[1]The Significance of Mandatory Wills in Islamic Inheritance Law: A Comparative analysis of Personal Laws in Arab Countries and the Proposed Legislation in Pakistan

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***Abstract**: This research aims to examine the significance of mandatory wills in Islamic inheritance law and compare them with personal laws in Arab countries. It also seeks to investigate the prospective legislation related to mandatory wills in Pakistan. Mandatory wills play a critical role in ensuring the fair distribution of assets among heirs in Islamic law. However, the implementation of mandatory wills varies across Arab countries, which have their own personal laws. This study will analyze the legal frameworks of mandatory wills in Islamic law and compare them with the personal laws of selected Arab countries, as well as explore the upcoming legislation in Pakistan. The research will employ a comparative methodology, utilizing legal and documentary analysis. The findings of the research will contribute to understanding the legal implications of mandatory wills in Islamic law and highlight the variations in their implementation across Arab countries, as well as the prospective changes in Pakistan.This study seeks to compare personal laws in Arab nations with Islamic inheritance law to analyze the meaning of mandatory wills in Islamic inheritance law. It also aims to look into potential legislation regarding Pakistan's requirement for wills. Mandatory wills play a critical role in ensuring the fair distribution of assets among heirs under Islamic law. However, since each Arab nation has its own set of domestic rules, how mandatory wills are implemented varies. In addition to examining upcoming legislation in Pakistan, this study will examine the legal frameworks for obligatory wills in Islamic law and compare them to the personal laws of a few Arab nations. A comparative methodology will*

be used in the study, along with legal and documentary analysis. The findings of the research will contribute to understanding.

Keywords: Mandatory Will, Islamic Law, Inheritance Law, Arab Countries, Pakistan, Personal Laws, Comparative Analysis.

Introduction. Islamic law is known for its emphasis on social justice and fairness, which is evident in Islamic inheritance law, which ensures every rightful heir receives their full share. In addition, the concept of wills in Islam encourages spending in the way of Allah to assist the poor and needy, promote social solidarity and avoiding family disputes. However, the debate on the obligation of will, known as *wasiyat- al-wajibah*, began in 1946 with the implementation of the law on wills in Egypt. Other Arab Countries followed suit, and scholars like Abu Zahra and Wahbah al-Zuhayli expressed their opinions on these laws. Critically analyzing the concept of mandatory bequest in Islamic law is crucial since Islamic scholars have limited discretion in religious matters to avoid going against the spirit of Islamic law. Therefore, it is necessary to examine the laws of Arab countries in the context of Islamic law. In Pakistan, understanding the reality of the issue was essential when the Muslim Family Laws Ordinance 1961 passed legislation regarding the inheritance of orphaned grandchildren. The Federal Shariat Court declared the law against Islam and recommended implementing the law of mandatory will instead, while the Islamic Ideological Council opposed it twice, deeming it against Islamic principles. Reviewing these laws in Pakistan is necessary to provide guidance for future laws concerning orphaned grandchildren.

Definition of Will (*Wasiyyah*)

Literally, will *"wasiyyah"* is derived from the verb "*wasaytu*" which means to enjoin or to instruct someone. It also means to leave something as a legacy or to give a gift. In Islamic Law, "*wasiyyah*" is a legal will made by a person during their lifetime that specifies how their assets will be distributed after their death, subject to certain conditions and limitations[(2)]

Legal Definition of "*Wasiyyah*": In Islamic Law, "*wasiyyah*" refers to the act of making a will in which a person directs the distribution of their assets after their death through a voluntary transfer of ownership. This can be done during the person's lifetime or as a testamentary provision in their last will and testament. The assets that can be transferred through "*wasiyyah*" include both tangible and intangible assets. [(3)]

The term "*wasiyyah*" can also refer to the person who receives the bequest or legacy.

According to Islamic Law, the bequest or legacy made through "*wasiyyah*" is subject to certain conditions and limitations, including the requirement that it does not exceed one third of the deceased person's net estate and that it does not deprive the lawful heirs of their share of the inheritance.

In legal terminology, it refers to the voluntary transfer of ownership of assets after death through a will or testament, whether in the form of tangible or intangible assets.

Shurbeeni Khateeb (1198 AH) stated that the words ʻAṣāʼa' and "*wasiyyah* are both present in the Arabic language. However, in the terminology of Islamic law (*Fiqh*), there is a distinction between them. "*Wasiyyah*" is a term used for a type of voluntary giving that is specifically related to giving after death. On the other hand, "*waṣiyyah*" is a responsibility given to a person who will assume charge after the death of the giver. (4)

The terms "*wasiyyah"* and "*wiṣāyah*" are synonymous in the Arabic language, and the difference between them is a matter of legal terminology, with"*wasiyyah"*specifically referring to the voluntary transfer of ownership of assets after death through a will or testament, and "wiṣāyah" referring to the act of enjoining or instructing someone.

The legality of a will: Islamic jurists agree on the legitimacy of a will. The Islamic ruling on a will: Islamic jurists agree that in the beginning of Islam, it was obligatory for every person to make a will regarding their entire property, which was in the hands of their parents and relatives. The proof for this is in the following verses of the *Quran:*

1."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 righteous." (5)

2."So for them [the wives] is one-eighth of what you leave if you have no child. But if you have a child, then for them is one-fourth of what you leave, after any bequest you [may have] made or debt." (6)

3. "So whoever fears from a testator [some] ill-conduct or sin, and he makes peace between the parties, there is no sin upon him." (7)

4. O you who believe! When death approaches one of you, let there be two just witnesses from among you when making a bequest-witnesses that are trustworthy." (8)

Sunnah of the Prophet (peace be upon him).

1. Abdullah bin Umar (may Allah be pleased with him) narrated that the Messenger of Allah (peace be upon him) said, "It is not befitting for a Muslim who has anything to bequeath to spend two nights without having his will and testament written and kept ready with him." (9)
2. Sa'd ibn Abi Waqas (may Allah be pleased with him) reported that the Prophet (peace be upon him) visited him while he was in Mecca, and he disliked the idea of dying in the land from which he had emigrated. The Prophet (peace be upon him) said, "May Allah have mercy on Ibn Afra (a companion who had already passed away)." Sa'd

asked, "O Messenger of Allah, should I leave all my wealth in charity?" The Prophet (peace be upon him) replied, "No." Sa'd asked, "Then how about half of it?" The Prophet (peace be upon him) replied, "No." Sa'd then asked, "How about one third?" The Prophet (peace be upon him) replied, "One third, and one third is a lot. It is better for you to leave your heirs well-off than to leave them dependent on others. And whatever you spend, even a morsel of food that you put in your wife's mouth, is counted as charity. It is possible that Allah may raise you in rank and benefit people through you, while others may be harmed by you." At that time, Sa'd had only one daughter. (10)

3. Abu Huraira (may Allah be pleased with him) reported that the Messenger of Allah (peace be upon him) said, "Allah will be charitable to you when you pass away by giving one-third of your wealth as a donation, which will be an increase in your good deeds."(11)

After the revelation of the verse on inheritance, there have been differences of opinion among scholars regarding the ruling of wills. These differences are divided into three views:

The Hanafi, Maliki, Shafi'i, and Hanbali schools of thought, as well as Sha'bi, Ibrahim Nakha'i, and Thawri, hold the first opinion, as do the majority of jurists. According to this opinion, it is recommended (*mustahab*) to make a will when one has no debt and there is no right of Allah, such as *Zakat*, on the property. However, it is obligatory (*wajib*) to make a will when there is debt or the right of Allah on the property.

