.).

65. Wills Act 7 of 1953 § 2 (S. Afr.); Electronic Communications and Transactions Act, § 4(4) (S. Afr.).



version.<sup>66</sup> These two restrictions have generally led to courts adopting a skeptical opinion regarding probate matters, where the validity of a will is contingent solely on an electronic document.<sup>67</sup> This skepticism renders the purpose of section 2(1)(c) of the legislation, seeking to “promote the understanding and, acceptance of and growth in the number of electronic transactions in the Republic,” as altogether redundant.<sup>68</sup>

The landmark 2002 judgment of *MacDonald* is one of the few cases in which South African courts have gone ahead and interpreted the ECT Act in a liberal manner.<sup>69</sup> In this case, the deceased, a former International Business Machines Corporation (IBM) employee, committed suicide and left four notes stating that his last and final will and testament was stored in the hard drive of his computer.<sup>70</sup> The legal question that arose was whether the retrieved electronic will, which was not signed by the decedent or any witnesses, was a valid will or not.<sup>71</sup> The Court was quick to note that, although the will failed to satisfy South African law, it validated the will by applying a “rescue” provision under section 2(3) of the Act by which courts can validate *prima facie* illegal wills, provided the intention to make the same is manifest and bona-fide.<sup>72</sup> Clearly, extreme factual circumstances led to this decision,<sup>73</sup> and thereafter, the Court adopted such approaches sparingly—with a subsequent High Court decision reducing the rescue provision’s mandate solely to cases where it can be proved that the testator drafted the document under question themselves.<sup>74</sup>

### C. Canada

Recently, provinces—such as Ontario and Quebec—have made emergency provisions allowing virtual witnessing and other procedures related to the making of E-Wills.<sup>75</sup> In April 2020, the Ontario government amended its Emergency Management and Civil Protection Act in order to promote the continuance of the steady execution of estate

---

66. Electronic Communications and Transactions Act, §§ 13(3)(a), (5)–14 (S. Afr.).

67. David Burton, *Where You Can Go Wrong with a Do-It-Yourself Will*, CNBC (Jan. 17, 2013), <https://www.cnbc.com/id/100388275>.

68. *See* Electronic Communications and Transactions Act, § 2 (S. Afr.).

69. *MacDonald v. The Master* 2002 (3) SA 64 (N) at 11 (S. Afr.).

70. *Id.* at 2–4.

71. *See id.* at 2, 6.

72. *Id.* at 7, 13.

73. *Id.* at 7.

74. *Young v Master of the High Court, Durban* 2015 (2) SA 2 (H) at 5 para. 12, 8 para. 18–19 (S. Afr.).

75. Michael Rosen et al., *Virtual testimony in wills and powers of attorney*, BLG, <https://www.blg.com/fr/insights/2020/04/virtual-witnessing-of-wills-and-powers-of-attorney> (last updated May 30, 2020).

planning documents during the pandemic.<sup>76</sup> On April 7, 2020, virtual signing of documents was permitted in which the document had to be passed through three stages (testator to witnesses) for signing, one by one.<sup>77</sup> Later, changes were made to allow three signatories to sign on one separate and identical document, which would be considered one document once compiled.<sup>78</sup>

### 1. “Dispensing Powers”

In *Rioux v. Coulombe*, the police found a note guiding them to an electronic file in the hard disk stored in the testator’s personal computer after she committed suicide.<sup>79</sup> The note said, “[t]his is my will/Jacqueline Rioux/1 February 1996,” and the file contained directions of a testamentary nature, which stated “my credit card amount shall go to, my house shall go to, etc...,”<sup>80</sup> However, the note was not followed by a signature.<sup>81</sup> The Court declared the electronic will to be valid under the “dispensing powers” of Quebec law, despite the absence of the legal requisites of a will as per Article 726 of the Code Civil du Quebec.<sup>82</sup>

