

## **THE ENTITLEMENT OF THE *BAYT AL-MAL* TO A MUSLIM PRAEPOSITUS' ESTATES; AN ANALYSIS ON THE RIGHT OF A MUSLIM TO BEQUEATH WITHOUT OBTAINING A CONSENT FROM THE *BAYT AL-MAL*.**

**Mohamad Asmadi bin Abdullah**

Dr., Senior Lecturer at Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia (IIUM)

E-mail: [masmadi@iium.edu.my](mailto:masmadi@iium.edu.my)

### **Abstract**

The *bayt al-mal* or public treasury was established during the reign of Umar al-Khattab, the second rightly-guided Caliph. It originated during the Prophet Muhammad s.a.w. time but not as an institution. Its main function is to administer wealth contributed and acquired by Muslims through various sources. Under the Islamic law of succession, the *bayt al-mal* may constitute a recipient of a deceased Muslim's estate. It would exhaust the estates after being allotted to quranic heirs, in the absence of any *asabah*. A question arises in what capacity the *bayt al-mal* receives the property, as an heir or because of no recipient. Moreover, is a Muslim who leaves behind no heir, allowed to bequeath all his properties to whomever he wishes without obtaining a prior consent from the *bayt al-mal*? This article examines the entitlement of the *bayt al-mal* and the possibility of a Muslim to bequeath all his properties without the consent of the former.

**Key Words:** *Bayt al-Mal, Faraid, Wasiyyah.*

**JEL Classification:** K11

### **Introduction**

It is a religious duty upon a Muslim that his estates is distributed in accordance with the *faraid* as underlined in the *Qur'an* and *hadith*. The *wasiyyah* is also an instrument to distribute one's estates but is optional. In fact, there is no overlapping rule that governs these two. Even though both are related to and effective upon death, no conflicting rules exist. The *wasiyyah* is applicable to 1/3 of the estate whereas the remaining 2/3 is subject to the *faraid*.

The *bayt al-mal* may constitute one of the recipients of the estate of the Muslim praepositus under the *faraid* system. This occurs in the event that no legal heir survives and consequently, no one would be entitled to it. The estate is therefore

would be acquired by the state i.e. Muslims community and is in fact trusted upon the *bayt al-mal*. Accordingly, the estate would be utilized and disbursed for the benefit of the community at large.

In comparison with the *faraid*, the *wasiyyah* gives to a Muslim right to determine the recipients of his estates and moreover, to decide the quantum of each of them would receive upon his death. It is not an unrestricted freedom as he is subject to the rule of maximum 1/3 and the rule that a will should not be made in favor of legal heirs. This would cause problems to a Muslim who intends to dispose his estates totally or partly to whom he wishes, knowing the fact that upon his death no one would legally exhaust it. Furthermore, it is the opinion of the Shafiis that gives priority to the *bayt al-mal* over the *dhawu al-arham* heirs even though the latter possess blood relationship with the praepositus. This contention asserts that the entire Muslim community as represented by the *bayt al-mal* is more deserved to the deceased estate compared to them.

### **The Establishment of the *Bayt al-Mal* in Islamic History**

The *bayt al-mal* is defined literally as the national treasury (Islamic-Dictionary). It is where the wealth distribution and accumulation are administered and recorded (al-Mawardi, p. 301). Among the properties that are acquired and administered by the institution are *jizyah*, *al-kharaj*, *zakat*, *al-ushr*, *luqatah*, estate of the deceased and *diat*. All these are placed in the *bayt al-mal* and must be used for the welfare of the society at large and in accordance with the Shariah principles.

The existence of *bayt al-mal* in Islam can be traced back to the time of the Prophet s.a.w. It was initially for the purpose to administer the wealth of the state which was acquired through war. Islam and Muslims life were concentrated in Mecca and Madinah. Its existence was hence not quite noticeable due to the life which was not quite complex at that time. The acquired property including *zakat* collection was immediately distributed without any delay.

The similar situation occurred during the first Caliph. There was no rapid expansion of the Muslim territories. The Caliph focused more on the stability of the government after the death of the Prophet s.a.w. It was reported that all the acquired wealth was gathered in the Prophet's Mosque and subsequently distributed to the recipients within three days (Tahir, p. 15).