4. Dawood Zahiri, Ibn Jarir, Tawus, and Qatadah hold the second opinion. They argue that it is obligatory to make a will for those relatives who are not heirs. (12)

5. Ibn Hazm, from Zahiri School, espoused the position that the act of bequeathing is incumbent upon every individual who leaves behind an estate. (13)

The evidence for the first opinion: The one who argues for the recommendation of making a will. The advocate for creating a will draws evidence from the fundamental sources of Islamic law, namely the Quran and Sunnah, as well as secondary sources of legal reasoning such as Qiyas (analogical reasoning) and rationality.

1. The *Quran*: "It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents and next of kin, according to reasonable manners. This is a duty for the righteous. (14)

   The verse is considered evidence for the obligation to make a will in favor of parents and next of kin. However, this verse was abrogated after the revelation of the verse regarding the laws of inheritance, as evidenced by a prophetic tradition where the

Prophet (peace be upon him) said, "Allah has given each person entitled to a share, so there is no bequest for the heirs.[15]

According to Imam Sarakhsi (482 AH), making a will is not obligatory but rather recommended, similar to voluntary prayers in relation to worship. The intentions of the testator cannot be ignored, as mentioned in a hadith that provides evidence for the legitimacy of making a will: "Allah has granted you a third of your wealth as charity at the time of your death, as an increase in your good deeds."[16]

The Prophet's (peace be upon him) declaration that "he wishes to make a bequest" denotes that the decision to make a bequest has been left up to the testator's will. This serves as evidence that making a bequest is not obligatory, as obligation does not rely on the discretion of the party.[17]

The Prophet (peace be upon him) passed away without making a will, according to Imam Qurtubi (648 AH), despite the assertion that doing so is required. Furthermore, there is no explicit evidence that the bulk of the Prophet's (peace be upon them) companions left any kind of will behind. In the volumes of Hadith, the requirement to create a will would have been expressly communicated if it had been clearly established.[18]

Analogy. Analogizing different types of gifts, it becomes clear that they are all distinct in terms of their nature. Various types of gifts are not obligatory, and hence, a will is also not mandatory. It is assumed that the reason behind most gifts is goodness and benevolence, when an individual spends his wealth or resources for the benefit of another without any form of compensation. In the same way, wills are also considered non-obligatory as they represent gratitude and kindness, regardless of whether they occur after a person's death or during their life. Therefore, if making a will is not obligatory during one's lifetime, it would not be obligatory after death.[19]

Imam Sarkhasi (482 AH) states: The idea that both posthumous and lifetime donations are acts of kindness is the basis for the comparison. Donations during one's lifetime are not obligatory, and similarly, posthumous donations do not become obligatory.[20]

Evidence for the second opinion: A will in favor of those who do not inherit.

The Quran was used as proof: "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 righteous.[21]

> Based on the aforementioned verse, it is prescribed to make a will for parents and close relatives, but this obligation was subsequently abrogated for heirs. Consequently, making a will becomes obligatory for relatives who are not eligible for inheritance. [22]

The evidence for the third opinion.

The proponents of this opinion use the Quran and the Sunnah as the foundation for their argument.

> The Quran declares: "After any bequest he [may have] made or debt." [23]

Indeed, in the beginning of the verse, Allah lays down the rules for inheritance, as well as those for debt and bequests preceding inheritance. Therefore, any distinction drawn between them without supporting data is meaningless. A bequest is only void when Allah has voided it. The requirement of bequests remains limitless because Allah hasn't declared anything null and void.[24]

It is obligatory for every person who possesses wealth to make a will according to the custom of the time, as a duty for those who fear Allah. Making a will was initially mandatory for parents and relatives, and it is still considered a duty for them, even if they are not considered heirs.[25]

> The prophetic tradition narrated by Abdullah ibn Umar (may Allah be pleased with him) states that it is not lawful for a Muslim to have any property that they should bequeath, except if they stay for two nights without having its written bequest near them.[26]

Imam Ibn Hazm (456 AH) stated that it is obligatory for a person who leaves behind wealth to make a will, as per the Hadith of Abdullah ibn Umar (may Allah be pleased with him). If a person dies without leaving a will, then it is necessary to distribute their estate as a will to the extent possible. Fulfilling a will is obligatory, and the ownership of the deceased is considered relinquished in the obligatory portion of the will. However, there is no fixed amount for this, and the determination of the amount will be left to the discretion of the testator or heirs, as long as it does not cause injustice to the heirs. A group of early scholars share this view.[27]

A hadith narrated by Aisha (may Allah be pleased with her) through the chain of Imam Malik indicates that giving charity is obligatory and can be done on behalf of the deceased who did not make a will.[28]

In general, making a will (*wasiyah*) is recommended according to the majority of Islamic jurists. It becomes obligatory when there are outstanding rights or debts to be paid, or when there is payment due for Zakat, *Kaffarah*, or missed Ramadan fasts, which can be paid on

behalf of the deceased. In such cases, making a will is necessary according to Shariah, so that the responsibility can be fulfilled based on piety.

A will is optional until it becomes obligatory, and its execution is based on human will and intention. A court ruling cannot make a will mandatory. A will cannot be made from the deceased's wealth unless the deceased had gifted it to someone before their death.

According to Abu Zahrah (1394 AH), if someone does not make a will regarding any right of Allah or any right of people, and their heirs do not accept the responsibility of fulfilling those rights, then there is no justification for making the deceased responsible for those rights, nor can any court ruling force the distribution of the deceased's assets. Debt repayment will be handled according to Shariah, regardless of the will.[29]

The law of mandatory wills has been implemented in several Arab countries, allowing orphan grandchildren to become owners of their share of relatives' estates. Egypt was the first to implement the law in 1946, followed by Tunisia (1953), the Personal Status Code in Morocco (1958), the Palestinian Law (1962), the Kuwaiti Law (1971) on Mandatory will, the Jordanian Law (1976) on Mandatory will, and so on.

