

ISLAM'S VIEWPOINT ON WILLS,

BEQUESTS AND INHERITANCE

Question: Is there no such thing as a 'Will' in Islam? In Islam, can a person 'Will' his assets or property as per his wishes, after his death, to people other than those prescribed in the methods of the Shari'ah? Is this 'Will' legally valid in India?

Answer: A 'will' is a legal document through which a person declares his/her wishes and instructions on how his/her property and possessions should be disposed of, distributed or given away after his/her death.

Allah (swt) says in the Glorious Qur'an:

“Prescribed for you when death approaches (any) of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous.” [Surah Al-Baqarah 2:180]

Based on this verse from the Qur'an, it was earlier obligatory upon the Muslims to make a will before death. But after the revelation of the verses on inheritance (i.e. Surah Nisa 4:11-12), wherein Allah swt legislated fixed shares of inheritance for deserving heirs, it is now not compulsory in Islam for a person to write a will in his lifetime, because his estate is divided as prescribed in *Shari'ah* among his living heirs.

So after the revelation of Surah Nisa 4:11-12, in an Islamic country where Islamic Shari'ah is followed, it is not required to make a will.

In a non-Muslim country like India that has a separate Muslim Personal Law, to make a will is optional. If a Muslim fears that the non-Muslim country where Muslim Personal Law is followed has chances of deviating from the Shari'ah in this respect, it is preferable to make a will as per Qur'anic guidelines – otherwise it is not required. Such a will is legally valid in India.

However, in a non-Muslim country like U.S.A. that does not have a separate Muslim Personal Law, according to me it is compulsory for a Muslim to make a will as per the guidelines laid by Allah (swt) in Surah Nisa 4:11-12, so that it forces the law to execute Islamic Shari'ah as per your will.

It is the right of every citizen of a non-Muslim country, to will his property as per his desire, because in the absence of will each country has its own method of distributing the wealth.

It may be obligatory as well on a person to make a will, with regard to the dues of others where there is no proof, lest they be lost or neglected, because the Prophet (pbuh) said: “It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him.” [Narrated by al-Bukhari, *al-Wasaayaa* 2533].

One should also 'will' if he fears some kind of corruption or dispute among the heirs, especially in a non-Muslim country.

However, one does not have the right to make a will for the legal heirs as per his own inclinations (or wishes), because Allah (swt) has defined the share of each heir, and He has explained who inherits and who does not inherit. So it is not permitted for any person to transgress the limits set by Allah (swt).

“And whoever disobeys Allah and His Messenger and transgresses His limits – He will put him into the fire to abide eternally therein, and he will have a humiliating punishment” [Surah Nisa 4:14]

Allah (swt) has permitted us to make a will to whomsoever we wish other than the legal inheritors for a maximum of one-third of our wealth,

The Prophet (pbuh) said: “Allah was being generous to you when He allowed you to give one-third of your wealth (in charity) when you die, to increase your good deeds.” [Ibn Maajah, *Kitaab al-Wasaayaa*, Hadith No. 2709]

Therefore one can will upto one-third of his wealth to be used for charitable purposes or else one can also give it to the people apart from the legal heirs, because the Prophet (pbuh) said: “There is no will for the heirs. [Tirmidhi, *Kitaab al-Wasaayaa*, Hadith No.2120]

And Allah knows the best.

