
THE ATTITUDES OF MUSLIMS TOWARD WASIYYAH (WILL): A STUDY OF CONTEMPORARY MUSLIMS IN SOKOTO METROPOLIS

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Abstract

Wasiyyah as an Arabic word, symbolizes a legal declaration and one's discretion on how one desires his chattels to be disposed or determined after one's death. By extension, it can be seen as an action through which one bequeaths one's property after one's death. However, lack of adequate knowledge of how *wasiyyah* is to be managed seems to be one of the major research problems the paper intends to address. The objectives of the paper is, however, to underscore the lack of essential knowledge of *wasiyyah*, its position in Islam, principles as well as how it can be determined, accepted or revoked. The paper also aims at addressing misunderstanding among the contemporary Muslims of the words *wasiyyah* and debt left by the deceased. Moreover, the paper uses in-depth study and analytical method to identify the basis upon which the Muslims consider the *wasiyyah* very light harping on how their actions have individually or collectively added to the inappropriate handling of *wasiyyah* contemporarily.

Keywords: Attitude, Muslims, Wasiyyah

Introduction

According to the Qur'an Almighty Allah created man to be His *Khalifah*, His trustee on earth.¹

Mankind's basic trust, therefore, is to believe and worship Him. He elucidates in the following verse that:

And I did not create the Jinn and mankind except to worship Me...²

The purpose for one's creation is to worship the Creator. Allah further stated that He made this life in order to test mankind so that every person may be recompensed after death for what he has earned. He enunciates in the following verse that:

[He] who created death and life to test you [as to] which of you is best in deed - and He is the Exalted in Might, the Forgiving³.

However, the Prophet (S.A.W.) was reported to have stressed that:

It is a duty of a Muslim who has anything to bequeath not to let two nights pass without including it in his will⁴.

The term *wasiyyah* has its origin from the Arabic root word 'wasa' which simply means he conveyed.⁵ It means a gift of property by an owner to another contingent before the giver's death. The legal Qur'anic injunctions; in respect of bequest, was revealed in chapter two of the Glorious Qur'an where Almighty Allah:

Prescribed for you when death approaches (any) one of you if he leaves wealth (is that he should make) a bequest for the parents and near relatives according to what is acceptable, a duty upon the righteous⁶.

Deduced from this Qur'anic verse is that Allah (S.W.T.) has commanded Muslims without language barrier or tribal inclination, to adopt and exercise bequeath on parents and relatives. This is obligatory upon all Muslims but prior to the revelation of Qur'anic verses on inheritance. Similarly, after certain verses on inheritance were revealed, the (earlier quoted) verse was abrogated and fixed shares were giving to each and every legal heir. Legally speaking is the fact that the Qur'anic verses on inheritance do not, in any way condemned the issue of *wasiyyah*. Muslim scholars like Ibn Kathir and many others upheld this opinion. Conversely, Allah the exalted has also cautioned the alteration of bequeath when He stated in the following verses:

Then whoever alters it (i.e. the bequest) after he has heard it-the sin is only upon those who have altered it. Indeed, Allah is Hearing and Knowing⁷.

But if the one fears from the bequeather (some) error or sin and corrects that which is between them (i.e. the concerned parties) there is no sin upon him. In deed Allah is forgiving and merciful⁸.

Ibn Kathir and other similar scholars of varying degree of knowledge are of the view that adding or reducing anything out of bequeath made by the

deceased is a sin, which is punishable, if other supporting evidences are established. In fact, this opinion has further shown the extent of the gravity of the sin for anyone who conceals it⁹.

It is apparently clear that it is the concern of the pious and righteous people who developed fear of Allah to leave *wasiyyah* behind. But these verses were revealed when no law was yet fixed in the way and manner of distributing estate, known as inheritance. It was much later; a complete guidance was revealed to Prophet Muhammad (S.A.W.) who delivered same to Muslims concerning the inheritance and fixed portions for each of the heirs. The Prophet's practical demonstration and illustration, where necessary in respect of inheritance and bequeath were also made clear. Relative to this however, Sa'ad bin Abi Waqqas remarked in the following statements:

I was taken very ill during the year of the conquest of Makkah and felt that I was about to die. The Prophet visited me and I asked: O! Messenger of Allah I own a good deal of property and I have no heir except my daughter. May I make a bequeath leaving all my property for religious and charitable property? He (the Prophet) replied 'No' I again asked: may I do so in respect of 2/3 of my property? He replied: 'No' I again asked: may I do so with 1/3 of it? The Prophet replied: make a will disposing of one third in that manner because one third is quiet enough of the wealth that you possess. Verily if you die and leave your heirs rich is better than leaving them poor and begging¹⁰.