Definition of Mandatory will (*Wasiyat Wajibah*): A type of bequest that is mandatory for grandchildren who lose their fathers or mothers during the lifetime of their grandfather or grandmother, and who are prevented from inheriting anything after the death of their grandfather or grandmother by someone else. If the grandfather or grandmother does not make such a bequest, they will have left an obligation, which the judge will fulfill by giving them a share equivalent to what their father would have received if he were alive, provided that it does not exceed one-third of the estate.[30]

The legal validity of a compulsory will, also known as *Wasiyat Wajibah*, is not explicitly mentioned in the *Quran* or the *Sunnah*, and there is no established legal opinion regarding this type of will. Therefore, contemporary scholars have arrived at a consensus based on their own *ijtihad* (personal reasoning). Some legal experts and a few scholars have provided evidence to justify the legal validity of this type of will, according to the opinion of respected scholars who have established the law.

To support the legal validity of a compulsory will, these scholars have referred to various sources, including the Quranic verses, the juristic opinion of Imam Ibn Hazm, the sayings of the companions and followers, as well as the general principles of jurisprudence and law. They have also cited specific evidence to support the rights of non-inheriting relatives.

However, there are some scholars who have questioned the legal status of a mandatory will, and have presented their own evidence to challenge its validity. These debates and responses to the evidence are ongoing among contemporary scholars.

Argument from Book and Sunnah: Ibn Jarir Tabari (310 AH) states that the command of obligation in the verse of will (*Ayat al-Wasiyyah*) was abrogated after the revelation of the verse of inheritance (*Ayat al-Mawarith*) because Allah has clearly stated this command. Therefore, now this right has been transferred to inheritance from the will. This is confirmed by the saying of the Prophet Muhammad (peace be upon him) that, according to him, the will is not legally valid for an heir. Abu Umamah al-Bahili reported that he heard the Prophet (peace be upon him) say in his sermon during the Farewell Pilgrimage: "Verily, Allah, the Blessed and Exalted, has given the right of everyone to their due, so there is no will for an heir.[31]

The statement of Abdullah bin Abbas also supports this position. He said, "Wealth used to belong to the child, and the will belonged to the parents. Allah abrogated some of that and made the share of the male equal to that of two females, and He made the share of each parent one-sixth, and He made the share of the mother one-eighth or one-fourth, and the share of the husband is one-half or one-fourth."

According to the principles of Islamic jurisprudence, a change in a ruling due to a change in circumstances is one type of abrogation. Abd al Aziz Bukhari said:

> Transferring something from one place to another is also considered abrogation." Therefore, the verse of inheritance (*Ayah al-Mawarith*) abrogated the command of obligation in the verse of will (*Ayah al-Wasiyyah*), as Allah has clearly stated the shares of the heirs. Consequently, the right of a person to dispose of his property through a will is limited to one-third of his estate and cannot be used to deprive the heirs of their rightful shares.[32]

Argument from Prophetic *Hadiths*:

The claim of the necessity of making a will based on the *hadith* of Abdullah bin Umar (may Allah be pleased with him) is not correct because the purpose of the hadith is to encourage people towards good deeds on the basis of fear of Allah, so that they can prepare for death. A person does not know when death will come, so it is advisable for the one who prepares for death to write down their will and keep it with them. In the hadith narrated by Imam Malik, the words "*yuridu an yusiya feehi*" indicate that the will is based on the person's own desire. Therefore, those who believe in its necessity cannot prove it from this narration.

Similarly, the hadith narrated by Aisha, in which a person asked the Prophet (peace be upon him) to give charity on behalf of his deceased mother, and the Prophet (peace be upon him) replied, "It is better to fulfill any promises made by her." Those who believe in the necessity of the will use this hadith as evidence. However, the correct interpretation is that the person's act of giving charity to his mother without being specifically instructed to do so by her is not

considered a part of the will. Therefore, after proving the necessity of charity through this hadith, it is not likely to prove the necessity of the will.[33]

Legal maxims for argumentation: The proponents of the obligation to make a will also use Islamic legal maxims for argumentation.

"Acting upon the interest of the people is contingent upon the principle of public interest".[34] This means that the ruler(*Imam*) has the right to impose the ruling of what is permissible according to the public interest, and therefore, obedience to it is mandatory.[35]

He who knows best his own interests, knows that there is no harm in his actions or inactions, and the term "*Mubah*" (permissible) is sometimes used to describe what is neither praised nor blamed, even if abstaining from it is preferable.

The definition of "permissible" is that the legislator gives the obligated person the choice to do or leave a particular action without any harm to him. This can be applied to something that is not condemned or praised.

"Permissible (*Mubah*)" is recognized through the following matters:

> "If there is a clear text from the legislator regarding the permissibility or prohibition of a particular matter, such as Allah's commandment:
>
> Today, [all] good foods have been made lawful, and the food of those who were given the Scripture is lawful for you."[36]
>
> The *Shariah* has clearly stated that there is no sin, harm, or difficulty in performing the mentioned action. There are two types of *Mubah* (permissible) actions. The first type is that which is established from the textual evidence of the *Shariah*, such as the permissibility of selling, which is established by the Quranic command. An example of negation of sin is the following verse:
>
> "So whoever is forced by necessity, neither desiring it nor exceeding it, there is no sin upon him."[37]
>
> There is a fundamental permissibility in things, meaning that if there is no legal ruling regarding an object in Islamic law, it will be considered permissible (halal). This concept is related to the concept of presumption of continuity (*istisab)*. As for treaties, transactions, actions, animals, plants, and inanimate objects, they are all permissible (*jaiz)* and lawful (*mubah*) in their fundamental nature. If there is a clear ruling from the Lawgiver (*shar'i*) regarding a particular matter, then it must be followed accordingly. Otherwise, it will be considered permissible based on the principle of permissibility.[38]

In the presence of differing opinions among jurists regarding the permissibility of a particular matter, the holder of authority (*wali al-amr*) has the power to choose one opinion and remove the disagreement, according to certain guidelines. However, if the disagreement concerns a rare or unusual opinion that is not supported by the majority of jurists, it is considered a duty for all jurists to state clearly that there is no occurrence of the ruler's statement that contradicts the *Quran* and the *Sunnah*, regardless of whether some scholars may agree with it. However, if there is no evidence from the Sunnah, consensus, or analogy on a particular issue, it is not permissible for a jurist (*mujtahid*) or a follower (*muqallid*) to challenge the authority's decision.[39]

The ruler (The person in authority) plays an important role in organizing permissible matters in accordance with the principles. In Islamic law, the chapter on inheritance is organized based on legal texts, and the ruler or Muslim society as a whole do not have any right or authority to legislate in this regard. The law of obligatory bequest found in the personal laws of the Arab world is apparently related to bequest, but in reality, it is related to inheritance. In this way, inheritance has been enforced in the name of bequest. According to the majority of scholars, bequests are a recommended practice.

