



# BISMILLĀHIR RAHMĀNIR RAHĪM

**Inheritance (Part 2)**

01.02.20 - Mawlānā Suhail Manya



# INHERITANCE (PART 2)

The beautiful deen bought to us by *Nabī* ﷺ, - it is an obligation onto us that we have full conviction and *yaqīn* from the depths of our hearts that this religion is so comprehensive in that it holds the solutions to all our problems and it removes all the fears and anguishes of our hearts. This is what *Nabī* ﷺ taught the *sahābah*.

*Nabī* ﷺ has given us great hope through his blessed teachings that whatever Allāh swt has revealed onto us by means of *Quran* and *Hadīth*, these teachings will be sufficient for us in this world, in the grave, *barzakh* and a means of salvation for us in the hereafter. There is no situation which we can find ourselves in except that our religion will have a solution.

*Nabī* ﷺ has given us hope that on the Day of Judgment when our deeds will be weighed, we will find him in close proximity, and we will also find him at the doors of *Jannah* and *Jahannam*, where he will intercede for us. *Nabī* ﷺ will even go into *Jahannam* to remove the *ummah* from there.

We should make an intention that Allāh swt guides us on the right path, and Allāh swt allows us to do in accordance to the teachings of *Rasūlullāh* ﷺ

So continuing on with the inheritance topic...

When someone passed away, the **first** requirement is that the deceased is given *ghusl* and a burial according to *shar'iah*. When this is done, the **second** thing we have to do is to calculate how much debt the deceased had. Thereafter, the **third** this is that we need to look at the bequest and the will. From whatever is then left over (*residue/tarakah*), those who Allāh swt has stipulated a share for will receive their share. If all of the wealth of the deceased have to be used to fulfill his/her debt, then this should be done....even if it means selling the house.

Someone once asked *Nabī* ﷺ that so and so had passed away, and he has left debt and children behind so should I use the wealth to look after his children or fulfill his debts. *Nabī* ﷺ said to fulfill his debts first as his *rūh* will remain worried and imprisoned until the debts are fulfilled. Only after the debts are paid off then will his *rūh* will feel peace and tranquility.

## The three criteria for *wasiyyah*

1. Deduct the funeral expenses and debts from the estate
2. Ensure all *wasiyyahs* are within 1/3 of the estate and see whether it is incorrectly in favour of any inheritor.
3. Scrutinise whether the *wasiyyah* is for any *harām* or sin

*Wasiyyah* cannot be given to any heir - it is to be given to other than heirs like charity etc. There is a *hadīth* to the nearest meaning that there is no *wasiyyah* (bequest) for an heir/ inheritor. **Whoever's name is written as an heir, they cannot be given from the *wasiyyah*.**



One thing we need to understand is the concept of **ضمير تومال** - the sickness in which the deceased passed away, this is called '*marad ul mawt* - **ضمير تومال** . It means that sickness which became the reason for his death for e.g. a man had a stroke and remained in hospital for 6 weeks, after which he passed away. This is *marad ul mawt*. In this situation, you should listen to or write down all the instructions the person in their final illness will say - however we cannot act upon all the instructions given by that person. Refer to '*ulamā* to what you can act upon from his/her instructions.

*Marad ul mawt* cannot be for one year or more than one year so for example, if someone had a stroke, and died a year later remaining in hospital, that is **NOT** called *marad ul mawt* because it has been a year.

A person who is in final illness does not have the same freedom, in terms of *shar'iah* as a normal person. This is because they might make serious mistakes in this state, and this might harm the heirs. Hence in order for somebody to be protected whilst they are in this sickness, *shar'iah* tells us don't wait for this state and make the will beforehand. *Shar'iah* says make the will in such a state when you are not ill/in need. Make it whilst you are still healthy and strong.

In the *marad ul mawt* situation, we can take into account what they say for non-heirs like for e.g. if they say I owe so and so (not a heir) £3000 - now it is *wājib* for the family members to ensure that £3000 is taken from his estate and given to the person he said he borrowed from. This instruction we are allowed to act upon even though this person is in *marad ul mawt*.

But there are certain instructions we cannot accept for e.g. if they say give my son £4000 from my belongings. This instruction we cannot follow from a person in their final illness because it is for an heir. This instruction will not be acted upon.

A conclusion to all of this is that whilst our relatives are in hospital in their final illness, which we will know after they pass away, (we will not know at that time that it is their final illness until they pass away), make sure you write or note down what instructions they give then confirm with '*ulamā*.

We need to understand the difference between a bequest made by *shar'iah* and the British will/bequest which we should also have in place. The government tell us to keep the will in place so that it can protect our wealth when we pass away, otherwise we can be taxed up 40%.

## British Will :

This is your instruction in regards to your wealth after you die. It will be done accordingly to what you wrote for e.g. even if you say 100% of your wealth should be then to your neighbour's dog, then it will be done accordingly. They allow you to do anything. If you want to leave everything behind for your son or all of it to your wife, British law will allow you to do so.

