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The Concept of Will (Wasiyyah) under Islamic Law: A Juristic and Qur'anic Analysis

Nusrat Ali Rizvi

Assistant Professor, Govt. Law College, Gwalior, M.P., Email: alinusrat9@gmail.com

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ABSTRACT

The concept of Wasiyyah, or will, holds an important place in Islamic law. It allows a Muslim to allocate part of their property to meet moral, religious, and social duties after death. This idea is based on the Qur'an and expanded through Prophetic practices and traditional legal interpretations. Wasiyyah seeks a balance between an individual's right to create a will and the inheritance rules set by God. This research article provides a legal and Qur'anic examination of Wasiyyah in Islamic law. It looks at its legal nature, scope, and limitations as understood by major Sunni schools of thought. The study reviews key Qur'anic verses, especially Surah Al-Baqarah (2:180) and Surah An-Nisa (4:11-12), along with respected legal opinions. It traces how Wasiyyah evolved from a moral duty into a regulated legal practice. The article discusses important conditions for a valid will, including the testator's capacity, the content of the will, the beneficiaries, and the general rule that a will cannot exceed one-third of the estate nor benefit legal heirs without their agreement. It also addresses the ethical goals behind Wasiyyah, such as promoting social welfare, protecting dependents, and fulfilling charitable wishes. By engaging with traditional legal principles and modern viewpoints, this article emphasizes the ongoing significance of Wasiyyah in Islamic inheritance law and its ability to meet contemporary legal and social needs. The study concludes that Wasiyyah is a crucial tool that blends divine commands with individual choice within Islamic legal theory.

1. Introduction

The concept of Wasiyyah (will or bequest) occupies a distinctive place within Islamic legal doctrine: it operates at the intersection of divine, communal, and individual interests by permitting a testator to dispose of part of their estate while simultaneously preserving the Qur'anic, fixed shares accorded to legal heirs. The Qur'an introduces the moral and legal seed of testamentary disposition in verses that both encourage bequests and set the inheritance framework—most notably Surah Al-Baqarah 2:180 (the verse of bequest) and the detailed inheritance allocations of Surah An-Nisa 4:11–12. These texts form the primary normative foundation for subsequent juristic elaboration on Wasiyyah. Classical jurists across Sunni schools treated Wasiyyah as a permitted, though regulated, instrument. The predominant Sunni position limits unilateral bequests to one-third of the net estate (after debts and funeral expenses), unless the legal heirs expressly consent to a larger share; this restriction is grounded in a combination of Qur'anic injunctions, Prophetic traditions, and juristic concern to safeguard the ordained shares of heirs. The hadith literature and major juristic manuals articulate both the normative ceiling and the procedural conditions—capacity of the testator, permissibility of subject matter, and the timing and formalities of the declaration—required for a valid bequest.

Despite broad consensus on the one-third rule among Sunni jurists, doctrinal diversity exists: certain Shia legal formulations adopt alternative mechanisms for abatement and preferential distribution when bequests exceed the bequeathable quota, and modern codifications reflect varying accommodations of these doctrinal divergences. Such pluralism underscores the necessity of situating *Wasiyyah* not only within scriptural sources but also within the jurisprudential method and sectarian legal economies. In the contemporary Indian context, *Wasiyyah* is regulated through the lens of Muslim personal law as applied by national law—most prominently under the Muslim Personal Law (Shariat) Application Act, 1937—which secures the primacy of Sharia-based personal rules for Muslims while operating within India's secular legal framework. Judicial practice and legislative contours interact with social realities: recent litigation and petitions in Indian courts reflect renewed contestation over the scope of testamentary freedom under Muslim law, especially concerning the one-third limitation and its compatibility with constitutional guarantees and modern inheritance expectations. These developments render the study of *Wasiyyah* particularly salient for scholars of comparative family and succession law in India. This article pursues a juristic and Qur'anic analysis of Wasiyyah with three interrelated aims. First, it reconstructs the scriptural and prophetic sources that inform classical constraints and permissions. Second, it traces major doctrinal articulations and sectarian variations—identifying core points of consensus and disagreement. Third, it situates these findings in the contemporary legal landscape, with particular attention to Indian