It was during the second Caliph, Umar al-Khattab that the *bayt al-mal* was properly established. It was reported that the suggestion of setting it up was raised

by a person who was concerned with the speech of `Umar regarding the wealth acquired by Abu Hurayrah from Bahrain amounting to 500,000 dirhams. He suggested `Umar to set up a *diwan* as practiced by non-Arabs (al-Mawardi, p. 282). It is also narrated that it was by the suggestion of al-Waleed ibn Hisham who had experience of living in Syria. He proposed to `Umar to set up *diwans* following the practice of the rulers in Syria (al-Mawardi, p. 283). Acting on the suggestion, the Caliph had then appointed Aqeel ibn Abi Talib, Makhramah ibn Nawfil and Jubayr ibn Mut`im to start setting up the *bayt al-mal* (al-Mawardi, p. 283). Unlike the first Caliph who worked very hard on establishing an unwavering and firm government, and faced threats from the internally political dissatisfactions, Umar had dedicated more on the expansion of Muslim territories. For that reason, there was a need to establish a proper *bayt al-mal* because financial collections especially from wars had magnificently increased.

Caliph Umar had set up a good foundation of *bayt al-mal* for the administration of public properties. From thereon, its establishment had undergone tremendous progress throughout the Islamic history. During the reign of `Umar Abd Aziz, an Umayyah Caliph, the collection from the *kharaj* had increased splendidly. This was due to the policy of expanding territories and his trustworthiness with respect to wealth administered by the *bayt al-mal*. It was during the reign of Caliph Harun al-Rashid, an Abbasid Caliph that reportedly wealth accumulated in the *bayt al-mal* reached the amount of 530,512,000 million dirham and the figure increased up to 900,000,000 million dirham at the time of his death (Tahir, pp. 16-19). This was due to the efficient and effective administration of the Islamic government at that time.

### **The Islamic Law of Succession**

In Arabic, the Islamic law of succession is commonly known as *al-fara`id*, which literally means fixed portions (Brill, p. 783). Technically the term denotes the quantum of shares allotted to the legal heirs as determined by the Shariah (al-Sharbini, p. 2). The knowledge of *fara`id* is to do with principles regarding determining the entitled legal heirs, their quantum of shares, the impediments and the causes of inheritance, the exclusions from inheritance and the classification of the legal heirs (Ibn Abidin, p. 534). The principles and conditions regarding the devolution of a deceased Muslim's estates are deduced from the Qur`an and the *Sunnah*. Both prescribe in detail the entitlement and the quantum of shares of each legal heir.

There are three Qur`anic verses, known as verses of inheritance that elucidate in detail matters of inheritance, namely chapter *al-Nisa`* (4): 11, 12 and 176. These verses explain and prescribe the entitled legal heirs, their respective portions of shares, the principle of the 2:1 ratio between male and female legal heirs and the need to settle the rights attached to the estate prior to the distribution. It is a distinctive feature of this branch of Islamic law that in the main, the very detailed explanation and prescription of the principles are contained in the Qur`an, as compared to other branches of Islamic law (Coulson, p. 3). The *Sunnah* which has been defined as what transmitted from the Prophet Muhammad s.a.w. of his words, acts, and tacit approval (Nyazee, p. 163), elaborates further the general inheritance rules, and in some cases introduces new principles that are not expressly mentioned in the Qur`an such as the rule of priority in succession, the principle of the completion of 2/3 between a daughter and son`s daughters, the entitlement of the maternal grandmother and the entitlement of the *bayt al-mal* to the estate (al-Sharbini, p. 4).

The law also draw its epistemological sources from *ijma`* or the consensus of Muslim jurists, and individual *ijtihad*s or reasoning. These two sources are applicable in situations where no clear injunction is found in the primary sources. In this case, Muslim jurists perform *ijtihad*, which is clearly based on the principles deduced from the Qur`an and the *Sunnah*, in order to solve newly arising problems encountered by Muslims (Atiyyah, p. 26).

### **The Causes of Succession**

The entitlement of each recipient to the estate is based on their legitimate relationship with the deceased. Islamic law has established specific criteria that must be met for a relationship to be legitimate and to enable the survivor to inherit from the deceased. This implies that Islamic law does not recognize all relationships as capable of constituting the basis of inheritance. From the facts regarding the entitlement of legal heirs, it is understood that primarily, the marriage relationship, the blood relationship and the religion-based relationship are the relationships that are recognized by Islamic law to be the basis of inheritance (al-Sharbini, p. 4). These relationships are important in determining the legal heirs of the deceased. For instance, a divorced wife should not be simply dismissed from inheritance because of the divorce. The nature of the divorce, either revocable or irrevocable, should be taken into account because this determines whether the marriage relationship remains or has ceased to exist. If a husband dies within the period of *iddah* (waiting) of his divorced wife, the latter

is still entitled on the grounds that the marriage relationship between them remains in existence, albeit constructively.

