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Review article

Ineffective and invalid wills from the holy quran perspective with a curdory look at its relevant law and regulations

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ARTICLE INFO

ABSTRACT

Article history:

Received 03 March 2014

Accepted 21 March 2014

Available online 28 March 2014

Keywords:

Void wills

Invalid will

The holy qoran

Imamia jurisprudence (fiqh)

Relevant regulations

Will means that a person recommends that after his death such and such things should be done, or such and such thing out of his property will be the property of such and such person, or will be spent for charitable purposes, or he appoints someone as guardian of his children, or of those who are under his guardianship. The person to whom a Will is made is called executor (Wasi). If a person, who cannot speak, makes himself understood by means of signs, he can make a Will for anything he likes and his Will is in order. Although in some verses of the revealed priscrpts (Aiat al-Ahkam) on Will, God expressly permits it, some of them (such as verses 181 and 182 of Al-Baqara Chapter), and also different ideas in agreement and disagreement with them and other views which confirm and complement the mentioned verses, the Will is divided into two categories: 1) Wills; 2) void and invalid Wills. These two must be separted from each other and the first category should be only taken into account. Islamic Jurists and legal scholars disagree on some of the issues and lwas regarding Will. The differences lie in derivatives rather than generalities of Muslim law. Iranian lawmaker, in accordance with his mission, has enacted relevant legislations based on Islamic laws and famous scholars' opinions on this particular issue. According to the above, much importance is on recognizing the laws requiring religious

commandments, understanding relevant regulations and taking a correct action.

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1. Introduction

The Holy Quran is the primary source for Islamic sciences and the stringent authenticity of the laws attributed to it is inherent. The Fiqh (Islamic jurisprudence) before any reason is extracted from the the Holy Quran. The Qoran has 500 verses called Ayat al-Ahkam revelations that some of which clearly citing to Will (verses 180-180 of Sura Al-Baqara; verses 11-12 of Al-Nisa; Verses 106-108 Maida), and these verses are considered to be the the revelation of the Quranic injunctions on inheritance. However, undoubtedly, the analysis of Aiat al-Ahkam on every subject cannot be considered as a complete juridical deduction, because Ijtihad proofs should be considered along with other verses of the Quran. But the correct interpretation of the Quran is the first step to infer Islamic laws, i.e. for a correct interpretation and extension of such laws, Islamic qualified religious jurists and experts must have a domineering knowledge on valid deduction sources and other Quran generally applicable interpretations and sentences (Amid Zanjani, Aiat al-Ahkam: 21). Therefore, the present paper attempts to interpret Will issue primarily from the point of view of the Holy Quran and Fiqh and then define void and invalid wills and distinguish them from each other and from will, and then aims to further clarify the rules on Will which an adult may encounter in the face of uncertainty, and to determine for a Testator (Al-musi) what are his/her authority and s regarding the Will (whether contractual or Ahdi, and acquisitional or Tamliki) and finally to explain how to enact relevant law based on the arguments drawn from the Aiat al-Ahkam and Shia vibrant and dynamic Fiqh. A myriad of Islamic commentators, jurists and researchers have paid a great deal of discussion and research on the issue of Will and have raised many debates, and almost all of them agree on categorizing the issue into valid and invalid Will (including void and invalid) or just (Savab) or unjust (na-Savab). Some of which discuss briefly on void and invalid wills, but the author after doing required reviews, has not found a case which discuss in detail the theme presented in the current study.

2. The first debate

A) The concept of Will: Will (al-wasiyy) is a transaction which comes into operation after the testator's death and it has been discussed in the Holy Quran, Fiqh and law .

B) The etymology of Will: the word has been derived from the Holy Qurani and Aiat Al-Ahkam (Sanafi Pour, Abd al-Rahim bin Abdul Karim, Montahi al-Arab Fi Loghat al-Arab, Khaiam Library Publications, Dehkhoda, Ali Akbar; Dehkhoda Loghat Nameh, Tehran, Tehran University Press, 1966) in the Holy Quran, wherever the word "Wasyyat" is applied in a four-letter word, it means "connection" rather than "promise" (An'am Chapter, verse 151; Nisa Chapter, verse 131; Loghman Chapter, verse 14; Mariam Chapter, verse 31; Al-Zariat Chapter, verse 530). Therefore, it could be said that these two words have not any derivataive relation. By emphasizing that the word "Wasyyat" has been deriven from a four-letter word and means "promise", we believe that its main root is a triad verb and there is not so much divergence bwteen "promise" and "connection" (Mohaghegh Damad, Vassiat: 19).