personal-law applications, judicial trends, and policy debates about testamentary autonomy, heirs' rights, and social justice. By combining textual exegesis with doctrinal analysis and attention to modern legal challenges, the study seeks to clarify how Wasiyyah continues to mediate between individual intentions and divinely-ordained familial entitlements within plural legal orders.

2. Review of Literature

The Review of Literature on Wasiyyah consistently locates the institution within a tripartite textual matrix: Qur'anic injunctions that endorse bequests, Prophetic traditions that limit their scope, and juristic reasoning that systematises conditions and remedies. Classical hadith collections—most notably the hadith recorded in Sahih Muslim—are regularly invoked as the primary textual authority for the well-known one-third limitation on testamentary disposition, and contemporary doctrinal overviews treat this tradition as the linchpin that reconciles testamentary freedom with fixed Qur'anic shares. Comparative doctrinal studies of the four Sunni school demonstrate a broad consensus on core principles of *Wasiyyah* (validity, permissible legatees, incapacity of certain categories such as an heir or murderer, and the one-third ceiling), while also highlighting procedural and remedial divergences. Analytical overviews—such as recent concise treatments of *al-waṣiyyah*—map subtle variances in abatement rules, evidentiary preferences, and exegetical methods applied by Hanafi, Maliki, Shafi, and Hanbali jurists. These studies underscore that the dominant Sunni position privileges maintenance of predetermined shares over unfettered testamentary autonomy.

Empirical and socio-legal research has taken *Wasiyyah* beyond doctrinal exegesis to examine practice, perception, and institutional uptake in Muslim-majority and minority jurisdictions. Doctoral theses and field studies (for example, research on Islamic estate planning practices in Malaysia and broader comparative treatments) reveal that awareness, cultural norms, and availability of Sharia-compliant advisory services shape the use of wills and charitable bequests; these works also evidence tension between traditional rules and modern estate-planning needs. Such empirical scholarship is valuable for situating juristic norms within lived institutional contexts. In the Indian legal and policy literature, commentators focus on the interplay between Sharia-based personal rules and the secular legislative framework. The Muslim Personal Law (Shariat) Application Act, 1937, remains the statutory reference for applying Muslim personal law in India, but scholarly critiques stress the absence of a uniform codification for Muslim wills and divergent judicial approaches in civil courts. Recent litigation and high-profile petitions brought before the Indian Supreme Court (debating whether Muslims may opt for the Indian Succession Act instead of Shariat rules, and challenging the one-third restriction) have

propelled the issue into constitutional and policy discourse; legal commentators interpret these developments as a prompt for reassessing testamentary autonomy, statutory reform, and the relationship between personal law and fundamental rights.

3. Purpose of Study

The present study aims to undertake a comprehensive juristic and Qur'anic analysis of the concept of Will (Wasiyyah) under Islamic law, with a view to examining its legal nature, scope, and continuing relevance in contemporary succession regimes. The primary purpose is to analyse the foundational Qur'anic injunctions relating to testamentary disposition, particularly in light of Surah Al-Baqarah (2:180) and Surah An-Nisa (4:11–12), and to assess how these verses have been interpreted and harmonized by classical Muslim jurists through Fiqh and Usul-al-Fiqh. The study further seeks to explore the doctrinal development of Wasiyyah across major schools of Islamic jurisprudence, with special emphasis on the one-third limitation, exclusion of legal heirs, and the ethical objectives underlying these restrictions. Another important purpose is to evaluate the application of Wasiyyah within modern legal systems, particularly in jurisdictions such as India where Muslim personal law operates within a secular constitutional framework. By engaging with classical juristic writings, contemporary academic scholarship, and recent legal discourse on Muslim personal law, this study aims to identify doctrinal consistencies, interpretative divergences, and emerging challenges. Ultimately, the research article seeks to contribute to a clearer understanding of how Wasiyyah balances individual autonomy with divinely mandated inheritance rules and how it may respond to evolving socio-legal realities.

