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TOPIC

**WILLS AND SHARIAH PERSPECTIVES IN DYING,
A RESEARCH STUDY**

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ABSTRACT:

Will is the order of the deceased, which is executed after death. For example, if a person says at the time of death that after my death so much wealth or so much land from my property should be given to such and such a person or such and such a religious institution or a hostel or an orphanage, then this is called a will. The will should be written in the presence of two witnesses so that there are no disputes later. In Islamic Shariat, the law of will is made; So that the loved ones who are not getting a share in the inheritance due to the law of inheritance and deserve help, for example, there is an orphaned grandson or granddaughter or a widow of a son who is suffering or a brother or sister or any other loved one of support. If needy, the person should be helped through the will. Although both making a will and not making a will are permissible, sometimes it is better to make a will. In the early days of Islam, until the shares of the inheritance were determined, each person needed to determine the shares of his heirs through a will so that after his death there would be no quarrels in the family and no right of a rightful person would be killed. But when later, for the distribution of the inheritance, Allah the Almighty himself made rules and regulations which are mentioned in Surah Al-Nisaa. One of the many wisdoms of the will is that after the death of a person, the inheritance is distributed based on kinship and not in view of need, that is, the closer to the deceased will get a larger share, even if other relatives. Why not be poorer? But Islamic law has encouraged a person that if a person considers one of his relatives more deserving of help and he is not getting a share in the inheritance, then he should bequeath up to one-third of his property to him.

KEYWORDS: Commands will, disease, death

INTRODUCTION

The state of health of a person is different from the state of illness in the sense that the financial dispositions made in a state of prudence while staying within the Shariah limits are valid and no one can seize and seize it. Doing good deeds is more rewarding than charity and charity.

Meaning of the disease of death:

Death is a disease in which a person is constantly sick and eventually dies due to this disease.

Ibn Abidin Hanafi writes:

" مِنْ غَالِبِ حَالَةِ الْهَلَاكِ بِمَرَضٍ أَوْ غَيْرِهِ بِأَنْ أَضْنَاهُ مَرَضٌ عَجَزَ بِهِ عَنْ إِقَامَةِ مَصَالِحِهِ خَارِجَ الْبَيْتِ (هُوَ الْأَصْحُ كَعَجَزِ الْفَقِيهِ عَنِ الْإِتْيَانِ إِلَى الْمَسْجِدِ وَعَجَزِ السُّوقِيِّ عَنِ الْإِتْيَانِ إِلَى دُكَّانِهِ. وَفِي حَقِّهَا أَنْ تَعَجَزَ عَنْ مَصَالِحِهَا دَاخِلَهُ كَمَا فِي الْبِرَّازِيَّةِ، وَمُفَادُهُ أَنَّهَا لَوْ قَدَّرَتْ عَلَى نَحْوِ الطَّبَّخِ دُونَ صُعُودِ السَّطْحِ لَمْ تَكُنْ مَرِيضَةً"¹

" In most cases of death due to illness or something else, such as suffering from an illness that makes him unable to manage his affairs outside the home, it is correct to say that he is a faqih and unable to attend the mosque. Or if she is unable to go to her shop in the market, she has the right to be unable to pursue her interests in

it, as in the case of Bazazia, that is, if she can go to the terrace and cook, then she is not sick.”

Similarly, the fatwa is in Hindi:

"وَالصَّحِيحُ أَنَّ مَنْ عَجَزَ عَنْ قَضَاءِ حَوَائِجِهِ خَارِجَ الْبَيْتِ فَهُوَ مَرِيضٌ وَإِنْ أَمَكَّنَهُ الْقِيَامُ بِهَا فِي الْبَيْتِ إِذْ لَيْسَ كُلُّ مَرِيضٍ يَعْجِزُ عَنِ الْقِيَامِ بِهَا فِي الْبَيْتِ كَالْقِيَامِ لِلْبَوْلِ وَالْعَائِطِ كَذَا فِي التَّيْبِينِ"²

"It is true that a person who is unable to relieve himself outside the house is sick, even if it is possible for him to stay at home, such as standing for urination and defecation."