Another example is in the case of a blood relationship; the issue of the legitimacy of birth from the perspective of Islamic law is vital and determines the legal paternity of a child. This means that a child born within the period of less than 6 months of a marriage contract, or of the consummation of the marriage, is not entitled to inherit his or her biological father's estate on the grounds that no legitimate blood relationship existed between them. It is important to clarify that the Islamic law of succession does not recognize relationships based on love, friendship or adoption as a legitimate basis for inheritance. This indicates that the individual has no right to decide who will inherit their wealth upon their death.

It should be noted that in order to realize a right of inheritance, an heir must be free from any impediment of inheritance. Generally, an heir who kills the deceased is consequently debarred from the right to inherit the victim's wealth. This is important because if a killer is entitled to inherit, killing might be a means to acquire wealth by way of succession. This would bring universal chaos into the society. According to al-Ramli, a Shafii's jurist, the purpose of imposing such a rule is to prevent homicide from being a means to succeed one's property (Khan, p. 50).

Furthermore, inheritance cannot occur between two persons of different religions. The principle here is that, a non-Muslim is not entitled to inherit a Muslim's estate and vice versa. The issue of slavery, as outlined by the Muslim scholars as an impediment, appears to be rather irrelevant nowadays on the grounds of the abrogation of this practice in the modern world.

### **The Entitlement of the *Bayt al-Mal***

Muslim scholars are in disagreement on the entitlement of the *bayt al-mal*. To the Hanafis and Hanbalis, the *bayt al-mal* has no right of entitlement to the deceased Muslim's estate. However, in the situation that no one would inherit the property; the *bayt al-mal* would take it on the basis of public interest of the Muslim society (Dawud, p. 269). Ibn Abidin states that the estates which are taken by the *bayt al-mal* is considered as booty and not as inheritance (Rahman, p. 547).

To the Malikis, there are two opinions among them. They differ on the issue of administration of *bayt al-mal*. The first group view that if it is properly

administered, it has a right to the estate in its capacity as a legal heir to the deceased. On the other hand, another group which consists of post-classic scholars put the condition of proper administration in order to enable it to inherit the estate as a legal heir (Dawud, p. 269).

To the Shafiis, they are divided into three groups. Al-Muzani and Ibn Sirij share the same opinion with the Hanafis and Hanbalis. The *bayt al-mal* is not a legal heir and has no right to the estate of the deceased. The property would pass to the *bayt al-mal* on the basis of public interest of Muslim community. This applies in the situation that no legal heir would exhausts it. The other two groups of the Shafiis hold the same opinions as of the Malikis. They take into consideration the issue of administration as a condition for the entitlement.

It can be concluded that Muslim scholars from the four schools of Islamic law are actually of two opinions. First is no right of inheritance at all except if no legal heir exist and another one is that such a right exists if the *bayt al-mal* is properly administered.

### **The Principle of *Radd***

*Radd* literally means return. The rule implies that after giving away fixed shares to quranic heirs, the residue is again divided among them, following their original shares except spouses (al-Sirajiyah, p. 37). However, this rule is applicable in the situation that no *asabah* exists. Coulson defines it as proportionate return (Coulson, p. 49). Most of the companions of the Prophet s.a.w. such as Umar al-Khattab, Ali ibn Abi Talib, Ibn Mas`ud and Ibn `Abbas hold such opinion. It is the opinion of the Hanafis (Ibn Abidin, p. 539) and the Hanbalis (Ibn Qudamah, p. 47).

However, the Malikis and Shafiis do not agree with the opinion. Instead they followed the opinion of Zaid ibn Thabit asserting that the remaining property shall be given to the *bayt al-mal* (Ibn Qudamah, p. 48). They argued that the shares of the Quranic heirs have been fixed in Quran and hadith. Hence, no one has the right to increase the shares and since no one would receive it, the property would pass to the *bayt al-mal*.

However, the post-classic Malikis and Shafiis view their agreement on the rule of *radd*. This rule is applicable in the situation of mismanagement of the *bayt al-mal* (Dawud, p. 480 & al-Sharbini, p. 7).

