

تُحْفَةٌ رَمَضَانِيَّةٌ

فِي الْوَصِيَّةِ قَبْلَ الْوَفَاتِ

A Ramadan Gift

Regarding the *Wasiyyah* before Death

[A Concise Description]

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Introduction

Alhamdulillahwa bi-Hi nasta'een, to proceed;

Some scholars said death is not an absolute extinction, rather the separation of the soul from the body. It is the transition to the abode of solitude, darkness and pre-recompense. Innately, mankind loathe death, yet it is an inevitable journey that proves the transiency of life and each soul. Al Qur'tubee, in *At-Tadhkirah* vol.1 p.124 said: 'There is consensus that it neither has known age nor period nor sign. Thus, individual should be on alert and prepare for it (any time).'

I chant:

"If nobody ought not to die/our veritable Prophet would be alive

But it's an inevitable journey/that needs nothing, even money"

As it neither has specific age nor sign, writing of *wasiyyah* begins from adulthood (as said by Al Etiyobee in *Sharh Sunan An Nasa'ee*) thus Al-Albaanee – *rahimahullaah*, in *Talkhees Ahkaam Janaaiz* pp.7-8 said: 'Anybody that has rights upon him to discharge, should swiftly discharge them, if it is easy for him, otherwise he should write a *wasiyyah*, because of the prophetic command [regarding that]. It is an obligation to swiftly pen it because the Prophet – *sallaLlaahu 'alayhi wa sallam* – said:

"It is not befitting for a Muslim who has anything concerning which a will should be made, to tarry two nights without having written Will with him. AbduLlaahi bn 'Umar said; since I have heard this from the Messenger of Allaah – sallaLlaahu 'alayhi wa sallam, I have always my Will with me." (Al-Bukhaaree and Muslim).

Definiton of *Wasiyyah*

Ibn Hajar, *As Sana'aanee* and *Al Etiyobee* said: It is a specific pact which is related to (the affairs of an individual) after death (*Al Fat'h, As-Subul* vol.3 p.141 and *Ad-Dhaakheerah* vol.30 p.94).

Its Ruling

The preponderance is the opinion of the majority of the scholars, (that) *wasiyyah* may be compulsory, like the *wasiyyah* regarding the rights of Allaah (unpaid Zakah, missed fasting, fasting of oath and hajj), the rights of man (debt, promise, *diyyah* [blood money] etc) and it may not be an obligation...(Adh-Dhaakheerah vol.30 p.95, also see *Tuhfatul Ahwadhee, 'Aun Al Ma'bood* and *Subulus Salaam*).

In the same vein, it may be an obligation in the country (like UK and US) where the estate is distributed according to the dictate of their law, if the deceased has no Will. In this case, it is direly necessary to state in the will “my estate should be shared according to Al-Quran and As Sunnah” or the likes.

Recording it in Black and White

Keeping the *wasiyyah* in black and white is not an obligation, but the most trusted means. This is seen in the narration mentioned above and the athar of Anas bn Malik – may Allaah be pleased with him, he said:

“They (the Companions) used to write on issuance of their wills...”
{Al-Albaanee – rahimahuLlaahu – classed it authentic in *Al-Irwaa* vol.1 p.84 no1647}.

Witnesses

Allaah the Most Sublime says:

O you who believe! Call to witness between you when death draws near to one of you, at the time of making the will, two just persons from among you, or two others from among others than you... (Al Maaidah; 106).

Ash-Shaykh Naasiruddeen as-Sa'dee – *rahimahuLlaahu* – said: Two just persons must witness (the pronouncement or writing of) the Will. (*Tayseer Al Kareem* p.274). This is also the opinion of Ash Shaafi' and Al-Albaanee in *Talkhees Ahkaam Janaaiz* p.8.

Though, Al Marwazee (in *Tuhfatul-Ahwadhee* vol.6 p.256) said: 'Writing is enough without witnesses based on the apparent meaning of the hadeeth.'

The former opinion calms the mind, because Will contains the affair that deals with the issues of the Hereafter, wealth and family tie of kinship, unfortunately we are in the time when most of the people are not reliable. So, to save the testate, the family tie and hamper mismanagement, there must be witnesses. Allaah *Ta'aala 'Alam.*

Language

The language in use should be generally understood by the relatives, because the message is for them, Allaah the Most Sublime says:

We sent not a messenger except (to teach) in the language of his (own) people, in order to make (things) clear to them. (Ibraaheem: 4).

Allaah also says:

And if We made the Quraan in another foreign tongue, they would certainly have said; Why have not the communication have made clear... (Fusillat: 44).

If this could be said about the message of Allaah, what about the message of other than Him?

Legibility

The writing used should be easy to read, the erased ones should be totally erased to hamper doubt and misconstruction. Indeed our Prophet – sallaLlaahu ‘alayhi wa sallam – said:

‘Verily, Allaah loves when one of you does a work that he perfects it.’ (As-Saheehah vol.3 p.16 no1113 and Saheeh Al Jaami’).

