The University of Tehran Press

Journal of Contemporary Islamic Studies (JCIS)

Online ISSN: 2645-3290

Home Page: https://jcis.ut.ac.ir

An Analysis of the Shī‘a and Sunnī Views to Free Will Made to the Relatives

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ARTICLE INFO

Article type:
Research Article

Article History:
Received 27 January 2022
Revised 14 December 2022
Accepted 12 November 2023
Published Online 10 January 2024

Keywords:
free will,
will,
heir,
Shī‘a, Sunnī.

ABSTRACT

One of the main issues in the domain of personal status that has led to disagreement among the Imāmīyya and four Sunnī denominations is the tabarru‘ī (free) will made to the relatives. Regarding this issue, there are three viewpoints. Some Sunnī scholars do not deem permissible making such a will to the heir and believe that the Will verse has been abrogated by the Inheritance verse, the narration «Lā waṣīyya li-wārith» that has been narrated from the Prophet of Allāh (s) confirms this claim, and making will to the relatives brings about envy and animosity among the heirs. On the contrary, Imāmīyya believes that the Inheritance verse cannot be the abrogator here. Moreover, they say that such a claim cannot be proved using a singular narration with an speculative implication; that is, the claim for the causation of animosity is not general and cannot be true for all cases. In addition, there exist many narrations from Imāms (a) whose content deem permissible making a will to the heir. Their argumentation based on the Will verse shows the permissibility of such an act. However, another group of Sunnī scholars believe that the permission by the heir is necessary for the accuracy of making will for the relatives, and the prophetic narration «Lā waṣīyya li-wā rith illā an yashā’a al-waratha» confirms it. Of course, this narration is also singular, has speculative implication, and is weak in terms of chain of transmission.

Cite this article: Nuri, S. H. & Mohiti, A. (2024). An Analysis of the Shī‘a and Sunnī Views to Free Will Made to the Relatives. *Journal of Contemporary Islamic Studies* (*JCIS*), 6 (1), 39-49. DOI: http//doi.org/10.22059/jcis.2023.338081.1259

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Introduction

One of the main issues that has a high station in Islamic jurisprudence and law and has been noted by the Shī'a and Sunnī jurists is the will, in a way that in the jurisprudential books of the five denominations of Islam, its principles, conditions, and rulings have been extensively discussed.

Since will is an important issue in Islam and has been called «the right of any Muslim» in a narration from Imām Ṣādiq (a), the divine legislator as a special attention to it and has put great emphasis on it, and of course has mentioned some limitations for it, e.g., making a will on properties is permissible only for one third of one's properties, so if a person makes a will on his properties to be given to one of his relatives, such a will can take two forms: the will is either more than one third of the properties or is within the limit of one of third of properties. The five Islamic denominations have agreement that free will up to one third of the properties is acceptable, but have disagreements over the question that if it is permissible to make a will for the relatives or not. In general, the receiver of will can be three groups: father and mother, relatives that can receive inheritance, and relatives that cannot receive inheritance.

In this study that has been done via a descriptive-analytical method and based on library research (with data collection done both in person and electronically), we will answer the question about making a will for the heirs.

Imāmīyya jurists believe that making a will for all three foregoing groups is fine, while Sunnī sholars rely on the tradition «Lā waṣīyya li-wārith» to reject acceptability of making a will for the parents and relatives that can inherit. Of course, some of them believe that the acceptability of making a will for the relatives depends on the permission of other heirs.

In this paper, we aim at examining the reasons given by the opponents of making will to the relatives that can inherit, criticize them, and finally prove the Imāmīyya stance based on qur'ānic verses and Islamic traditions.

Thus, based on the suggested hypothesis, it is necessary to discuss the main question of the study in three parts: absolute prohibition viewpoint, conditional permission viewpoint, and absolute permission viewpoint. However, we first need to turn to a discussion of some key concepts.