Despite the Qur'an and *Sunnah* teachings on inheritance and *wasiyyah* most of the contemporary Muslims, particularly in Sokoto as the study area are mostly ignorant of the Shari'ah demands on inheritance and its distribution in accordance with the unfettered freedom and certain restrictions of manmade law. Having opted ignorantly for some western matrimonial property system, Muslims are precluded from drawing up Islamic wills.

Others again, simply do not care of the dire consequences awaiting them in the next world since they bequeath their estates as instructed by their whimsical desires. An attempt was therefore made in this paper to address one of the misunderstandings prevalent among the Muslims concerning *wasiyyah* and its management.

The *Musi* (testator) and *Al-Musa-lahu* (the beneficiary) are the major components in its application. Likewise, according to some Muslims the execution of *wasiyyah* is more important than the payment of debt left behind by the deceased in the area. It is, the research gathered, obligatory to be made in some cases and desirable in others. *Wasiyyah* as seen by many obliged for a person in determining all financial rights of others under his possession or

vice versa. This is to be done in case these rights are not recorded, lest they should be lost¹¹.

The understanding of many Muslims, especially in the study area, reveals that there is need for much awareness among the Muslims who could neither distinguish between *wasiyyah* and debt, its position and application. This development however, calls for a total overhaul in the management, control and application of *wasiyyah* among the contemporary Muslims. More so, this trend is analogous to the practice of *Jahiliyyah* Arabs who normally dispose off their property the way they so wish as there was no clear law on inheritance. As such, they deprive their own parents, children and wives their assigned rights. At times, bequeath is made in favour of a rich and influential members of the clan.

A Synopsis of Sokoto Metropolis:

Sokoto city, the headquarters of Sokoto Emirate is located in the northwest region of Nigeria. The history of the city has been shaped, largely by 19th century Islamic revivalism (*Tajdid*) which is also referred to as the Sokoto *Jihad*. Usman conceives that the most important outcome of the 19th century was the establishment of a new Islamic state called the Sokoto Caliphate.

The name Sokoto, which is the modern version of the local name *Sakkwato* is also known as *Sakkwato Birnin Shehu* (Sokoto that of Shaykh).

Being the city of the Caliphate, it is predominantly inhabited by Muslims and is an important seat of Islamic learning not only within the state but throughout Nigeria. The Sultan is the spiritual leader of the Nigerian Muslims. Oral tradition has it that Sokoto was founded by Shaykh Uthman bn Foduye in 1804 and was later maintained by his son Muhammad Bello as a *ribat* when the former was in Sifawa. It later became the Caliphate capital after Shaykh's death. Presently, Sokoto metropolis is made up of Sokoto North, Sokoto South and, to some extent, parts of Wamakko local government areas.

By the way, it was predominantly occupied by Fulani and Hausas – that are made up of Gobirawa, Zamfarawa, Kabawa, Adarawa- has a projected population of 4.2 million people. Being the capital city founded by the triumvirates, the literary revolution of the area was accompanied by the transformation occasioned by the change in the entire structure and the fabric of the society under the caliphate¹². Islam, being the widely practiced religion, affects nearly all aspects of life among the people of the area.

Proliferation of *Jum'at* mosques and other educational centers, within the study area, has further proven the point. Sokoto is therefore seen as a citadel of learning for Nigerian Muslims and Islamic education as well.

Wasiyyah In Islamic Law

Wasiyyah is distinguished from *Hibah* i.e. gift. Thus, the transfer or the control as well as the benefit of *Hibah* takes place during the life time of the benefactor while that of *wasiyyah* takes effect only after his death¹³.

It is prescribed for you when death comes to any of you; if he leaves abundant wealth that he makes a will...¹⁴

The Messenger of Allah (S.A.W.) was reported to have elucidated:

It is not right for a Muslim who has property regarding which he must make a will that he should sleep say, for two nights but that his will should be written down with him¹⁵.