This disease will be called death disease:

- That makes a person a gentleman.
- Inability to walk.
- Or does not prevent him from walking, but gradually his health deteriorates and eventually, he dies.

If a person is suffering from a disease in which he has the strength to walk and also can work outside the house, but his health is constantly deteriorating, then the rules of death will apply in this disease because this condition His health is constantly deteriorating and the disease is increasing. According to the jurists, the disease of death can last for a year.

If a person is suffering from a disease that causes death, but his health is not threatened by this disease, nor is his disease progressing, rather he lives for a long time despite this disease. , then the death of such a person will be counted when his health deteriorates and he dies in that condition.

And if a person is suffering from a disease that causes death, but that person recovers from this disease, then such a disease will not be considered a disease of death, and in such a case, the rulings of death will not apply to him.

Diseases in which a person has the fear of death are called (mortal disease) or dreaded disease such as plague, colic, pneumonia, chronic nosebleeds, persistent diarrhea, or entering the last stage of tuberculosis. , or a stroke from the beginning, because these diseases are such that death is usually the result of them. The rest of the minor diseases are not called scary, so itching (itching), toothache, headache, minor malaria, fever or Diarrhea of two days, or tuberculosis without blood or prolonged paralysis, diseases are treatable, they usually do not pose a threat of death, but the possibility of health and survival prevails. There are two views on the issue of a pregnant woman being hit on the stomach (in the last days) and bleeding: one is that it will be declared a terminal illness. The other is that it is not because the woman usually recovers.

Regarding a person who is fighting on the battlefield, or has been caught in a storm at sea, or has been imprisoned by infidels who are certain to kill the prisoner, or has been brought to stoning for adultery, or the condition In the battle, standing against the enemy in the ranks of the war, there is disagreement. One view is that it will be the stage of death. After that, its dispositions will be enforced to the extent of one-third. Fear of death. And there are two sayings about the murderer who was brought to the slaughterhouse for revenge.

One is that as long as there is no injury on his body, he will be considered healthy and his disposal of the total wealth will be valid. This view is included in the Shafi'i religion. But the later scholars have adopted two methods on this occasion. Abu Ishaq has said that it would be like a prisoner who was captured by infidels who do not leave the prisoner without killing him, and secondly, a healthy person. will be in the rank of, his disposal will be limited to one-third.

According to Hanbaliyya:

For a person who is suffering from the disease of death, all his charitable dispositions such as donation, will, etc. are not valid in more than one-third and neither will these matters be valid in favor of the heir.

But for those diseases that the patient lives for a long time, for example, tuberculosis, and leprosy, there are two sayings related to this from Imam Hanbal: one is that the will will be issued in the total wealth, the other is that only in a third of the wealth. The will will be enforced. A woman who is six months pregnant, when her pregnancy is touched, will be in the status of a patient, one who joins the ranks of war, or who is on board a ship and the ship is caught in a storm, or in a place of slaughter for revenge. has been brought, or is in a place where the plague has spread, according to one opinion, these people will be in the status of dying disease, and according to another opinion, they will be considered in the status of healthy

According to the Hanbaliyya, heartache, liver pain, pneumonia, plague whether it has spread in his city or he himself has suffered from it, cholera, colic, tuberculosis, chronic hemorrhage, persistent diarrhea (i.e. flatulence), first an attack of paralysis. , the last stage of tuberculosis, or the disease which two just doctors declare as the disease of death, all these diseases are called a disease of death.

Shia Jurisprudence:

In Shia jurisprudence, two types of dispositions of the patient are described:

1. Mowjalah (whose term is fixed).
2. Manjalah (Immediate) There is a consensus on this that the order of posthumous disposals will be the order of the will. Similarly, when a healthy person makes his disposals towards the time after death.

