

The Islamic principles on estate distribution and the wills

According to the Islamic teachings, the assets of a deceased should be distributed in the following order:

Firstly: All funeral expenses should be paid. This includes the costs of medical certificates, transportation, washing, shrouding, digging of the grave and burial etc. This does not include the costs of feeding the guests, transportation costs of the family and payment for the flowers on the grave. If someone volunteers to pay for the funeral expenses, in full or part, that is perfectly acceptable.

Secondly: Any outstanding debts should be paid in full. The payment of debts has priority over everything else (with the exception of the burial costs).

Thirdly: Any wasiyyah (bequests) should be honoured. This however is only necessary if the bequest in question is valid. The criteria for the validity of a wasiyyah is as follows:

- The value of wasiyyah does not exceed one-third of the total value of the estate – the assets left after taking out the funeral expenses and the settlement of the debts,
- The recipient of the wasiyyah is not a close relative of the deceased who is entitled to receive a share from the estate (according to the Islamic teachings). These include spouses, parents, children etc.)
- The wasiyyah does not consist of a forbidden act. This can be things such as denying a close relative a share from the estate which s/he is set to receive Islamically, or something which is likely to bring harm to the individuals or public.

About wasiyyah (bequest), two further points must be noted:

Firstly, it is important that in addition to having a formal document drafted, one also explains to his family members the governing principles of the will. Consider the following tradition recorded by Daraqutni, the famous scholar of Hadith (d. 995 CE/385 AH)

Anas b. Maalik (may Allah be pleased with him) said, the companions of the Prophet ﷺ used to write in the opening paragraph of their wills:

'The following is what *so and so* dictated in his will. He dictated that:

he solemnly testifies that there is no God but Allah alone, Who does not have any associate, and that (Prophet) Muhammad is a servant of Allah and a Messenger of His,

and that the Doomsday is inevitable without any doubt,

and that Allah shall raise the dead back to life from their graves.

He commanded the family (that he left behind) to fear Allah and be mindful of Him as He deserves, be at good terms in between them and obey Allah and His Messenger since they are believers.

He further instructed them of that what Prophet Ibrahim and Prophet Ya'qoob had instructed their sons, '*My sons, indeed, Allah has chosen for you this religion; so do not die except in a state of full submission.*' (Daraqutni)

Secondly, charity should be given during one's life. Such charity earns the greatest amount of reward. At death, one has the permission to bequeath up to one third of his or her estate to a charitable cause. This permission nevertheless is restricted the following conditions:

- a) This should only be done when the beneficiaries are all well off and are not in need of their share in the estate. In such a situation one is encouraged to give away up to one third of his or her estate for a charitable cause. In fact, if one fears that his or her heirs are likely to squander his wealth or put it in wrong use, one should make use of his right to give up to one third away.
- b) The intention should not be to harm or deprive the heirs of their complete share.
- c) If the heirs are needy, poor or are likely to benefit more from the estate – such as for their study or some other greater use – than an intention of charity should be done with them. Rather than bequeathing a portion of one's estate to a charitable cause, one should allow his heirs to benefit from it in full. This will earn one greater reward, not of charity only, but also of supporting the needy relatives.

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