A WILL OF MORE THAN ONE THIRD? OF THE PROPERTY

Q: 13- "On page 5 of the October, 1993 issue of AL BALLAGH

I have read with interest the commentary on Verses 180 - 182 and particularly the Hadith narrated by Sayyidna ibn Abbas 4 and the conclusion given which purports to make it permissible for an inheritor to receive more than his/her share if all inheritors allow the enforcement of a will which names an inheritor to receive more than his/her share.

From previous issues several months back and from other material read, it Chas my understanding that only one third of the total net assets can be gifted as part of a will to non-inheritors and that no allowances in gifts can be made to normal inheritors where their share would exceed that which is ordained by ALLAH.

Please comment on this aspect of inheritance, laws and remove any confusion or misconception that has cropped up in my mind and possibly in other reader's minds too.

Your prompt attention to this request will be much appreciated. Thank you and Jazakallah." (Muhammad Hussain Chand Karachi)

A: Answer to your question is very simple. Islamic law of inheritance does not permit a person to make a will in favour of any one of his legal heir so as to increase his share in the property of the deceased to more than the share prescribed for him by the Shari'ah. But this limitation has been imposed only to protect the rights of other inheritors, because any increase in the share of one heir would violate the rights of the remaining heirs whose shares would be reduced. However, if all other inheritors are sane and major, they can waive their right in favour of some other inheritor. Therefore, if a deceased person has made a will in favour of one of his legal heirs, and all other inheritors, being sane and major, have consented to enforce it, there is no bar in Shari'ah against its enforcement, because the restriction was meant to safeguard the rights of all the legal heirs and if they themselves have waived their rights, there is no violation of any right in its enforcement. It will be like a gift made by them in favour of the legatee. It is this principle that has been enunciated in the hadith of Sayyidna Ibn Abbasi rdi. quoted in Ma'ariful Qur'an in the following words:

"There is no will for any inheritor unless all inheritors permit."

But it should be kept in mind that the permission of other inheritors will be effective if they have given such permission after the death of the testator. The permission given in his lifetime is not a valid permission unless it is confirmed after his death.

Similarly, the restriction that a person cannot bequeath more than one third of his property is also meant for the protection of the rights of the legal heirs. But if all of them, being sane and

major, are agreeable, a will of more than one third of the property can also be enforced. For example, if a person has bequeathed one-half of his property to a mosque, and all the legal heirs are agreeable to enforce it, they can do so, but in this case the thawab of one third will go to the deceased and the thawab of the remaining one eighth will be deserved by his legal heirs who have foregone this part of their share for a mosque.

Contemporary fatawaa