In *Re Buckmeyer Estate*, the decedent, John Buckmeyer, sent an email to the executor of his will mentioning certain additional duties to be undertaken by the executor prior to reaping the benefits arising out of the will.<sup>83</sup> The question that arose was whether the email was a testamentary document under section 37 of the Wills Act 1996 or not.<sup>84</sup> The Court found that the email was drafted by the testator when his health was deteriorating, and in his last days, he wanted to give directions to the executor concerning his funeral services.<sup>85</sup> The email was duly signed by typing his name at the end, which the Court considered as an electronic signature under The Electronic Information and Documents Act 2000.<sup>86</sup> However, the email concerning the directions was not declared as a testamentary document and, hence, probate was not ordered.<sup>87</sup>

---

76. *Id.*

77. *See* Signatures in Wills and Powers of Attorney O. Reg 129/20 (Can.).

78. Order Under Subsection 7.02 (4) of the Act - Signatures in Wills and Powers of Attorney, O. Reg. 164/20, s.1 § 2 para. 1.

79. *Rioux v. Coulombe*, 1996 CarswellQue 1226, para. 2 (Can. Que.) (WL).

80. *Id.* at para. 3.

81. *Id.* at para. 21–30.

82. *Id.*; Civil Code of Quebec, S.Q. 1991, c 64, art. 726 (Can.).

83. *Buckmeyer Estate (Re)*, 2008 SKQB 260 para. 33 (Can.L.J.).

84. *Id.* at para. 4.

85. *Id.* at para. 5.

86. *Id.* at para. 5, 7.

87. *Id.* at para. 32.

After numerous provinces, such as Saskatchewan,<sup>88</sup> British Columbia,<sup>89</sup> and Alberta,<sup>90</sup> recommended the addition of the same, the power for the courts to validate *prima facie* non-compliant wills was added in the revised version of the Uniform Wills Act in 2015—passed by the Uniform Law Commission of Canada.<sup>91</sup> The Act recommended that, where a court is satisfied with the evidence presented to prove that an intention to formulate a will existed, it should declare the document fully effective even if it is not in accordance with the law.<sup>92</sup>

British Columbia incorporated this provision in section 58 of the Wills, Estates and Succession Act.<sup>93</sup> Alberta's legislations do not prohibit E-Wills, but do not enable them either, creating a convoluted scenario.<sup>94</sup> Saskatchewan, which had otherwise not enacted any legislation permitting E-Wills, enacted the Wills (Public Emergencies) Act 2020 on April 16th of this year in order to enable the same during the COVID-19 period via "remote witnessing,"<sup>95</sup> along with mandating courts to utilize their "dispensing powers" effectively during this period in line with the 2014 federal legislation.<sup>96</sup>

#### D. United Kingdom

The Victorian-era Wills Act of 1837 is still the primary law regulating all probate matters in the United Kingdom.<sup>97</sup> The Act, as applied to England, Wales, and Northern Ireland, was amended in 1852, allowing for a signature anywhere on the document as long as it represents the testators intent and is physically signed in the presence of a specified number of witnesses; Scotland law requires that every page of the will must be signed.<sup>98</sup> Nonetheless, the usage of e-signatures and

---

88. L. REFORM COMM'N OF SASKA., REPORT ON ELECTRONIC WILLS 26 (2004), <http://lawreformcommission.sk.ca/electwills2.pdf>.

89. B.C. L. INSTIT., BRITISH COLUMBIA SUCCESSION LAW REFORM PROJECT, WILLS, ESTATES AND SUCCESSION: A MODERN LEGAL FRAMEWORK 30 (2006), [https://www.bcli.org/sites/default/files/Wills\\_Estates\\_and\\_Succession\\_Report.pdf](https://www.bcli.org/sites/default/files/Wills_Estates_and_Succession_Report.pdf).

90. John Gregory, *Electronic Wills Down Under and Closer to Home*, SLAW (Jan. 18, 2018), <http://www.slaw.ca/2018/01/18/electronic-wills-down-under-and-closer-to-home>.