C) Will in the area of law: some scholars have favoured "connection" as the meaning of Will over "promise" (Catouzian, Will on civil s: 20), but others have sufficed to such disputes and have applied Will both in the meaning of promise and connection and this contract conveys a binding implication because it is a commitment which must be enforced by testator. Researchers, scientists and scholars have presented many definitions for Will. For example, Mohaghegh in Sharaie al-Islam says that "Will is distribution of remaining estate amongst the heirs following death (Mohaghegh Helli, Sharaie Al-Islam: 247) and Shahid Aval says "Will is to determine the share entitlement of each of the heirs" (quoted from Zain al-Din al-Jabei al-Ameli "Shahid Sani", Masalek al-Afham, 1412 A.D., Vol. 1: 305, the same, Sharh Lam'eh, Vol. 2, Will book: 35) .But from the perspective of law, Will is not a particular form of tenure such as contract of

sale, donation and permission, and its subject may include free possession, set dues, instructions required to manage children's property, payment of deceased's debts or just some moral advices.

D) Form of the will and its warrant:

The jurists agree that Will at any form is valid and enforceable, for example, a testator may make a Will after he died, and say that his property will be the property of Javad. However there must be no ambiguity with respect to its time, and it should involve stipulation "after the death".

Through Kitabat (in a written form): the famous Imamia scholars believe that Will will be enforced by Kitabat. (Imam Khomeini, Tahrir al-Vasyleh, Vol. 2: 94), and in Iranian law and most of the countries, the most valid type of Will enforcement is Kitabat (Civil Law in the current discipline, Dr. Naser Catouzian, will section, published in 2003, Tehran).

Enforcement by signs: somebody who is dumb or mute or unable to talk can make himself understood by signs and thus make Will for anything he likes (Makaseb, Shaikh Ansari, 93)

3. The second debate

3.1. An analysis of Ayat Al-Ahkam on Will

Few verses in the Holy Quran expressly warrants the general validity of Will and its scope of enforcement, and jurists and commentators by these revelations and scientific instruments at hand have been able to expand and to remove any ambiguity on Will, in many cases; the verses are as follows:

[1] Baqara Chapter, verses 180-182

[2] Nisa Chapter, verses 11-12

[3] Al-Maida Chapter, verses 106-108

Three general decrees could be inferred from the above verses

[1] Will's legitimacy

[2] Any change and manipulation into will is regarded as sin (there are exceptions here as well).

[3] Will must not be persecution and oppression of heirs (i.e. a Will which is the persecution and oppression of heirs is invalid). (Fadhil Miqdad, Miqdad ibn Abdullah, Kanz al-Irfan fi fiqh al-Quran, translated by Dr. Aghighi Bakhshaieshy, Navid Islam Publication, Qom, Volume 2: 577).

In these verses, even though the legitimacy of Will is clearly expressed but disagreement exists on its obligation and recommendation, which as the the verses of inheritance, has underlined obligation, it is regarded as a recommendable emphatic act as well (Taphsir Aiashy, Vol 1, p 77, Hadith 167, from the verses 11 and 12 of Nisa Chapter: the stories quoted either of Imam Sadiq (AS) or Imam Baqir (AS) on the abrogation of the Will verse by the Will verses). And even some Muslim Jurists believe that Will could be categorized into four forms: 1-compulsory (Vajiba) 2-recommendatory (Mostahiba) 3-prohibited (Hiram) and 4- Abominable but not forbidden or dis-recommendable (Makruha) (Shaikh Baha al-Din Ameli, Kitab Jamie Abasi: 463) (Sheikh Baha al-Din Ameli, Kitab Jame Abbasi: 463)

[1]: Compulsory (Vajiba)] Wills: Wills to pay compulsory rights: a) the rights of God (Haqh Allah) b) the rights of people (Hogh al-Nas)

[2]: Recommendatory (Mostahiba) :make a Will to a low wealth, i.e. make a Will in relation to wealth- and Will to two witnesses and acknowledgment of the prophethood of the Prophet and the Imamat (spiritual leadership of holy Imams)

[3]: Prohibited Will (Hiram): (as one branch of our debate): making Will and testament to the acquisition of prohibited and non-prohibited, such as wine or the current administration to a prohibited act, such as adultery.