On the basis of the injunctions of the Qur'an and Hadith, the position of Islamic law on making *wasiyyah* changes with circumstances. It is therefore an obligation that must be attained in respect of certain duties. An instance is to return *Amanah*, a trust to its rightful owner. Because Qur'anic injunction emphasizes that:

Certainly Allah orders you to give over the trust to those entitled to them¹⁶.

The same ruling goes to an outstanding *zakah* from the wealth of a person which was not deducted and distributed before one dies. But however, it is desirable for one who possessed huge wealth to make a *wasiyyah* for the poor. This could only mean that it is not allowed when one's wealth is not much. In view of this stand, some scholars are of the opinion that *wasiyyah* is disallowed provided the aim is to harm the heirs or is tantamount to causing harm to any of the heirs albeit inadvertently. To buttress this point, a Prophetic tradition sheds light when it revealed that:

It is possible for a man to do good for seventy years and at the end he makes an unjust will which could make him end up in hell. As it is possible for a man to do evil for seventy years and at the end, he will be just in his will and that will be his last work and earns him paradise¹⁷.

Comparatively, there is no gain saying the fact that *wasiyyah* remains permissible as per as Islam is concerned. But yet, this could only be regarded when it harms no heir or heirs. Alternatively, what obtains in the Western laws concerning *wasiyyah* doubtful because it is being carried out blindly. It does not only stop here but rather plays with an intelligence of any upright person considering that one is at liberty to give out a *wasiyyah* of one's total wealth to an animal such as cat, dog or any other domestic animals. This has indeed goes contrary to the teachings of Islam.

Principles of *Wasiyyah*

Wasiyyah, like many other issues of great concern, has four basic principles that have to be attained to before it becomes valid. These principles include but not limited to:

Al-Musi is the testator or the person who makes bequeath. Part of the attributes of *Al-Musi* is that he must be an adult, independent, sane, absence of coercion in the decision and that he must have full right in law to dispose off his property in question. He must also be free to rescind his decision any time.

Al-musa-lahu (the beneficiary of *wasiyyah*) should not be a potential heir. Thus bequeath should not be made in favour of any potential heir¹⁸.

It is interesting to know that a potential heir can enjoy *wasiyyah* in his or her favour if other co-heirs who have attained adulthood approved it. But if the co-heirs are divided, the enforcement of such *wasiyyah* shall affect only the share of the heirs who approved it. For instance, a man dies and left behind sons as heirs. His estate is valued at ₦30, 000. He then made a bequeath of ₦6000 in favour of child 'A'. But child 'B' disapproved, while 'C' Okayed it. Without the implication of the *wasiyyah* each child is entitled to ₦10, 000.

But in the circumstance of disagreement between 'B' and 'C' over the bequeath in favour of 'A', child 'B' who disapproved it takes his due share of ₦10, 000 as if there was no bequeath, while child 'C' who approved it will take ₦8000, the child in favour of whom the bequeath was made takes ₦12, 000.

In fact, similar principle is applicable to bequeath in favour of non heir, but which violates the maximum of one third (1/3) of the whole estate. Its implementation is at the mercy of heirs. Where they disagree, its implementation is restricted only to the heirs who approved it¹⁹.

The third principle is the quality of the item or property upon which the *wasiyyah* is made. It should be available at the time of the death of the testator and should be what the Islamic law allows for Muslims to possess or what Islamic law permits Muslims to invest on.

The last principle however, is the *Sigha*. This is the format in which the bequeath is normally formed, and it varies from person to person. But Islamic ethics demand that, it should be introduced²⁰.

According to Abdurrahim in his work *Al-Wajiz fi Al-Fara'id* the bequeath belongs to the heir if other heirs approved it. It is lawful and accepted in Islam. This opinion has also been corroborated by Ibn Baz emphasizing that provided the heirs okayed it.²¹

Revoking *Wasiyyah* (Will)

While the *Musi*²² is alive, he has the right of revoking any bequeath he has made. When revoking it, it is essential for him to use such terms which clearly

indicate that the *wasiyyah* has been revoked. For instance, I am revoking this *wasiyyah* or I am cancelling this *wasiyyah*²³.

Payment of Debt Takes Precedence over the Payment of Bequest (*Wasiyyah*)

All Muslim Jurists agreed that the bequeath (*wasiyyah*) should be first settled after debts due to the following reasons:

- Imam Ali, (RA) the fourth Caliph of Islam, cautioned that: O! People, you are reciting this verse ‘after any bequest he (may have) made or debt’. I saw the Noblest Prophet (S.A.W) started with the debt before bequest²⁴.