Heading

There should be a lucid indication on the cover of the document that contains the Will, example, “My Will,” or the like.

Outline

a) Sermon of Necessity;

‘Abd-Allaah ibn Mas’ood (may Allaah be pleased with him) said: “The Prophet (peace and blessings of Allaah be upon him) taught us Khutbat al-Haajah:

Al-hamduLillaahi nasta’eenu-hu wa nastaghfiruhu, wa na’oodhubillaahi min shuroorianfusinaa wa sayi’aatia’maalinaa.

Man yahdihlilaahu falaa mudillalahuwa man yudlil falaa haadiyalahu. Waashhadu an laailaaha ill-Allaah wa ash’haduanna Muhammadan ‘abduhu wa rasooluhu.

(Praise be to Allaah, we seek His help and His forgiveness. We seek refuge with Allaah from the evil of our own souls and from our bad deeds. Whomsoever Allaah guides will never be led astray, and whomsoever Allaah leaves astray, no one can guide. I bear witness that there is no god but Allaah, and I bear witness that Muhammad is His slave and Messenger). Then he recited the following three aayaat (interpretation of the meaning):

*‘Yaaayyuha’lladheenaamanu-
ttaqu’Llaahahaqqatuqaatihwalaatamootunnailaa wa
antumuslimoon*

(O you who believe! Fear Allaah as He should be feared, and die not except in a state of Islam (as Muslims) with complete submission to Allaah.)’ [Aal ‘Imraan 3:102].

*‘Yaaayyuha’n-naasuttaqurabbakumalladhikhalaqakum min
nafsinwaahidatin wa khalaqaminhaazawjahaa wa
baththaminhumaarijaalankatheeran wa nisaa’anwa’ttaqu-
Llaahalladhitasaa’aloonabihiwa’l-arhaamainnaAllaahakaana
‘alaykumraaqeeban*

(O mankind! Be dutiful to your Lord, Who created you from a single person, and from him He created his wife, and from them both He created many men and women, and fear Allaah through Whom you demand your mutual (rights), and (do not cut the relations of) the wombs (kinship) Surely, Allaah is Ever an All-Watcher over you).’ [al-Nisaa’ 4:1].

*‘Yaaayyahu’lladheenaamanu-
ttaqu’Llaahawaqoolooqawlansadeedan*

(O you who believe! Keep your duty to Allaah and fear Him, and speak (always) the truth).’ [al-Ahzaab 33:70].” (Sunan al-Nisaa’i: Kitaab al-Jumu’ah, Baab kayfiyyah al-khutbah).

Al-Albaanee – rahimahullaah – said: this is the same *khutbah* that the pious predecessors would begin their lessons, books and various affairs with (*Khutubah al haajah* p.5). This is the opinion of Ash Shaafi', Aboo Daawood author *As Sunan*, As-Sanadee, Azeem Al 'Abbaad, Al Etiyobee and others.

b) The foreword of the companion:

Anas bn Malik radiyyahLlaahu 'anhu said; They (the companions) used to write at the issuance of their Wills; "In the name of Allaah, The Beneficient, The Merciful, this is what I bequest for the son so and so; He testifies that there is none worthy to be worshipped except Allaah and Muhammad is His Slave and Messenger. Indeed the time will come without doubt and Allaah will resurrect those who are in the graves. I admonish who I left among my relatives to fear Allaah and make good between themselves, follow Allaah and His messenger if you are indeed believer and I advise you with what Ibraheem advised his children and Ya'qoob. Allaah says:

And the same did Ibraheem enjoin on his sons and (so did) Yaqoob. O my sons! Surely Allaah has chosen for you (this) faith, therefore die not unless you are Muslims. (Baqarah: 132).

{Al-Albaanee – *rahimahuLlaahu* classed it authentic in *Al-Irwaa* vol.1p.84no1647).

Debt

Ash-Shaykh Saalih Al-'Uthaymeen – *rahimahuLlaahu* said: It is what is proven as liability (in an individual's custody). Rent, loan without interest, dowry, return of *Khulu'* (half payment of the bride-price) to the husband. (*Tafseer Soorah An-Nisaa'* vol.1 pp.75-76).

Allaah says:

...after the payment of a bequest he may have bequeathed or a debt... (An Nisaa': 11).

'Alliyy – radiyaLlahu 'anhu – said: The Prophet – sallaLlahu 'alayhi wa sallam – favoured paying debt before executing the Will. (Musnad Ahmad, Saheeh Al Bukharee, Sunan At Tirmidhee and Ibn Majah).

Types of Debt.

1) Debt of Allaah.

The Prophet said: *'The debt of Allaah deserves its payment more than (the payment of anyone else).'* (Saheeh Al Muslim).

Ash Shaykh Adam Al-Etiyobee said: If an individual dies and has the debt of Allah and human upon him, but his estate is not sufficient, the debt of Allaah should be put forward. This is also the opinion of An-Nawawee. (*Al-Bahr Al-Muheet* vol.21 p.327).

