

***Al-waṣiyyah* (Bequest) according to the Four *Sūnni* Schools: A Concise Analysis.**

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Abstract: *Al-waṣiyyah* is an integral part of Islamic law of inheritance. Giving out a stipulated fraction out of an estate willingly by a Muslim especially to non-heirs while alive is also an applauded mechanism of wealth distribution and enthronement of peace and love among relatives in Islam. This, without mincing words has been copiously enumerated by numerous scholars of the past and present. However, little have been done in term of comparative analysis of the opinions and judicial verdicts of the scholars of the four *Sūnni* schools in Islam especially to the English readers and learners. For this, this article is aim at briefly explain the concept of Islam and *Sharī'ah*, reasons for divergent of opinions among these schools, conditions and benefits of making bequest and comparatively enumerate some divergent and convergent views of scholars as regards *Al-waṣiyyah*. It was then concluded that flexibility and all-inclusiveness of Islamic law made it possible for scholars to express divergent views on some religious, social, political and economic issues with huge reference to the unadulterated main sources of Islamic law, Qur'an and *Sunnah*.

Keywords: *Al-Waṣiyyah*, Analysis, Inheritance, *Sharī'ah*, *Sūnni* Schools.

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I. INTRODUCTION

Islam as a religion stipulates regulatory framework that encompasses all aspects of human life; spiritual, social, economic and political.^[1] It also directs mankind's matters of earning and spending and as emphasized by Al-Jibaly, it provides a systematic process of passing down wealth from predecessor to successor,^[2] and left nothing untouched; hence, *al-waṣiyyah* (bequest, will, legacy or testament) as a micro-institution of Islamic Inheritance system (*al-Farā'id*) is a legal document that outlines on how one's estate is to be distributed in the event of affairs after the demise of the testator according to Islamic law (*Sharī'ah*).^[3] Though, it is on record that *al-waṣiyyah* practice preceded Islamic law of inheritance (*al-Farā'id/al-Mirāth*), it remains an integral unit of the inheritance process which must be dealt with before the devolution of estate left behind by a deceased Muslim. The divergent and convergent opinions of the Four *Sūnni* Schools of Thought (*al-madhāhib al-arba'*) within the purview of Islamic law as regards *al-waṣiyyah* which ranges from its institutionalization, abrogation and validity, due and maximum proportion to be earmarked, the beneficiaries and other areas have generated huge literary debates among scholars of ages. On these premises, this work is aimed at critically and comparatively analyse the concept of *al-waṣiyyah* according to the verdicts of the Four *Sūnni* Schools. The work basically utilises the book entitled "*al-Fiqh 'alā Madhāhib al-Arba'*- Islamic Jurisprudence according to the four *Sūnni* Schools of thought" authored by 'Abd al-Rahman al-Jazīrī.^[4]

In giving concise but explicit analysis of the subject matter, the work briefly discusses Islam and *Sharī'ah*, origin and evolution of the four *Sūnni* Schools, reasons for divergent opinions, concepts of *al-farā'id* in Islam with special reference to *al-waṣiyyah* while the opinions of the four *Sūnni* Schools in the area of definitions, sources of *al-waṣiyyah*, its pillars, conditions and legal verdicts, bequest for *Hajj* and Qur'an recitation, bequest for selected people, bequest quotas and the will-executor are comparatively enumerated.

II. ISLAM AND SHARĪ'AH

Islam encapsulates total submission to the whims and caprices of religious and mundane verdicts and precepts as revealed by Allah and ably exemplified and enunciated by Prophet Muhammad (Peace be Upon Him). Fazl-ur-Rahman al-Ansari emphasises Islam to be a monotheistic religion with universalistic outlook in which connection between the Creator and the Creatures is paramount for the establishment of that which is good and eradication of all that is evil through constant spiritual, moral and intellectual struggles for the

realisation of vicegerency of God.^[5] It is therefore inevitably noted that, the genuine purpose of Islam is based on originality of its core kernel which is directly sanctioned by God (Allah) through Qur'ān, the source through which all principles and ordinances are drawn^[6], the prophetic traditions which is the ultimate and legal repository after the Qur'ān; and through these, Islamic law (*Sharī'ah*) was born. *Sharī'ah* from all facets is the indubitable mechanism in Islam through which all religious and civil engagements are metered. Ambali quoting Ruxton on the synergy between Islam and its law says:

In Islam there is but one Law, and it's the religion law, signified in the word *Sharī'ah*. In other words, it is the only supreme law; for it emanates from God, who decreed its main bases in the Koran.^[7]

As emphasised by Muneer and Muhammad Mumtaz, *Sharī'ah* cannot be understood as a set of civil or criminal or personal and public law alone as it has been conceived by many in modern age, rather, it is a conglomeration of comprehensive set of fundamental truths, socio-ethical legal precepts and higher principles and a practical way of life.^[8] *Sharī'ah* in Islam is sourced from primary sources which are the Qur'ān and the traditions of the Prophet (*Hadīth/ Sunnah*) fortified with secondary sources which include *Ijmā'* (Consensus of Scholars), *Qiyās* (Analogical deduction) and others.^[9]

III. THE FOUR SŪNNI SCHOOLS OF THOUGHT AND DIVERGENCE OF OPINIONS

The Four *Sūnni* Schools of Thought evolved after the Prophet and his Companions. The known two distinct groups in Islamic world are the *Sūnni* and the *Shiite* (the preponderants of *Ahlal-Bayt* the gemony). Majority of the *Sūnni* Muslims follow four *Madhāhib* (Schools) of Islamic jurisprudence. These are the Hanafi School of Imām Nu'mān Ibn Thābit popularly known as Abū Hanīfah (699-767 CE), the Māliki School of Imām Mālik Ibn Anas (715-795 CE), the Shafi'i School of Imām Muhammad Ibn Idrīs al-Shāfi'i (767-820 CE) and the Hanbali School of Imām Ahmad Ibn Muhammad Ibn Hanbal (780-855 CE).^[10] All these four *Madhāhib* mostly upheld the primacy of the four fundamental principles of Islamic law *viz-ā-viz* the Qur'ān, the *Sunnah*, *Ijmā'* and the *Qiyās*.^[11]

However, there exist differences of opinions as regard religious rulings which are believed to have occurred for various reasons. Scholars of ages have also identified and discussed the causes of these differences which are attributed to many reasons. In his own submission, Muhammad Ibn Sālihal-'Uthaymeen opined that these differences among the scholars of the *Madhāhib* were as the result of these seven causes:

- i- The relevant evidence was not known to the scholar who erred in judgement.^[12]
- ii- The relevant *hadīth* is known to the scholar, but he does not have any confidence in its narrator and regards it to be in contradiction to a stronger evidence.^[13]
- iii- The *hadīth* was known to the scholar but he did not recollect it.^[14]
- iv- The scholar is aware of the evidence but understand it incorrectly.^[15]
- v- The scholar is aware of the *hadīth* but it is in actual fact abrogated.^[16]
- vi- The scholar believes that the particular evidence in question conflicts with either a stronger text or a consensus of the scholars.^[17]
- vii- The scholar gives a ruling on the basis of a weak *hadīth*, or his argumentation and deduction is poor.^[18]

Abu Ameenah Bilal Philip in his own submission believes that these differences of opinions among the scholars of *Madhāhib* arose for various reasons which include interpretation of word meanings and grammatical construction, *hadīth* narration and authenticity, admissibility of certain principles (which include *ijmā'*, customs of the *Madeenites*, *Istihsan* and opinion of *Sahābah*) and methods of *Qiyās*.^[19] It has to be noted, as affirmed by Abdul-Rahman Doi that all these *Imāms* and scholars of these schools were teachers and pupils of each other, all of them are working for a common goal, that is, to serve the posterity in enhancing their knowledge and knowledge of the *Ummah* (Muslim Community) about the *Sharī'ah*.^[20]

IV. AL-FARĀ'ID'S CONCEPTS IN ISLAM WITH SPECIAL REFERENCE TO AL-WAṢIYYAH

'Ilm al-Farā'id or *'Ilm al-Mirāth* in Islamic legal terminology means inheritance knowledge of what to be divided from the property of a deceased Muslim among his successors. It is a Science in Islamic law which gives rules that guides as to who inherits and who is to be inherited; and what shares go to the heirs.^[21] In other definition, Haroon sees it as a science which stipulates the mechanisms of devolution of "anything that could be shared as belonging to those who have legal rights to take it after the death of the owner"^[22]

