

Rendered into English by
Shaikh Mir Asedullah Quadri

The Will and Inheritance

WRITTEN IN URDU BY
HADHRAT MOHAMMED ABDUL
QADEER SIDDIQUI (رحمة لله عليه)

THE WILL AND INHERITANCE

وصیت و وراثت

Written in Urdu By

**Hadhrat Mohammed Abdul Qadeer
Siddiqui (رحمة لله عليه)**

Rendered into English by

Shaikh Mir Asedullah Quadri

Under the guidance of

Hadhrat Ghouse Mohiuddin Siddiqui

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FOREWORD

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

In one of the meetings, Hadhrat Syed Inayat Hussain Ali Khan, the Sjjada Nashin of the Dargah of Hadhrat Khwaja Moinuddin Chisti Sanjari (رحمة الله عليه) spoke to me about the general discussion in public that, along with the sons, the grand children (children of the sons) do not get any share in inheritance. I told him, 'not only the children of the sons but also the children of the daughters don't get a share in the inheritance'. However, there is an imperative in the Quran to write a 'will' for them, if you so desire. By writing a 'will' you can include them in the distribution of inheritance. He said it would be useful, if I could describe it in a clear written format. On his behest, I have written this book.

People do not know Islamic rules about Inheritance. They are unaware of the difference between direct and in-direct descendants. They also do not know the difference between 'the kin' and the 'next of kin'. In addition, they are under the influence of Non Islamic rules. All these add to the confusion in their minds about the distribution of inheritance after their deaths.

It is important that Muslims give importance to writing a 'Will of Inheritance' during their lifetime which is stipulated in Quran and Ahadith. To clarify the Islamic law of Inheritance, I have written this book in a very simple language. I pray Allah (عَزَّ وَجَلَّ) to bestow Muslims with correct knowledge and rightful deeds.

It is in Quran - وَمَا عَلَيْنَا إِلَّا الْبَلَاغُ - [And our duty is only to convey (the message)] (Yasin - 17)

Al-Faqeer

**Mohammed Abdul Qadeer Siddiqui (Hasrat) Madina
Manzil, Malakpet, Hyderabad, India Rabia I, 1372 AH -
December, 1952**

PREFACE

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الحمد لله رب العالمين، والصلاة والسلام على سيدنا محمد وعلى آله وصحبه أجمعين

'The Will and Inheritance' (وصيت و وراثت) is the seventh book translated in the series of translations of Hadhrat Mohammed Abdul Qadeer Siddiqui's (رحمة الله عليه) works which were written in Urdu and published during his lifetime.

Shaikh has concentrated his entire works towards clearing the misconceptions about Islamic teachings and practices. As the title suggests, this book is related to the rules of Inheritance in Islam. Shaikh has explained this issue in simple language. Inheritance is an important issue and I am sure every reader will benefit from reading this book.

I am thankful to Hadhrat Ghouse Mohiuddin Siddiqui, the son and successor of Shaikh Mohammad Abdul Qadeer Siddiqui (رحمة الله عليه), for his support and encouragement in translating Shaikh's works.

**Shaikh Mir Asedullah Quadri 13 Rabia II,
1422 AH - 6th July, 2001**

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OPINIONS OF ISLAMIC SCHOLARS ABOUT THIS BOOK

Syed Mohammad Shattari, Jamia Nizamia, Hyderabad.

This suppliant (فقير) testifies that the respected and learned friend of mine, Hadhrat Siddiqui, a praiseworthy Islamic Jurisprudence and research scholar of the modern world, who reads the pulse of the people exceptionally well, in a concise write up, has unlocked the requirements of the 'will of inheritance' and has squeezed out the river of imperative knowledge from Quran and Ahadith in the proverbial cup, which is extremely necessary for the present day Muslims.

May Allah reward this act of goodness and piety.

**Syed Mohammad Shattari, Jamia Nizamia, Hyderabad.
2nd Safar, 1372 (October 21, 1952)**

Maulvi Syed Shah Mohammad Badsha Hussaini

A man wishes that after his death, his sons and daughters be the owners of his property. But often it so happens that the grownup sons and daughters, who have children of their own, die leaving behind their children to be looked after by their grandparents. As a result of this unusual orphanage and in the event of death of the grandfather, they are deprived of any assistance from the inheritance. On one hand, this difficulty is being felt, on the other, general public do not have any direct contact with Muslim theologians. Also, people do not approach the learned Scholars and try to find a remedy for this problem. This state of affairs has led to deprivation of share to

grandchildren of the deceased sons and daughters in ancestral wealth. Even though the grand children are the direct descendants, they become technically not eligible to the inheritance in view of losing their parents during the lifetime of their grandparents.

Since Islamic imperatives in Shariah are complete, the longing to do something for these orphan kids was worrisome to many people.