91. Uniform Wills Act, S.C. 2015, c 10 (Can.).

92. *Id.*

93. Wills, Estates and Succession Act, S.B.C. 2009, c 13, art 58 (Can.).

94. Gregory, *supra* note 90.

95. See The Wills (Public Emergencies) Regulations, S. Gaz. 2020, c L-10.2 s 3-4 (Can.).

96. Katherine Melnychuk, *One Click Away: The Prospect of Electronic Wills in Saskatchewan*, 77 SASK. L. REV. 27, 32 (2014).

97. See generally Wills Act 1837, 7 Will. 4 & 1 Vict. c. 26 (Eng.).

98. The Wills Act Amendment 1852, 15 & 16 Vict. c. 24, § 1107 (UK); Kenneth Reid, *Testamentary Formalities in Scotland*, in TESTAMENTARY FORMALITIES, 1 COMP. SUCCESSION L. 404, 424-25 (2011); Roger Kerridge, *Testamentary Formalities in England and Wales*, in

digital signatures are not uncommon in England.<sup>99</sup> Courts in the United Kingdom have considered typing one's name at the end of the email as an electronic signature,<sup>100</sup> and the exchange of offer and acceptance via email may constitute an enforceable agreement.<sup>101</sup> The Law Commission of the United Kingdom launched a public consultation in 2017 to reform the Wills Act of 1837 by proposing incremental changes, such as digitalization of the process and mental check-ups for dementia and other medical conditions prior to rendering a will.<sup>102</sup>

### E. New Zealand

In New Zealand, The Wills Act 2007 is the federal legislation governing wills.<sup>103</sup> However, in stark contrast with its neighbor Australia, neither the legislators nor the courts have projected a favorable attitude towards the recognition of E-Wills.<sup>104</sup> The most ideal example of this approach would be in *Re Crawford Estate*, wherein the Court refused to probate a scanned copy of a will.<sup>105</sup> The decedent's solicitor had destroyed the original copy under the false presumption that probate would not be required, and kept the scanned copy.<sup>106</sup> The Court held that section 32 of The Electronic Transactions Act 2002<sup>107</sup> mandates parties to produce the original document for the purpose of evidence and an electronic version used solely for the purposes of comparison.<sup>108</sup> Part 27 of the High Court Rules 2016 deals with the granting of probate by courts in New Zealand where there is clearly an established practice of not granting probate where the original document is not available.<sup>109</sup> In

---

TESTAMENTARY FORMALITIES, *id.* at 311–12; The Wills and Administration Proceedings (Northern Ireland) Order 1994, SI 1994/1899 (N. Ir. 13) art. 2, ¶ 5.

99. Britney Pay, *The UK's Electronic Communications Act and Electronic Signatures Regulation*, EFILECABINET (Nov. 24, 2015), <https://www.efilecabinet.com/the-uks-electronic-communications-act-and-electronic-signatures-regulation>.

100. Stephen Mason, *The International Implications of Using Electronic Signatures*, COMPUT. & TELECOMM. L. REV. 161, 161 (2005) (“[w]hen a person types their name on to a file in electronic format, such as a letter, email, or other form of document, the text added is a form of electronic signature.” *Id.*).

101. *See* Raymond Bieber and Others v. Teathers Ltd. (In Liquidation) [2014] EWHC (Ch) 4205 [56]–[58] (Eng.).

102. Professor Nicholas Hopkins, *Project Data on the Public Consultation on E Wills*, L. COMM’N (July 13, 2017), <https://www.lawcom.gov.uk/project/wills>.

103. *See* The Wills Act 2007, pt 1, s 3 (N.Z.).

104. *Re Crawford (deceased)*, [2014] NZHC 609 at [9] (N.Z.).

105. *Id.* at [14]–[15].

106. *Id.* at [3].

107. *See* Electronic Transactions Act 2002, pt 3, subs 2, s 32 (N.Z.).

108. *Re Crawford (deceased)*, NZHC 609 at [11].