The debt of Allaah includes: missed Ramadaan fast, missed hajj, unpaid zakat, fasting of oath etc. Al-Qaadee said: *'There is consensus among our comrades that missed Salat should not be offered.'* (See *Al-Bahr* vol.21 p.317).

2) Debt of Human

The Messenger of Allaah – *sallaLlahu 'alayhi wa sallam* – said: *'The believer's soul is suspended due to his debt until it is settled for him.'* (Ahmad and At Tirmidhee graded it Hasan).

Al- Ameer As-Sana'ane – *rahimahuLlahu* – said: This is from the proofs that the deceased continuously busies with

his debt after his death, craving to free him (from the debt) after death. It is the most important. (*As-Subul* vol.3 p.132).

Bequest

Ash-Shaykh Naasiruddeen Al-Albaanee said (in *Talkhees Ahkaam Janaaiz* p.8): It is an obligation to bequest for the relatives (except the illegitimate or apostate child) that will not inherit from the property, because of His saying:

‘Bequest is prescribed for you when death approaches one of you, if he leaves behind wealth for parents and near relatives according to what is acceptable – a duty upon the righteous.’ (Baqarah: 180).

Ash-Shaykh Saalih Al-‘Uthaymeen said (in *Tafseer Suratun-Nisad’* vol.1 p.75): ‘It has two pre-conditions:

- a) It should not be beyond one-third of the estate.
- b) It should not be bequeathed to the inheritor.

Note: Debt should be lucid in wording by writing;

- a) The name of the owner.
- b) Act of worship missed and there number or amount (if it is Zakah)
- c) Material owned and number or the amount.
- d) And date.

This kind of list is flexible, lest any change; the reason should be clearly stated like ‘paid’, ‘overlooked’ etc. and should be accompanied by dates.

The Debt Owned the Deceased and Property:

These are debts owned the deceased and where he has properties that may be unknown to the relatives. This is recommended for two reasons.

a) To leave abundant and enough property for his heirs;

The Prophet – *sallallaahu alahyi wa sallam* – said [to Sa’d bn Abee Waqqaas]: ‘*It is better you leave your inheritors wealthy than leaving them poor, begging others...*’ (Saheeh Al Bukhaaree).

b) To free the debtor: Nowadays, many are weak in discharging trust (*amanah*), so stating it in the Will will assist him to discharge it duly, especially at the present of the witnesses.

The Prophet – *sallallaahu alahyi wa sallam* – said: ‘*None of you has become a good believer except to love for his brother what he loves for himself.*’ (Bukhaaree and Muslim).

Recommendation on washing, shrouding and burial

Ash-Shaykh Naasiruddeen Al-Albaanee – rahimahullaah – said: ‘When innovation in the religion is now common among the people, especially in relation to burial. It is an obligation upon the Muslim to bequest that he should be washed, shrouded and buried upon the tradition of the Prophet – *sallallaahu alahyi wa sallam*, implementing His saying:

O you believer! Save yourself and your families from a fire whose fuel is men and stone... (Tahreem: 6).

Thus the Companions of the Messenger *sallaLlaahu - ‘alayhi wa sallam* – used to bequest this, the reports mentioned from them are many, from them are:

Udhayfah – *radiyyaLlaahu ‘anhu* – said: ‘If I die, nobody should announce my death, because I fear not to become wailed upon. And I heard the Messenger of Allah – *sallallaahu alahyi wa sallam* – prohibited wailing.’

Also from Aamir bn Sa’d bn Abee Waqqaas, his father said on his sickness that he died upon: ‘Dig *lahd* (a niche in the grave) for me and cover it with bricks as the Messenger of Allaah – *sallaLlaahu*

'alayhi wa sallam – was done to.' (*Talkhees Ahkaam Al Janaaiz* p.10 and *Al-Wajeez* p.527).

In our community, it is very necessary to clearly indicate who should bathe, shroud lead the prayer on him and what should be avoided after him.

Keeping of the Will

The Prophet – *sallaLlaahu 'alayhi wa sallam* – said:

“It is not befitting for a Muslim who has anything concerning which a Will should be made, to tarry two nights without having a written will with him.”

AbduLlaah bn 'Umar – may Allaah be pleased with both – said: 'Since I have heard this from the messenger of Allaah, I have always my will with me.' (*Al-Bukhaaree* and *Muslim*).

The hadeeth indicates that the Will should be with the owner, but preferably should be kept from all eyes except for the witnesses.

I advise myself and my brethren to always have their Will written, update it and keep it with them, verily the time is very near than we hope, the affair is more severe than we despair, while majority of the relatives will only weep or will be busy sharing our property without proper protocol. Oh Allaah, elongate our lives upon Sunnah, forgive us, remove the punishment of the grave and hereafter from us and count us among the dwellers of Firdaus.

Allahummasalli 'ala Muhammad wa 'alaaali Muhammad wa ashaabihi wa sallim.