Waṣīyyat (will)

Before beginning the main discussion, it is proper to know the literal and terminological meanings of waṣīyyat:

A) Verbal meaning of waṣīyyat

There are disagreements about the etymology of the word waṣīyyat among philologists and dictionary writers of Arabic language. Some have taken it as thulāthī mujarrad gerund of the root word waṣaya, yaṣā to mean waṣl (connection), while others have deemed it as rubā'ī gerund of waṣaya, yuwaṣṣya (bāb taf'īl) or gerund of awṣaya, yūṣaya (bāb if'āl) to mean covenant (Muḥaqqiq Dāmād, 1999: 19). This disagreement has led jurists to disagreement as well, with some jurists such as Shahīd Thānī ('Āmilī, 1989, vol. 5: 11) and Sayyid Muḥammad Kāẓim Yazdī (Yazdī, 1988, vol. 2: 877) casting doubt on its root. However, some other scholars (Ḥillī, 1993, vol. 3: 182; Ḥillī, 1995, vol. 21: 5; Ṭūsī, 2008, vol. 4: 3) have decisively said that waṣīyyat comes from the root word waṣaya, yaṣā and means waṣl (connection), because via making a will, the testator connects properties of his lifetime to the properties after his death. Meanwhile, Shaykh Anṣārī believes that waṣīyyat is the gerund of awṣaya and waṣaya and means covenant, because the derivations of this word used in the noble Qur'ān and narrations are all in b ā b taf'īl and if'āl rather than thulāthī mujarrad, and the people who believe that this word is a thulāthī present participle or gerund do not mean that this word is directly taken from waṣaya, yaṣā, but rather they mean that this word is indirectly derived from thulāthī, and because of this suchlike words are called thulāthī mazīd (Anṣārī, 1994: 24). If we adopt this stance, then there will be no disagreement in meaning and there will not be a general non-commonality between the two verbs, but rather in addition to emphasizing that the word waṣīyyat is taken from a four-letter root and means covenant, we believe that in principle, this word comes from thulāthī verbs and there is no general non-commonality between 'ahd (covenant) and waṣl (connection). (Muḥaqqiq Dāmād, 1999: 19)

B) Terminological meaning of waṣīyyat

The jurists of the five Islamic denominations have defined waṣīyyat as follows:

- 'Alā' al-Dīn Kāshānī, a Ḥanafī scholar, has defined waṣīyyat in his book as follows: «Waṣīyyat is a term used for what the testator obligates to be done to his property after his death». (Kāshānī, 1985, vol. 7: 333)
- From the viewpoint of Ibn Rushd, a Mālikī scholar, waṣīyyat means that a person donates his properties to one person or multiple people after his death and gives it as a gift, and there is no difference if he has designated this act with the word waṣīyyat or not. (Ibn Rushd, 1995, vol. 5: 383)
- Muḥy al-Dīn Nawawī, a Shāfi'ī scholar, defines waṣīyyat as follows: «Waṣīyyat in Sharī'a means our specific 'ahd to what exists after death and to khilāfat; that is, a person commits to making a capable person responsible for khilāfat after himself». (Nawawī, n.d., vol. 15: 397)
- Manṣūr b. Yūnus Bahūtī, a Ḥanbalī scholar, defies waṣīyyat as follows: «Waṣīyyat is an order to use or donate a property after death». (Bahūtī, 2005, vol. 7: 541)
- Defining waṣīyyat, Shaykh 'Alī al-Khafīf writes, «Many definitions have been given for waṣīyyat, but it is better to define it as follows: Waṣīyyat is using the property remained after one's death». (Al-Khafīf, 2009: 8)
- Imāmīyya scholars have defined waṣīyyat as follows: «Waṣīyyat means free ownership of a property or benefit or giving the right to someone to use something after a person's death». ('Āmilī, 1989, vol. 5: 11; Ḥillī, 1995, vol. 21: 5; Yazdī, 1988, vol. 2: 877)

Based on what was said, it got clear that the discussion of this article is about free will (to own) for the relatives who receive inheritance up to one third of properties. There are three theories in this regard. We now turn to these theories and their reasons.

Explaining the dispute

If a person makes a will for his heir or heirs, the issue will have only two forms:

1. Will for the heir to receive more than one third of the property

Although there is a seeming agreement for the ruling of this form, some have opposed it. Thus, the question has three forms:

Conditional permissibility: this theory belongs to Imāmīyya (Ḥillī, 1989, vol. 6: 342), Ḥanafīyya, Ḥanbalīyya, Shāfi'īyya, and some Mālikīyya scholars. It asserts that if the testator makes a will to one of the heirs more than one third of his properties, the will on the part more than one third of the property is acceptable if other heirs allow it, because two third of the testator's property will belong to the heirs after his death. (Riḍwānī Kāshānī, 2017: 76)

Absolute impermissibility: this theory belongs to some Mālikīyya scholars. According to this theory, making a will for more than one third of properties, either for the heir or non-heir, is impermissible, even if other heirs allow it. (ibid)

Absolute permissibility: Shahīd awwal attributes this theory to 'Alī b. Bābiwayh and says, «If the testator makes a will for all of his property, it is acceptable». ('Āmilī, 1996, vol. 2: 305)