But there are two sayings in the cases of disposals that are immediately effective, such as giving exemptions, bequests, and endowments: firstly, that they will be enforced from the total property, and secondly, that they will be enforced from only one-third of the property. But in this order, both agree that if the patient recovers from his disease, the immediate dispositions shall be deemed to be enforced both by him and by his heirs. The difference is only if the patient dies in the condition of the disease itself.

Diagnosis of the disease:

The disease which usually results in death is called a fatal disease such as dysentery, tuberculosis, or the continuation of blood or swelling in asthmatic diseases or similar fatal diseases.

But the diseases in which the possibility of recovery prevails, the order of health is the order of health, such as fever or pain, asthma, eye disorder.

Some diseases are intermediate between the two levels, such as tuberculosis or dysentery. Nowadays, when medicine has advanced immensely, it would be appropriate to consider the recent nature of the disease.

The limitation imposed on financial dispositions in death can also be applied to certain cases which are not related to any disease but the possibility of death is similar to death. Therefore, the order of financial disposal at the time of war on the battlefield or the storm in the river will be considered as the order of death. Although there is no disease here, the result will be decreed which is "death", because in both cases there is the same cause i.e. the fear of death.

According to Firqa Zahariyyah:

According to Zahariyyah, those who are sick and dying, or who have been imprisoned for murder, or who are pregnant women, or who are travelers on any kind of journey, are exempted from the possessions, donations, charity, and sale of all those people or the acceptance of the will is valid and valid. Effects will continue as in healthy humans (without any difference).³

There are many problems related to a person suffering from the disease of death, which have been described by the jurists. Some of the problems are mentioned below.

Rules of the will in case of death:

Meaning of will:

Will, advice and Isa'a is a noun meaning source, and they are synonymous with each other. The literal meaning of will is "atsal" i.e. to reach or meet one thing with another. Sometimes a will is also called a will because it is connected with the affairs of the deceased.⁴

The original meaning of "wasy" is to take a pledge, hence the word will.⁵

In the terminology of jurisprudence, the ownership of a property or profit from it is called "Isa" or "Wasit".⁶

The difference between Hiba and Wrai'at, Sale, Wajara and Will is that in Hiba, the original object is owned and in Borrowing, its profit is made the owner during life and not after death. In Ijarah, the benefit of the thing is received in return, it is not intended to be a mere donation, the testator is called "musi" in favor of whom the bequest is made, and the thing to be bequeathed is called "musila". is called "Musya Bah".

Historically, the will is mentioned from the ancient times. Babylonian and Assyrian civilizations of ancient Egypt were familiar with its name, but the form of the will was completely different from the present will. It was completely unimaginable.

Shariah Definition of Will:

In Shari'ah Islam, a will refers to an inheritance that is directed towards the time after death. It refers to an inheritance as a donation, that is, as a favor (free of charge) to the owner after death, and what the deceased owns. Whether it is the object itself or the benefit derived from the object.⁷

Definition of Will:

A will is a definite expression of a person's transfer of his Shariah-owned property or its benefit to a person or an institution for a fixed time after his death.

- The person who makes the will is called "Musa".

- The object to be bequeathed is called "Moosa Bah".
- The one in favor of which a will is made is called "Musaila". The plural form of Musaila is Musa Lahm.
- The person who is appointed as the executor of the testator to issue and execute the will is called the "testator".

Islamic Disposition Regarding Wills:

The concept of will is from ancient times. Before Islam, most religions and laws allowed the will without restrictions, the result was that unjust people deprived their original heirs, or they had very little of their property. They used to leave a part and bequeath their entire wealth or a large part of it to others, or they themselves would bequeath it to someone among their own heirs and deprive someone. Islam has left the scope of the will so that man can make it his future life and through it he can carry out charitable works in society. Because a person wants not to lose any part of his wealth in view of his possible needs in life, the way was left open through the will that he could use some part of his wealth for charitable and good deeds after his death. could, but the unfair method of bequest was prohibited, therefore, bequests were not allowed in more than one-third of the deceased and it was not justified to make a bequest for an heir so that the heirs could not be deprived and They should not be treated unfairly and unequally.