4. Methodology

This study adopts a doctrinal-comparative methodology grounded in textual and jurisprudential analysis. Primary sources—Qur'anic verses (notably 2:180; 4:11–12) and relevant Prophetic traditions on bequests—will be examined through classical Commentary and hadith corpus to reconstruct normative bases for will. Next, major Sunni and Shia juristic manuals and fundamental literature will be surveyed to map doctrinal consensus and divergence concerning validity, the one-third rule, abatement and remedies. Contemporary scholarly works will contextualise doctrinal positions within modern legal thought. For the Indian dimension, statutory and case-law analysis will interrogate the application of Muslim personal law — principally the Muslim Personal Law (Shariat) Application Act, 1937 — and leading judgments shaping testamentary practice.

5. Concept and Sources of Will in Islamic Law

The concept of Wasiyyah (will or testamentary bequest) under Islamic law represents a carefully structured legal mechanism through which a Muslim may direct the disposition of a portion of his or her property to take effect after death. Unlike secular testamentary systems that permit broad freedom of disposition, Islamic law places Wasiyyah within a normative framework governed by divine injunctions, ethical considerations, and juristic limitations. The primary objective of Wasiyyah is to allow the fulfilment of moral, charitable, and social obligations without disturbing the Qur'anically mandated scheme of inheritance.

In its legal sense, Wasiyyah refers to a voluntary transfer of ownership of property, benefit, or usufruct to a person or institution, effective upon the death of the testator. Classical jurists unanimously recognized Wasiyyah as a lawful institution, though its scope is restricted. The most notable restriction is that a will cannot ordinarily exceed one-third of the net estate and cannot operate in favour of a legal heir without the consent of the other heirs. These limitations reflect Islam's emphasis on balancing individual autonomy with the protection of familial rights and social justice.

The primary source of *Wasiyyah* is the Qur'an. Surah Al-Baqarah (2:180) initially enjoins believers to make a bequest in favour of parents and close relatives, presenting *Wasiyyah* as a moral obligation. However, the later revelation of detailed inheritance shares in Surah An-Nisa (4:11–12) introduced a fixed and compulsory system of succession. Classical jurists reconciled these provisions by holding that while inheritance shares are mandatory, *Wasiyyah* remains permissible within defined limits and primarily for non-heirs. This harmonization reflects the juristic principle of reconciling apparently conflicting texts through contextual and chronological interpretation.

The second principal source is the Sunnah of the Prophet Muhammad (peace be upon him). The well-known Hadith reported in Sahih Muslim, wherein the Prophet advised Sa'd ibn Abi Waqqas not to bequeath more than one-third of his property, serves as the doctrinal foundation for the quantitative limitation on Wasiyyah. This Hadith is widely regarded as authoritative across Sunni schools and has significantly shaped the jurisprudence of testamentary disposition. The third source consists of juristic consensus (Ijma) and analogical reasoning (Qiyas). Muslim jurists from all major schools—Hanafi, Maliki, Shafi, and Hanbali—developed detailed rules governing capacity, subject matter, revocation, and acceptance of Wasiyyah. While minor procedural differences exist, there is broad consensus on its essential principles. Juristic reasoning further integrates ethical objectives, such as protection of heirs, prevention of injustice, and promotion of charitable giving.

Thus, Wasiyyah under Islamic law emerges as a synthesis of scriptural authority and juristic interpretation, designed to uphold divine commands while accommodating human discretion within carefully defined boundaries.