2. Making a will for an heir on one third of properties

Unlike the first form that was agreed upon by Imāmīyya and Sunnī scholars, there are a lot of disagreement among jurists of the five Islamic denominations about the second form that regards making a will for an heir on one third of properties. Reference to the assertion of the jurists of the five Islamic denominations in this regard shows the following:

The first viewpoint: absolute impermissibility: some Sunnī scholars believe that making a will for an heir is impermissible even if it regards one third of properties. They have relied upon some reasons for this claim: the abrogation of the Will verse by the Inheritance verse, the narration «Lā waṣīyya li-wārith», and the creation of envy and enmity among heirs are some of the reasons given by believers in this assertion.

The second viewpoint: conditional permissibility: some Sunnī jurists have tended to this stance. To prove their claim, they rely on the narration «Lā waṣīyya li-wārith illā an yashā' al-waratha», and believe that the problem is removed with the permission of the heirs.

The third viewpoint: absolute permissibility: this theory accords with the Imāmīyya jurists' opinions who have consensus about it. In addition to providing responses to the reasons given for the rival theories, they rely upon some verses of the Qur'ān, narrations from Ahl al-Bayt, and some Sunnī narrations.

A will for an heir on one third of the property

There are three viewpoints in relation to the permissibility or impermissibility of making a will for an heir on one third of the property, and it is necessary to clarify them.

The first viewpoint: absolute impermissibility

According to this viewpoint, one of the conditions for the acceptability of a will is that the one to whom the will is made is not an heir. Thus, according to this viewpoint, making a will for an heir is impermissible in the same way that if the testator made a will for an heir on more than one third of his property, because the will in both cases is against the qur'ānic text. (alkhafif, 2009: 161)

The proponents of this viewpoint include some Mālikīyya scholars (Ibn 'Abd al-Barr, 1977, vol. 2: 1024), ahmad b. hanbal (Ibn Qudāma, 1996, vol. 8: 396), Shāfi'ī (Shāfi'ī, 2002, vol. 4: 143), the Shāfi'ī scholar mazani (Ibn Qudāma, 1996, vol. 8: 396), Ahli Ẓāhir such as Ibn Ḥazm Andulusī (Ibn Ḥazm Andulusī, 2004, vol. 8: 356), and some Zaydīyya scholars (Al-Khafīf, 2009: 161) who take a will for the heirs as absolutely impermissible, even if the heirs allow it.

Reasons given for the absolute impermissibility stance

Proponents of impermissibility have relied upon three reasons for their claim:

1. The abrogation of the Will verse by the Inheritance verse

The first reason that the proponents of this viewpoint have relied upon is that the Will verse «It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the Allah-fearing» (Qur'ān 2:180) has been abrogated by the Inheritance verse «Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females …» (Qur'ān 4:11) (Bājī, 1999, vol. 8: 92; Ibn Taymīyya, 2004, vol. 20: 397). Therefore, making a will on one's property for his father, mother, and relatives who can receive inheritance based on the share of inheritance that has been stipulated for them in the verse is removed from the Will verse and other relatives who cannot receive inheritance remain under the ruling of this verse.

Analysis

Many responses have been given to this argument:

1. Up until we do not have firm evidence in the qur'ānic verses and Islamic narrations for the abrogation, the principle is that the qur'ānic verses are not abrogated. Here there is no evidence from the Qur'ān or narrations for abrogation. (Suyūrī, 1994, vol. 2: 90)
2. What makes abrogation permissible is the existence of conflict between two verses. Here, not only there is no conflict between these two verses, but also the Inheritance verse gives an absolute propriety for will over inheritance. (Rashīd Riḍā, 1990, vol. 2: 109)
3. The Inheritance verse can abrogate the Will verse only if it has been revealed after it; however, such an event is not proved. (ibid)
4. If we accept that the Inheritance verse abrogates the Will verse, the abrogation here only removes the obligation, not the permissibility. (Suyūrī, 1994, vol. 2: 90)
5. If God is to abrogate a verse in future, it is not appropriate for Him to emphasize the rightfulness of the verse with the phrase «this is due from the Allah-fearing» at the end of the verse and threaten those who oppose it with the phrase «If anyone changes the bequest» at the beginning of the next verse. This shows that the Will verse is not abrogated. (Rashīd Riḍā, 1990, vol. 2: 109)
6. What has led some to suppose that the Will verse is abrogated is the narration «Lā waṣīyya li-wārith». This is a singular narration, and even if all Muslims accept it, it will not change to a

> frequently narrated narration; then, its content becomes speculative, and the speculative content cannot abrogate the Qur'ān whose content is definitive. (ibid)

Some Sunnī scholars believe that the Will verse is not abrogated, but rather its meaning is specific to parents who are prohibited from receiving inheritance (such as parents who are disbelievers or slaves) and non-relative heirs (Qurṭubī, 1996, vol. 2: 176). According to this theory, the permissibility of the will mentioned in the verse should be limited to the parents who are prohibited from receiving inheritance and non-heir relatives.