109. *Id.* at [7].

addition to the aforementioned requirements, the document needs to be physically available and duly signed by the testator and the witnesses.<sup>110</sup>

#### F. Australia

In Australia, the scenario is markedly different from the aforementioned jurisdictions.<sup>111</sup> It is not uncommon to make a will in an electronic format under the Succession Act 2006.<sup>112</sup> Courts have probated electronic documents where it shows the decedents testamentary intent.<sup>113</sup> In *Yazbek v. Yazbek*, before leaving for a holiday, the testator prepared a testamentary Microsoft Word document named Will.doc, which was later found on his personal computer after his death by his family members.<sup>114</sup> A legal battle ensued between his brother and parents, with the former claiming it was a testamentary document where he is the beneficiary, and the latter claiming that their son died intestate.<sup>115</sup> The legal question that arose before the Hon'ble Courts of New South Wales was whether a printout or electronic copy of a testamentary statement is considered a will under section 8 of the Succession Act 2006.<sup>116</sup>

The Hon'ble Judge Slattery accepted the electronic document as Daniel Yazbek's last will, since the act of typing his name at the end of the document—in his humble opinion—showed a degree of adoption and presence of intention.<sup>117</sup> Similarly, in *Re Yu*, the Hon'ble High Court of Queensland probated the will of Mr. Yu, the deceased, which was stored on his iPhone.<sup>118</sup> The document was prepared like a traditional will and contained directions for the appointment and replacement of the executor.<sup>119</sup> The Court declared it to be testamentary, legally effective, and subsequently declared that the document for which probate is sought satisfies all the requirements.<sup>120</sup> The Court also accepted unsent messages as an enforceable will in *Nichol v Nichol*, where the messages

---

110. *Id.*

111. *Succession Act 2006* [NSW] ch 2, ss 3–5 (Austl.) (stating that the court may dispense with the requirements of a will when there is evidence relating to the matter or evidence showing the testators intent).

112. *See id.* at ch 2, s 6; *see generally Mahlo v Hehir* [2011] QSC 243 ¶ 44 (Austl.); *Yazbek v Yazbek* [2012] NSWSC 594 ¶ 142 (Austl.).

113. *Mahlo*, [2011] QSC at ¶ 44; *Yazbek*, [2012] NSWSC at ¶ 142.

114. *Yazbek*, [2012] NSWSC at ¶¶ 4–5.

115. *Id.* at ¶ 1.

116. *Id.* at ¶ 79–81.

117. *Id.*

118. *Re Yu* [2013] QSC 322 ¶ 1 (Austl.).

119. *Id.* at ¶ 7.

120. *Id.* at ¶ 9.

were found in the phone of the decedent.<sup>121</sup> The decedent mentioned the name of his nephews, ex-girlfriend, and sons in the will, clearly demarcating and elaborating how his belongings shall be disbursed amongst all of them.<sup>122</sup> The sons then filed a suit claiming intestate succession with equal disbursement of the testator's assets amongst them.<sup>123</sup> The Hon'ble Court came to the conclusion that the messages fulfilled all essential elements to be declared as a will and allowed the "dispensation of,"<sup>124</sup> as the text shows, the testator's intention, although the document was not in the format that was required by law.<sup>125</sup>

#### V. E-WILLS, THE RIGHT TO PRIVACY, AND THE CLOUD CONUNDRUM: AN INDIA PERSPECTIVE

After the advent of the right to privacy and the *Puttaswamy*<sup>126</sup> judgment in India, the most immediate concern that arises out of the E-Will concept is that of privacy and possible data breaches arising out of the storage of data.<sup>127</sup> Section 2(1)(t) of the Information Technology (IT) Act, 2000 (India) defines an electronic record as "*data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche*" (emphasis added).<sup>128</sup> However, with the emergence of novel technologies such as block-chain and artificial intelligence, it is important to possibly rethink the provisions of the IT Act in order to define the term 'data' in a more succinct manner.<sup>129</sup> However, that discussion is for another day. Another crucial question that arises with regard to the evidentiary value of E-Wills and other forms of electronic documentation in India is whether a certificate is mandatory while producing electronic evidence under section 65B(4) of the Indian Evidence Act.<sup>130</sup>

---

121. *Nichol v Nichol & Anor* [2017] QSC 220 ¶ 12 (Austl.).

