

Guidelines for Preparing a Will the Islamic Way

Writing and preparing a Will is undoubtedly very important, especially in western countries, ensuring that upon death, one's wealth and assets are distributed according to Islam.

There are a number of Islamic texts, both in the Qur'an and Sunnah, which point to the importance of making a will.

Sayyiduna Abdullah ibn Umar (Allah be pleased with them both) narrates that the Messenger of Allah (may Allah show him with peace and blessings) said: "It is not befitting for a Muslim who has something to make a will of, to remain for two nights without having a last will and testament written and kept ready." (Sahih al-Bukhari, no: 2587)

Making a will becomes even more important in non-Muslim countries, such as the US, because failing to leave a valid written will can result in the law of the land deciding on how the estate is to be distributed, which obviously will not be in accordance with *Shariah* (Islamic law). Therefore, it is essential that all Muslims leave a valid written will. Those who have not made a will should haste in doing so. Writing a will is not only for old people, rather all those who have reached puberty should quickly get their will prepared, for there is no guarantee of when one will die.

Many Muslims are mistaken in believing that, writing a will means distributing one's wealth and estate among the inheritors during one's lifetime.

This is incorrect, as making a will does not mean one must divide one's wealth among the various inheritors in one's life. Rather, one must merely stipulate in the will that "upon my death, my executors will distribute my wealth according to *Shariah*". One may also state that this will be determined by a local Muslim scholar or Mufti, who will be contacted and appointed by my executors upon my death.

The reason behind this is that the inheritance portions have been determined and allotted by Allah Most High in the Qur'an. These portions vary according to who is alive at the time of one's death.

Leaving parents behind after one's death is different from passing away after the parents have passed away. The inheritance distribution will be different in both cases.

As such, one cannot determine in one's lifetime as to how much percentage of one's wealth will be exactly allocated to each individual, for one is unaware who will survive him. Even the death of one person can make a big difference in the distribution of the estate.

The beauty of *Shariah* is its simplicity and certainty. When are writing the will, it is not necessary to figure out which of the relatives will still be alive in order to make sure that they will inherit. Whoever administers the estate will ascertain (in collaboration with a knowledgeable scholar) which of your relatives are still alive and the fixed shares they are entitled to inherit by applying the criteria of *Shariah*.

Moreover, it is unlawful and invalid to make a bequest (*wasiyya*) in favor of an individual who automatically is entitled to receiving a share of the estate, such as one's spouse, children and parents, etc. The Messenger of Allah (may Allah show him with peace and blessings) said in his historic sermon (*khutba*) of his farewell hajj (haj al-Wada'): "Verily Allah has given each rightful person their right, thus there is no bequest in favor of an inheritor." (Sunan Tirmidhi, no: 2120, narrated by Sayyiduna Abu Umama al-Bahili)

The meaning of this Hadith is that Allah, the Almighty has already fixed and allotted the shares of those who are entitled to inherit from one's estate. As such, if one was to make a bequest in their favor, one will be going against the shares fixed for them in the Qur'an and Sunnah.

However, if one wished to make a bequest for a non-relative, or for a charity, then this would be allowed (and rewarded), but only up to a third of one's total wealth. The remaining two thirds will be left to be distributed among the relatives according to the fixed shares prescribed by Allah, Most High. If one does not make a bequest of up to one third of the estate, then all of the estate will be divided between the surviving relatives.

Secondly, one must distinguish between a bequest (*wasiyya*) and a gift (*hiba*). Many fail to differentiate between the two, thus a grave error is committed.

What a person gives to another in one's lifetime is considered a "gift" whereas the gifting of something after one's death is a "bequest (*wasiyya*)". For example, if I give my house to a friend while I am alive, it is a gift, but if I make a state that my friend take ownership of my house after I pass away, then that is a bequest (*wasiyyah*).

If one wishes to distribute the estate among the children while he is still alive. This will be valid provided it is given as a gift and not a bequest, because to make a bequest for a relative who already qualifies to inherit is invalid, as mentioned previously. As such, if one desires to distribute the estate among the children while one is alive, then it does not have to be in accordance with the *Shariah* laws of inheritance, for it is merely a gift.