The inaccuracy of this theory is evident, because the requirement for the obligation of making a will and preservation of the relatives in the generality of the noble verse is the obligation of making a will for the non-heir relatives, a stance that has not been adopted by any scholar of the Islamic denominations (Subḥānī, 2002, vol. 2: 161). Moreover, the claim for the particularity of the noble verse leads to the maximum particularity, because parents and most of the relatives should be taken out of the generality of the Will verse and limit the generality of the verse as pertaining to the non-heir relatives, which is a vile and improper assertion and is contrary to eloquence, because it is vile that God strongly asserts something and then it gets clear that He means parents and non-heir relatives, because in most cases the parents of a Muslim are Muslims themselves.

Thus, the claim for the abrogation or particularity of the Will verse is a false claim and reliance on it to prove the impermissibility of making a will for the inheritor is fruitless.

2. Arguing based on the narration «Lā waṣīyya li-wārith»

The main evidence used by the those who believe in absolute impermissibility is a narration from the Prophet of Allāh (s):

> Khataba Rasūl Allāh (s) faqāl: «Innallāha qad a'ṭā kullu dhī ḥaqqa ḥaqquh, falā waṣīyyata li-wārith». (Ibn Māja, 1997, vol. 4: 278; Nasāʾī, 2000, vol. 6: 158; Sajistāni, 2008, vol. 4: 492; Tirmidhī, 2015: 794)

The proponents of the absolute impermissibility theory believe that this tradition evidently suggests that making a will for the heir is impermissible and this cannot be compromised even by the permission of the heirs:

- Qurṭubī, a Sunnī exegete, writes, «According to Tirmidhī, this tradition is good and sound, and according to our scholars [i.e., Sunnī scholars] the Will verse is abrogated by this tradition rather than by the Inheritance verse, because if this tradition did not exist, it was possible to compromise the Will verse and the Inheritance verse». (Qurṭubī, 1996, vol. 2: 180)
- About this tradition, Shāfi'ī states, «I don't see any disagreement among people about the content of this tradition». (Shāfi'ī, 2002, vol. 4: 143)
- Ibn Ḥazm Andulusī says, «When God has prohibited something through the tongue of the Prophet of Allāh (s), the heirs cannot allow it». (Ibn Ḥazm Andulusī, 2004, vol. 8: 356)

Analysis

Numerous problems have been posed against the argument made based on this narration. These can be divided into two parts, because some of these problems regard the chain of transmission of the narration and some are about the implication of the narration for the claim:

Part one: problems of the chain of transmission

The first problem

Although this narration has been mentioned by Tirmidhī, ibn maja, and some others, it is not present in Ṣaḥīḥ Muslim and Ṣaḥīḥ Bukhārī (which are two of Sunnī valid sources), because this narration has not had the conditions of accuracy in the eyes of Bukhārī and Muslim (Al-Khafīf, 2009: 169). The reason is that for Bukhārī, a narration was sound if its transmitter was deemed as trustworthy by scholars. Moreover, Bukhārī takes the in-person meeting of the transmitter with whom he narrates from as a condition for the soundness of the narration. (Shahristānī, 1999, vol. 1: 84)

The second problem

The chain of transmission of this narration is weak, because it is narrated through the following people:

1. Abī Amāma Bāhilī:

> Abū Dāwūd (Sajistāni, 2008, vol. 4: 492), Ibn maja (ibn maja, 1997, vol. 4: 278), and Tirmidhī (Tirmidhī, 2015: 794) have narrated this narratin from Abī Amāma Bāhilī; however, there exists Ismā'īl b. 'Ayyāsh in their chain of transmission to him. After narrating this narration, Tirmidhī notes that Abū Isḥāq al-Qazārī says, «Accept what others have narrated from trustworthy transmitters, but do not accept whatever narrated by Ismā'īl b. 'Ayyāsh from either trustworthy nor non-trustworthy transmitters». (ibid)