> Ibn Hazm(456H), who believes in the obligation of bequest in favor of non-inheriting relatives, does not limit it to the grandchildren of the deceased, but includes all the mentioned relatives.

In response to those who advocate for compulsory inheritance, it is essential to explain the theory of exclusion ('*Hajb wa Hirman*') which prohibits close individuals from being deprived of their rightful inheritance by distant relatives. This command of the Prophet Muhammad (peace be upon him) is the basis for this law. Ibn Abbas reported:

That the Messenger of Allah (peace be upon him) said: "Connect the duties to their beneficiaries, and what is left belongs to the closest male relative."[40]

This statement by Zaid bin Thabit further clarifies this issue. He said: "The grandchildren are considered the same as the children if there are no male children among them. They will inherit like the children and be subject to the same rules of exclusion. The son of the son does not inherit with the son."[41]

"In the current era, the most important issue in the debate on the inheritance of orphaned grandchildren, great-grandchildren, and their descendants despite the deceased having his own biological children,that is, if a person's deceased son or daughter (who had already passed away during the lifetime of the deceased) has children, would they be entitled to a share in the inheritance of the deceased's grandfather or great-grandfather when his son (i.e., the father of the deceased child) is still alive. There was no difference of opinion on this issue from the time of the Prophet Muhammad (peace be upon him) until the first quarter of the twentieth

century, among the four famous *Sunni* schools of law as well as the *Shia Imamiyah*, *Zaidiyah*, and *Zahiriyyah*. There is no opposition to this view, even within the lesser-known schools of thought.[42]

Effective cause (*Illah*)For the obligatory will(Ratio decidendi). If a grandchild's father, who is the son of the grandfather who has passed away, is alive during the time of the grandfather's death, the grandchild is deprived of their share of the inheritance according to Islamic law. In such a situation, it becomes obligatory to make a will in favor of the grandchild, up to one-third of the inheritance. If the grandfather did not make such a will during his lifetime, it is understood after his death that he had made a will for one-third of his inheritance.

The Scholars, such as *Wahbah al-Zuhayli* (1436 AH), in Arab countries provide evidence for the obligatory nature of making such a will. According to Islamic inheritance laws, these grandchildren cannot inherit from their paternal grandfather because their paternal uncles and aunts are alive. However, sometimes these grandchildren are in need and in poverty while their uncles and aunts are wealthy. Therefore, the law has made it obligatory to make a will to distribute wealth and property fairly according to Islamic law. This is to ensure that the son who passes away before his father is not deprived of his share of the inheritance, and that his children are not left in need. Also, since grandchildren are not heirs of their grandfather's estate when their father is alive, the ruler has the authority to rectify this situation for their benefit. Furthermore, their grandfather's wealth should be distributed among the most deserving heirs, including these grandchildren, who are sometimes in need.[43]

In many situations, when a head of the family passes away during the lifetime of their parents, poverty can arise on the orphaned children, which can affect their well-being. In the Egyptian law of mandatory wills, the grandfather's will is not tied to the poverty of the grandchildren. It is also possible that the grandfather of these orphaned grandchildren has left a significant amount of property, but the financial situation of their uncles (father's brothers) is poor, and the grandfather has also left a small amount of property. In such a situation, if these grandchildren are included in the grandfather's inheritance as heirs, the share of these uncles in the mandatory will can be further reduced. There is no solution to such a situation in the Egyptian law.

Islamic law is bound by the concept of "*khayr*" (goodness) in the law of wills, as stated in the verse of the Quran (if he leaves behind good). It is possible that the will of the deceased may be bound to the "*khayr*" (abundance of wealth). There may be differences in the amount of wealth, depending on the customs of the time. According to Ibn Qudamah, if the heirs are so rich that they do not spread their wealth, then it is better to leave them than to leave them poor, based on a hadith of the Prophet Muhammad (peace be upon him) that says:

It may be that Allah raises you, and some people benefit from you, and others are harmed by you.[44]

Therefore, Islamic law and Egyptian law do not provide a clear solution to such situations.

The conditions for a mandatory will:

1. This means that the grandchildren's father passed away before the grandfather's death. (45)
2. Even if it is a legal order, it should not be a government order. (46)
3. These grandchildren are non-heirs and present as individuals. (47)
4. These grandchildren are not eligible for inheritance. (48)

Here, the conditions of the mandatory will laws in Arab countries are being described, and it is stated which individuals these laws apply to. It is stated that the grandchildren are not heirs. The question arises as to what the situation would be if they were distant heirs and did not receive a share in the inheritance due to their degree of relation. An example of this is that if the deceased's heirs include a husband, father, mother, two daughters, and one grandson, then the grandson will not receive anything from the inheritance. In response to this question, the laws are silent, and the commentators on the laws do not provide any clarification. However, the answer is provided by Mufti Jadd al-Haqq Ali Jadd al-Haqq of Al-Azhar University, who states that the grandson's share can be obtained by invoking the principle of substitution in the mandatory will laws. In essence, the grandson will receive a share from the inheritance, as he is entitled to it under the law, even if he is deprived of it due to some legal impediment or degree of relation. (49)

Judicial death: If someone is declared judicially dead and is missing in their parents' lifetime, the ruling of judicial death will be enforced. After the judge's decision, the missing person will be considered dead and their will, if any, will be applicable to their estate.

The following obstacles regarding inheritance are not addressed in any legislation. This means that descendants will inherit a share in the property as a substitution of inheritance according to the law of compulsory will.

According to Islamic law, when two people die at the same time and are not each other's heirs, this happens due to an accident, and the confusion of the time of death occurs between the heir and the inheritor. Therefore, this is one of the obstacles in inheritance. However, it seems that these laws consider it a substitution for compulsory will, whether Islamic law permits it or not. (50)

The second obstacle is the difference of religion between the inheritor and the heir. In this case, the laws state that the missing person can still receive a share through a compulsory will, even if their father is not entitled to the inheritance due to religious differences. Imam

Sarakhsi states, "Muslims are heirs to each other, but a non-Muslim cannot take inheritance from a Muslim through a relative or causal relationship.[51]

Recipients of Mandatory will: We can divide the laws of Arab countries regarding the rightful heirs of the obligatory will among two groups:

First group: According to the laws of Egypt and Kuwait, the beneficiaries of the obligatory will are limited to the son who passed away during the lifetime of their father or mother. Here, by the term "son," we mean a son or a daughter. The beneficiaries of the obligatory will include the descendants of the son, no matter how many generations down they may be. Only the first tier of the daughter's offspring will be entitled to the obligatory will.[52]

This group argues that the obligatory will replaces the inheritance of the mentioned rightful heirs. Moreover, it also helps in reducing the problems of such beneficiaries. Including the daughter's offspring has been done with the same spirit.[53]

Second group: According to the laws of Syria, Morocco, and Jordan, the rightful heirs of the obligatory will are only the descendants of the son. After that, the grandson of the son will become the rightful heir, no matter how many generations down they may be. Each lineage will only have its rightful share, not someone else's. However, the daughter's offspring who died before the death of their father or mother will not be entitled to the obligatory will.[54]

The argument of the second group is that the offspring of the daughter is considered a kinship of mercy, so they do not have a right to inherit in the presence of those who have a duty of inheritance and consanguinity.[55]

The amount of compulsory will:

There is a difference in the laws of the Arab world regarding the amount of compulsory will, which is detailed below:

1. Details of the laws of Egypt, Palestine, and Kuwait: According to this law, in the case of the deceased's children, the amount of the share that would have been received by the deceased had he been alive, but not exceeding one-third, shall be considered as a compulsory will in favor of the children of the deceased, and not to exceed one-third for the children of the deceased. According to the Jordanian law, the compulsory will is limited to the offspring of the son. In this case, the share of a male is equal to the share of two females.