### **Bayt Mal v. *Dhawu al-Arham***

The term *dhawu al-arham* is literally defined as relatives by womb. Its technical meaning denotes relatives of the praepositus who are neither quranic nor *asabah* heirs. The Malikis and the early Shafiis view that they have no right of inheritance on the basis that their entitlement is not mentioned in the Quran and hadith. Based on that, it is therefore not right to create right of inheritance for them based on solitary hadith and the principle of analogy (Dawud, p. 407). The property of the deceased who dies leaving behind neither quranic nor *asabah* heirs would devolve to the *bayt al-mal* as it inherits it in the capacity of a legal heir.

However, to the majority scholars namely the Hanafis, Hanbalis and the post-classic Shafiis namely al-Muzani and Ibn Surayj view that *dhawul arham* have right of inheritance in the absence of quranic and *asabah* heirs. This contention is based on the Quranic verse, al-Anfal: 75 which states that in the matter of inheritance some relatives have preference over the others (Rahman, p. 537). The term “*dhawu al-arham*” in fact include quranic and *asabah* heirs because they are connected to the praepositus through blood relationship. The above Quranic verse gives right of entitlement to the *dhawu al-arham* in general even though their right are not specifically mentioned as in the case of quranic and *asabah* heirs (Dawud, p. 409).

### **The *Wasiyyah* and the Limited Right of a Muslim to Bequeath**

The *wasīyyah* is an optional testamentary succession and is based on the wishes of the deceased. Only upon his death the ownership of the property is transferred to the beneficiaries. It was originally incumbent upon every Muslim following the revelation of the Qur`anic verse *al-Baqarah* (2): 180. However, this original ruling was abrogated by the revelation of the Qur`anic verses *al-Nisa`* (4): 11,12 and 176 and the *ḥadith* of the Prophet ‘*no wasīyyah in favour of legal heirs*’.

Even though a Muslim is allowed to dispose of his property by way of *wasīyyah*, and by that means he is permitted to select the beneficiaries and confer upon them rights to his estate effectively upon his death, such a right is not absolute. His right to make a *wasīyyah* is subject to limitations. A *wasīyyah* that exceeds the prescribed limits would constitute an *ultra vires wasīyyah*, which means the consent or refusal of the entitled heirs is decisive (Coulson, pp. 242-243).

The first limitation is pertaining to the recipient. It is based on a number of sound Prophetic traditions that state making a bequest in favour of legal heirs is not permitted. It is clear that the meaning of 'warith' in that particular *ḥadith* and those *aḥadith* which give the same effect, is the 'warith' who is entitled to the deceased's property under inheritance law. If the legal heir is either *de jure* or *de facto* excluded from inheritance or is disqualified due to the presence of any impediment to inheritance that affects his/her entitlement, any bequest made by the deceased in their favor is valid (al-Qardawi, 1996, p. 172). Since Allah has prescribed their rights to the deceased's wealth by way of succession, they have no right to the deceased's wealth by way of bequest (al-San`ani, p. 204).

The second limitation is with regard to the quantum. A Muslim is not allowed to bequeath all his wealth. In the *ḥadith* narrated by al-Bukhari that Sa'ad bin Abi Waqaṣ says that the Prophet came to visit me in the year of the farewell pilgrimage when I was afflicted with a severe illness. I said to him: "O Prophet, you see how ill I am. I have property and no heir except my daughter. Shall I then give away two-thirds of my property as alms?" He replied "No." I said "A half then?" He still said "No." I then asked "A third?" He replied: "A third. And a third is much. It is better that you leave your heirs rich than you should leave them destitute, begging from their neighbours." (Coulson, p.214 and al-San`ani, p. 208).

## Conclusion

Based on the opinions of scholars on the entitlement of the *bayt al-mal*, it is clear that those who agree with its entitlement as one of legal heirs do not consider it on the same rank held by quranic and *asabah* heirs. Unlike the heirs, its entitlement is not absolute. This is evident in the situation of mismanagement of the *bayt al-mal* such as corruption and unfair distribution of wealth. The entitlement of relatives who have blood relationship with the *praepositus* should therefore have prevalence over the *bayt al-mal*. This is apparently in agreement with the Qur`anic verse, al-Anfal (8): 75 which substantiates that those who have blood relationship with the deceased enjoy the priority over those who do not have. Hence, in making a *wasiyyah* in favor of heirs or which exceeds the 1/3, no consent from the *bayt al-mal* is needed.

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