A point worth noting is in Islam, a gift is only valid and complete when the one to whom the gift is given, takes full ownership and possession of the item. Merely, registering it in a person's name has of no value in *Shariah*, hence the gift will be considered invalid.

Thirdly, there is the issue of the husband and wife. If the house is solely owned by the husband, upon his death, it will be distributed among all the inheritors. It is commonly observed that years pass by after the husband's death and yet the inheritance is not distributed. The wife of the deceased and some children continue residing in the house

without even thinking about distributing it. This is a grave sin committed by all those who overlook this great injunction of the *Shariah*.

If the house was jointly owned by the couple, then in the event of one of the spouse's death, half of the house will remain in the ownership of the other spouse, and the remaining half will be distributed. Thus, it would be wise for the couple to have joint ownership of the house. This also should be made clear to all the children, for being negligent in this regard brings about disputes and problems.

Note that if the inheritors give their consent to their mother or father to reside in the house, then this is permissible. However, what is necessary is that the shares are distributed, and then they may give their consent in allowing their mother or father to reside. However, one must be extremely careful, for all the inheritors must consent to this from their heart and must not be pressurized into it. If even one inheritor disagrees, his/her share will have to be given to him/her.

Fourthly, in case the deceased made an unlawful and invalid bequest, for example, "my eldest son will take such and such property and my daughter will take the house", it will be unlawful (*haram*) and a grave sin for the relatives to distribute the inheritance according to the bequest made by the deceased. The estate must be distributed in accordance with the Qur'an and Sunnah.

Finally, one must make sure that the will meets the requirements of the law of the land, for failing to do this may well render one's will legally invalid. To ensure that one's assets are distributed in accordance with the *Shariah* after one's death, the will must comply with the requirements of the country one is residing in in addition to complying with the *Shariah*. Therefore, it is advisable that one seeks the advice of an expert, practicing Muslim attorney.

Normally when making a will, one must stipulate the following:

- 1) Revoking of all previous wills.
- 2) Naming the executors of the will.
- 3) Payment of funeral and burial expenses.
- 4) Payment of all debts connected to the servants of Allah: After one's death, paying off one's debts is given priority. Thus, the wealth remaining after death will first be utilized in repaying the debts, and then the remainder, if any, will be distributed among the inheritors according to the *Shariah*. Note that this is with regards to debts payable to the servants of Allah (and not with regards to liabilities due by *Shariah*, such as unpaid Zakat, etc). Also, there is no condition of it being from only one third of one's wealth.
- 5) Payment of any bequest (*wasiyya*): This refers to any religious liabilities, such as unpaid Zakat, Fidyah for Salat, etc, and also anything that one would like to give in charity. However, the condition here is that this is only permissible from one third of the wealth.

It is worth remembering here that along with one's written will, one should have a separate document stipulating the number of unperformed prayers, missed fasts, unpaid Zakat, unperformed Hajj, any other religious obligations and debts payable to the servants of Allah.

One must strive in accomplishing these obligations while alive, and make the necessary amendments to the document whenever an obligation is fulfilled. This "important" document should be attached with the will in order to let the relatives know of one's obligations and duties remaining after death.

6) Distribution of the remaining two thirds of one's estate (or full, if one does not include no. 5) among the inheritors in accordance with Sunni Islamic law, and in consultation with a qualified local scholar or Mufti.

7) Signing of the document by both the will-maker and the relevant witnesses.

Finally, the responsibility of the relatives is that they haste in distributing the estate of the deceased as quick as possible. Being negligent in this regard is highly sinful. All the inheritors will be jointly responsible for this distribution.

Also, when totaling the deceased's assets, the inheritors must include every big and small item left behind by the deceased at the time he/she passed away, which includes properties, houses, cars, financial instruments, cash, gold, silver, clothes, furniture, etc.

At times, people overlook small items and give them away in charity without the prior consent of all the inheritors, which is unlawful (*haram*). The permission and full consent of all the inheritors must be sought before giving away any item to anybody.

Hopefully, this will be helpful in simplifying the laws governing the great responsibility of will-making and inheritance. May Allah Almighty forgive our shortcomings and keep us steadfast on his *Deen*, Ameen.

And Allah knows best.