6. Conditions, Limitations, and Legal Effects of *Wasiyyah* under Islamic Law

The institution of *Wasiyyah* (will or testamentary bequest) occupies a carefully regulated position within Islamic succession law. While Islamic law recognizes an individual's right to make a testamentary disposition, this right is neither absolute nor unrestricted. Classical Muslim jurists, drawing upon Qur'anic injunctions, Prophetic traditions, and juristic reasoning, developed a comprehensive framework of conditions and limitations to ensure that *Wasiyyah* does not undermine the divinely ordained system of inheritance. The legal effects of *Wasiyyah* further demonstrate its role as a supplementary, rather than overriding, mechanism of succession.

I. Conditions of *Wasiyyah*

Islamic jurisprudence lays down four broad categories of conditions relating to the testator, subject matter, beneficiary, and formal validity of the will.

1. **Capacity of the Testator**

   The testator must possess legal capacity at the time of making the will. This requires that the testator be a major, of sound mind, and acting voluntarily. A will executed by a minor, an insane person, or under coercion is void. Jurists also require that the testator have ownership rights over the property being bequeathed. In cases of terminal illness, *Wasiyyah* is permitted but scrutinized closely, as such dispositions resemble inter-vivos transfers and may prejudice the rights of heirs.

2. Subject Matter of the Will

The subject matter must be lawful (*halal*), valuable, and capable of ownership and transfer. Property that is uncertain, non-existent at the time of death, or prohibited under Islamic law cannot form the subject of a valid *Wasiyyah*. Jurists allow bequests of corporeal property as well as usufruct, provided the transfer of ownership takes effect only upon the death of the testator. Importantly, the bequest becomes operative only after payment of funeral expenses and debts, which enjoy priority under Islamic law.

3. Beneficiary of the Will

The beneficiary must be capable of holding property and must be in existence at the time of the testator's death, whether actually or constructively (such as a child in the womb). One of the most significant conditions is that a will cannot ordinarily be made in favour of a legal heir. This rule, derived from Prophetic tradition, aims to protect the fixed inheritance shares allocated by the Qur'an. However, a bequest to an heir may become valid if all other heirs' consent after the testator's death, reflecting the principle that private rights may be waived by those entitled to them.

4. Acceptance and Revocability

Acceptance of the bequest by the beneficiary may occur after the death of the testator, and refusal prior to death does not necessarily invalidate the will. Islamic law also recognizes the revocable nature of *Wasiyyah*: the testator may revoke or modify the will at any time during his or her lifetime, either expressly or by conduct inconsistent with the bequest.

II. Limitations on *Wasiyyah*

While *Wasiyyah* is a recognized legal institution, its operation is subject to strict limitations that preserve the integrity of Islamic inheritance law.

1. The One-Third Limitation

The most prominent limitation is the quantitative restriction that a will must not exceed one-third of the net estate. This rule is derived from the well-known Hadith of Saad ibn Abi Waqqas, in which the Prophet Muhammad (peace be upon him) approved a bequest of one-third and described it as "much." Jurists unanimously accept this limitation, and any bequest exceeding one-third is ineffective unless ratified by the heirs after the testator's death.

2. Prohibition of Bequest to Heirs

As a general rule, a will in favour of a Qur'anic heir is invalid without the consent of the remaining heirs. This limitation prevents manipulation of inheritance shares and ensures equality among heirs. It also reinforces the principle that testamentary freedom cannot override divine allocation.

3. Subordination to Debts and Obligations

Another significant limitation is that *Wasiyyah* operates only after payment of debts and funeral expenses. The Qur'an consistently places the discharge of debts before testamentary and inheritance distributions, emphasizing the moral and legal priority of obligations over voluntary acts.

III. Legal Effects of *Wasiyyah*

The legal effects of *Wasiyyah* arise upon the death of the testator and demonstrate its supplementary nature in Islamic succession.