[4]: Abominable but not forbidden (Makruha) Wills [4] : and it is making a Will to the great wealth; another branch of our debate in this article is abominable ones which their roots are not related to invalid and void, because based on jurisprudential and legal principles, abominable acts are not separable from illegal and void roots.

Second Debate: Will and the rules relevant to execute it

It should be noted that in the verses and hadiths (verses 180-182 and 240 of Al-Baqara Chapter- Verses 106-108 Maida Chapter, verses 11-12 of Nisa Chapter) (HorR Ameli, Vasaal al-Shia, Vol. 13, p. 252) (and Taphsir Aiashy, Vol. 1, p 76, hadiths 163-166), it is mentioned that listed Will is a recommended

emphatic act and if testator's Will is accepted by executor or legatee, Will should be made, and it is forbidden to be changed or manipulated.

And any manipulation on it is invalid, but will remain in order. Of course, this type of Will need to be reasonable for any reason, as stated in the verse 180 of Baqara Chapter, the adverb "Almaeruf" is used to mean a known phenomenon for reason and wisdom.

From scholars and jurists' perspective, Will must be acceptable and reasonable in terms of value, amount and also based on the considerations of testator and inheritor rather than being a pretext for quarrel, deviation and controversy. In addition, it must be the object of knowledge not addressed to an unknown, because it is void and invalid.

But God has allowed revoking a void Will and converting it into a valid one, and the verse 181 of Baqara Chapter which has banned any change in Will is linked to the preceding verse, i.e. 182, and God has given consent to enacting necessary manipulations.

Third Debate: justness and equitability in making a Will

Based on different verses and stories on the prohibition of transgression in Will, it could be found that they have emphatically underlined "non oppression" and "non manipulation" in Will; therefore Will is a full act, any transgression and unlawful manipulation regarding it must be prohibited and is considered a cardinal sin, and Imam Bagher (AS) in a hadith says:

Imam has emphasized that will is an emphatic recommendable act, and warned that any transgression in Will removes the favor of God in the Day of Judgment, and oppression and inequality in a Will happens when a testator makes a Will more than a one-third share and deprive inheritors of their legitimate shares.

Third Debate: categorization of Will from invalidity perspective, authenticity in effectiveness

From one perspective, Will is divided into two forms of valid and invalid, and from another perspective, it could be regarded as effective and ineffective. An effective Will is certainly valid but an ineffective Will may convert into a valid or invalid one. However, invalid Wills can never change, and as it will be clarified later, this type of Will is fundamentally null and void due to some legal and lawful considerations. In other words, there is a kind of differentiation (tabaion) between valid and invalid Wills and also between effective and non-effective ones. However, the relationship between non-effective wills and valid and invalid ones is a general one. Also, the relationship between an effective Will and a valid Will is a general one, i.e. valid Will has a generality over effective one. And there is a type of differentiation between valid and invalid Wills. It must be noted that the legal nature of Wills could be categorized into two forms of contractual and acquisitional (See Katouzian, Will in civil law: 31).

Contractual will: this happens when a person or some people are assigned to do some affairs in lieu of somebody else, and it includes three persons (testator, legator and executor), in which executor is responsible for executing the Will. For example, testator makes a Will that executor become guardian and custodian of legator (a minor) (to know entire rules in this area, see Hakim, Seyed Mohsen, Menhaj al-Salehin, Najaf Publication, Vol. 2: 244; Imam Khomani, Tahrir al-Vasileh, Vol. 2: 93).

