THE CONCEPT OF 'WILL' UNDER MUSLIM LAW: A STUDY

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Abstract:

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 one-third. 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.

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.

I. Concept of a Will

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

- Payment of funeral expenses
- Payment of his/her debts
- 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 Ali[1] 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

[1] Ameer Ali: Mohammedan Law, Vol. I, p.438

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.[2]

II. Nature of the 'Will'

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

- 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."*
- 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 writing[3]. 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.

[2] Yawar Qazelbash, Principles of Muslim Law, (Fifth Edition, 2005), p.233
[3] M.Altaf v. Ahmad Bux (1876) 25 W.R. 121 (P.C.)
[4] Ramjilal v. Ahmed, AIR 1952 MP 56

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[5]:

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.

On the other hand, in case of a written will, there should be two witnesses to the declaration of the will. If the testator fails to mention the quantity or amount of bequeathed property, regard may be given to the number or quantity owned by the testator at the time of death.

The will is executed after payment of debts and funeral expenses. The majority view is that debts to Allah such as *zakh* and obligatory expiation should be paid whether mentioned in the will or not. However, there is difference of opinion on this matter amongst the Muslim jurists.

For a will to be valid, the following conditions are to be satisfied.

- Capacity/Competence of Testator;
- Competence of Legatee;
- Subject Matter:
- Testamentary Capacity.

1. Capacity of Testator:- According to Muslim Law, a testator or legator has to fulfil the following conditions: age of majority, validity of gifts made by guardians, validity of a person who has attempted suicide and soundness of mind.

According to Muslim Law, the age of Majority is 15 years, but it is not applicable to the wills in India. It may be noted that under Shia law, age of majority is not a condition precedent for making a will. Tyabji states that *"the Shiite Law of wills must be deemed to be unaffected by the Indian Majority Act which defines the age of majority as 18 or 21 and only questions related to marriage, divorce, adoption, and religious usages are exempt from this"*. A Shiite who is ten years old is thus exempt from the Act and has discretion and is competent to create a will. It has however been held that this

[5] M.A Qureshi, Principles of Muhammadan Law, (Ninth Edition, 2005) p.327

view cannot be accepted. There is no expression provision in the Act which excludes the operation of law for Shia Mulsims.

The Shafi School of Sunni Law has prescribed certain conditions:

a. A person who is capable of duties can make a valid will
b. A person who is under inhibition on account of insanity cannot make a will
c. A person who is not on his senses cannot make a will
d. A will made by a child is also not valid. However there is a difference in opinion among Muslim Law Scholars. However, under Muslim law, a will cannot be made by the guardian on behalf of the minor or insane person and it will be treated as void. A will made by a person when he was a minor but after attaining majority he ratified the same will be treated as valid.

Under Shia Law, a will made after the testator who was injured by his own actions or tried to commit suicide, such a will is declared as invalid. In *Mazhar Hussain v Bodha Bibi*[6] it was held that a will of suicide is valid when made in contemplation of taking poison but before poison was actually taken, onus of proving that the will was written afterwards rests on party impugning with.

Tyabji says that *"a will made by a testator whose mind is unsound does not become valid by his subsequently becoming of sound mind. A will made by a person while of sound mind becomes invalid if the testator subsequently becomes permanently of unsound mind."*

2. Competence of Legatee:- Any person having capacity to hold the property can be a legatee. The Legatee may be a Muslim or a Non-Muslim who is not hostile towards Islam, man or woman, a major or a minor or even a child in the womb provided the child is born within 6 months of the death of the testator. A person who renounces Islam cannot be a competent legatee. An institution is also a valid legatee. In the general sense, the institution should not be hostile towards Islam and not promote anti-Islamic activities. A will in favour of a Hindu temple or a society that propagates another religion will not be a valid will. However an institution engaged in promoting education and self-reliance is a valid one as long as it is not against Islam.[7]

[6] (1898) 21 All. 91(P.C)
[7] Badrul Islam Ali Khan .v Ali Begum AIR 1935 Lah 251

Where a legatee under a will is responsible for the murder or causing death to the testator, the will made in his or her favour will be invalid under Sunni Law. It is irrespective whether the murder was cause accidentally or intentionally. It is also immaterial if he knew about being a beneficiary in the will. Under Shia Law, the legatee will be incompetent to receive the benefits if the murder was caused only intentionally. The time of making the will is of no consequence.

The legatee must be capable of owning the bequest. Any bequest made in favour of any legal heir already entitled to a share is invalid under traditional Sunni Muslim law unless consent has been given by other legal heirs. An acknowledgement of debt in favour of a legal heir is valid. Acceptance or rejection of a bequest by the legatee is only relevant after the death of the testator and not before. Generally speaking once a legatee has accepted or rejected a bequest he cannot change his mind subsequently.