If a person made a will for someone who was entitled to compulsory will, but the will exceeded the amount of the compulsory will, then the excess will be subject to the discretionary will. However, the condition for this excess is that if the heirs give permission, it will be enforced; otherwise, it will not. If some give permission, then their

share will be reduced by the amount of the excess will. Similarly, the will made was less than the prescribed amount, then the shortfall should be fulfilled.[56]

Mandatory bequest will apply to the portion that is less than two-thirds. This means that if there is a branch that would have inherited its share had it been alive, then its share will be taken from the original inheritance. The second part is a one-third share of the residue. So, whichever portion is lesser between these two will be implemented. For example, if a deceased person has three sons and one grandson, and the father of the grandson passed away during the lifetime of the deceased person, then the grandson will receive a quarter (1/4) of the inheritance because it is less than one-third (1/3).[57]

Regarding the laws of Syria and Morocco: A mandatory bequest for the benefit of the children will be enforced in the event that the original inheritor passes away. The children will receive their designated share, but if that share is less than one-third, then they will still receive a share, even if the inheritor is still alive. For example, if the deceased person has two sons and one daughter, and one daughter passed away during the lifetime of the deceased person, then the share of the son will be half (1/2), and the remaining half will be divided between the two daughters in a ratio of 1/4 and 1/4. Then, assuming that one of the sons passed away after the death of the father, the remaining half of the deceased son will be divided among the two daughters in the same ratio (1/4 and 1/4).[58]

Conflict between wills/testaments: The interference of multiple wills: This means that if there are multiple wills and they cannot be fulfilled from one-third of the estate or the permission of the heirs is not granted, or even if permission is given but it is not possible to fulfill all the wills due to shortage of assets, then in such a case, if the number of wills is less than or equal to one-third, the wills will be implemented with the consent of the heirs and there will be no interference. However, if the number of wills exceeds one-third, then the wills with the consent of the heirs will only be implemented, and there will be interference.[59]

Priority of mandatory will over optional wills: The law states that mandatory will takes precedence over other mandatory wills, because it has to be fulfilled before the distribution of the one-third of the estate. Optional wills are those which a person makes before their death according to their own discretion, even if they are recommended, such as making a will to pay for fasting, because it is not obligatory, but it is commendable. Therefore, the demand comes from the slaves to fulfill this optional will.[60]

If the mandatory will is equal to or less than one-third, then the heirs are not allowed to demand more than that, because the mandatory will only entitles them to that much share. So if the heirs of the optional will interfere with the remaining wills, they will not have anything left. Here, the legal scholars of the mandatory will provide arguments on all types of optional wills, even for such a recommended will that is made for the purpose of paying

Zakah, Pilgrimage(*Hajj*),Expiation(*Kaffarah*), or religious compensation (*Fidya*) for fasting, objections are raised on the following grounds:

The proof is conclusive that after a will is made, it must be fulfilled and any debt upon it must be paid. In Arab countries, the force of mandatory will is present in the law. In reality, it is based on controversial interpretation.[61]

The presentation of the legal mandatory will over the optional will is a matter of human interpretation of Allah's command. There are several verses in the Quran on this subject, one of which is:

"O you who have believed, do not put [yourselves] before Allah and His Messenger but fear Allah. Indeed, Allah is Hearing and Knowing.[62] (Quran 49:1)

Agreement and differences between compulsory and optional wills:

Forms of agreement:

1. There is similarity between both in the sense that the name of the will is mentioned in both.
2. Both mention the distribution of one-third of the property in the will.
3. Both wills, mandatory and optional, have precedence over inheritance.[63]

Forms of disagreement:

1. In optional wills, implementation is based on the will of the person, while in mandatory will, the force of law is applied if someone does not want to make a will.[64]
2. Acceptance is also a step in the optional will, but it is not necessary in the mandatory will, as according to the law, the person's death is enough.[65]
3. Optional wills can be rejected, but in the case of mandatory wills, no such option is given by the law.[66]
4. Distribution of property in optional wills is based on the wishes and discretion of the individual, whereas in the case of compulsory wills, distribution is done like inheritance. The Quran has numerous versus on this subject, one of which is as follows:

   "O you who have believed, do not put yourselves before Allah and His Messenger but fear Allah. Indeed, Allah is Hearing and Knowing."[67]

5. Optional wills can include close and distant relatives according to the principles of Sharia, but compulsory wills can only include the descendants of the person making the will.

Nature of mandatory will according to Council of Islamic Ideology and Federal Shariat Court.

The Islamic Ideological Council of Pakistan is a constitutional institution whose role is to advise the Government of Pakistan on aligning Pakistani laws with Islamic laws. In its meeting held on June 5, 1969, the Council passed a resolution against Islamic texts related to the inheritance of a grandson from his grandfather under the Muslim Family Laws Ordinance, 1961. Subsequently, in the same meeting, the Council declared that mandatory wills are against Islamic principles.

(c) Since there is no compulsion in Islam with regard to making wills, nobody can be forced a will in favour of grand-children.

Furthermore, the Holy Quran gives every person the right to make a will of up to one-third of their property for charitable purposes. This act of making a will is considered virtuous, as it involves contributing to charitable causes, and is not against the Qur'anic teachings.

In a meeting held on February 13, 1983, the Council further clarified this position in its recommendation. The Council stated that it is not mandatory for a person to make a will, even if they are approaching death or are expected to die in the near future. However, it is recommended to make a will, and evidence for this practice is found in the Holy Quran and Hadith. The four Imams have made it preferable to observe good manners in making a will in accordance with the teachings of the Quran and Hadith. Therefore, it is not necessary or essential to force anyone to make a will at any stage of their life. In the terminology of Shariah, the definition of "preferable" means that the action is liked by the Shariah, but there is no displeasure if the action is left undone. In this case, it is not correct to oblige anyone to make a will regarding their property.