Acquisitional Will: a Will in which "testator makes a Will to property, of course in the case of being free and gratuitous." (Abi Mansour Hassan Ibn Mansour Ibn Motahar al-Asadi (Alameh Helli), Tazkarat al-Noghaha, Vol. 2, Qom Publication, Ketel Al-Vasiat: 452). The main purpose of the author in dividing Will into contractual and acquisitional type is that he wants to say that in both cases, it is possible to have invalid, non-effective and valid Will.

4. The First debate: invalid wills

a) Make a Will to illegitimate: invalidity of Will to illegitimate and prohibited affairs is certain and there is no disagreement on this issue among jurists (Mohaghegh Damad: 32); the proof of this decision is the following examples:

[1] Islamic Law has prohibited illegitimate practices and there are a myriad of verses and hadiths in this regard, and it could be said that those practices are rationally and lawfully prohibited (with regard to the concomitance between logic and Shariah). Therefore making a Will to the practices which are not rationally performable is invalid, and the same is true on the making Will to unlawful acts.

[2] According to the second verse of Maida chapter: "...and do not help one another in furthering evil and enmity..." It could be inferred that making a Will to a thing prohibited by Islamic rules is a kind of participation in sin and enmity (derived from Maida chapter, verse 2).

[3] According to Ayat al-Ahkam on Will rules, ineffectiveness and invalidity of Will is prohibited; and in the verse 182 of Baqareh chapter ("But if one fears from the bequeather [some] error or sin and corrects that which is between them, there is no sin upon him. Indeed, Allah is Forgiving and Merciful"), (Baqareh Chapter, verse 182), indicate that making an unjust Will is void and ineffective (Javaher al-Kalam, Vol. 28: 263). Will to unjust and invalid and its revocation could be seen in both contractual and acquisitional form of will. For example, in contractual will, if testator orders in the Will that executor kill a person or some people or do any unlawful and illegitimate act, the Will is void and no effect on respective Will be validated because the Will is fundamentally wrong and unjustified. On the other hand, in acquisitional wills, if legator makes a Will to the affairs which the Islam has prohibited their ownership and transfer, for instance make a Will to wine, the Will is void and invalid. In general, any Will which its execution requires conduction of an illegitimate affair is invalid and there are different instances in this regard, which the present article suffices to two examples, and civil law in this regard says: make a Will to spend money on illegitimate affairs is void (Katouzian, Civil Justice, Article 840), and only acquisitional Will has been considered in this regard.

B) making Will to others property: if somebody make a Will on others' properties and give it to others, the Will is certainly invalid, despite that its owner give consent, because this case is out of the general scope of Will (Imami, Vol.3: 76; Katouzian, Will: 148). In the article 841 of civil law, this issue is affirmed and it is stated that: "legacy must be the private property of testator and making Will to others' property, despite proprietor's consent, is invalid. To see the document of this order, refer to the Holy Quran and Ayat al-Ahkam (Verse 180 to 182 of Baqara Chapter; 11 and 12 Nisa Chapter; 106 to 108 Maida Chapter, 6 of Ahzab Chapter). For example, in the verse 180 of the Baqara Chapter, the God says: "It is ordained for you, when death approaches any of you and he is leaving behind much wealth, to make bequests in favour of his parents and [other] near of kin in accordance with what is fair: this is binding on all who are conscious of God". As an another example, in the verses of 11-12 of Nisa Chapter which has emphasized dividing inheritance after making a Will, it is clearly seen that testator must be the sole owner of property which make a Will on it. This is an obligation and some details on this issue could be discussed in the future papers.