Where the testator has bequeathed the property jointly to several certain or ascertained persons, the bequeathed property will be divided equally amongst the legatees. Under Hanafi law the legatees who have survived the testator will take the property.

The whole of a bequest made to several legatees collectively of whom one or more predeceases the testator is taken by the surviving legatees, Where the testator has directed that legatee will be entitled to take only a definite part of the bequest, the legatee will be entitled to inherit such portion of the property.[8]

3. Subject matter:- A Muslim can bequeath any property movable or immovable, corporeal or incorporeal, which must be in existence and transferable at the time of testator's death. Therefore it is not necessary that the subject matter of the will must exist at the time of making the will but it must exist when the will becomes operative that is at the time of the death of the testator.

4. Testamentary Capacity:- A Muslim cannot dispose of by will more than one-third of the net assets after allowing for the debts and funeral expenses of the testator (under both Hanafi Law and Shia Law). The remaining 2/3 share should be made available for distribution amongst the heirs. Even for bequeathing the 1/3rd share, the Muslim has to obtain the consent of the other heirs. Thus, the testamentary capacity of a Muslim is cut down by two principal limitations[9]:

a. as to quantum where he cannot bequeath more than one-third of his net estate
b. as to the legatees where he cannot bequeath to his own heirs.

[8] Ibid 5, p.318
[9] Asaf. A.A.Fyzee, Outlines of Muhammadan Law (Fourth Edition,1974,) p.358,

III. Importance of the consent

Under Sunni Islamic law the power of the testator is limited in two ways: firstly, he or she cannot bequest more than 1/3 of the totally property unless the other heirs consent to the bequest or there are no legal heirs at all or the only legal heir is the spouse who gets his/her legal share and the residue can be bequeathed and secondly, the testator cannot make a bequest in favour of a legal heir under traditional Sunni Muslim law. Here consent must be given at the time of the operation of the Will, that is, after the death of the testator.

There are two exceptions to the one-third rule:

a. When the testator does not have any heir. In such cases, if the restriction of permissible one-third is applied, then the beneficiary is the Government who will take the property by doctrine of Escheat, while the primary purpose of applying the bequeathable permissibility to the extent of one-third is to protect the rights of the heirs, and not that of the Government. An heirless person can thus make a bequest of the total property.
b. Where the heirs themselves consent to the bequest in excess of one-third. As the chief objective is to safeguard the interests of theirs, the excess bequest can be validated by consent.

Under Shia Law, the bequest in favour of an heir is valid without consent of other heirs provided it does not exceed the bequeathable one-third limit. If it is in excess of the one-third, then the consent of those heirs is necessary whose share is likely to be affected by the bequest.

The consenting heirs must be majors, sane and not insolvent in law to be considered as valid consent. The consent given by the heirs may be expressed or implied. It may be oral or in writing. It can also be implied from conduct. Mere silence or inaction would not be taken as consent even if heirs were present at the time of the proceedings for effecting the names in the Will. Where a will is executed in writing and is attested by the testator's heirs it is sufficient proof of their consenting to the act of the testator. Where the testator makes a bequest in favour of an heir and on his death, the other heirs help the legatee in effecting a mutation in name or allow the heir to take exclusive possession of the property it is proof of the heirs' consent.

Under Shia Law, the consent of heirs whose shares are adversely affected can be given before or after the death of the testator and under Sunni Law, it must be given after the testator's death. But once the consent is give, it cannot be rescinded subsequently and the heirs are bound by it. Similarly, consent cannot be given after an heir has previously repudiated it.

The legacy in favour of an heir can be validated by obtaining the consent of one or some of the heirs or even all of them collectively. Where all the heirs give their consent the legacy is valid to the extent of the shares of all. Where only one or some of them give their consent the legacy would be valid only to the extent of the heirs' shares. In the case of *Gulam Mohammed v Gulam Hussain*[10], the Privy Council held that a bequest in favour of heirs without the consent of other heirs is invalid.

IV. Abatement of legacies

A Muslim testator can make a will of only one-third of his property without the consent of his or her heirs. If the bequest is in excess, and the heirs refuse to give their consent, the totality of the will does not become operative or invalid but abates rateably and is valid to the extent of one-third of the property, as has been stated in the *Hedaya*. In *Damodar Kashinath Rasane v Shahzadi Bi*[11], the Bombay High Court stated that a Muslim cannot bequeath more than one-third of his property whether in favour of an heir or a stranger.

The rule of Abatement is different in Sunni Law and in Shia Law.