Under Islamic law, the concept of succession was divinely ushered in with the revelation of inheritance verses "*Āyāt al-Mawāriṭh*" (which include Q4:11, 12 and 176).^[23] This inevitably abrogated the *Jahiliyyah* (Ignorance) practices of disinheriting women and legitimisation of heirs by oath;^[24] thus, these and others were replaced by inheritance through fixed or Qur'ānic Shares (*Irth bi al-furūd*), through agnatic method (*Irth bi*

at-Ta'sīb) and through the residuary process (*Irthbi al-Arhām*). It is a religious abhorrence for a Muslim to dispose his estate according to his own wishes and desires without recognising the provision of *Sharī'ah*. If he attempts to do so, it will tantamount to an act of grave transgression which will make him to usurp the *huqūq* (rights) of the rightful heirs in flagrant violation of Allah's command pertaining to inheritance.^[25]

However, the flexibility and all-inclusiveness of Islamic law allows Muslims to make a bequest from his estate to beneficiaries while alive; thus the concept of *al-waṣiyyah* or *al-Tawsiyyah* (will-making) emerged. Al-Jibali defines *Al-waṣiyyah* as a set of instructions given by a person to individuals whom he expects to survive him which include monetary distributions, assignment and rights.^[26] According to Salisu quoting Imām Muhammad Idrīs al-Shāfi'ī, *al-Waṣiyyah* means "authorising possession of one's wealth or possession to someone else after one's death by way of charity (*tabaru*)."^[27] The will or bequest is one of the fundamental practices enjoined upon Muslims at the early stage of Islam as enshrined in Q2:180 before it was legally abrogated with verses of inheritance and hence; it became recommendatory and discretionary for Muslims to activate *al-waṣiyyah* term from their estate in as much it does not exceed stipulated quota of *one-third* of the total estate;^[28] and even after its abrogation, it became a germane requisite of the whole succession process which must be done with before the devolution of the estate. This was affirmed in Q4:11 and 12 where Allah says "...After the payment of bequest or debt...". Furthermore, the availability of witnesses to the writing and pronouncement of bequest is one of the fundamental aspects of *al-Waṣiyyah*.^[29] The witness/witnesses must be Muslim and if not possible, two non-Muslims are accepted provided that their testimonies is validated as explained in Q5:106-108.

The Jurists also unanimously agreed that quantum of wealth or property of which a bequest or legacy can be bequeathed with equity must be an abundant wealth in tandem with various *ahādith* in which the Prophet advised the dying companion who sought his opinion on what to give out as legacy or bequest. He told him that leaving their heirs wealthy is better for them than leaving them poor. This was the views and verdicts of 'Āishah, Ali bnAbiṬālib and some *Sahābah*.^[30]

All in all, it is important to point out the following:

- a. *Al-waṣiyyah* was mandatory before the revelation of the verses of inheritance.
- b. The bequest verses were abrogated by inheritance verses in the cases of legal heirs but remain valid in favour of non- heirs.
- c. *Al-waṣiyyah* is voluntary and recommendatory as a form of *Istihsān* (doing good).
- d. The core value of bequeathing; that is, justice, usefulness to the legatee and not exceeding mandate of $\frac{1}{3}$ must be upheld at any time.
- e. *Al-waṣiyyah* is unacceptable and has no merit when the wealth of the *Mūsiy* (The Testator) is meager and scanty.

V. CONDITIONS AND BENEFITS OF AL-WAṢIYYAH (*SHURŪT WA MANĀFI' AL-WAṢIYYAH*)

Al-waṣiyyah in Islam must be *Sharī'ah*-compliant wills in the sense that:

- i- Testator (*al-Mūsiy*) can only give away up to one-third of his or her property.
- ii- The Legatee (*al-Mūṣālahu*) must not be an individual who is a legitimate heir to inheritance.^[31]
- iii- The utmost benefits behind *Al-waṣiyyah* is its adoption as a valuable tool that affords the testator flexibility to bequeath assets to those he or she deems deserving; and it also safeguards the close kin who are entitled to their share under *Sharī'ah* law from being disinherited.
- iv- It gives non-Inheriting relatives such as adopted child and non-biological parents leverages of being legitimately enriched and accommodated into the testator largesse.^[32]
- v- There must be an existence of a genuinely written will by the testator or a witnessed verbal pronouncement attested to by relatives as made by the testator while the *Sīqah* (pronouncement) of *Ijāb* and *Qubūl*- offer and acceptance- is necessary.
- vi- The willed property (*Mūṣābihi*) must not exceed one-third of total estate.
- vii- The Testator (*Al-Mūsiy*) must be an adult, sane and has the legal capacity to dispose of whatever he bequests.
- viii- The willed property (*Mūṣābihi*) must not be made in favour of legal heir at the time of death of testator because "there is no bequest for the heir"^[33].
- ix- The Legatee (*Al-Mūṣālahu*) must be in existence at the time of death of the testator.
- x- The appointed will executor (*Al-Wālī Al-Mukhtār/Al-Wāsī Al-Mukhtār*) appointed by the testator must endeavour to carry out the wishes of the testator.^[34]

VI. AL-WAṢIYYAH ACCORDING TO THE FOUR SŪNNI SCHOOLS

Comparatively, the following are enunciated in scrutinizing the judicial and religious *locus standi* of the founders and scholars of the four Sūnni Schools in tandem with *al-waṣiyyah* concept as contained in the book under focus:

A. Meaning of Al-Waṣiyyah

The Hanafi School defines *al-waṣiyyah* as a “means of transference of right of a certain property to someone else through charity after the demise of the owner”^[35] In Māliki School, it is viewed as “*aqd* (contract) that obligate *one-third* of the testator’s property to be given out to legatee with the occurrence of testator’s death”^[36] The Shāfi‘ī School sees *al-waṣiyyah* as “a charity that must be fulfilled after the death of the testator either being a bequest made verbally or not”^[37]; while the Hanbali School defines it as “an issue to be actualised after death like giving an order of testacy to someone to nurture his young children (from his wealth) or marry his daughters in marriage or expend *one-third* of his property and so on”^[38]

It is shown from the above definitions as given by these four Sūnni Schools that *al-waṣiyyah* entails the transference of certain portion of someone’s estate (not exceeding one-third) to his legatee (*al-Muhsalahu*) while alive and which must be executed after his death before the devolution of whole property among the heirs.

B. Pillars and Conditions of Al-waṣiyyah

In unison, three Schools (Hanbali, Shāfi‘ī and Māliki) opined that the Pillars of *al-waṣiyyah* are four; these are:

- i- The Testator (*Al-Muhsy*) –the One who makes the bequest.
- ii- The Legatee (*Al-Muhsalahu*) the one whom the bequest is made for.
- iii- The Estate or Property (*Al-Muhsabihi*)– the property to be taken as bequest by the legatee
- iv- The Language of offer and acceptance (*Siqatal-Ijābwa al-Qubūl*).^[39]

In their own submission as regards the pillars of *al-waṣiyyah*, the Hanafi school believed that there is only one pillar of *al-waṣiyyah*; that is, *al-Ijābwa al-Qubūl* (offer and acceptance) which they believed has encapsulated the other three pillars propounded by other schools.^[40] They believed the bequest entails the condition of offer and acceptance in which the offer must be made by a capable testator while the acceptance is validated only after the death of the testator. They opined strictly that the bequest execution involves “right of ownership” only after the death of the testator. Some scholars of this school also opined that offer and acceptance or offer and rejection has no meaning except after the death of the testator while some further opined that acceptance is not a condition of *al-waṣiyyah* since *al-waṣiyyah* itself is a micro-mechanism in Islamic law of inheritance; and that acceptance might either be by vocal response or by way of gesticulation (*Ishārah*). The school also explained that the conditions of *al-Waṣiyyah* entails the testator to be “matured”, must be a sane person, must never be in damning debt, must not be a fugitive or criminal, must never be an inheritor at death bed, not a slave and must not be suddenly afflicted with dumbness (*al-akhras*) at the time of giving bequest and that the legatee must be known to the testator and the he/she must not be the killer of the testator either unintentionally or intentionally. The school concluded that it is not mandatory for a legatee to be a Muslim; thus giving a bequest to *ahlal dhimmi* (the protected non-Muslim) is allowed except the apostate (*al-Murtad*) who is not eligible to benefit from the Muslim bequest^[41]

There are two conditions that must be upheld as regards *al-waṣiyyah* according to Māliki School. These are:

- i. The testator must be a free man (*Al-Hurr*)
- ii. He must be a sane person (*al-‘Aqil*)