C- Being eligible to make a Will

-Interdiction (Hajr) and exculsion of an interdicted person (Mahjur) of possession of his estate Interdiction (Hajr) means exclusion and hinderance (Imam Khomaini, Tahrir al-Vasileh, Vol. 2: 12; Mohaghegh Helli, Sharaie al-Islam, Vol. 2:99; Javaher al-Kalam, Vol. 26:3) and an interdicted subject (Mahjur) is an individual who is excluded from his estate by another (Shahid Sani, Masalek al-Afham, Vol. 1: 246). However, some regard an interdicted person (Mahjur) as somebody prevented from both financial and non-financial estates, except for worship, Islam, etc. (Allameh Helli, Tazkarat al-Foqhaha, Vol. 2: 73). In Shia Fiqh, Hajr has six types: minority, insanity, slavery, illness leading to death, bankruptcy, mental alienation. Some categorize Hajr into two categories: 1) somebody who is Mahjur due to its benefits such as infant, insane and mentally alienated. 2) Somebody who is Mahjur because of benefits of others. Based on another categorization by Islamic Jurisprudences, Hajr is common or special. The former includes all possessions including financial and non-financial, and latter includes only some parts of legal possessions. Some of these could be finished and some have no end (Javaher al-Kalam, Vol 2:4).

C-1 the Will made by minor and insane

A will made by a minor who has not reached age 10 is invalid. There is no disagreement on this issue among Islamic Jurisprudences, because in holy verses on the legitimacy of making Will emphasize that child must have been Baligh rather than a minor child.

As it was told regarding Hajr, a minor cannot take possession of its estate and will made by him/her is invalid (Javaher al-Kalam, Vol. 28:271). However, Islamic jurists have some disagreements on the validity of a Will made by a minor over 10 years. Some of them see it as valid (Horr Ameli, Vasael al-Shia, Chapter 44) and some other regard it as invalid (quoted from: Javaher al-Kalam, Vol. 28:271). It must be reassured that a Will made by a minor less than 10 years old is not valid. Civil law also ascertains that "testator must have reached the required age to make a Will" (Civil law, Article 835). To make a valid Will,

a minor not only must have reached a legal age, but also, he/she undergo sufficient development" (Sharh Lame'h, Vol. 1: 416) And as Saheb Javaher says, there is no disagreement on this order (Javaher al-Kalam, Vol. 46:4). And insane literally means somebody who is ignorant, and in the area of Fiqh and civil law insane means somebody who tends towards extravagance and dissipation and it is not reasonable to let him/her take financial possessions.

C2: Will made by an Insane

Insanity is two types: 1- permanent insanity 2- periodic insanity

All jurisprudences agree that the will of a permanent insane is void because such people cannot control their property and self in accordance with the Holy Quran and traditional practice and thus they cannot fulfill the act of will which entails having free will and control over property and self (Mohaghegh Damad: 72). According to Article 1211 A.M, an insane individual with any degree of insanity must not compose a will.

In periodic insanity, when the person becomes mentally conscious and without any problem, Will is valid otherwise it is invalid.

C3- will at the time of being drunk and not conscious

When a person does a Will at this state, his Will is invalid based on jurists opinion, because it has not reason and intention as two main principles of Will (Javaher al-Kalam, Vol. 28: 270).

Based on the Article 195, "at the time of drunkenness or unconsciousness, if a person makes a deal or contract, it is not valid since it has not any intention".

C4- The will made by a guardian and custodian from the ward's behalf

Some verses of the Holy Quran indicate that custodian's practices must be based on expediency and common good of a ward because custodian is trustee in this case (Verse 6, Nisa Chapter, verse 152, An'am Chapter 34, Isra Chapter (Bani Israel))

And as will of granting property to someone else is gratuitous so the custodian is not authorized to take property out of hands of a ward and, Martin (1184 and 1186) has claimed that the main conditions for guardianship are competency and potential of guardian, and has emphasized that guardian must act like a trustee and avoid any transgression and negligence. The duties and authorities of a guardian have been clearly expressed in the Quran verses (verse 283, Baqarah Chapter, Verse 75, Al Omran Chapter, verses 2 & 6, Nisa Chapter)

C5- Mokreh's Will

Mokreh is somebody who makes a threat in order to force another to do something. Will either in the form of a contract or unilateral must be composed and this composition must be done willingly and intentionally, as well. Therefore, if testator has no intention of composing a Will, Will is void and invalid. However if he due to lack of authority and satisfaction compose a Will, Will is valid and the validity depends on the point that the content of Will is approved by legator following resolving dissatisfaction (Katouzian, Will: 66).