Moreover, there exists Sharḥabil b. Muslim in their chain of transmission to Abī Amāma, who is mentioned by Isḥāq b. Manṣūr as weak. (Mizzī, 1979, vol. 12: 431)

2. Anas b. Mālik:

Ibn Māja has narrated this narration through another chain of transmission by Anas b. Mālik (Ibn Māja, 1997, vol. 4: 278). However, there exists 'Abd al-Raḥmān b. Yazīd b. Jābir in his chain of transmission to Anas b. Mālik, about whom Ibn Ḥajar 'Asqalānī has quoted a sentence from Filās, «Filās is a weak transmitter, and although he has been deemed as trustworthy by Baṣra scholars, but he has been narrating wrong traditions in the presence of K ū fa scholars». (Ibn Ḥajar 'Asqalānī, 1907, vol. 6: 298)

Moreover, there exists Sa'īd b. Abī Sa'īd in this chain of transmission, about whom Ya'qūb b. Shayba has said, «He has changed and has got old, and has got afflicted with loss of mind four years before his death». (ibid, vol. 4: 38)

Therefore, the multichannel chain of transmission of this narration is weak and problematic, so Ibn Ḥajar 'Asqalānī says, «The chain of transmission of every one of them is debated». (Ibn Ḥajar 'Asqalānī, 1959, vol. 5: 372)

Part two: Implication problems

Problem one

This narration is singular, and the implication of sinulgar narration is speculative and cannot match the Will verse because the implication of a verse is definitive (Rashīd Riḍā, 1990, vol. 2: 109). Although there exists consensus about this narration and is deemed as acceptable, it cannot abrogate the verse because the consensus implies that although the reason for abrogation has been present, they have not mentioned it and have sufficed to consensus, and it is not permissible to reject the Qur'ān with consensus. (Fakhr Rāzī, 1990, vol. 5: 54)

Problem two

Although it is claimed that this tradition should be deemed as a widely transmitted narration because Muslims have deemed it as acceptable, this claim is rejected because despite knowing that this verse is singular, Muslims made a consensus about it and deemed it as acceptable, so their act has not been permissible and they have made a mistake. (ibid)

Problem three

On the one hand, the clause «Falā waṣīyya li-wārith» in the narration has come with fā' tarfī', which means that it is subordinate to the previous sentence (Innallāha qad a'ṭā kullu dhī ḥaqqa ḥaqquh), and on the other hand, the sublime God in the Will verse has introduced the compulsory will as obligatory, it can be concluded that making a compulsory will for the relatives who can receive inheritance is not necessary, because God has taken it Himself and has expressed it in the Inheritance verse; however, the rejection of the compulsory will does not contradict making the free will for some relatives, because the free will is different from the compulsory will made obligatory by God. (Riḍwānī Kāshānī, 2017: 83)

Thus, we conclude that in the light of the problems in the chain of transmission and implication of the narration «Lā waṣīyya li-wārith», this narration cannot be robust evidence for the proponents of theory «making will for the relatives is rejected even if the heirs allow it».

3. Making envy and enmity among heirs

To prove the claim that making a will for the heir is not correct, Ibn Qudāma writes, «Such a will brings about enmity and envy among heirs» (Ibn Qudāma, 1996, vol. 8: 396). Moreover, if making the will for the heir is permissible and the testator wills only for some of the heirs, it will bother and disunite the heirs, and will finally lead to the disruption of family ties, which is forbidden, and whatever leads to forbidden things is forbidden itself. (Kāshānī, 1985, vol. 7: 337)

Criticism

This reasoning is problematic from different aspects:

First, this reasoning is ijtihād against qur'ānic text. Second, it disagrees with the qur'ānic discussions about inheritance (Riḍwānī Kāshānī, 2017: 85). Third, if we are to adopt such a reasoning, we should rule based on it when a person gives a gift during his lifetime and deem such an act as impermissible, because it brings about enmity among the relatives, while no one has issues such a ruling. Fourth, the divine legislator has deemed permissible making a will for strangers within the one-third boundary, while feelings of envy and enmity toward strangers under these conditions are stronger. Thus, if making a free will for the strangers is permissible, it is certainly permissible for the heirs ('Alam al-Hudā, 1994: 664). Fifth, the reason for a will might be the specificness of it to the claimant, because it is possible that the thing that is willed for an heir is useful only for him, e.g., the testator wills that his books are given to an heir who is a person of letters, while the other heirs are businesspeople. Sixth, the one who receives the will might be a disables person in need of the willed property. Then, how can such a will lead to envy and enmity? (Subḥānī, Darsi Khāriji Fiqh, February 2, 2016)