122. *Id.* at ¶¶ 13, 15.

123. *Id.* at ¶ 69.

124. *Id.* at ¶ 72.

125. *Id.* at ¶ 46.

126. *See* Justice KS Puttaswamy v. Union of India, (2017) 10 SCC 1 (India).

127. *See* Vrinda Bhandari & Renuka Sane, *Protecting Citizens from the State Post Puttaswamy: Analyzing the Privacy Implications of the Justice Srikrishna Committee Report and the Data Protection Bill, 2018*, 14 SOCIO LEGAL REV. 143 (2018).

128. Information Technology Act, 2000, No. 21, Acts of Parliament, § 2(1)(t), 2000 (India).

129. Bhavana Alexander & Kayal Manivannan, *Disruptive tech like Blockchain is here to stay, law will have to simply catch up*, ECON. TIMES, <https://economictimes.indiatimes.com/small-biz/security-tech/technology/disruptivetech-like-blockchain-is-here-to-stay-law-will-have-to-simply-catchup/articleshow/59397014.cms> (last updated July 1, 2017).

130. The Indian Evidence Act, 1872, No. 1, Acts of Parliament, § 65B(4), 1872 (India).

Regarding this issue, there exists two conflicting judgements: *Shafhi Mohammad*<sup>131</sup> and *Anwar PV*.<sup>132</sup> In the former 2018 case, the Court declared that while producing electronic evidence, the requirement of a certificate is not always mandatory under section 65B(4) of the Evidence Act.<sup>133</sup> Whereas in the latter 2014 case, the Court admitted that electronic records—such as CD, Chips, VCD, etc.—can be categorized as “secondary evidence” and shall be accompanied by the certificate provision of section 65B.<sup>134</sup>

The supreme court has now finally addressed this concern in the *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal* case.<sup>135</sup> The case was initially put up before a two judge division bench, which referred it to a three judge bench on July 26, 2019, in order to reconsider the 2018 *Shafhi Mohammad* decision in light of the 2014 *Anwar PV* judgment.<sup>136</sup> The arguments were concluded on March 3, 2020 before the bench, with written submissions also being concluded by March 7, 2020.<sup>137</sup> The judgment had been pronounced and has had a profound impact on the evidentiary value of electronic documents in India.<sup>138</sup> The Division Bench—led by Nariman, J.—came to the conclusion that the mandatory requirement of such a certificate is justified so as to prove “lawful control” of the “primary source evidence” under the Indian Evidence Act for E-Wills, but becomes “impracticable” when the evidence can be produced in a physical form.<sup>139</sup>

With inhibitions rife about the safety of government-based applications and modalities, such as Aadhar<sup>140</sup> and Aarogya Setu,<sup>141</sup> the

131. *Shafhi Mohammed v. State of Himachal Pradesh*, (2018) 2 SCC 801 (India).

132. *Anwar PV v. PK Basheer*, (2014) 10 SCC 473 (India).

133. *Shafhi Mohammed*, (2018) 2 SCC 801, at ¶ 4.

134. *Anwar PV*, (2014) 10 SCC 473, at ¶ (4)(a).

135. *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal*, (2020) Supreme Court of India, Civil Appeal Nos. 20825-20826 (India).

136. *Arjun Panditrao Khotkar*, Civil Appeal Nos. 20825-20826 at ¶ 2; *Case Status*, SUPREME COURT OF INDIA, <https://main.sci.gov.in/case-status> (last visited Sept. 13, 2020).

137. *Case Status*, *supra* note 136.

138. *Arjun Panditrao Khotkar*, Civil Appeal Nos. 20825-20826 at ¶ 2.

139. *Arjun Panditrao Khotkar*, Civil Appeal Nos. 20825-20826 at ¶¶ 1–2, 72; The Indian Evidence Act, 1872, No. 1, Acts of Parliament, §§ 62, 65 1872 (India).