## Bequest in Terms of Shari'ah:

*Wasiyyah* (in terms of *dīn*) is different. It is *wājib*.

Firstly, it cannot be given to an heir.

Secondly, it has to be given to a *halāl* cause for e.g. it cannot be used for lottery tickets even if someone requested such as this is a *harām* cause.

Thirdly, your *wasiyyah* can only cover 1/3 of your wealth in *dīn*. British law will allow you to bequest 100% of your wealth. However, in *sharīah*, you can only bequest 1/3 of your wealth!

British law does not say you cannot do it according to *sharīah*. They allow you to do what you want, so we need to do it according to our *dīn*.

*Wasiyyah* is not given to an heir because that will already be given. Allāh swt has clearly instructed what to do for heirs. This is different to a bequest/*wasiyyah*. *Wasiyyah* is for e.g. if a man feels he should give somebody some charity.

*Sa'ad* RA was once ill so *Nabī* ﷺ visited him. He became very happy that *Nabī* ﷺ visited him so he said 100% of my wealth I want to give to *dīn*. *Nabī* ﷺ said decrease it meaning don't give all of it. He then said 50% of my wealth I want to give to the cause of *dīn*. *Nabī* ﷺ said still decrease it. He then said, okay I want to give 1/3 of my wealth to the cause of *dīn*. *Nabī* ﷺ accepted that.

This is because it is important we don't leave our children in poverty as well. Leaving wealth behind for your children is also a means of *sadaqah*. Many *ahādith* show that do not leave your children in poverty. Leave sufficient wealth for them.

## Wasiyyah to non-heirs:

- If someone passes away, and want to leave behind something for their cousins, it is permissible. This is because their cousins are non-heirs. This can be done from the 1/3 as they are a non-heir.
- An adopted child will not gain inheritance from his stepfather. He will only take inheritance from his real father. However if the parents want to leave wealth behind for their adopted child, they can do from the 1/3 as the adopted child is a non-heir.

Your will only needs to be 2 pages long - this will be sufficient to safeguard your wealth, give it to the right people, and invest in your hereafter from the 1/3.

## What if someone requested to a heir?

Sometimes the deceased leaves behind instruction that give my son such and such. This is not allowed to be acted upon as they are a heir. HOWEVER, if all the other heirs consent that we don't mind giving our brother £4000 from the estate as my dad has willed then they can do so. Every situation is different. Refer to '*ulamā*'.

In the situation above, if from the children even one is minor, then he/she cannot give any consent - it cannot be accepted as they're not *bāligh* (*mature*). The siblings or the heirs who are *bāligh* can decide to give the £4000 to their brother only from their share. They cannot give it from the share of the minor.

In a situation where someone is *bāligh* but not in the right frame of mind to make the right decision e.g. they want to use their money for alcohol, refer to '*ulamā*'.

# FOUR TYPES OF WASIYYAH:

## 1. WĀJIB

This includes debt and *fidyah* (compensation for *salāh*/fasting).

They need to write for example I have 15 years of *salah* that I missed so give *sadaqat ul fitr* for each *salah*/fast. *Sadaqah tul Fitr* is according to what Nabī ﷺ said, not what is printed on our timetables/what someone randomly says. *Sadaqat ul Fitr* is counted by the weight of wheat. It equates roughly around £1.10/£1.20. Its *wājib* for us to mention how many years of *salāh* need to be covered by means of *fidyah*. If you write the amount in terms of money, that will be easier for the heirs.

If the amount it comes to goes above 1/3 of the estate then then heirs will need to do *mashwara*. If everybody unanimously accept to give from their shares to pay the *fidyah* off, that is fine...however EVERY single heir needs to accept this.

## 2. MUSTAHAB (recommended)

To write such a *wasiyyah* is rewarding for e.g. to write a *wasiyyah* giving advice like don't leave the *sunnah* when burying me, stay steadfast on your *salāh*, abstain from acts of tradition, custom and innovation. Another *mustahab wasiyyah* is to give *sadaqah jāriyah* for e.g. to write give such and such an amount to every *masjid* in my area.

## 3. PERMISSIBLE

This is for e.g. to write that such and such an imām should perform my *janāzah salah*

## 4. HARĀM

You can't act upon a *wasiyyah* like this for e.g. a bequest for an organization, which is involved in *harām* in terms of *shar'iah*.

Sometimes some people make a mistake because they are so fed up with their relatives, or let's say someone doesn't have children and they don't want to give their money to their siblings, then what they do is give everything away with the intention to deprive their heirs. This is *harām* if the intention is such. It is *harām* to **INTENTIONALLY** squander your wealth so that your heirs do not receive anything. Allāh swt has ordained the shares for these people. It is not up to us to decide whether they deserve it or not.

*Shar'iah* has said is *makrūh tahrīmī* to say I don't want my share. This is arrogance. Allāh swt ordained a share for you. Let's say you want to give to your other sibling who is not so well off. Then to take your share and to give it to your sibling is fine, and it is a good thing. However, to say that I don't want it is wrong. Give it to whoever you want, but accept it then give it.

