Will/Wasiyyah/Beques

In Muslim law, the testamentary document called the will is referred to as *Wasiyat* .Will or Wasiyat is a document made by the legator in favour of legatee which becomes effective after the death of the legator. Under Muslim law no person is entitled to make will of the whole property.Limitations are imposed in making will.The reason being to pay the respect to the word of prophet in order to ensure the shares of the legal heirs. In case of will of absolute property nothing will remain for all sharers prescribed under Muslim Law. Wills are declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of one-third. The permissibility of bequests up to one-third is traced to a *Hadis* of the Propeht which ahs been stated by Sa'd Ibn Abi Waqqas and reported by Bukhari.

Introduction

Sa'd Ibn Abi Waqqas said: "The Messenger of God used to visit me at Mecca, in the year of the Farewell Pilgrimage on account of my illness which had become very serious. So I said, "My illness has become very severe and I have much property and there is none to inherit from me but a daughter, shall I then bequeath two-thirds of my property as a charity?" He said, "No." I said, "Half?", He said "No." Then he said: "Bequeath one-third and one-third is much, for if thou leavest thy heirs free from want, it is better than that thou leavest them in want, begging of other people; and thou dost not spend anything seeking thereby the pleasure of Allah but thou art rewarded for it even for that which thou puttest into the mouth of they wife"In Muslim law, the testamentary document called the will is referred to as *Wasiyat*. Wills are declared lawful in the Quran, though the Quran itself does not provide for the testamentary restriction of onethird. The permissibility of bequests up to one-third is traced to a *Hadis* of the Propeht which has been stated by Sa'd Ibn Abi Waqqas and reported by Bukhari.

Meaning and Nature

A will is essentially a legal declaration which signifies the intention of the testator (the maker of the will) with regard to the distribution of his or her property which takes effect after death. Till he or she is alive, the testator has full ownership and control over the property. A will

does not affect the power of the owner to transfer the property either inter vivos or by any other testamentary disposition. It is not binding upon the testator in any manner, especially before his or her death. It is a revocable document, either by formal cancellation or by a subsequent will on the same property. A will executed by a person will also be revoked if he or she loses sanity and becomes of unsound mind subsequent to execution. The Muslim law of wills affects only Muslims. Where a Muslim gets married under the Special Marriage Act, 1954 either to a Muslim or a non-Muslim, he or she along with the respective spouse and the children born of this marriage would no longer be governed by the Muslim law of Succession but will be governed by the provisions of the Indian Succession Act, 1925. The essential differences between the rules governing disposition of property by a will under Muslim Law and under Indian Succession Act, 1925 is that under Muslim Law, a testator cannot make a will of more than one-third of his or her property but under Indian Succession Act, a person can make a testamentary disposition of 100% of the property. Secondly, under Muslim Law there are restrictions on the powers of the testator in case of an heir and under Indian Succession Act there is no such restriction.

This research project analyses the law of Wills in general-the nature and scope of wills, the execution of the wills and the validity of wills in both Sunni and Shia Law.

Concept of a Will

When a Muslim dies there are four duties which need to be performed. These are:

1. Payment of funeral expenses
2. Payment of his/her debts
3. Execution his/her will

Distribution of the remaining estate amongst the heirs according to Shariat.

When a person dies his/her property devolves upon his/her heirs. A person may die with or without a will (Testament). If he or she dies leaving a will, the property is distributed among his/her heirs according to the rules of Testamentary Succession. In other words, the property is distributed as per the contents of the testament or will. On the other hand if a person dies leaving no testament (will), that is dies intestate, the rules of intestate Succession are applied for

distribution of the property among heirs. The Islamic will is called *al-wasiyya.* A will is a transaction which comes into operation after the testator's death. The will is executed after payment of funeral expenses and any outstanding debts. The one who makes a will (*wasiyya*) is called a testator (*al-musi*). The one on whose behalf a will is made is generally referred to as a legatee (*al-musa lahu*).

The following terms are important to note in terms of wills:

a. **Testator**:-The person, who makes/creates a will.

b. **Legatee**:- The person/persons, in whose favour, the will is created.

c. **Legacy**:- The subject matter of the will. It is the property to be distributed among the heirs.

d. **Executor**:- The testator, while executing the will, may appoint a person to execute the will in accordance with its contents (after his death). In the absence of the appointment of Executor by the testator, the Court may appoint a person called 'Administrator' to execute thee will. Ameer Ali1 says "*a will from the Mussalman point of view is a divine institution since its exercise is regulated by the Quran*". At the same time the Prophet declared that the power should not be exercised to the injury of the lawful heirs. Tyabji says that a will means "*the legal declaration of the intentions of a Muslim with respect to his property which he desires to be carried into effect after his death*." The ancient texts in Muhammaden law definitely dealt with wills. The leading authority on the subject of wills is the Hedaya which was composed by Sheikh Burhan Ud-din Ali. According to the Hedaya, "*a will is the endowment with the property of anything after death*". A will confers a right to property in a specific thing or in a profit or advantage in the manner of a gratuity postponed till after the death of a testator. The fundamental idea of a will is that the testator should thereby dispose of his property or such part thereof as his personal law permits him to bequeath by Will. Under pure Islamic Law a will is purported to direct that after the testator's death a certain task be completed or that a portion of his property be given in ownership to someone or that the ownership of testator's property be transferred to someone or that it be spent for charitable purposes or the person making a will may appoint some person as guardian of his children and dependants.

Nature of the 'Will'

The importance of the Islamic will is clear from the following two *hadith*:

1. Sahih al-Bukhari: *"It is the duty of a Muslim who has anything to bequest not to let two nights pass without writing a will about it."*
2. Ahmad and Ibn Majah: *"A man may do good deeds for seventy years but if he acts unjustly when he leaves his last testament, the wickedness of his deed will be sealed upon him, and he will enter the Fire.If, (on the other hand), a man acts wickedly for seventy years but is just in his last will and testament,the goodness of his deed will be sealed upon him, and he will enter the Garden."*

The will gives the testator an opportunity to help someone (e.g. a relative need such as an orphaned grandchild or a Christian widow) who is not entitled to inherit from him. The will can be used to clarify the nature of joint accounts, those living in commensality, appointment of guardian for one's children and so on. In countries where the intestate succession law is different from Islamic law it becomes absolutely necessary to write a will. The Islamic will includes bequests and legacies, instructions and admonishments, and assignments of rights. No specific wording is necessary for making a will. A Muslim can make a will orally or in writing3. Muslim law requires no specific formalities for creation of a will. It may be made in writing or oral or even by gestures. Though it is in writing, it need not be signed by the testator and attested by the witnesses.4 It is necessary that the intention of the testator should be clear and unequivocal.
In Islamic law the will can be oral or written, and the intention of the testator must be clear that the will is to be executed after his death. Any expression which signifies the intention of the testator is sufficient for the purpose of constituting a bequest.
Therefore there are two types of wills: Oral and Written. If a document possesses the characteristics of a will, the document is considered to be a complete will. In the case of an oral will, no specific number or class of witnesses is necessary for the validity of a will. However the following conditions need to be satisfied :

a. **Legator's intention to make a will must be proved beyond doubt.**

b. Terms of the will must be proved

c. Will must be proved with the greatest possible exactness.