140. Reetika Khera, *The Different Ways in Which Aadhaar Infringes on Privacy*, WIRE (July 19, 2017), <https://thewire.in/government/privacy-aadhaar-supreme-court>; *What is Aadhaar*, UNIQUE IDENTIFICATION AUTH. OF INDIA, <https://uidai.gov.in/what-is-aadhaar.html#:~:text=Aadhaar%20number%20is%20a%2012,enrol%20to%20obtain%20Aadhaar%20number> (last visited Sept. 13, 2020).

141. Andrew Clarence, *Aarogya Setu: Why India's COVID-19 contact tracing app is controversial*, BBC (May 14, 2020), <https://www.bbc.com/news/world-asia-india-52659520>; *Aarogya Setu data only shared with government officials directly involved in Covid-19 interventions, 'highly encrypted' says Niti Aayog CEO*, INDIA TIMES (May 11, 2020),

role of private players—apart from banks, which in India are not predominantly public-sector—may come into play.<sup>142</sup> However, bringing in non-banking private players into a hypothetical E-Will storage market without any solid regulatory framework to support it will endanger the privacy and legacy of numerous generations to come.<sup>143</sup> India can perhaps draw some inspiration from Australia, which is in the implementation stage of its Consumer Data Right (CDR) legislations, allowing consumers to obtain details about any information stored by private players about them by sending an application (akin to an RTI) to the Office of the Australian Information Commissioner.<sup>144</sup> Such measures create a robust regulatory framework, which aggressively urges private players in the market to promote transparency with regards to consumer data.<sup>145</sup> Australia's personal information protection legislations, which come with strict safeguards, such as Tasmania's, are as old as 2004.<sup>146</sup>

## VI. CONCLUSION

Although E-Wills are definitely going to increase in importance with the passage of time, three central concerns still remain relevant for

---

<https://timesofindia.indiatimes.com/india/aarogya-setu-data-only-shared-withgovernment-officials-directly-involved-in-covid-19-interventions-highly-encrypted-saysniti-aayog-ceo/articleshowprint/75672278.cms>; Aditya Saroha, *Government gets notice after saying it has no information on Aarogya Setu creator*, THE HINDU (Oct 28, 2020), <https://www.thehindu.com/sci-tech/technology/govt-gets-notice-after-saying-it-has-no-information-on-aarogya-setu-creator/article32963829.ece> (the Central Information Commission issued a notice because the creator of the program remains 'unknown' to the government).

142. Nileena MS, *From Aadhaar to Aarogya Setu, Vidhi's questionable role in technology-related policy making*, CARAVAN MAG. (Aug. 26, 2020), <https://caravanmagazine.in/technology/vidhi-aadhaar-aarogya-setu-arghya-sengupta-privacy-think-tank>; see generally Sujan Hajra, *Expert view: Indian banks need to wake up to harsh cyber realities*, ECON. TIMES, [https://economictimes.indiatimes.com/markets/expertview/expert-take-indian-banks-need-to-wake-up-to-harshcyberrealities/articleshow/65509359.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/markets/expertview/expert-take-indian-banks-need-to-wake-up-to-harshcyberrealities/articleshow/65509359.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last updated Aug. 23, 2018); Vivek Kaul, *How private banks are taking over Indian banking*, MINT, <https://www.livemint.com/industry/banking/how-private-banks-are-taking-over-indian-banking-1560706195840.html> (last updated June 17, 2019).

143. See MS, *supra* note 142.

144. *Data Protection Laws of The World (Australia)*, DLA PIPER, <https://www.dlapiperdataprotection.com/index.html?t=law&c=AU> (last modified Feb. 3, 2020) [hereinafter DLA PIPER].