The Council deliberated on this recommendation in its ninth meeting held in Islamabad from August 25 to 28, 1991 (corresponding to 14 to 17 Safar 1412 AH). It was also unanimously agreed upon by the four Imams that it is not obligatory to make a will for non-heir relatives. When the four Imams unanimously agree on a matter, it should be understood that the consensus of the entire Muslim community is based on the followers of these four Imams, and that consensus is not baseless.[(68)]

Text of Section 4 of the Muslim Family laws Ordinance 1961.

4. Succession. In the event of death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes, receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive.[(69)]

"In light of the guidance of General Muhammad Zia-ul-Haq, dated November 15, 1978, conveyed through Ministry of Religious Affairs letter number ADJ-23(2)/78 dated November 29, 1978, the Islamic Ideological Council, in its meeting held in Islamabad from January 29 to February 10, 1979, under the chairmanship of Justice Muhammad Afzal Cheema, discussed and approved the following amendments to the Muslim Family Laws Ordinance, 1961.

Delete the current section 4 and replace it with the following text:

If a son or daughter of the intestate dies during their lifetime, but the intestate has another son or sons surviving him/her at the time of his/her death, then the share of the pre-deceased son or daughter shall go to his/her issue per stripes, subject to the condition that the bequest of the issue shall not exceed the share which their grandparent (i.e., the intestate) would have been entitled to under the law of inheritance in force at the time of his/her death, provided that such bequest shall not exceed one-third of the whole estate after the payment of funeral expenses and debts.

However, if no bequest is made in favor of such issue by their grandparent, it shall be obligatory on their grandparent to make such provision for them out of the estate as may be determined by the family court after considering the matter and making a recommendation in accordance with Islamic law.[70]

In light of the amendments approved in section 4, it is clear from the order of your mentioned requests that despite the mandatory bequest being prevalent in Arab countries, the council has rejected the theory of mandatory bequest by recommending optional bequests. According to this theory, if the grandfather or grandmother did not make a will, it is assumed that they have made a will.

Federal Shariat Court. The Federal Shariat Court has issued several verdicts on a case named "Allah Rukha vs. Federation of Pakistan"[71] regarding the Muslim Family Laws Ordinance 1961, determining whether these verdicts are against the dictates of the *Quran* and *Sunnah* or not. One of these verdicts, regarding section 4 of the said ordinance, pertains to the issue of inheritance for paternal and maternal orphaned grandchildren, and the esteemed court declared it against Islam, citing the Quran, Sunnah, and other sources of jurisprudence as evidence. After this, laws from Egypt and Kuwait were presented as exemplary solutions to this issue, recommending the implementation of "*Wasiya-al-Wajibah*" (mendatory will) in Pakistan, and its implementation as a permissible solution in matters of inheritance.

Measure has been resorted to in some Muslim countries and that the laws enforced in this respect in Egypt and Kuwait are being effectively made use of-

The Federal Shariat Court has opposed the recommended amendment in the S.4 of the said ordinance of the Islamic Ideological Council, stating that it is against the social conditions of Pakistan.

(c) that a provision can be made that in case a propositus dies without creating a will, the will, to the extent of 1/3rd in favour of the grandchildren out of the estate with a ceiling that it does not go beyond the share of their predecessor, shall be deemed to have been created by, the grandparents in their favour

(b) That the orphan grandchildren would have fruits from the assets of their grandparent without any inhibition as they would be enjoying the same as of right in the same manner as their Uncles and Aunts as heirs would be enjoying benefits of the estate of their father-

If the piety which is a requisite of an Islamic Social Order had been prevalent it could well have been a good solution but in the situations in which we are placed, the better solution would be the making of a law for Mandatory will in favour of the orphan grandchildren -[72]

The Federal Sharia Court has clearly declared Section 4 to be against Islamic texts and has provided evidence from the Quran and Sunnah in this regard. The Court has relied solely on a narrated Hadith from Abdullah bin Umar (may Allah be pleased with him) to explain the evidence. In response to this evidence, the Four Imams have provided detailed answers, which can be seen in this article.

The mandatory nature of the will has been presented as a possible solution, with the societal circumstances being cited as the reason and responsibility for its permissibility. However, no legal reason has been given for this justification, and its implementation has been cited as a reason for its adoption in Muslim countries such as Egypt, Kuwait, and Pakistan. However, the Islamic Fiqh Council has presented multiple jurisprudential arguments against the permissibility of the mandatory will.

In this regard, the opinion of Sheikh Abu Zahrah (1394 AH) is sufficient:

"This law is an addition to the prescribed parts of Allah Almighty, and it is necessary to make something essential that is not required by the texts of the Book of Allah or transmitted from any Imam that the texts of the Book of Allah did not make necessary, nor is it transmitted from the Prophetic Sunnah, nor is it transmitted from any of the famous jurists or companions or consensus of the jurists.[73]

Solution to the problem of inheritance and guardianship of orphaned grandchildren:

1. Islamic law has detailed the division of inheritance in the Quran and Sunnah, and according to the principles of Hijab, grandchildren are deprived of inheritance in the

presence of their grandfather. In such cases, Allah knew that there would be incidents where someone's son or daughter would die during their lifetime. Allah is the Most Merciful, and he created the system of inheritance according to the demands of justice and fairness, and there is no exception in the principles of exclusion (*Hajb*) in the presence of a grandfather. It raises the question, is a human being more merciful than Allah?[74]

2. If orphaned grandchildren are given inheritance in the name of a compulsory will, will justice and fairness be established? The Islamic society will be created through the implementation of the Islamic agricultural and economic system. Therefore, it is necessary for uncles to take care of their orphaned nephews and nieces socially, according to the principles of Islamic livelihood, and this guardianship is not an act of kindness but their right. If the uncle is unable to provide for them due to poverty, the responsibility of their guardianship falls on the Islamic state, and it is still not correct to deviate from this responsibility.[75]

During a session of Pakistan's National Assembly in 1963, a wise member suggested the following solution to this problem during the discussion: The Prophet Muhammad (peace be upon him) has instructed that if a person dies leaving behind their daughter, her children have the right to inheritance, and if a person dies leaving behind their son, his children do not have the right to inheritance.[76]

The opinion is based on the following texts:

> Decisions regarding giving charity, paying off debt, and distributing the inheritance of an orphan are made on the same basis. The Prophet Muhammad, peace be upon him, said: "I am the inheritor of the one who has no heir, so I support his dependents and inherit his wealth.[77]

> For the needy Muslims who are without inheritance, imprisoned, and others, whose necessities need to be fulfilled and who have their own wealth to spend on them, the *Beit-al-Mal* (public treasury) will provide for their expenses such as clothing, medical treatment, and funeral expenses even if they have no relatives to support them. Similarly, if someone commits a crime, the debt will be paid from the public treasury for those Muslims who are not capable of paying it, even if they have the mental capacity to understand the consequences but are unable to fulfill the payment.[78]

In terms of providing financial support, those who have more rights, such as close relatives, will be given priority in receiving support, followed by extended relatives, and if no one is available, then the government will take responsibility for the care of these individuals and the *Beit-al-Mal* will bear the expenses. This means that it is the legal right of the orphaned children's relatives who are responsible for their livelihood, such as taking care of their own

children, to provide for the orphans as well. If the relatives fail to fulfill this duty, legal action may be taken through the courts to obtain this right. However, it is essential that necessary amendments are made in the law to ensure the protection of the rights of orphans' relatives. If they are unable to meet the full expenses of the orphan, the government will cover the remaining amount.