C6- the impact of suicide on Will

According to the legal decisions of Imamieh famous jurists, whenever somebody injures himself by an intention of committing suicide or other practices which lead to death, the will is invalid after death and if it does not lead to death, will is effective.

D) Restitution from Will

If we consider will as a contract, it is a permissible one. Therefore, every legator can retribute from his Will every time he intends, same as donation, either verbally or by act. The civil law claims that "testator can return from its Will" (Civil law, Katouzian, Article 838). The jurists agree on the fact that when testator restitutes, Will becomes null and void (Allameh Helli, Tazkarat al-Foghaha, Vol 2: 514) and it becomes invalid when Will returns, for example, the Article 839 says "if legator make a Will contrary to the second Will" the first concept becomes invalid (Vasiat al-Batel Ka al-Maedum). However, it must be noted that Kharejites believe that the primary Will is binding and they make a reference to the Holy Quran and fulfillment of promise (verse 76, Al Omran Chapter).

5. Second debate

5.1. Ineffective wills

5.1.1. Making a will to deprive inheritors of their right

Imami jurists agree when a person make a will that "deprive one of his heirs from inheritance", the will is not valid; for example, when a man makes a will that "because one of my children is corrupt, I depriving him of inheritance or deprive him of my inheritance", the will is regarded as a contractual one because testator has not given something to someone but he has assigned somebody to deprive one heir of his legacy. Therefore, as this will is contrary to the will of God and tradition, then there is no disagreement among the jurists regarding it (Javaher al-Kalam, Vol. 28: 327; Shahid Sani, Masalek al-Afham, vol. 1: 317). To ascertain their opinion, jurisprudences have presented some examples from the Holy Quran and tradition:

Reference to the Holy Quran: in the Holy Quran, some verses have referred to the invalidity of a will which deprives inheritors of legacy.

A-1- as per the verse 11 of Nisa Chapter, God has determined the sole owner of parents' property as their children: "God does enact that the share of the male is twice that of a female..."

A-2 and as per verse 6 of Ahzab Chapter, the close heirs are preferred to others, and God recites that "... And those of [blood] relationship are more entitled [to inheritance] in the decree of Allah than the [other] believers and the emigrants..." In this verse also heirs are favored over others because this is a grant to them by the Almighty God and to permit the elimination of such right, man must have a justified reason.

A - 3 – and as per verse 182 of Baqara Chapter, which has already been dealt with: "But if one fears from the bequeather [some] error or sin and corrects that which is between them, there is no sin upon him. Indeed, Allah is Forgiving and Merciful". From this verse can be argued that a will that requires "evil" i.e. oppression and persecution, is invalid. Also, in a myriad of narrations of the Prophet's companions, depriving some inheritors of legacy is regarded as "evil" and a cardinal sin (Horr Ameli, Vasael al-Shia, Hadith 3). A-4- as per the verse 180 of Baqara Chapter, a will which may harm to inheritors is invalid and God Almighty in the verse 9 of Baqara Chapter has ordered the testator that make a and justified will, i.e. make a will which is beneficial to inheritors (Tabatabaei, Taphsir al-Mizan, an interpretation of the Holy Quran verses, Amid Zanjani, 2008).

B) Referring to the tradition: there are lots of narrations on this subject in the tradition. For example, based on a narration by Ali (AS) which has been cited in Vasael al-Shia: "whoever will observe eousness in his Will is regarded as someone who has paid alimony during his life and anyone who does an unjust Will meets the Lord in the Day of Judgment with reproachment" (Horr Ameli, Vasael al-Shia, Hadith 3).

Legal reasoning: There are two theories: first, depriving inheritors of legacy nullifies Will, because the transfer of property to the heirs after the death of the testator is compulsory and does not depend on desire and consent of somebody, so testator can not prevent the transfer of assets to heirs. In the other words, this kind of transfer is an obligation not a discretionary rule, i.e. it is related to binding rules not discretionary rules and the main source of such obligation is the Holy Quran (Katouzian, Will: 304; Imami: 1990:64).

However, the second theory is opposed to the first one, i.e. the mentioned Will is not completely invalid, i.e. when a testator depriving a one member of heirs of legacy means transferring his share to other members. However, as legator cannot make a Will on more than 1/3 of property, so firstly, that share of 1/3 of property which is shared by the deprived heir, transfers to other ones.