The second viewpoint: conditional permission

According to this viewpoint, making a free will for the heirs is sound only if the heirs permit it. That is, «Heirs' permission is not a condition for the soundness of will, but rather it is a condition for its applicability; therefore, it is fine in principle to will for the heir, but this act relies upon the other heirs' permission. Thus, if they permit the will, it is applicable, and if they don't, it is nullified, and if some of them permit and some do not, the will is applicable only to the share of those who have permitted and it is not applicable to the rest of the shares». (Al-Khafīf, 2009: 162)

This viewpoint is deemed correct by most Sunnī scholars (ibid), including Ḥanafīyya (Kāshānī, 1985, vol. 7: 337; Sarakhsī, 1988, vol. 27: 175), most Shāfi'ī scholars (Shirbīnī, 2008, vol. 3: 60), Ḥanābala (Ibn Qudāma, 1996, vol. 8: 396), and some Mālikī scholars. (Ibn Rushd, 1995, vol. 5: 386)

Reasons for the conditional permission

Believers of the permissibility of making a will for the heirs have relied on some reasons as follows.

The first reason: the narration «Lā waṣīyya li-wārith illā an yashā' al-waratha»

Dār Quṭnī has narrated this narration through three chains of transmission, with one chain leading to 'Amru b. Khārija (Dār Quṭnī, 2001, vol. 3: 384, narration 4219) and two chains leading to Ibn 'Abbās (ibid: traditions 4218 and 4220), which all narrate from the Prophet of Allāh (s), «Lā waṣīyya li-wārith illā an yashā' al-waratha».

Out of the three narrations mentioned by Dār Quṭnī, two are loose narrations, because in one of the chains of transmission that leads to Ibn 'Abbās exists 'Aṭā' Khurāsānī who is born in the year 100 LH, while ibn 'Abbās is born in the year 69 LH, so 'Aṭā' Khurāsānī could not have narrated from Ibn 'Abbās directly. The other narration is a weak one because 'Akrama exists in its chain of transmission (Subḥānī, Darsi Khāriji Fiqh, February 7, 2016). Even if we ignore the weak chain of transmission of this narration, as we noted earlier, the Will verse is absolute and unambiguous and no other verse or narration can abrogate it; moreover, this narration is a singular narration and its implication ais speculative, while the Will verse has definitive implication. ('Alam al-Hudā, 1994: 599)

The second reason: Removal of obstacle by the heirs' permission

The second reason given by the proponents of the second viewpoint is that what prevents the applicability of the will is the heirs' dissatisfaction; thus, if thy permit the will, the obstacle is

removed. Muṣṭafā Ibrāhīm Zilmī explains the reason as follows: «The reason for the prohibition of making a will for the heir is that this damages the heirs and also brings about hatred, envy, and coldness among them. However, if the heirs permit the will after the death of the testator, because they have capacity for this permission, then the foregoing reason will not exist anymore». (Riḍwānī Kāshānī, 2017: 88)

Analysis

As we noted earlier, this claim is not general and is also ijtihad against the qur'ānic text, because according to all evidences that indicate absolute permission, no cause can prevent the prohibition of making a will for the heirs.

The third viewpoint: Absolute permission

According to this viewpoint, it is permissible to make a will for all relatives who can receive inheritance and no obstacle exists against its soundness or applicability. In other words, in the same way that making a will for the strangers is absolutely sound, making a will for the relatives who can receive inheritance is also sound and is not conditional to the heirs' permission.

The absolute permission is the viewpoint held by Imāmīyya jurists, some Sunnī scholars, and Egypt's Personal Status Law.

With the examination of this issues in the Shī'a jurisprudential books, we can conclude that the soundness of making a will for the heirs in an absolute manner is agreed upon by the Shī'a jurists:

- There is not disagreement among Imāmīyya scholars about the permissibility of making a will for the heirs and strangers, and this ruling is among the ones is unique. ('Alam al-Hudā, 1994: 597; Ḥillī, 1993, vol. 3: 186; id., 1995, vol. 21: 114; Najafī, 2000, vol. 14: 680; Ṭūsī, 1986, vol. 4: 135)

Among Sunnī scholars, Shaykh 'Alī Al-Khafīf believes that among the existing opinions about this issue, the best reasons belong to those who have ruled for the permissibility of making a will for the heirs within the one-third limit, because although many early and later scholars have ruled for the inapplicability of will for the heirs in the on-third limit, there is not sound reason for it. (Al-Khafīf, 2009: 175)

In the explication of Will Law, it is mentioned that the law has not asserted that the receiver of the will should not be the heir of the testator, and has not set such a condition for the soundness or applicability of the will. (ibid: 161)

Reasons for the absolute permissibility viewpoint

As we noted earlier, the Shī'as believe that making a will for the heir is absolutely permissible. They have relied on five evidences to prove their claim.