I) In Sunni Law, the general rule is that a bequest in excess of the one-third of the estate of the deceased would take effect with respect to one-third with the excess going by inheritance. Where there are more than one legatees and the property given to them exceeds one-third, the shares of each of the legatees would be reduced proportionally. This is called the ***'Rule of Rateable Proportion'.***

The following principles are applied:

a. The property disposed of by will, must first abate equally and rateably.
b. The proportionate part of each bequest which is for a secular purpose must be allotted to it
c. The proportionate parts so abated of bequests for pious purposes must be aggregated and the aggregate distributed so that the priority will be given to the extent of the full bequest. In such cases the following rules are applied:
    - The Quranic rules will be given first preference. The Quranic heirs will have precedence over other bequests for pious purposes.

[10] AIR 1932 PC 81
[11] AIR 1989 Bom 1

- The property will be applied for certain works which are necessary.
- The property will be applied for voluntary purposes.[12]

There is an exception to the above rule. Where the legator has left only his or her spouse, and apart from the spouse there is no other heir, the above rule of only making one third of the property may become inapplicable. In such cases, the spouse shall take the whole property. The rule of bequeathable third shall have no application if no heir has survived the legator.

If a Muslim bequest more than one-third of the property and the heirs does not consent to the same, the shares are reduced proportionately to bring it down to one-third. Bequests for pious purposes have no precedence over secular purposes, and are decreased proportionately. Bequests for pious purposes are classified into three categories:

a. Bequest for *faraiz,* that is, purposes expressly ordained in the Koran viz. *hajj*, *zakat* and expiation for prayers missed by a Muslim.
b. Bequest for *waji-bait*, that is, purposes not expressly ordained in the Koran, but which are proper such as charity given for breaking rozas.
c. Bequest for *nawafali,* that is, purposes-deemed pious by the testator, viz. bequest for constructing a mosque, inn for travellers or bequest to poor. The bequests of the first category take precedence over bequests of the second and the third category and bequests of the second category take precedence over those of the third.

An example under the Rule or Rateable Proportion: If a Muslim Man executes a Will giving Rs.30,000 to A and Rs. 20,000 to B. He leaves behind property that comes up to Rs.75,000 after payment of funeral expenses. Here the bequeathable limit would be one-third, which would be Rs.25,000 while the bequest in the will at the moment is Rs.50,000. The bequest in favour of A and B will be proportionately reduced. The ratio of the bequest will be the same but both bequests will be reduced to half, that is, the bequest due to A would become Rs. 15,000 and that of B would be Rs.10,000. The sum total would then by Rs.25,000 which would make it valid.

II) Under Shia Law, the principle of rate able abatement is not applicable and the bequests made prior in date take priority over those later in date. But if the bequest is made by the same will, the latter bequest would be a revocation of an earlier bequest. This is called the **Rule of Chronological Priority**. The legatee whose name appears first in the Will is to be given his or her share, followed by the second legatee

[12] Mathuradas v. Raimal (1935) 37 Bom. L.R. 642

and then the third and so on. The moment the bequeathable one-third is exhausted full effect has been given to the Will. Any other legatee whose name follows after the one-third of the assets has been distributed will not receive anything. The rule of chronological priority is not applicable in cases where under one legacy two or more persons have been an exact one-third of the total assets. In such cases, the legatee whose name appears last gets the one-third given to him under the Will, and the legatees whose names appear prior to him will not get anything.

For example, A testator dies behind leaving assets worth Rs.1,20,000. He leaves a will under which he leaves Rs.20,000 to A, Rs. 30,000 to B and Rs. 40,000 to C. As the total assets of the testator are to the tune of Rs.1,20,000, the bequeathable one-third of that amount would be Rs. 40,000. Following the rule of Chronological Priority, as A's name appears first, he will be given Rs. 20,000. The rest of the Rs. 20,000 of the one-third will be given to B. C will not get anything as the one-third (Rs. 40,000) is exhausted.

V. Registration and revocation of wills

REGISTRATION OF WILLS

Though it is not necessary to register a will, but the Law recognizes a Registered will when the execution of a will is disputed and when there is an unregistered will. The provisions relating to registration of the will have been given in sections 40 and 41 of the Indian Registration Act. The testator, after his death, or any person claiming as executor or otherwise under a will, may present it to any Registrar or Sub Registrar for registration. No time limit has been prescribed for registering the will and a will may be presented for registration at any time. A will presented for registration by the testator may be registered in the same manner as any other document.

A will presented for registration by any other person entitled to present it shall be registered, if the registering officer is satisfied:

a. that the will or authority was executed by the testator;

b. that the testator is dead; and

c. that the person presenting the will is entitled to present the same.

The registration of will is not the proof of the testamentary capacity of the testator as the Registrar is not required to make an enquiry about the capacity of the testator except in case the testator appears to him to be a minor or an idiot or lunatic.