1. Transfer of Ownership

A valid *Wasiyyah* results in the transfer of ownership of the bequeathed property to the beneficiary upon the testator's death, subject to acceptance. Unlike gifts (*Hiba*), which operate inter -vivos, *Wasiyyah* creates no proprietary interest during the lifetime of the testator.

2. Interaction with Inheritance

Wasiyyah operates prior to the distribution of inheritance shares but after debts and expenses. The estate is therefore distributed in the following order: funeral expenses, debts, execution of valid wills, and finally inheritance among heirs. This sequencing highlights that *Wasiyyah* supplements but does not replace inheritance.

3. Effect of Invalid or Excessive Bequests

If a will violates any essential condition—such as exceeding one-third without consent or benefiting an heir without approval—it is either wholly or partially invalid. Jurists developed doctrines of abatement to proportionately reduce excessive bequests while preserving valid portions, thereby minimizing disruption to succession.

4. Ethical and Social Effects

Beyond legal consequences, *Wasiyyah* carries significant ethical implications. It allows the fulfilment of moral duties, charitable intentions, and care for non-heir dependents, reflecting the broader objectives of justice, compassion, and social welfare.

7. Judicial Interpretation of Muslim Wills in India

The Indian judiciary has consistently engaged with the doctrine of *Wasiyyah* (will) under Muslim personal law, balancing scriptural precepts, Prophetic traditions and practical equity in its decisions. Two recurring themes dominate judicial treatment: (1) enforcement of the classical restrictions on testamentary power—most notably the one-third limitation and the bar on bequests in favour of legal heirs without consent—and (2) pragmatic issues of form, proof, abatement and sequencing of estate liabilities (debts, funeral expenses, wills, then inheritance). Courts have therefore played a central role in operationalizing *Wasiyyah* within India's plural legal order.

A. One-Third Rule and Abatement: Consistent Judicial Application

At the doctrinal core is the one-third rule—rooted in Prophetic guidance and treated as normative by Sunni jurists—which Indian courts have repeatedly recognized. Where a bequest exceeds one-third of the net estate and heirs do not consent, courts apply doctrines of abatement to reduce legacies proportionately (Sunni rule of rateable abatement) so that the effective testamentary disposition does not prejudice Qur'anic shares. This principle has been applied in numerous High Court decisions and is routinely explained in contemporary doctrinal summaries cited by courts. The Madras High Court's decision in **Asma Beevi v. M. Ameer Ali (2008)** exemplifies judicial fidelity to the rule. The court held that a registered will was valid only to the extent of one-third where there was no proved consent of heirs, partitioning the estate accordingly and allotting the legal heirs their Qur'anic shares from the remaining two-thirds. This decision underscores two points: first, formal registration of a will does not allow it to override substantive testamentary limits; second, courts will effectuate proportionate reduction to preserve heirs' rights.

B. Bequests in Favor of Heirs and the Role of Consent

A closely related line of authority concerns bequests to legal heirs. Indian courts follow the classical rule that a will favouring an heir is ineffective vis-à-vis that heir unless the other heirs (whose shares are affected) give their consent. Jurisprudence clarifies that such consent may be express or can be inferred from clear post-death conduct; it may also be given after the testator's death. The Calcutta High Court in **Rabbani Begum v. Zarina Bibi** articulated this rule by emphasizing that a bequest to an heir requires the other heirs' consent and that any one heir can bind his own share by consenting. Courts have also addressed evidentiary contests over when and whether heirs' consent was given. Indian decisions hold that mere possession or acceptance by a legatee during the testator's lifetime is generally ineffective to

validate a will that infringes heirs' rights; rather, consent must be clear and attributable to those heirs whose shares would be prejudiced. These fine-grained distinctions show judges are careful to protect both testamentary intent and statutory/scriptural entitlements. Indian courts have repeatedly affirmed that Islamic wills need not conform to rigid formalities (such as written form or attestation) so long as the testator's intention is clear and proved. Case law going back to colonial era decisions (and reiterated in later High Court rulings) accepts oral wills, registered instruments, and implied revocations — provided that the factum and terms of the bequest are satisfactorily established. Courts therefore apply ordinary standards of evidence to determine validity, revocation, and interpretation. Equally important is the sequence of liabilities recognized by courts: funeral expenses and debts first, then valid wills (up to permitted limits), and only then distribution of residual estate as per (Qur'anic shares). This order has recurring judicial affirmation because it mirrors both Quranic priorities and classical juristic practice.