The first reason: The noble Qur'ān

1. The verse «It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the Allah-fearing». (Qur'ān 2:180)

Reasoning aspect: this noble verse indicates that making a will is a ritually obligatory rather than recommended act, because it says «it is prescribed». Whenever in the Qur'ān it is said that such and such thing has been prescribed for such and such nation, it means that that ruling is definitive and required (Ṭabāṭabā'ī, 1999, vol. 1: 667). Then, using the phrase «when death approaches any of you», it determines the lats chance to make the will; of course, making a will much before the death time is not only permissible but also decent (Makārim Shīrāzī, 1995, vol. 1: 616). At the end, the verse states «to parents and next of kin». This phrase evidently indicates that making a will for parents is sound while they are part of the heirs themselves (Baḥrānī, 1984, vol. 22: 517). Since the word «al-aqrabīn» (next of kin) is muḥḥalla plural with «al» and indicates generality, it includes strangers and heirs.

2. The noble verse «after the payment of legacies and debts»

Reasoning aspect: according to this noble verse, paying legacy and debt are prior to inheritance, and since the noble verse in a general manner implies the legality of will making, then making a will regards the next of kin as it regards strangers (Suyūrī, 1994, vol. 2: 93). If anyone specified it to the

strangers, he has deviated from the apparent meaning of the verse with no reason. ('Alam al-Hudā, 1994: 598)

The second reason: narrations

1. Ṣaḥīḥa Ibn Baṣīr: 'Alī b. Ibrāhīm 'an abīhi 'an Ibn Abī 'Umayr 'an Abī al-maghrāʾ 'an Abī Baṣīr qāla: «Saʾaltu Aba 'Abdillāh (a) 'an al-waṣīyya lil-wārith faqālā tajūz». (Kulaynī, 1984, vol. 7: 9)

This narration has a sound chain of transmission and all of its transmitters are Imāmī and trustworthy. Moreover, Ibn Aby 'Umayr and Abī Baṣīr are among Aṣḥāb Ijmā'. Finally, the implication of the verse is evident.

2. Ṣaḥīḥa Muḥammad b. Muslim: 'Iddatun min aṣhābana 'an Sahl b. Zīyād 'an Aḥmad b. Abī Naṣr 'an Ibn Bukayr 'an Muḥammad b. Muslim 'an Abī Ja'far (a) qāla: Saʾaltuhu 'an al-waṣīyya lil-wārith faqāla tajūzu qāla thumma talā ḥadhihi al-āya: «In taraka khayran il-waṣīyyatu lil-wālidayni wa al-aqrabīn». (ibid: 10)

The chain of transmission of this narration is sound, too, all of its transmitters are Imāmī and trustworthy, Muḥammad b. Abī Naṣr Bazanṭī, Ibn Bukayr, and Muḥammad b. Muslim are among Aṣḥāb Ijmā'. Moreover, the implication of this narration about the foregoing claim is evident, and even Imām Ṣādiq (a) himself uses the verse «In taraka khayran il-waṣīyyatu lil-wālidayni wa al-aqrabīn» to support the permissibility of making a will for the heir.

3. Ṣaḥīḥa Muḥammad b. Muslim: Al-Ḥusayn b. Sāīd 'an al-Ḥasan b. 'Alī wa Faḍāla 'an 'Abdillāh b. Bukayr 'an Muḥammad b. Muslim qāla: Saʾaltu Abā 'Abdillāh (a) 'an al-waṣīyya lil-wārith faqāla «tajūzu» (Ṭūsī, 1986, vol. 9: 199)

Although there exists Ḥasan b. 'Alī Faḍāl (a Faṭḥī person) in the chain of transmission of this narration, this does not damage the soundness of this chain of transmission, because although he was a Faṭḥī person, he converted from that denomination later in his life and he is deemed as one of Aṣḥāb Ijmā'. Second, this narration has been narrated through another chain of transmission in which all transmitters are Imāmī, trustworthy, and among Aṣḥāb Ijmā'. Therefore, no problem can be posed against the chain of transmission of this narration, and the implication of this verse evidently supports the foregoing claim.