In accordance with the laws of Egypt, Kuwait, and Jordan, both male and female children are entitled to inherit equally. In addition, the first level of inheritance for the children of a female heir is through a compulsory will. However, under the laws of Syria and Jordan, only male children are entitled to inherit through a compulsory will. Therefore, Egypt and Syria have two separate accounting methods for dividing inheritance among heirs.

In Pakistan, there is no law in effect regarding mandatory wills. After the Federal Shariat Court declared the Muslim Family Laws Ordinance 1961 as non-Islamic, the court recommended the implementation of laws similar to those of Egypt and Kuwait. On the other hand, the Islamic Ideology Council has twice declared compulsory wills as against Islamic teachings and has urged against the implementation of such laws in the country.

Conclusion. In the laws of Arab countries, it is currently common practice to need wills for grandchildren of the deceased. It is significant to note, however, that all traditional schools of Islamic law concur that making an optional will mandatory would be against divine law. Grandchildren may need to be included in wills that must be made according to Arab law, but it's important to think about other options that put their welfare first. In order to make the necessary arrangements for the care and wellbeing of such grandchildren, a welfare state can be very helpful. Regarding Pakistan in particular, it is crucial that any future legislation include the values of justice, fairness, and the general welfare of all parties. Legislation can be created to guarantee the protection and maintenance of paternal and maternal grandchildren within the larger framework of inheritance laws by carefully balancing legal requirements and societal considerations.

Refrences

(1)Firuzabadi. al-Qāmūs al-Muḥīṭ, (maḍaḥ al-waṣiyyah). Beirut: Al-Muʾassasah al-Risālah, 1426 AH,p.1343.

(2)Firuzabadi. al-Qāmūs al-Muḥīṭ, (maḍaḥ al-waṣiyyah). Beirut: Al-Muʾassasah al-Risālah, 1426 AH,p. 1343.

(3)Qadi zadada, Shams al-Din Ahmad. Takmila Sharh Fath al-Qadir. Beirut: Dar al-Kutub al-Ilmiyya, 1424. Vol. 10, p. 443.

(4)al-shirbini, Shams al-Din Muhammad ibn Ahmad ibn Khateeb. Mughni al-Muhtaj. Beirut: Dar al-Ma'arifah, 1418 AH. Vol. 3, p. 52.

(5)Al-Baqarah 180:2

(6)Al-Nisa' 11:4

(7)Al-Baqarah 182:2

(8) Al-Ma'idah 105:4

(9) Sahih, Muhammad ibn Isma'il al-Bukhari, *Kitab al-Wasaya, Bab al-Wasaya wa Qaul al-Nabi Sallallahu Alaihi Wasallam: "Wa Siyyatu al-Rajuli Maktubah `Indahu*",Riyadh.Dar al Salam, Hadith Number 2738.

(10) Bukhari, Sahih. Kitab al-Wasaya. "*Bab An Yatruka Warasatahu Aghniya Khayrun Min An Yatakaffafu al-Nas*." Hadith No. 2742.

(11) Ibn Majah, Sunan. Imam al-Hafiz Abi Abdullah Muhammad bin Yazid bin Majah al-Qazwini. "*Abwab al-Wasaya, Bab al-Wasiyya*." Hadith No. 2709.

(12) Ibn Qudamah, Muwaffaq al-Din Abu Muhammad. *Al-Mu*ghni, Cairo, Hajar lil-Tiba'ah, 1412 H. Vol. 8, p. 391.

(13) Ibn Hazm, Abu Muhammad Abd al-Sa'id, *Al-Muhalla*. Beirut: Dar al-Kutub al-Ilmiyah, 1408 H. Vol. 8, p. 349.

(14) Al-Baqaarah 180:2

(15) Ibn Qudamah. *Al-Mughni*., vol. 8, p 391

(16) al-Sarkhasi, Muhammad ibn Ahmed ibn Abi Sahl, *Kitab Al-Mabsut*, Beirut: Dar Al-Ma'arifah, 1372H, vol.27, p.142

(17) Ibn Hajar Asqalani, Ahmad ibn Ali, *Fathul Bari Sharh Sahih Bukhari*, Riyadh, Maktabat Dar al-Salam, 1421H, vol.5, p.440

(18) Qurtubi, Muhammad ibn Ahmed Abu Bakr Ansari, *Al-Jami' li Ahkam Al-Quran*, Beirut,Dar Al-Kutub Al-Arabi, 1423H, vol.2, p.256.

(19)Ibn Qudamah,. *Al-Mughni*, Vol. 8, p. 391.

(20)) al-Sarkhasi, *Al-Mabsut*, vol.27, p.142.

(21) Al-Baqarah 2: 180.

(22) Ibn Hazm, *Al-Muhalla* , vol.8, p.352.

(23) Al-Nisa' 11:4

(24) Dawood: *Al-Huquq al-Muta'alliqah bi al-Turkah*.Oman, Dar al saqafah,P. 148.

(25) Ibn Qudamah,*Al-Mughni*. vol. 8, p. 391.

(26) Sahih al-Bukhari, *Kitab al-Wasaya, Bab al-Wasaya wa Qaul al-Nabi Sallallahu Alaihi Wasallam: "Wa Siyyatu al-Rajuli Maktubah `Indahu*", Hadith # 2738.

(27) Ibn Hazm, Al-Muhalla , vol.8, p.352.

(28) Muslim ibn al-Hajjaj al-Qushayri, *Kitab Al-Wasiyyah, Bab Wusool Thawab Al-Sadaqat ila Al-Mayyit*, Hadith#12/1004.

(29) Abu Zahrah*, Ahkam Al-Turkati wal Mawarith*, cairo, Dar Al-Fikr Al-Arabi, 1410H: P231.

(30)Badran Abu Al-Aynayn, *Ahkam Al-Tarikaati wal Mawarith*,Cairo, Dar Al-Ma'arif, 1964: p.334.

(31)Abu Jafar Muhammad ibn Jarir Al-Tabari, *Jami Al-Bayan An Ta'wil Ay Al-Quran*,Cairo, Dar Al-Fikr, 1421H: vol.2, p.146.