On the issue of offer and acceptance, the Maliki scholars opined that it must be an explicit utterance which stipulates the offer and that the acceptance occurs after the death of the testator. It was further legalised that even if the legatee died before accepting the bequest, his heirs would stand his stead in accepting the bequest except when the *waṣiyyah* is not specific like the one bequeathed to the poor and indigents. They also discussed a case whereby the bequest devolution was delayed to be accepted after the death of the testator until the bequeathed property appreciated. The scholars of the school opined thus:

- i. Some believed that all of the bequeathed properties belong to the legatee
- ii. Some scholars believed that the bequest belong to the testator, while others
- iii. Believed that the legatee has only one-third of the appreciated property.^[42]

According to their own opinions, the Shāfi‘ī School enumerated the *waṣiyyah* conditions thus:

- i. The testator must be matured, sane, freeman and self-independent in his judgement
- ii. It is not compulsory for both testator and legatee to be Muslim. It is also permissible to bequeath property to an apostate with the condition that he is reverting back to Islam
- iii. The legatee must be sane and matured and there is no bequest for a dead person
- iv. The language of offer and acceptance must be an explicit utterance that specify the bequest either loudly or in written form or using epithet (*Kināyah*) such as “he has portion in my property”
- v. The acceptance language can be explicit also by saying “I have accepted it”, but the validation of such acceptance occur after the death of the testator.^[43]

In the consensus opinions of the Hanbali Scholars on the condition of *al-waṣiyyah*, it was agreed that:

- i. The testator must be sane
- ii. Testator be intelligent and conscious
- iii. Testator must not be known for indolence or lassitude
- iv. It is not compulsory for the testator nor the legatee to be a Muslim
- v. It's also mandatory that the legatee must not be the killer of the testator either intentionally or accidentally
- vi. The testator has legal right to choose his legatee
- vii. The legatee must be alive when the bequest was made
- viii. The language of offer and acceptance must be explicit
- ix. The acceptance must be after the death of the testator.^[44]

It can now be deduced that, these schools agreed essentially on the pillars of *al-waṣiyyah* and extensively agreed in some area of *al-waṣiyyah* condition which include the sanity of the testator, the language of offer and acceptance, the legatee not be the killer of the testator, the bequest to be made by the testator while alive and that only one-third of the testator's estate can be bequeathed among others.

C. The Judicial Pronouncement of *al-Waṣiyyah*.

Abdur-Rahman al-Jaziri opines that in some cases, *al-waṣiyyah* becomes mandatory, recommendatory and forbidden; and on these, there are divergent opinions enunciated by the four schools. The Hanafi school categorised the judicial verdict of *al-waṣiyyah* as regard the testator into four; compulsory (*al-wājibah*), recommendatory (*al-mustahāb*), acceptable (*al-mubāh*) and detestable (*al-makrūh*). According to the scholars of the school, the compulsory bequest entails giving legal right to its owner like a bequest for the return of legacies or debts. This is believed to be an obligation on any testator which must be returned to their rightful owner without delay before or after his death.

The recommendatory bequest consists of the right of Allah like writing a bequest for *kaḫārah* (atonement), *Zakāt* (alms-giving), *fiḍyat al-ta'ām li ṣā'imīn* (feeding the fasting Muslims), prayers and a bequest to perform *Hajj*. In their submission, acceptable request is what the wealthy man gives to his immediate family, neighbours and their likes as bequest (*hibah*—gift) out of his benevolence to assist them for a certain condition which is not mandatory upon him because there is no bequest for legal heirs; while detestable bequest is what is made by evil people upon themselves as legacies for their cronies and bad company.^[45]

In the view of Shāfi'i School, the bequest verdict in Islamic law is divided into five:

- i. Compulsory bequest such as payment of debt and return of legacies (*al-wadā'i*)
- ii. Forbidden bequest like bequeathing the forbidden things for someone
- iii. Detestable bequest such as giving more than one-third as bequest or given a bequest to a legal heir without the consent of others
- iv. Acceptable bequest like giving a bequest to an upright personality who is non-heir
- v. Recommendatory bequest like the bequest made by a wealthy man for the indigents.^[46]

The Hanbali School also divided the bequest juristic pronouncement into five; these are:

- i. The compulsory bequest like return of legacies and payment of debt
- ii. The recommendatory bequest for the non-heirs and indigents
- iii. The detestable bequest such as writing a bequest by someone who has meagre property and shall be inherited by people who are already in abject poverty
- iv. The forbidden bequest such as bequest that exceed one-third of the whole property and or given a bequest of more than one-third for one's spouse (as gift-*hibah*) and
- v. The acceptable bequest.^[47]

In Maliki School, the judicial verdict of *al-waṣiyyah* is divided into five; these are:

- i. Compulsory bequest which must be made by an indebted testator to pay off his debt or to return legacies to the rightful owner
- ii. Forbidden bequest such as making a request for people to wail after his death
- iii. Recommendatory bequest such as the bequest made for the poor relatives
- iv. Detestable bequest such as a bequest made by someone who possess meagre property in the midst of his heirs
- v. Acceptable bequest is a bequest made without any issues raised above.^[48]

It's clear from the fore-going that all the *Sūnni* Schools unanimously agreed on some form of judicial pronouncements on *al-waṣiyyah* classification which is recommendatory, compulsory, detestable, forbidden and acceptable except that they gave some different instances under each classification.

D. Bequest for Reciting the Qur'ān on the testator's grave

The Hanafīs opined that making a bequest for the recitation of the Qurʾān on the grave of the testator or in his house is null and void (*bātilatun*) under Islamic law;^[49] and if deceased wrote a will requesting the spending of part of his property for the recitation of the Qurʾān on his grave such bequest would not be actualised.^[50] The Māliki School approved the wishes of someone who wrote a bequest requesting the recitation of the Qurʾān on his grave equating the action with the bequest for performing *Hajj* except a revocable bequest of someone to perform *Salāt* (Canonical Prayer) or observe fasting on his behalf which are viewed *bātilatun*.^[51] The Shāfiʿī School also approved the bequest for the recitation of the Qurʾān on the grave believing that the reward of such act will be accrued to the dead testator;^[52] while the Hanbali Scholars also affirmatively corroborated the Shāfiʿī and Māliki Schools' standings on the ground that such act is a beneficial acts of *kurbatun* (Supplication) to Allah for the benefit of the deceased testator.^[53]

E. Bequest for the performance of *Ibādāt* (acts of worship) such as *Hajj*

The Hanafi School vehemently proclaimed as recommendatory the act of writing a bequest for engaging in act of worship on behalf of the deceased Muslim like requesting the legatee or heirs to perform *Hajj* on his behalf. They also opined that if the testator aimed for *Hajj* and died on his way, the legatee has the right to complete his pilgrimage either from where he died or from his own native town.^[54] The Māliki School believed that it is legally accepted for the legatee to actualise the bequest of the testator in performing *Hajj* on his behalf;^[55] while the Shāfiʿī Scholars also accepted such pronouncement whether the *Hajj* is a compulsory one or supererogatory (*Umrāh*).^[56] The Hanbali School also accepted such verdict of actualising the bequest of the testator in performing *Hajj* on his behalf.^[57]

F. Making Bequest for other Issues

The Hanafi Scholars declared as null and void a bequest requesting the legatee to preserve, decorate and erect tomb on his grave.^[58] They also negate a bequest requesting the legatee to bury the testator in his room except if such room is the *maqbara* (graveyard) of the Muslims.^[59] On the other hand, Māliki School rejects the bequest for wailing after the demise of the testator or for drumming *qubbah* (Drum) on his grave;^[60] while the Shāfiʿī Scholars believed that a Muslim can write a bequest for the maintenance ('*imārah*) of the mosque from his estate by engaging a custodian for such purpose and be paying his wages from the asset he left behind.^[61] Lastly, the Hanbali Scholars agreed that writing a bequest stipulating a charity for the needy is more reward able than engaging in supererogatory pilgrimage to Makkah.