Validity of Will:

The legality of the will is proved by the Book and the Sunnah and the consensus of the Ummah. The will is mentioned in several places in the Holy Qur'an:

"كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ"⁸

"It is obligatory upon you that when the time of death comes for one of you, if he is about to leave some property, he should bequeath it to his parents and relatives in accordance with the law. Right."

It is stated in Surat al-Nisa:

"مَنْ بَعَدَ وَصِيَّةً يُوصِي بِهَا أَوْ دَيْنًا"⁹

"After a bequest which he has made or after a debt."

The hadith of Tirmidhi is:

"عَنْ سَعْدِ بْنِ مَالِكٍ قَالَ: عَادَنِي رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَأَنَا مَرِيضٌ، فَقَالَ: أَوْصَيْتَ؟ قُلْتُ: نَعَمْ، قَالَ: كَمْ؟ قُلْتُ: بِمَا لِي كُلِّهِ فِي سَبِيلِ اللَّهِ، قَالَ: فَمَا تَرَكْتَ لَوْلَدِكَ؟ قُلْتُ: هُمْ أَغْنِيَاءُ بِخَيْرٍ، قَالَ: أَوْصِ بِالْعُشْرِ، فَمَا زِلْتُ أَنْاقِصُهُ حَتَّى قَالَ: أَوْصِ بِالثُّلُثِ، وَالثُّلُثُ كَثِيرٌ قَالَ أَبُو عَبْدِ الرَّحْمَنِ: وَنَحْنُ نَسْتَحِبُّ أَنْ يَنْقُصَ مِنَ الثُّلُثِ، لِقَوْلِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالثُّلُثُ كَثِيرٌ"¹⁰

"It was narrated on the authority of Saad bin Malik that he said: The Messenger of Allah, may God bless him and grant him peace, visited me when I was ill. He said: Did you make a will? I said: Yes, you. He said: How much? I said: All my money for the sake of God. He said: What have you left for your children? I said: They are rich. He said: I bequeath one tenth Then he continued to reduce it until he said:

I bequeath a third, and a third is too much. Abu Abd al-Rahman said: We want it to be sacrificed. As the Messenger of Allah, may God bless him and grant him peace, said: He said peace, and a third is much."

Bukhari Sharif has a hadith:

"عَنْ عَبْدِ اللَّهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا: أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ: مَا حَقُّ امْرِئٍ مُسْلِمٍ لَهُ شَيْءٌ يُوصِي فِيهِ، يَبِيتُ لَيْلَتَيْنِ إِلَّا وَوَصِيَّتُهُ مَكْتُوبَةٌ عِنْدَهُ"¹¹

"It was narrated on the authority of Hazrat Abdullah bin Umar that the Messenger of Allah, may God bless him and grant him peace, said: A Muslim who has something to bequeath does not have the right to spend two nights with it without writing it down."

Types of Wills by Order:

There are four types of will according to the ruling: Wajib, Mustahab, Mubah, Makruh. If the deceased has someone's trust, someone's debt that is not known to the heirs, Zakat and expiation and the redemption of fasting prayers, if he was not able to perform Hajj even though it is obligatory, then his will is obligatory. Willing related to the rights of Allah is recommended. It is permissible for such relatives who are not needy and needy, and it is makruh to make a will for those who are transgressive and disobedient.¹²

A will that harms the true heirs is frowned upon in Shari'ah. Therefore, it is better not to make a bequest if the heirs are minors or adults but are so needy that two-thirds of the deceased's inheritance is not enough for his needs.

Members of the Will:

The sign of a will is acceptance, acceptance by the testator and acceptance by the person to whom the will is made.¹³

Conditions for Acceptance:

There are certain conditions for a will to be valid and enforceable: some conditions are related to the members of the will i.e. acceptance and acceptance, some are related to "Moosa" i.e. the one who approves the will, some "Mosilalah" i.e. to that person or those persons. are related to the bequest in favor of, and certain conditions are related to the property which is bequeathed, which in jurisprudence is called "musi'a-bah".