C. Recent Litigation and Constitutional Questions

Contemporary litigation has brought new questions into the judicial arena. In 2025 the Supreme Court in **Sufiya PM v. Union of India (WP (C) No. 135/2024)** agreed to examine whether a Muslim may opt to have succession governed by the secular Indian Succession Act, 1925, instead of Shariat law—a development that could affect the scope of testamentary freedom and the practical operation of *Wasiyyah* in India. This Supreme Court reference signals possible re-examination of the relationship between religious personal law and secular succession statutes, and it has prompted academic and policy debates about individual choice in personal law matters.

This petition has also challenged the constitutional legitimacy of personal-law restrictions (for example, the one-third constraint), arguing that they may impinge on autonomy or equality. While such challenges are nascent, courts appear poised to consider whether historical juristic limits should be reinterpreted in light of constitutional rights—without, however, losing sight of the protection afforded to heirs by long-standing Islamic doctrine. Overall, Indian courts perform a delicate balancing act. They preserve the substance of classical Islamic restrictions (one-third rule, heir-consent requirement, sequencing) while applying common-law evidentiary tools and equitable remedies (abatement, partition decrees, tracing of consent). Judicial practice thus ensures that *Wasiyyah* functions as a limited instrument of personal autonomy that coexists with the protective architecture of inheritance law. Recent Supreme Court interest in allowing choice of succession law may reframe some doctrinal defaults, but until authoritative rulings depart from classical norms, High Court and lower court jurisprudence will remain the primary vehicle through which *Wasiyyah* is interpreted and enforced in India.

8. Conclusion

The concept of *Wasiyyah* under Islamic law reflects a carefully calibrated legal and ethical framework that harmonizes individual testamentary discretion with divinely ordained rules of inheritance. Rooted in Qur'anic injunctions and refined through Prophetic traditions and classical juristic reasoning, *Wasiyyah* occupies a supplementary role in Islamic succession law, ensuring that personal intentions do not disrupt the fixed shares prescribed for legal heirs. The juristic consensus on key principles—such as the one-third limitation, the prohibition of bequests to heirs without consent, and the priority of debts and funeral expenses—demonstrates Islamic law's commitment to justice, familial balance, and social responsibility.

The study's juristic and Qur'anic analysis reveals that *Wasiyyah* is not merely a legal mechanism but also a moral instrument aimed at fulfilling charitable obligations, protecting vulnerable dependents, and advancing the broader objectives of Islamic law. At the same time, judicial interpretation in India has played a decisive role in translating these principles into enforceable legal norms. Indian courts have consistently upheld classical doctrines while applying procedural fairness, evidentiary rigor, and equitable remedies such as abatement, thereby ensuring the continued relevance of *Wasiyyah* within a plural legal system.

Contemporary debates—particularly those concerning constitutional values, testamentary autonomy, gender justice, and the option to choose secular succession law—signal a dynamic phase in the evolution of Muslim testamentary law in India. These developments do not negate the foundations of *Wasiyyah* but invite thoughtful reinterpretation and measured reform. A purpose-oriented approach, combined with limited codification and procedural clarity, may offer a viable path forward.

In conclusion, *Wasiyyah* remains a vital institution within Islamic law, capable of adapting to modern socio-legal realities while preserving its core normative principles. Its continued effectiveness depends on a balanced engagement between scriptural fidelity, juristic wisdom, judicial interpretation, and responsive legal reform.

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