According to British law, you will not be taxed up to £325,000 assets. Anything above that will be taxed 40%. You need you talk to your accountant. Sometimes this threshold might change and it might go up, but know what is the benchmark and talk to your accountants as to how to avoid this for e.g. creating a family trust. There are a lot of rulings behind this so take advice from an accountant.financial advisor. If you create a family trust, then confirm exactly what you mean to your family members so that there is no confusion after.

Another ruling which causes problems in our community is in regards to a situation where a parent has one son living with them. Let's say the parents pass away, and the son says he paid the £70,000 extension and he paid towards the German kitchen etc. so the distribution should not take place on the value of these parts of the house. The son who wants to add the extension and the German kitchen should make this clear with their parents whilst they are alive that they want to deduct the extra they paid towards the extension when it comes to their inheritance being shared. In this case, the other siblings cannot argue. Have the conversation with your parents beforehand. If there is no written acknowledgment, then don't worry as siblings can still acknowledge it as they can see the sacrifice you put in. Don't leave all this until after someone passes away. Clarify these things beforehand. **To avoid discord is very important.** Make things very clear. For those living with their parents, then clarify things and share the acknowledgment with siblings.

After fulfilling debts and *wasiyyah*, then we need to leave the left over wealth (*tarakah*/residue) according to what Allāh swt has said, even if the deceased said otherwise. Even an *'ālim* cannot change the shares depending on circumstances. It needs to be done according to *shar'īah*. You can't say such and such a sibling never spoke to his dad for 20 years and thus, he should not receive anything. Allāh swt has decreed the shares - full stop!

Determine the assets after three days of mourning. Everything in the house needs to have an owner. The heirs should meet up with an *'ālim*/*muftī* and help them divide the shares. Each situation is different. What happens in one family cannot be applied to another. There needs to be a very high level of cooperation. One family member can become the means of ruining everything - there needs to be good mutual understanding between everyone. Why do we want to make the lives of the deceased intolerable? Learn to cooperate from now; learn to give and take from now; learn to understand from now. We don't need litigation to end up courts. We are Muslim. We understand to give and take.

### **Who is deprived?**

For step children, you will need ask a *muftī*/*ālim*. A biological and direct relation is a condition. However, you can leave behind some instruction from your 1/3.

Common Errors:

1. Dining at the house of the deceased. Expecting relatives to come from far is not *ta'ziyat*
2. You don't need to stay at the house of the deceased all day and night. Costs for electricity and food cannot be taken from the wealth of the deceased for guests!
3. Delaying the discussion of the estate so as not to offend anyone. Do it after the 3 days of mourning. The mothers should have the confidence to ask the siblings to get together to sort the inheritance out. There is no need for fear - it is a requirement.

### **Where does the mother live in the absence of the father?**

In the absence of the father, the mother now becomes the responsibility for all the sons. Before the father used to look after the mother and her expenditure, now the sons have the responsibility to fulfill the needs of their mother. It becomes *wājib* upon the sons. It is an honour for the son. There should not be a dispute over this. Give your children good *tarbiyyah* - it is very important.

If the father passed away, then there is no need to remove the mother from the house if it now belongs to the children. There are a few ways that the mother can still live there.

One way is that the father should've written in the will that I give my wife the right to stay in the house until death. The *wasiyyah* here is to do with a right and not an object, hence it is okay as long as every child gives permission. A second way that the mother can remain in the house is if the children want to give their right of partial ownership of the house to their mother as a gift because when the mother dies, the children will get the share again.

A third way that the mother can stay in the house is that the other heirs can take their portion in lieu of other assets for e.g. if a son say in lieu of my 25%, I will take the socks instead etc.

The fourth way a mother can stay in the house is that every person takes their allotted share in the house and then they all unanimously say I give permission for my mother to stay in the house until her death.

Through these ways, no mother should fear that their children will make them homeless if their husband dies.

Don't assume the estate belongs to someone like the house belongs to one son or daughter. If the father passes away, the siblings can sit with the senior members of the family and say we want to share the wealth out according to *shari'ah*. The seniors cannot say anything in contradiction to *shari'ah*. They should not stop the estate from being distributed. Sometimes, some relatives don't give us any time of day but when the father passes away, they turn up and tell us what to do in contradiction *shari'ah*. Sometimes they come to cause mischief. They are looking for drama/entertainment!

**There is no well-wisher greater than Allāh swt!**

Don't delay the settlement of the heirs - sometimes genuine heirs are deprived. Some even pass away before receiving their rightful inheritance.

Some mothers are completely left deserted after the passing away of her husband, due to their children being disloyal. Some children show no inclination towards their mothers and they leave them alone! Imagine the sacrifices our parents made to settle us in this country. Our mothers are our crowns. Children need to make sure they take this responsibility if the father passes away. If she was used to going to *'umrah*/India every year, then don't make her feel her husband's absence. Take her with you when you go. We should serve them until they are alive. Your mother is a more valuable asset than a £300,000 house! How can you put a price on your mother?!