Second, the transfer of the residue of deprived heirs' share to others depends on the consent of the deprived person.

Most of jurists have accepted the first opinion. (Shahid Sani, Masalek al-Afham, Vol 1: 317). However, some like Saheb Javaher have agreed on the second opinions. (Javaher al-Kalam, Vol. 28: 228). In accordance with the opinion of Shaikh Mohammad Hassan Najafi, Iranian civil law legislator also has claimed in Article 837 that "if somebody deprives someone of his legacy in a Will, the Will is not Nafiz". Therefore, it could be concluded that when Najafi refers to "is not Nafiz", then he has followed the second theory, because the first theory does not refer to this point.

5.1.2. Added one-third will

In the last section, this issue was discussed in short. In the present section, the invalidity of Added One-third Will by using The Holy Quran interpretations and verses and jurisprudential opinions is considered in detail. As per Aiat al-Ahkam on Will, God emphasizes justness and equitability of Will including equitability in composing Will by testator and equitability in its execution. For example, in interpreting the verse 182 of Baqara Chapter which "evil & enmity" was discussed, the intention of testator was emphasized. And in these Wills, the justified share of heirs and others must not be ignored. In some stories also just execution of Will and allocation of the estate amongst all the heirs have been undelined, and its transgression is a cardinal sin. Imam Baqer in a hadith has said: "somebody who considers equality in his Will is like the person who has dedicated all his property for God's favour and somebody who transgresses Will, God takes away its mercy from him in the Day of Judgment. (Horr Ameli, Vasael al-Shiaa, Vol. 13:359). Transgression in Will is that man make a Will more than 1/3 of property and deprive inheritors who are entitled to receive it (based on the Quran verses which share of inheritance is specified; Nisa Chapter, verses 11 & 12) or do unjust discriminations due to unjustified personal interests and even reduce the share by 1/4 and 1/5 (Horr Ameli, Vasael al-Shiaa, Vol. 13: 360). The Infallibles (Maesumin) have emphasized on specifying clear cut entitlement and specific shares of inheritors. In a hadith by the Prophet Mohammad we read that: one man of Ansar Tribe died and left some minor children. As he observed the signs of approaching death, he dedicated all his estate in God's way, in a way that he left no further property for his children. When the prophet became aware of this story, asked his companions: "what did you do with that man? They said: we buried him. The Prophet said: "if I had earlier known, I did not allow you bury him in Muslim graveyard because he has left his children without any estate and they are forced to beg (Horr Ameli, Vasael al-Shiaa, Vol. 13: 363). Will to more than 1/3 of property, even with inheritors consent, is invalid based on the opinions of Shafe'ian, Malekian and Ibn Hazm (quoted from Mohaghegh Damad, Will, 2008). Shahid Sani in Masalek says: "it is possible to claim consensus on that among Imamia jurists" (Shahid Sani, Masalek al-Afahm, Vol. 1: 320). According to Saheb Javaher, there are various narrations on the invalidity of a Will higher than one-third of property. He believes that if these narrations do not achieve successive transmission, they are diffused (Mostafiz) (Quoted from Horr Ameli, Vasael Al-Shiaa, Chapter 11). The Will more than 1/3 of property is invalid because after the death of testator, the shares of the inheritance that are prescribed in the Quran should be transferred to those who are entitled to receive it and they are authorized to invest it on any personal purpose, otherwise the inheritors want to donate their property and give effect to Will which has divided shares more than one-third.