I pray to Allah (عَزَّ وَجَلَّ) to bestow blessings on behalf of the Islamic nation on the teacher of Muslim theologians and great Islamic scholar of our times, the ocean of knowledge, Hadhrat Mohammed Abdul Qadeer Siddiqui (Hasrat), for solving this puzzle by writing this book.

It is in Quran - [وَمَنْ يُؤْتَ الْحِكْمَةَ فَقَدْ أُوتِيَ خَيْرًا كَثِيرًا] [And whoever has been given wisdom has certainly been given much good.] (Al-Baqara - 269) .

It is in Hadith - [من يرد الله به خيراً يفقهه في الدين] [If Allah wants to give a lot of virtue to someone, He gives him correct understanding of the religion] (Bukhari)

Whenever brothers and sisters in Islam, face this problem, they can benefit from his work and take advantage of the Universal Islamic Law and the imperatives of the Islamic Sharia.

**Mohammad Badsha Hussaini, Safar 9, 1372 AH - October
28, 1952**

Mufti Syed Mahmood

The revered, the symbol of understanding and wisdom, Hadhrat Mohammed Abdul Qadeer Siddiqui, has written this booklet titled ' The Will and Inheritance (وصیت و وراثت) to provide Islamic Sharia point of view for those who would like to write a “Will of Inheritance” for their relatives who would otherwise get deprived of it, or for those friends and sincere people who have undertaken service to the deceased during his lifetime or for charity works of national and religious significance. This work is a remedial path and a torch light for Muslims.

If Muslims start acting upon the author’s sincere counsel, the troublesome thought of deprivation and future helplessness of those people who are not included in the broad circle of immediate heirs, will not become vexatious for their souls.

Mufti Syed Mahmood

INTRODUCTION

During his lifetime, a man uses his wealth and property according to his wishes. But the moment he dies and leaves behind some wealth, its distribution becomes a huge problem. This is solved in many ways. Among Christians, the practice of ‘first successor-ship’ is enforced. All the bequest goes to the eldest son in the family. In the absence of an eldest son, others get it in descending order. In Hindus, who follow a joint family system, the inheritance is not distributed individually among heirs, but is kept in the family and all members of the family avail the inheritance jointly. The intention of both these practices is to stop distribution of wealth among different family members for their welfare. This results in accumulation of wealth at one place which is counterproductive as far as society and the country is concerned. This practice brings a lot of evils into the society as only a few become rich while a majority remains poor. In essence, this practice is known as ‘capitalism’, in consideration of wealth; and ‘feudalism,’ in consideration of immovable property. Together, they give birth to ‘imperialism’ monster.

The need to look for alternative systems has consistently been felt by nations so that the wealth should not be blocked at one place. Rather, it should be distributed in public at a larger scale and at a faster pace. To achieve this, some countries have started treating their government as a big family and all the people in the country as its members. Meaning, the people belong to the Government and their wealth and properties also belong to the Government. This system is known as Communism or socialism.

Be it the old imperialism or new socialism; whatever have been their objectives, the result is the same. In all these different systems, the personal freedom gets curtailed to an extent that individuals and poor nations reach to the stage of economic slavery. Whether one would like to tolerate this slavery habitually or by nature, is a different story all together.

Islamic system is unique in the sense that it is free from the ill effects of imperialism, capitalism and socialism. In Islamic society, wealth is not allowed to be accumulated in the hands of a few individuals. The Islamic Law of Inheritance is the best example in this context. The inheritance in the Islamic system is distributed at a wider scale among family members of the deceased and all beneficiaries are free to use their share as they like. In other words, the Islamic system eradicates the defects of imperialism, capitalism and socialism.

The inner truth is that the Islamic system is wholly based on the human nature. It does not have any room for despotism.

There are two options in distribution of Inheritance, that work side by side. These are (i) the Will (وصیت), and (ii) the Inheritance (وراثت). And in consideration of the nature of these options, the 'Will' gets preference in the distribution of heredity as the 'Will' is the reformer of Inheritance.

Ironically, the practice of writing a Will has been abandoned by Muslims. It is used sparingly, and the issue is left to the purview of the law of inheritance which often leads to hardship for certain needy successors. People feel sorry for such state of affairs but do not take the trouble of writing a Will to avoid it. They get perturbed from the hardship but do not turn to the corrective measures and use the provision in shariah for writing a Will.

The carelessness among Muslims and the resulting in dissatisfaction was needed to be removed. Accordingly, respected Hadhrat Mohammed Abdul Qadeer Siddiqui, former Professor and Head of the Department of Theology, Osmania University, has provided a concise and clear description of the issue Will and Inheritance. His effort in calling the attention of the society in this context is a great service to the nation.

