

It law of succession,
and of enabling



It offers to the testator the means of correcting to a certain extent the law of succession, and of enabling some of those relatives who are excluded from inheritance to obtain a share in his goods, and/or recognizing the services rendered to him by a stranger, or the devotion to him in his last moments.

At the same time the Prophet had declared that the power should not be exercised to the injury of the lawful heirs". Thus, the Muslim law of wills is a compromise between two opposite tendencies. One, when the Prophet has laid down clearly, specific and detailed rules for the distribution of the property of a Muslim after his death among his heirs, it is natural to consider it undesirable for any man to interfere with the divine law. Secondly, it is considered to be a moral duty of every Muslim to make arrangements for the distribution of his property (within the specified limit of one-third) after his death. This seems to be the reason why the word wassaya or wassiyat has two meanings; it means a will and it also signifies a moral exhortation.

Apart from the limitation that a Muslim cannot bequeath more than one-third of his assets, there is yet another limitation on bequest in favour of an heir. The reason for this limitation is obvious; if a bequest is allowed by way of discharging a moral obligation, by way of moral exhortations, or, by way of spiritual donations, then the property should be given to those who do not get a share in the inheritance of the deceased. Thus, a Muslim is not allowed to bequeath more than a third with a view to not affecting the shares of those who are enjoined by the Koran to inherit the property of the deceased. Yet, he is not allowed to bequeath anything to the heirs.

It is because if he is allowed to bequeath one-third with a view to fulfilling his duty in respect of those who have served him, who have shown devotion to him in his last moments, and who get nothing. Both these limitations can be made nugatory if the heirs consent to the disposition made in violation of these limitations. Under the Hanafi law, such consent to be valid must be given after the death of the testator. The will of Muslim is governed by Muslim law. The provisions of testamentary succession laid down in the Succession Act, 1925 affect the Muslim wills marginally. We would discuss the Muslim law of wills (wassiyyat) under the following heads : (i) capacity to make a will, (ii) formalities of making a will, (iii) subject-matter of will, (iv) to whom the property may be bequeathed or the legatees, (v) construction of the will, and (vi) revocation of the will.