5.1.3. Eligibility of will

As it was told in the present paper, the eligibility is prerequisite to authenticity and if testator, legator or executor is not eligible to make a Will, the accuracy of Will will be undermined. Article 190 of civil law recounts the requirements of eligibility and Imamia Jurisprudence also has interpreted it in detail. Such eligibility has different aspects which must be observed in each kind of contract and transaction and there is a general relation between eligibility and contracts and transactions. Some instances of it are presented as follows.

a) Unauthorized Will: this type of Will must not be mistaken for making Will to other's property, as it was told earlier. Regarding Will to other's property, legator regarded the others' property as himself, but in unauthorized Will, person makes a Will to other's property, i.e. there is a difference between these two. Some jurisprudents have proved the accuracy of unauthorized Will (Javaher al-Kalam, Vol. 28; Imam Khomeini, Tahrir al-Vasileh, Problem 19). Because in case of proprietor gives consent, he proves that the proprietor itself has made the will. Here, it is true that legator in unauthorized Will has no eligibility of making a will, but it is assumed that person makes a Will from behalf of somebody else, similar to unauthorized will. In fact, he narrates or composes his Will and after property owner gives the consent to the Will, he is the real executor and the Will is related to him. In this case, Will which is first invalid, becomes valid by the intention of proprietor (Imam Khomeini, Tahrir al-Vasileh, Problem 19).

b) Makreh Will: this issue was explained in the previous section as well. In short, Mokarah testator has no authority and consent in making a will and has not the above mentioned eligibility to do this. Same rule could be enforced as inheritor. However, as it was told before, even if Mokarah gives consent and has sufficient authority but somebody represented by him makes the Will, Will is invalid and its validity

depends on consent following resolving *Ikrah* (duress). The same rule is enforced regarding validating or cancelling will on the behalf of executor or inheritor (Mohaghegh Damad: 76).

C- Monjazat and a patient's Will: here, patient means somebody who observed the signs of approaching death due to an illness or other causes. In this case it is possible to distribute property in two forms:

[1] Possessions suspended on somebody's death (Will)

[2] Monjazat possessions: those legal practices which a person certainly conducts in his practices.

These monjazats may be exchangeable, permissible and gratuitous. In the first case which claims legal affairs are exchangeable and non-gratuitous, Will is valid from a jurisprudential and legal perspective. However, we discuss the second case, i.e. a patient's Monjazat, as practices which leads to generosity, dedication, exchanges accompanied by *Mobahat*, and finally every action which leads to the financial forsaking of properties and reduction in his heirloom. There are two opinions on it by jurists (Mohaghegh Heli, Vol. 2: 102).

[1] Some believe that even though a patient's Monjazat is more than 1/3 of his property, or even entire property, it is valid.

[2] The second group regards patients Monjazat as valid up to 1/3 of property and regard more than this amount as invalid and dependent upon heirs' consent

Iranian civil law, makes no point to patients' Monjazat neither in Will nor interdiction (*Hajr*) and it seems that as contemporary *Imamia* jurists have followed the first idea, they have consider Monjazat as valid (Imam Khomeini, Vol. 2: 23).

Finally, it must be noted that Muslim jurists and lawyers have extended the scope of the rules regarding Will, dividing shares and people involved including legators and executors from every respect and the present paper has investigated the general rules regarding void and invalid Wills from the perspective of the Holy Quran and *Fiqh* and in a general form and by using some applicable examples. However, examining all details and delicate points in this regard requires performing a detailed and comprehensive study which it is out of the limited scope of our work.

6. Conclusion

As *Ayat al-Ahkam* of Quran is stated generally, the undertakers (Muslims) search for a judgment in many of its instances, so it needs interpretation and expert opinions to save Muslims from confusion and show them a direction..

As also it was seen regarding Will, the decisions of *Ayat al-Quran* were extended following reviewing the revelation and interpretation using inference and using other tools in the hands of jurists, and this group despite some small disagreements on their instances and examples, clearly expressed the way and prevented Muslims from evil and enmity. Also, they presented some delicate reasons distinguished valid Will from void and invalid ones to everybody in every position of a Will recognize its duties and responsibilities.

As a result, Iranian lawmaker has effectively used from the rich *Shiite Fiqh* and has composed the relevant statute according to the valid opinions of *Imamia* scholars, and as will is a critical affair following and before death, and as it is his last intention and it is an emphatic recommended affair according to tradition, a detailed explanation of its provisions is obligatory to clearly determine its legal and prevent people from violating the rights of others and committing sin or error.

The end result of this article is that even though invalid Wills are basically void and null, their explanation in a theoretical form prevents them from deviation, mistake and ambiguity.

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