May Allah (عَزَّ وَجَلَّ) bestow his blessings on the author for bringing to attention a universal problem and providing its solution in the light of Quran and Sunnah in a simple and understandable style so that the people could understand it easily. To guide and solve the problems of the nation's welfare in the light of Quran and Sunnah is definitely the work for the Muslim sages of our time.

Ilyas Barni, Professor of Economics, Osmania
University, Hyderabad

THE WILL AND INHERITANCE (وصيت و وراثت)

Shaikh has provided some Quranic verses and Ahadith related to 'Will and Inheritance' before discussing the issue in detail. Readers are requested to read these verses and Ahadith carefully as shaikh's discussion is based upon these commandments. It will help them in understanding the subject in its proper perspective.

(i) It is in Quran - “ كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِنْ تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْأَقْرَبِينَ وَالْأَقْرَبِينَ ” [Prescribed for you when death approaches (any) one 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.] (Al-Baqarah - 180)

(ii) It is in Quran - “ يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۖ وَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۖ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۗ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۗ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ” [Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are (only) daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate, if he left children. But if he had no children and the parents (alone) inherit from him, then for his mother is one third. And if he had brothers (or sisters), for his mother is a sixth, after any bequest he (may have) made or debt.

(vii) It is in Hadith - Narrated by Hadhrat Abdullah Ibn Omer (رضي الله عنه) that the Prophet (صلى الله عليه وآله وسلم) said, "It is not allowed for a Muslim that he had some wealth for which he needed to write a 'will of inheritance' and he spends two nights without keeping this document with him". **(Accepted by all - The book of 'Will')**

(viii) It is in Hadith - Narrated by Hadhrat Abu Huraira (رضي الله تعالى عنه) that someone submitted to the Prophet (صلى الله عليه وآله وسلم) as to which charity is prominent? The Prophet (صلى الله عليه وآله وسلم) said, "Give alms while you are well and healthy and fearful of poverty and do not delay it to the extent that your life is about to come to an end and you start telling that give this much to someone and this much to someone and that 'I have to pay money to someone' ". **(Bukhari)**

(ix) It is in Hadith - Narrated by Hadhrat Saad Ibn Abi Waqaas (رضي الله عنه) that the Prophet (صلى الله عليه وآله وسلم) came to inquire about me when I was ill. He (صلى الله عليه وآله وسلم) asked me, "Have you written a Will?". I said, "Yes I have done it". The Prophet (صلى الله عليه وآله وسلم) asked, "How much?". I said, "The entire wealth (owned by me) for charity in the path of Allah". Then the Prophet (صلى الله عليه وآله وسلم) asked, "What have you left for your children?". I submitted that they are rich and are in fine shape. On this, the Prophet (صلى الله عليه وآله وسلم) asked me to write a Will for one tenth (part). Then I started requesting the Prophet (صلى الله عليه وآله وسلم) for reduction (of inheritance to the children) until he (صلى الله عليه وآله وسلم) said, "OK, write a Will for one third of your wealth for charity and one third is also plenty". **(Tirmidhi)**

(x) It is in Hadith - Narrated by Hadhrat Ibn Abbas (رضي الله تعالى عنه) that the Prophet (صلى الله عليه وآله وسلم) said, "Writing of a Will is not allowed for a heir (until all other heirs agree). **(Abu Dawood, Ibn Maja, Ahmad).**

Shaikh describes below the imperatives established from the verses and Ahadith in this context.

(i) The meaning of the word (كُتِبَ) is 'it is obligatory'. Like in (الصلاة) and (مكتوبة) (كُتِبَ عَلَيْكُمُ الصِّيَامُ), meaning, Salah and Fasting have been made obligatory for you.

(ii) The meaning of (الْوَصِيَّةُ) is an 'emphatic command'. Therefore, the meaning of (يُوصِيكُمُ اللَّهُ) is Allah (عَزَّ وَجَلَّ) emphatically commands. The meaning of (الْوَصِيَّةُ) is also to decide and authorize distribution of a part of

inheritance to those who do not fall under the category of 'direct heirs' and for religious works and for alms to the poor (and needy).

(iii) After the absolute fixation, other provisions should be made. When you explain the gist and ambiguous rules, this is actually the detail of abstract.

(iv) The word (أوصي) has come in the Ahadith which is the grammatical form of a command and necessity is the root cause for the command. With this requirement also, writing of a 'Will for Inheritance' is clearly established.

(v) The command is given in Quran to help out the relatives first; that means providence of succor to relatives is absolutely necessary. The word (بِالْمَعْرُوفِ) indicates the absoluteness, abstractness and generality. And this is made obligatory in view of (كُتِبَ عَلَيْكُمْ).

When the shares of the heirs have been fixed, it is also commanded in Quran to write a 'Will' (for non-heirs) and for repayment of loans, etc.