(32) Abd al Aziz Bukhari*, Kashf Al-Asrar 'an Usul Al-Bazdawi*, Beirut, Dar Al-Kutub Al-Ilmiyyah, 1416H: vol.3, p.267.

(33) Ibn Hajar Asqalani, *Fath al Bari*, vol 5, P440.

(34) *Majallat al-Ahkam al-'Adliyyah*, Section ,58.

(35) Al-Sartawi, *al-Wajiz fi al-Wasaya wal-Mawarith*, Cairo, Dar al-Biyarah, 1421 H: p. 42.

(36) *Al-Ma'idah* 5:5

(37) Al Baqarah 2:173

(38) Zaidan,Abdul Karim, *al-Wajiz fi Usul al-Fiqh*, Cairo, Muassasat al-Qurtubah, 1976, pp. 47-48.

(39) Ibn al-Qayyim, Shams al-Din Muhammad ibn Abi Bakr, *Aʿlam al-Muwaqqiʿin ʿan Rabb al-ʿAlamin*, Beirut, Dar al-Kutub al-ʿIlmiyyah, 1411 AH, vol. 3, p. 224.

(40) Sahih al-Bukhari, *Kitab al-Fara'id, Bab Mirath Ibn al-Ibn idha lam yakun ibn*, Hadith # 6735.

(41) Sahih al-Bukhari, Kitab al-Fara'id, Bab Miraath Ibn al-Ibn idha lam yakun ibn

(42)Tanzil al-Rahman, *Majmoo'a Qawanin- e-Islam*, Islamabad, Idara Tahaqiqat Islami 2010,vol.5,p.1956.

(43)al-Zuhayli, Muhammad Wahbah, *al-Fiqh al-Islami wa Adillatuhu*, Damascus, Dar al-Fikr, 1422 AH: vol. 10, p. 64.

(44) Ibn Qudamah, *al-Mughni*, vol. 8, p. 393.

(45) *Qanun al-Ahwal al-Shakhsiyyah*, Egyptian law, Section 76; Syrian law, Section 257; Jordanian law, Section 182; Maghreb law Section 266; Tunisian law, Section 196.

(46) *Qanun al-Ahwal al-Shakhsiyyah*,Egyptian law,Section 76; Kuwaitian law, Section 1. The ruling of "Hukmi Maut" means that its implementation wil be for a person whose whereabouts are not known.

(47) *Qanun al-Ahwal al-Shakhsiyyah*, Egyptian law, section 76; Kuwaitian law, Section 1.

(48) *Qanun al-Ahwal al-Shakhsiyyah*, Egyptian law, Section 76; Syrian law, section 257; Jordanian law, Section 182; Maghrib law, Section 268; Tunisian law, Section 191; Kuwaitian law, Section 1.

(49) Mufti Jad al Haq Ali Jadal Haq, Ministry of Egyptian *Awqaf, Fatwa* dated 3 March 1981.

(50) Hussein Faraj, *Ahkam al-Awsiya wal-Awqaf fi al-Shari'ah al-Islamiyyah,*Cairo, Dar al-Matabi'at al-Jami'iyyah, 1997: p. 197.

(51) Al-Sarakhsi, *Kitab al-Mabsut*, vol. 30, p. 30.

(52) *Qanun al-Ahwal al-Shakhsiyyah*, Egyptian Law Section 76, Palestinian Law Section 1, Kuwaiti Law Section 1.

(53) Abu Zahrah*, Ahkam al-Tarakaat wa al-Mawarith*,Cairo, Dar al-Fikr al-Arabi, Year not mentioned: p 230.

(54) *Qanun al-Ahwal al-Shakhsiyyah*, Syrian law,Section 257, Jordanian law,Section 182.

(55) al-Zuhayli*, Al-Wasaaya wa al-Waqf fi al-Fiqh al-Islami*, Damascus, Dar al-Fikr: P 107.

(56) *Qanun al-Ahwal al-Shakhsiyyah*, Egyptian law,Section 77, Kuwaiti law,Section law 1, Jordanian law Section 182.

(57) Abu Zahrah, *Ahkam al-Tarakaat wa al-Mawarith*:P 230.

(58) *Qanun al-Ahwal al-Shakhsiyyah*, Syrian law,Section 257, Moroccan law,Scction 267.

(59) Dawood, *Al-Huquq al-Muta'alliqah biltarkaat bayna al-Fiqh wa al-Qanun*, 'Oman, Dar al-Thaqafah,date not mentioned: p 82.

(60) al-Zuhayli, *Al-Wasaaya wa al-Waqf fi al-Fiqh al-Islami*: p 108

(61) Abu Zahrah, *Sharh Qanun al-Wasiyyah*: p 230

(62) *Al-Nisa'* 11:4

(63) Dawood*, Al-Huquq al-Muta'alliqah biltarkaat bayna al-Fiqh wal-Qanun*: p185

(64) Mohammad Riyad*, Ahkam al-Mawarith bayna al-Nazr al-Fiqhi wa al-Tatbiq al-Amali*, Cairo, date not mentioned: p 252

(65) Abu Zahrah, *Sharh Qanun al-Wasiyyah*:P 194

(66) Mohammad Ramiz Abdul Fattah al-Azizi*, Al-Mirath wal-Wasiyyah*,Cairo, Dar al-Furqan, date not mentioned: p 123.

(67)Al-Hujurat 49:1

(68)Report on Muslim family laws, council of Islamic Ideology Government of Pakistan,2nd ed.1993,p81-86 (Recommendation dated 13feb.1983)

(69) Muslim Family Laws Ordinance,1961

(70) Report on Muslim family laws, council of Islamic Ideology Government of Pakistan,2nd ed.1993,p29.

(71) P.L.D. 2000 Federal Shariat Court 1

(72)Abu Zahrah, *Ahkam al-Tarakaat wa al-Mawarith*,P.194

(73) opp. 296.

(74) Samarah, Muhammad, *Ahkam wa Athar al-Zawjiyyah*, Jordan, Al-Dar al-Ilmiyyah al-Dawliyyah, 2002 AD: p. 449.

(75) Ikram al-Haq Yasīn, Advancement of Intellectual Orientations of the Council of islamic Ideology (Government Speeches and Assembly Discussions), Council of islamic Ideology , Government of Pakistan 2021 AD: Volume 2, p. 535-536.

(76) opp.

(77) Sunan Abu Dawood, *Kitab Al-Fara'id, Bab Fi Miraath Dhu Al-Arham*, Hadith#2901.Nasir al din albani has classified this Hadith as "Sahih, authentic." Sahih Sunan Abu Dawood, Maktabat Al-Ma'arif, Riyadh, 1419 AH, Vol. 2, p. 219.

(78) *Al-Mawsu'ah Al-Fiqhiyyah Al-Kuwaitiyyah*, Wizarat Al-Awqaf Al-Shu'un Al-Islamiyyah 1414H, Vol.8, p. 253.