The will of sin:

There is no validity to the will of sins and acts of sin, so if a person makes a will that a dome be built over his grave, then this will should not be obeyed, similarly if a will is made that I should be buried in my own house. If so, the will is not valid.

Wills Resuscitation Death:

All dispositions of a dying patient, whether voluntary or forced, can be enforced up to one-third of the remaining estate after payment of death as a will.

If a person is dying, the Shari'ah has allowed him to deal with only one-third of his wealth; He was allowed to deal in only one-third of the property because his heirs would have rights to the remaining two-thirds of the property. In other words, it should be said that

when he succumbed to death, the rights of his heirs became attached to his property and it is not permissible for him to deal with their rights (i.e. in two-thirds).

According to Malikiyyah:

According to Malikiyyah, in the case of terminal illness (a disease from which a person cannot recover), the will of more than one-third will be suspended with the permission of the heir, but if there is an excuse that it is necessary to issue the will due to this excuse. For example, the heir who gives permission may fear that if he does not give permission and the testator (the one who made the will) becomes healthy, then his monthly maintenance will stop or he will be deprived of the treatment that the testator used to give him. will be done, or if he is indebted to Musa and does not have the power to pay the debt and the hope of repayment of the debt from Musa is lost, or Musa Sahib is influential, he can jail him after recovery. If the heir has given permission, he will have the right to appeal the permission.

According to Malikiyyah, a pregnant woman will be considered healthy in the beginning of pregnancy, she will not be considered as a terminally ill patient, but in the last period of pregnancy, she will be considered terminally ill.¹⁴

Zarqani has written in Sharh al-Mu'ta in the proof of Imam Malik's statement that the earliest period of a woman's pregnancy is before six months. Allah Almighty said:

"فَبَشِّرْنَاهَا بِإِسْحَاقَ وَمِنْ وَرَاءِ إِسْحَاقَ يَعْقُوبَ"¹⁵

"So We gave him glad tidings of Isaac, and after Isaac of Jacob."

The early period of pregnancy has been declared as good news, so it cannot be declared as a disease.

"فَلَمَّا أَثْقَلَتْ دَعَا اللَّهَ رَبِّمَهَا"¹⁶

"When she (the woman) became pregnant, they both called upon their Lord (for help)."

Therefore, when a woman begins to feel burdened with a child, she cannot dispose of more than a third of her wealth even after conception.

Will for Divorced Wife in Case of Death:

When the wife of a sick and dying woman asks for a divorce from her husband in the state of illness and the husband divorces her, then the husband makes a confession of religion in her favor or makes a bequest. If a woman's husband dies during her Iddah, then she will be given inheritance or confessional deen or property (up to one-third of the estate), whichever is less. If the husband dies after the iddah, then the confessional deen or mal-i-musa will be given (up to one-third of the inheritance, as the case may be). In case of the full share of inheritance will be given.

In the dispositions of the patient and the death, which the jurists have honored with partiality and have kept in mind the protection of the rights of the heirs, in these dispositions, the patient's recovery from illness and death, after divorcing his wife, during the period of `iddah, confessing religion in her favor, or It is also permissible to make a bequest in the right. Therefore, if a person divorces his wife in the state of illness and death, after that he confesses religion for her or bequeaths some amount of property and in this

disease, this person Died, the jurists say that the situation has to be reviewed on this occasion. The husband has divorced on the demand of the wife or without the demand. A smaller portion will be given. The reason for this is the accusation that can be leveled against the husband in such a situation that the husband, on account of the divorce of the wife, intended that the wife should get a little more property than her share of the inheritance. Therefore, both of them must have secretly agreed that the husband should confess this amount of religion in favor of his wife or make a bequest in her favor and the woman should demand a divorce from him, so that the confessional religion or the wealth of the will is binding. The share of (Moses) that is more than the inheritance, can be given to the woman.