4. Ṣaḥīḥa Abī Baṣīr: 'Anhu 'an Ibn Abī 'Umayr 'an Abī al-Maghrāʾ 'an Abī Baṣīr qāla: Qultu li-Abī 'Abdillāh (a) yajūzu lil-wārith waṣīyyatuhu qāla na'am. (Ṭūsī, 1984, vol. 4: 127)

This narration, too, has a sound chain of transmission, all of its transmitters are Imāmī and trustworthy, and has no problem in terms of the implication; thus, the implication of this narration on the aforementioned claim is evident.

5. Rawaya Ibn Bukayr 'an Muḥammad b. Muslim 'an Abī Ja'far (a) qāla: Saʾaltuhū 'an al-waṣīyya li-wārith faqāla «tajūzu» thumma talā hādhihi al-āya «In taraka khayran il-waṣīyyatu lil-wālidayni wa al-aqrabīn». (saduq, 1984, vol. 4: 194)
6. The chain of transmission of this narration is sound, its transmitters are Imāmī and trustworthy, and the implication of the narration on the permissibility of making a will for the heir is evident, as Imām (a) has relied on the verse «In taraka khayran il-waṣīyyatu lil-wālidayni wa al-aqrabīn» to support this stance.

Therefore, these narrations that exist in the Shī'a Four Books indicate that making a will for the heir is absolutely sound and is not conditional to the heirs' permission.

The third reason: consensus

The soundness of making a will for the heir is under consensus among Imāmīyya Shī'a, and notable scholars such as Shaykh Ṭūsī (Ṭūsī, 1986, vol. 4: 135), 'Allāma Ḥillī (Ḥillī, 1995, vol. 21: 114), and Ṣāḥib Jawāhir (Najafī, 2000, vol. 14: 680) have relied upon this argument.

The fourth reason: Rational reason

The narration «Al-Nās musallaṭūn 'Alā amwālihim» indicates that people have authority over their properties and can use them anyway the like. On the other hand, as attested by the reasons, the testator

has the right to make a will on one third of his properties. Therefore, the testator can make a will on one third of his properties for those of his relatives who can receive inheritance.

ʻAllāma Ḥillī has written in this regard, «Making a will for the heir is a use made by the rightful person in a right situation». (Ḥillī, 1995, vol. 21: 114)

The fifth reason: Strengthening the familial relations

Contrary to the claim made by the Sunnī scholars, making a will on one's properties to be given to the relatives who can receive inheritance is an act that strengthens familial ties. It is as if the testator and the other heirs have paid more attention to the weaker heir and have tried to improve his economic conditions.

Shahīd Thānī writes in this regard, «In a will made for an heir is a kind of concern for blood relatives, which is at the least level a recommended act». (ʻĀmilī, 1989, vol. 5: 55)

Conclusion

One of the important issues whose ruling has been debated by the scholars of Islamic denominations, including Shīʻa and Sunnī, is the issue of free will for the relatives. Therefore, it is required to solve the root of this problem and turn the disagreement to agreement. Some Sunnī scholars believe that one of the conditions for the receiver of a will is that he is not an heir, so if the testator makes a will for one of his heirs, it is unacceptable. Of course, many Sunnī scholars believe that making a will for an heir is permissible only if other heirs permit it, but the Shīʻa scholars deem that as making a will within the one-third limit of properties for a stranger is sound and applicable, making a will for an heir to receive inheritance within the one-third limit of the properties is sound and acceptable. Therefore, the findings of this study can be summarized as follows:

1. Some Sunnī scholars believe that making a will for an heir is absolutely prohibited.
2. Most of Sunnī scholars believe that making a will for an heir is sound and applicable only if it is permitted by the heirs.

The most important reason of the proponents of the absolute prohibition is the abrogation of the Will verse with the Inheritance verse and also the existence of some narration that imply the prohibition of making a will for an heir.

The main reason used by the majority of Sunnī scholars to prove the conditional permissibility is the existence of narrations through which the content of absolute prohibition narration is limited.

On the contrary, the Shīʻa scholars believe that the Will verse is general and that the Inheritance verse cannot be deemed as its abrogator. Moreover, they believe that a prophetic narration cannot be its abrogator as well, because speculative evidence cannot abrogate definitive evidence. However, the most important reason put forth by the Shīʻa for the permissibility of making a will for the relatives is the numerous narrations received from Ahl al-Bayt (a) that evidently indicate the permissibility of making a will for the relatives.

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