145. AUSTRALIAN COMPETITION & CONSUMER COMM'N, *DIGITAL PLATFORMS INQUIRY 14* (2019), <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

146. DLA PIPER, *supra* note 144.



most common law nations until the time federal legislation is enacted.<sup>147</sup> The three concerns are, namely:

- 1) finding a lawyer in order to provide assistance in drafting the will;
- 2) getting the typed draft of your will printed in order to sign on the same, if ready access to a printer is not available; and
- 3) finding the specified number of witnesses in order to testify to the document.<sup>148</sup>

Another option, if available, is oral wills.<sup>149</sup> However, the same also possesses a host of evidentiary issues and is illegal in a host of common law jurisdictions.<sup>150</sup>

Although numerous lawyers, will-making sites, and companies are now available remotely, it is important to note that most common law jurisdictions do not specify that a will has to be made using professional assistance,<sup>151</sup> nor does it specify that it should be typed or in a particular format; needless to say, only the recipients and executors details must be specified.<sup>152</sup> As for witnesses, it could be neighbors or even a person's family members—in most cases, legatees.<sup>153</sup> Although a vast majority of common law nations—such as Kenya—do not consider it as a fair practice to do so, the law in nations—such as India—allow individuals from all religions, apart from Christianity and Zoroastrianism, to allow legatees to their wills in order to act as witnesses to the same as well.<sup>154</sup>

---

147. See generally Christine Fletcher, *The Pros and Cons of Electronic Wills*, FORBES (Oct. 25, 2019), <https://www.forbes.com/sites/christinefletcher/2019/10/25/the-pros-and-cons-of-electronic-wills/#77447a285457>.

148. See generally *id.* (stating general concerns people run into when they are writing their will).

149. Michael Savage, *Make bedside oral wills legal during pandemic, UK campaigners urge*, GUARDIAN (May 2, 2020), <https://www.theguardian.com/world/2020/may/02/make-bedside-oral-wills-legal-during-pandemic-uk-campaigners-urge>.

150. See generally *Developments in the Law: More Data More Problems*, 131 HARV. L. REV. 1714, 1797 (2018).

151. *Make Wills FAQ—What you need to know about wills—the most basic estate planning Document*, NOLO, <https://www.nolo.com/legal-encyclopedia/wills-faq.html> (last visited Aug. 31, 2020).

152. Mary Randolph, *How to Determine If a Will Is Valid*, ALLLAW, <https://www.alllaw.com/articles/nolo/wills-trusts/how-determine-will-valid.html> (last visited Sept. 9, 2020); see generally *What is an executor of a will?*, FREEWILL, <https://www.freewill.com/learn/what-is-an-executor-of-a-will> (last updated Aug. 29, 2019).

153. See Randolph, *supra* note 152.

154. See generally Sanjeev Sinha, *All you need to know about making a Will*, ECON. TIMES, <https://economictimes.indiatimes.com/tmc/your-money/all-you-need-to-know-about-making-a-will/articleshow/53209791.cms> (last updated July 15, 2019) (stating the general principle for a will to be valid a legatee or beneficiary should not be a witness).

Although the authors have deliberately kept the same outside the ambit of this short article, security breaches via breaking encryption keys and firewalls are a common occurrence.<sup>155</sup> It is important that mechanisms, such as the Nevada Lockbox, be viewed with immense scrutiny as any data breach, followed by the hypothetical deletion of data, could automatically result in the activation of the state's intestate laws—with no legal recourse for a beneficiary who was allegedly supposed to inherit all proceeds arising out of the same.<sup>156</sup> What is even worse is that, if this happens, some prospective beneficiaries might not even realize that they have been denied something that would have otherwise rightfully belonged to them.<sup>157</sup> Technology is moving at a rapid pace; however, a lot of responsibility now rests on the shoulders of legislators across common law jurisdictions to inculcate these changes into law with adequate safety measures.

---

155. See Mark Leon, *Public key encryption: And they said it couldn't be done*, TECH REPUBLIC (Feb. 25, 2020), <https://www.techrepublic.com/article/public-key-encryption-and-they-said-it-couldnt-be-done>.

156. See *Online Services: Nevada Lockbox*, NEV. SEC'Y ST., <https://www.nvsos.gov/sos/online-services/nevada-lockbox> (last visited Sept. 13, 2020).

157. See *Data Breach Notification in the United States and Territories*, PRIVACY RTS. CLEARINGHOUSE (Dec. 10, 2018), <https://privacyrights.org/resources/data-breach-notification-united-states-and-territories>.