In short, three things have been described in Quran (a) The share of heirs, (b) Repayment of Loan, and (c) Writing of a Will.

The shares of inheritance of lawful heirs have been fixed in the Quran. For others, it is commanded to write a Will. However, the beneficiaries of the 'Will' and their shares have not been fixed. The assistance to people who are not heirs has been left to the discretion of the writer of the Will. Whatever be the case, the necessity to write a will is absolutely essential.

In the Quranic verse (كُتِبَ عَلَيْكُمْ) the discretionary choice given to a person is only for those beneficiaries who do not fall under the category of direct heirs; and this is after the allotment and ascertainment of lawful heirs' portions.

The optional authority of ascertaining the quantity of assistance to the non-heirs within the purview of Islamic law is given because the circumstances of these beneficiaries are different. Some of them are very close (to the deceased), some are remote, some are well to do and some are down trodden. In the same manner, a Will can be written for some good works whose importance is subject to the opinion of the writer of the Will. In addition, there are certain people who served the deceased and had exceptional affection for him. Therefore, the assistance to them is also

subject to the opinion of the deceased (writer of the Will) within the stipulated 1/3rd of Inheritance.

(vi) To write a will in favor of an heir is inappropriate because the shares of heirs are already determined by Quran.

(vii) Since heirs are the closest relatives, therefore the 'maximum quantity and amount of the Will' is fixed at one third of the inheritance so that the heirs do not suffer. If the heirs agree, the Will can be introduced for more (than one third). If there are no heirs, then the Will can be written for the entire wealth because there is no one to object over it.

When a Will can be written for other than the relatives, then writing a Will for those relatives who get deprived of the inheritance is proved as preferable. The following is kin who gets deprived of Inheritance if a 'Will' is not written for them.

(a) Son or daughter of the deceased son, namely paternal grandson/granddaughter.

(b) Son or daughter of the deceased daughter, namely maternal grandson/granddaughter.

(c) Son or daughter of the deceased brother, namely paternal nephew and niece.

(d) Son or daughter of the deceased sister, namely maternal nephew and niece.

(e) Maternal grandfather

(f) The sister or brother of the mother namely maternal aunt/uncle.

(g) The son/daughter of the deceased paternal aunt or the paternal aunt herself.

In all the above cases, the Shariah requires a 'Will of inheritance' to be written during the life time of a person because some people, to whom he wants to give a share of his inheritance, may get deprived in view of the close relatives or because of the maternal relationship is against the paternal relationship.

The Will has been placed ahead of 'repayment' of loan and 'distribution of inheritance to legal heirs'. The reason for giving precedence to the Will is that the heirs consider the

wealth of the deceased as their own and in the process the loans taken by the deceased during his life time remain unpaid.

The Will is the only thing to which people show indifference, while the Prophet (صلى الله عليه و آله وسلم) has commanded us not to pass two nights without a written Will of inheritance. This deed of inheritance will be kept safely and will be opened only after the death of that person. In view of its importance, the Quran has commanded to 'keep two witnesses to the deed of inheritance'. As per Quranic directive when the Will is read out to two witnesses, it is preferable to keep it in the registration office safely so that when needed, the government could implement it with its authority.

Sometimes, it so happens that the person takes a loan from people on which there is no witness or deponent. In such circumstances, there is apprehension that the loan amount could be lost (in the absence of witnesses). If the heirs do not accept the repayment of a loan, then this can be taken care of by the amount of the Will.

What is being proven by the verse - وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسَاكِينُ فَارْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا [And when (other) relatives and orphans and the needy are present at the (time of) division, then provide for them (something) out of the estate and speak to them words of appropriate kindness.] (An-Nisa - 8).

It is evident that at the time of distribution of inheritance, the person is already dead. Therefore, the addressees of this verse are the heirs and this verse is for those dependents who are neither direct heirs nor is there a Will written for them. In view of this command (فَارْزُقُوهُمْ), something should be given to them as well.

The end result from the description in the above paragraphs is that the Islamic imperatives are comprehensive and complete. The commandments given for inheritance are also unequivocal and non-amendable. A Will should be written in respect to those relatives who are deprived of the inheritance or for those who deserve it or for friends and those sincere people who served the deceased or sympathizers or for the virtuous and community deeds.

The commandments of Allah (عَزَّ وَجَلَّ) and his Apostle (صلى الله عليه و آله وسلم) are there, but the people do not heed towards them and complain about Shariah that the inheritance deprived the grand children as they do not get anything. If you abide by the commandments of Allah (عَزَّ وَجَلَّ) and his Apostle (صلى الله عليه و آله وسلم), you will neither run around crying for the deprivation of your grandchildren in inheritance, nor will there be a need for them to beg for alms. Also, you do not have to trespass the laws of the Shariah.