The general criteria as per as *Usul al-Fiqh* is concerned is that the statement of a Companion in a situation where one cannot apply his opinion is like *Hadith al-Marfu’u* and is considered as a source of Islamic law.

- Rational evidence suggests that the bequeath is considered as voluntarily while debt is regarded as obligatory. Deduced here simply is that obligatory is stronger than voluntary. But however, some people may argue as to why Allah (S.W.T.) begins with bequeath before the debt? A response to this argument is to be noted below:
 - Almighty Allah started with bequeath to call the attention of people to it and understand its importance. This is due to the fact that, it may be difficult for the heirs to deduct it; since they know it is a gift, while payment of debt is necessary and obligatory.
 - Debt has its owner who will ask for it, but for the bequeath no one will ask for it, because it is either written or commanded verbally by the deceased.
 - Debt is a right belonging to someone who is alive, while bequest is from a deceased who cannot ask anyone to implement it for him. That is why Allah started with it to remind people so that they would not forget it²⁵.

These are some of the reasons why settlement of debt (s) came first before that of the *wasiyyah*.

Attitudes of Muslims Towards *Wasiyyah*

On the basis of what has been discussed so far, it is established beyond doubt that before the advent of Islam, many people disposed their property in the way and manner they so wish as there was no apparent law concerning it. The crux of the matter is the fact that the application of *wasiyyah* in the area under study is minimal. This might probably be the

reason that there has been anomaly in the conduct of *wasiyyah* among the contemporary Muslims in Sokoto metropolis. This study observes that a number of Muslims particularly in Sokoto Metropolis are not either fully aware about the actual position of Bequest (*Wasiyyah*) and its application in Islam or are unmindful about it as it affects their lives as Muslims. On the other hand, very few number of Muslims who are aware about the teachings of the injunctions of *Wasiyyah* in Islam do not normally care to either implement such teachings or educate others particularly the ignorant ones. Thus, lack of awareness about the legal position of *Wasiyyah* by some Muslims made them to misunderstand it and neglect it as part of religious duties. Hence, some Muslims apply it wrongly which may either affect the rights of the heirs or the person in favour of whom the *Wasiyyah* was made. For instance, though it is not valid to make *Wasiyyah* in favour of an entitled legal heir, it may however be valid if the entitled legal heirs consent to it. The same ruling applies to a *Wasiyyah* that has exceeded one third (1/3) of the total estate left by the deceased person. This study therefore discovered that some Muslims are not aware about the general rulings of Shari'ah and some of the exceptions provided in matters of *Wasiyyah*. Despite this anomaly however, scholars of varying degree of knowledge strived hard in sensitizing the Muslim populace on the application and conduct of *Wasiyyah* as well as its position in Islam.

With this therefore we call for the production of more books, articles and journals on the concept of *Wasiyyah*. Similarly, Islamic organizations like J.N.I, IZALA, QADIRIYYAH, TIJJANIYYAH should device a forum of awareness on the concept of *Wasiyyah* for the benefit of Muslim ummah. Likewise, T.V and Radio stations should be organizing Islamic programs to enlighten the Muslim Ummah about the *Wasiyyah*.

Conclusion

Wasiyyah is an optional both in the part of the testator as well as the beneficiary. The testator may have his bequeath revoked as he pleases. While the beneficiary is at liberty to either accept or reject it. Every bequeath made by a parson during his life time is valid and becomes executable after his death. The significance of *Wasiyyah* in Islam is in the fact that both the Qur'an and *Sunnah* emphasized on its position and applicability. Though a greater number of Muslims have neglected its teachings and application, others are ignorant about it. Muslims particularly in Sokoto Metropolis should be fully enlightened and educated about *Wasiyyah* and its application in Islam. This task should be carried out by eminent scholars who specialize on the subject with a view to minimizing the problems associated with the practice and application of *Wasiyyah* among Muslims in the area. This can also be achieved by introducing program on *Wasiyyah* in schools, mosques and other centres of learning to educate Muslims. By this way, it is hoped that the

misunderstanding of *Wasiyyah* by some Muslims and some other attitudes would significantly be minimized.

Endnotes

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3. Qur'an 67:2
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