Therefore, in view of the protection of the rights of the heirs, the small amount of these parts will be given, because in this way it will not be possible to accuse the husband and this part will not be received as an inheritance. Rather, it will be given as an acknowledgment of the will. This is the reason why the wife will not be a co-conceived heir in the specified items of the estate. But if the patient has passed away after the end of "Iddah", then in this case the confessional deen or property will be given to Musabah (with the condition of one-third of the inheritance), because at that time the woman has become estranged from her husband, so the inheritance will not be given. The concept of proportion to part will not be established.

If the patient divorces the woman without her demand and dies during the woman's period, now the woman will be given the full share of her inheritance.

Summary Discussion:

The literal meaning of a will is "to combine" because through it (certain affairs) of life are combined with (certain affairs) after death and the testator also combines some of his dispositions which were permissible during his life so that They continue after life.

In the term of the jurists, the meaning of will is "to order a certain part of the estate to be spent after death (in a person or place)." in other words it is "to donate by means of the property after death". There is a consensus among the scholars of the Ummah on the validity of the will. Making a will is sometimes obligatory and sometimes recommended. This summary explains that it is obligatory to make a will about every right that he has over people or people have over him, that is, there is a transaction with them and there is no proof of it. A will regarding such rights is mandatory so that they are not lost. It is not permissible to bequeath more than one-third of the property to a person who has heirs. However, it is permissible to bequeath more than one-third of the property with the consent and permission of the heirs, because the heirs have the right to more than one-third of the property. If he withdraws, it is valid and his permission will be valid after his death. It is not permissible to make a bequest in acts of sin, for example: making a bequest related to the construction of houses or temples of infidels and polytheists. In the same way, the construction of shrines, lighting lamps on them, or making a bequest for their neighbors, whether it is a Muslim or a Muslim, is the same. And if more than one-third has been bequeathed, it will be suspended with the permission of the heirs.**Results:**

Whether a will is made in health or in death, it is a will in any case and its ruling is that if it is in favor of a stranger, it will be effective in one-third and if it is in favor of an heir, the consent of the heirs will be seen if that permission is granted. If you give it, the will will be enforced and if you don't give permission, the will will be declared invalid. Also, for the implementation of the will, it will be necessary that it does not conflict with any order or regulation of Shariat.

Suggestions and recommendations:

Some restrictions related to the will in death have been imposed by the Shari'ah to protect the rights of the heirs and creditors. He does not know about it, so he causes harm to the heirs and creditors by making a will at the time of death, in the same way, the heirs are also unaware of this and cannot protect their rights, so there is a need to educate the public and religious training in this regard.

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- ¹⁰ Muhammad bin Isa bin Sura bin Musa, Al-Sunan (Egypt: Mustafa Al-Babi Al-Halabi Library and Press Company, Second Edition, 1395 AH - 1975 AD) Chapter on Funerals, Chapter on What is stated in the will as a third and a quarter, Hadith No. 975.
- ¹¹ Abu Abdullah Muhammad bin Ismail Al-Bukhari, Al-Jami' al-Sahih Al-Bukhari (Beirut: Dartuq al-Najat, 1422 AH) Kitab al-Wasaya, Bab al-Wasaya and the sayings of the Prophet, may God's prayers and peace be upon him: No. 2738.
- ¹² Ibn Abidin, Muhammad Amin bin Omar, Radd al-Muhtar ala al-Durr al-Mukhtar, 5/315.
- ¹³ Committee of Scholars headed by Nizam al-Din al-Balkhi, Hindi Fatwas, 6/90.
- ¹⁴ Muhammad bin Abd al-Baqi bin Yusuf al-Zarqani al-Masri al-Azhari, Al-Zarqani's commentary on Muwatta al-Imam Malik (Cairo: Library of Religious Culture, first edition, 1424 AH - 2003 AD), 4/130.
- ¹⁵ Hud (11): 71.
- ¹⁶ Al-A'raf (7): 189.