G. Making Bequest for Selected People among Neighbours and Relatives

The Four *Sūnni* Schools unanimously agreed that it is lawful to make a bequest for neighbours and relatives who are non-heirs.^[62] However, the concept of who the neighbours and relatives should be has generated divergent opinions among the scholars of the Schools. The Hanafi Scholars believed that those neighbours must be the neighbours whose houses are closely joined with the house of the testator right, left or behind. They can be given equal bequest either they are Muslims or *ahl al-Dhimmi*, men or women.^[63] They also opined that a testator can make a reasonable bequest for his in-laws who are his *Muhārimīn* (unmarriageable persons). These include the fathers-in law, brothers and sister's in-law, uncle's in-law, brothers and sister's in-law. It can also be given to all *Muhārimīn* among his fathers' wives, his paternal and maternal uncles and other related relatives.^[64] The Maliki Scholars also opined that the closed relatives can be given the bequest among those living in any angle to the testator's house (back, front, right, left, up and down) and those adjacent neighbours. They however gave a verdict that if a man pronounced a bequest for his neighbours, families, and kindred (*Dhawul al-Arhām*) and did the same for his paternal relatives who are non-heirs, his bequest for them would be upheld while the maternal relatives would be exempted.^[65] In their own pronouncement, the Shāfiʿī Scholars believe that the neighbours to the testator comprises forty houses from all four angles (front, back, right and left); that is, hundred and sixty (160) houses. The bequest can be made for them house by house and then occupants by occupants.^[66] The Hanbali Scholars also pronounced that the neighbours under Islamic law entails forty houses from all angles and if a testator makes a bequest for them, the bequest would be given to all occupants of these houses as legatees.^[67] They also believed that a bequest can be made for the eight people pronounced by the Qurʾān as the recipient of *Zakat* as entails in Q9:60. This, as they opined is not going to be made a *Zakāt* but a charity given to them.^[68]

H. *Al-waṣiyyah* Maximum Bequest of one-third, more or less.

It has to be mentioned at this juncture that no bequest is allowed under Islamic law to exceed one-third of the whole estate. In one *Hadīth* reported by Abu Dardāi, the Prophet (Peace and Blessing upon him) was quoted to have said:

Allah granted you a third of your wealth at the time of your demise to increase your good deeds”^[69]

It's a concrete verdict under Islamic law that no bequest is allowed to exceed **one-third** in order not to prejudice the rights of the legitimate heirs, However, the making of bequest for specific persons in the region of maximum quota of one-third or more or less, the four *Sūnni* Schools have divergent views on its devolution. The Hanafi Scholars opined that if a testator made a bequest of **one-third** for a particular person (MR. A) and another **one-third** for other person (MR.B) and knowing fully to him the *waṣiyyah* must not exceed one-third, the two legatees (MR.A and B) would jointly share one-third of the whole estate as *waṣiyyah* in which each would be given one-sixth ($\frac{1}{6}$) each.^[70] They further unanimously legislated that if he bequeathed **one-third** of his estate (*athlāthan*) in which MR. A(who was give $\frac{1}{3}$) would take two parts while MR.B (who was given $\frac{1}{6}$) would take a part.^[71]

Furthermore, Māliki Scholars opined that a bequest made for two different persons would be executed as wished by the testator on certain conditions. These are:

- i. The bequeathed property must be of a kind, not a different property from one another.
- ii. The two bequests must be from two different pronouncements but at the same level.
- iii. The two bequests must be of a kind but can be of different quantity, be it little or more, such as bequeathing someone with 10 *Dinnars* and other with 5 *Dinnars* *vice-versa*. They opined that the formula of **athird of one-third** would also be used in given out the *waṣiyyah* to the two legatees as upheld previously by the Hanafīs.^[72]

On their part, the Shāfi'ī Scholars agreed that if a man bequeathed different people what exceeded one-third of his estate, the legatees would be obliged by the law to share only one-third of the estate as bequest;^[73] while the scholars of Hanbali School opined that if a man bequeathed all his properties for someone and half of it at the same time for others which has exceeded the whole estate, the estate would be shared among them on the basis of *third of one-third* in which the first legatee would be given half of one-third while the residue of the bequest would be given to the second legatee. They concluded that any bequest made which has no proportion in the estate (that is, exceed whole estate or exceed one-third), the legatees would be given nothing as bequest.^[74]

I. The Bequest or Will executor

The Will executor is someone willingly chosen by the testator while alive to oversee the devolution of his bequest after his death. He is expected legally to oversee the will execution and perform the exercise uprightly with fear of Allah as enshrined in (Q4:9).^[75] On the criteria to be possessed by a will executor, there are divergent opinions among the four schools. The Hanafīs enlisted such qualities as:

- i. *Al-Bulūqh* (Maturity)
- ii. He must be a Muslim. They also upheld a view that the judgement of a non-Muslim would be accepted if he embraced Islam after the death of the testator and before the execution of the bequest
- iii. He must be Just (*'ādil*)
- iv. He must be trustworthy
- v. He must be capable of executing the bequest as stipulated by the testator.^[76]

According to them, if a will executor merited all these qualities, the judge (*al-Qādi*) has no judicial power to remove him except when defaulted.^[77] They also opined that when two personalities are chosen as will executors, it is illegal for one of them to execute the will in the absence of other except with his permission in respect of his unavoidable absence or illness. If one of the will executor died before the execution of the bequest but had permitted the other on his sickbed verbally or through valid written document (of permission), he (the living executor) has the judicial power to execute the bequest as willed by the testator.^[78]

In the view of Māliki Scholars, they outlined four qualities of a will executor. These are:

- i. *Al-Taklīf* (Entrustment)
- ii. Islam. He must be a Muslim
- iii. *Al-'adālah*. He must be upright and trustworthy and
- iv. *Al-kudrah* (legal capability) He must be capable to execute the bequest without fear or favour as wished by the testator.^[79]

They also agreed that it is illegal for one of the two appointed will executors to execute the will (testament) without prior permission from the other except in a situation where the testator stipulated that any of the appointed will executor could devolve the bequest without the permission of the other.^[80] The Māliki Scholars concluded that if any of the two will-executors died or found defaulted in qualities, the judge is empowered to adjudicate whether to contend with the execution of one of them or to appoint another will

executor to replace the dead or erring one by the court.^[81] On their own separate pronouncement, the Shāfi‘ī Scholars believed that its obligatory for a will executor to possess the following qualities:

- i. He must be an upright person inwardly and outwardly
- ii. He must possess capability to execute will
- iii. He must be a free man
- iv. He must be a Muslim whenever the bequest is made for Muslims
- v. The will executor must not be a foe (enemy) to whom the bequest is made (that is, the Legatee)
- vi. He must not be a person of unknown character and
- vii. He must be a matured and sensible person.^[82]

They further opined that a blind (*al-‘amah*) and a dumb person (*al-akhras*) could be made as a will-executor once his gesticulation could be understood.^[83]

The Hanbali School pronounced in their judgement that the will executor must be:

- i. A Muslim and it is illegal for a Muslim to appoint a non-Muslim as a will-executor
- ii. A matured person who has no traces of insanity
- iii. A rightly guided person
- iv. A just person even if he is blind.^[84]

They also held a view that it is illegal for one of the two chosen will executors to execute the will without the knowledge of the other except if specifically mentioned by the testator.^[85] It must be noted that all the four *Sūnni* School agreed that the will executor must be matured, sane, capable, alive at the time of making bequest by the testator, healthy and must be a Muslim. They however had the divergent opinions on whether an executor or two is enough, whether a non-Muslim can be a will executor for a Muslim and so on.

V. CONCLUSION

The institutionalisation of *al-waṣiyyah* preceded *al-farā‘id* in Islam and it was legislated by Allah for Muslims to give out of their wealth for non-heirs among their families, neighbours and relatives. The trend of *al-waṣiyyah* later changed with the revelation of *āyāt al-mawāriṭh*- inheritance verses-which made the *waṣiyyah* discretionary and non-binding upon the legitimate heirs except as a gift with the consent of other heirs. The opinions of the Four *Sūnni* Schools’s founders and Scholars on certain aspects of *al-waṣiyyah* varies greatly in some area and were the same in some aspects as enumerated earlier in this concise work. The differences in opinions of these Scholars not on *al-waṣiyyah* alone as a micro-mechanism of inheritance in Islam but on other religious verdicts were borne out of many reasons which include their divergent understanding of the revealed verses and prophetic traditions which discussed the subject matter; or the variance in time, location and materials availability. It’s therefore concluded that, the variance of opinions by the Scholars of the Four *Sūnni* Schools as regard *al-waṣiyyah* on its definition, conditions, pillars, legality, types of bequest that can be made, the bequest maximum quotas and the will executor is seen as ultimate flexibility and accommodating tendencies that could only be found in Islamic law (*Sharī‘ah*) aimed at giving Muslims leverage of practicing a fundamental tenet of their religion with ease and sense of purpose in order to be subservient adherents of Islam and true followers of the Messenger.

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