CODICIL

Codicil means an instrument made in relation to a will and explaining, altering or adding to its dispositions and shall be deemed to form part of the will. The codicil is generally made to make slight changes in the will, which has already been executed. A codicil cannot alter a will more than what is necessary to carry out the testator's intention as evidenced by the will and the codicil.

Executor of the will (*Al-wasi Al- mukhtar*)

The executor or *al-wasi* of the will is the manager of the estate appointed by the testator. The executor has to carry out the wishes of the testator according to Islamic law and to watch the interests of the children and of the estate. The authority of the executor should be specified. Hanafi law states that the executor should be trustworthy and truthful; Shia Law states that the executor must be just. The Hanafi law considers the appointment of a non-Muslim executor to be valid. The testator may appoint more than one executor, male or female. The testator should state if each executor can act independently of the other executors. If one starts acting as an executor, one will be regarded as having accepted the appointment, both in Islamic and in English law.

REVOCATION OF WILL BY A MUSLIM

The basic feature of a will is its revocability. The testator may revoke his will at any time before his or her death either expressly or impliedly. The express revocation may be either oral or in writing. A will may be expressly revoked by tearing it off or by burning it. This revocation is possible till the testator breathes his last which is *Marzul Maut* (end at the death bed). Similarly a testator is lawfully empowered to make a subsequent will of the same property and the previous will would be revoked. The will can be revoked impliedly by testator transferring or destroying completely altering the subject matter of the will or by giving the same property to someone else by another will. Where the testator has disposed of the bequeathed property by way of alienation it will be presumed that the testator has revoked the bequest.[13]A subsequent sale or gift of the property may also amount to revocation.

Therefore under Islamic Law, the following conditions can stand as revocation:

a) sale of the bequeathed property

b) gifting the property

[13] Abdul Karim v. Shiofiannisa (1906) 33 Cal. 833

c) when the property is materially changed or altered by way of addition and the property cannot be delivered

Mere denial by the testator as to the validity of a bequest will not be sufficient to revoke the will. A similar declaration will not amount to revocation either. Under Islamic Law, a bequest to a person is revoked by a bequest in a subsequent will of the same property to another. But a subsequent bequest, though it be of the same property to another person in the same will does not operate as revocation of the prior request and the property will be divided between the two legatees in equal shares, as per the Hedaya.

Another important aspect of Revocation is intention of the legator. It is important to show that a legator has intended to alter the will and the alteration in the deed, is a result of an altered intention in the interest of justice and good conscience.

Conclusion

A Muslim will must be construed primarily in accordance with the rules laid down in the Muhammadan Law, bearing in mind the social conditions that prevail, the language employed and the surrounding circumstances. A will speaks as in modern law, from the death of the testator. The Court should as far as possible give effect to the intention of the testator when there is ambiguity in the will. The heirs may also be asked to interpret it. While determining the rules guiding the interpretation of wills, it is essential to remember the differences in the law of wills with regard to Sunni Law and Shia Law. Thus summarising the differences:

a. In Sunni Law, the bequest to an heir is invalid even to the extent of one-third of the total property of a testator. Whereas in Shia Law, the bequest to heirs is valid up to the extent of one-third of the property.

b. The Consent of the heirs must be given after the death of the testator in Sunni Law but in Shia Law, the consent of the heirs may be given before of after the death of the testator.

c. The bequest in favour of a child in the womb of his mother is valid provided he or she is born within six months of making a will in Sunni Law but it is up to ten months under Shia Law.

d. A will by the testator who later commits suicide is valid in Sunni Law. This is invalid in Shia Law unless the will is made before taking any step towards commission of the act of suicide for the will to become valid.

e. The Legacy has to be accepted after the death of the testator in Sunni Law. Legacy under Shia Law can be accepted before or after the testator's death.

f. Legatee who causes the death of the testator cannot take his property under Sunni Law. Under Shia Law, if the death of the testator was caused by the legatee accidently, then the property can be taken but not otherwise.

g. Under Sunni Law, if the legatee dies before the testator, the legacy lapses. Under Shia Law, if the legatee dies before the testator, the legacy will lapse only when either the legatee dies without leaving an heir or where the testator himself revokes the will. If an heir exists, the legacy passes onto the heir if the will is not revoked.

h. Where the bequest is more than one person in excess of the valid one-third, the rule of rateable proportion applies in Sunni Law. In Shia Law, it is the rule of Chronological Priority that is applied to determine the distribution of the one-third property.

Therefore a will in Muslim law is a divine disposition of property. The object of a will is two fold, firstly, it prevents a person from interfering and defeating the claims of his lawful heirs. So the restriction of the legal one-third ensures that at least two-thirds of the property must go by succession. Secondly, by permitting the testator to bequeath one-third of the property, he or she is empowered to settle just claims of even strangers or other relatives who are not heirs.