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Section 22: Genuine Righteousness, Retaliation & Bequest

Surah Al-Baqarah, Verse 177

لَيْسَ الْبِرَّ أَنْ تُوَلُّوا وُجُوهَكُمْ قِبَلَ الْمَشْرِقِ وَالْمَغْرِبِ وَلَكِنَّ الْبِرَّ مَنْ آمَنَ بِاللَّهِ
وَالْيَوْمِ الْآخِرِ وَالْمَلَائِكَةِ وَالْكِتَابِ وَالنَّبِيِّينَ وَآتَى الْمَالَ عَلَى حُبِّهِ ذَوِي الْقُرْبَى
وَالْيَتَامَى وَالْمَسَاكِينَ وَابْنَ السَّبِيلِ وَالسَّائِلِينَ وَفِي الرِّقَابِ وَأَقَامَ الصَّلَاةَ وَآتَى
الزَّكَاةَ وَالْمُؤْفُونَ بَعْدَهُمْ إِذَا عَاهَدُوا وَالصَّابِرِينَ فِي الْبَأْسَاءِ وَالضَّرَّاءِ وَحِينَ
الْبَأْسِ أُولَئِكَ الَّذِينَ صَدَقُوا وَأُولَئِكَ هُمُ الْمُتَّقُونَ

177. "It is not righteousness that you turn your faces towards the East and the West, but righteous is he who believes in Allah, the Last Day, the angels, the Book, and the Apostles, and for the love of Him gives (of) his wealth, although he likes it, to the kindred, the orphans, the needy, the travelers, beggars and for the (emancipation of) slaves, and keeps up the prayer, and pays the poor-rates (zakat); and those who fulfill their promise whenever they make a promise, and are patient in distress, adversity, and in the time of war, these are they who are the truthful (in Faith verbally and actually) and these are the pious ones."

The Faith of a person in *Allah* causes him to be humble before Him and to stand firm, with no obedience, before tyrants; where the Faith in Resurrection creates eyesight and magnanimity; and Faith in angels refers to the existence of belief in the processes of supernatural including the Faith in revelation, Providence, etc.

Faith in prophets is a belief in a straight way and true guidance existing throughout history. It is evidence

leading to the fact that Man has never been aimless and absolutely free in this world.

"It is not righteousness that you turn your faces towards the East and the West, but righteous is he who believes in Allah, the Last Day, the angels, the Book, and the Apostles..."

The Qur'anic phrases: ***"gives (of) his wealth"*** indicates the assistance and humanity of believers; ***"keep up the prayer"*** refers to the direct link with *Allah*; ***"pay the poor-rates (zakat)"*** leads to planning the social life for solving the problem of different layers of the society; ***"Those who fulfill their promise whenever they make a promise"*** strengthens the coherence and connection between people; and the concept of ***"are patient"*** is an active factor in Man to become persevering and stable.

"... and for the love of Him gives (of) his wealth, although he likes it, to the kindred, the orphans, the needy, the travelers, beggars and for the (emancipation of) slaves, and keeps up the prayer, and pays the poor-rates (zakat); and those who fulfill their promise whenever they make a promise, and are patient in distress, adversity, "and in the time of war, these are they who are the truthful (in Faith verbally and actually) and these are the pious ones."

Explanations

1- This verse is one of the most consistent verses of the Qur'an. It is cited in Al-Mizan, that the Messenger of *Allah* said in a tradition that everyone who acts according to this verse has a complete Faith. 1

2- We should heed the content and essence of the religion rather than to go after the mere mottoes, which hold us back from the main godly aims.

3- The number of those who claim Faith is very large, but the true believers, who follow all the details of this verse, are a particular small group: ***"These are they who..."***

4- Belief in *Allah*, Resurrection and revealed Book is mentioned before the fulfillment of the righteous deeds.

5- In this verse, the act of attachment to *Allah* ***"Faith in Allah"***, and connecting with the poor and deprived people, and also social aids upon accidents and afflictions have been stated together, one after another, in the verse.

6- For reaching a true piety, donation in both obligatory and non-obligatory forms are necessary. There are some people who sometimes help the poor while they do not pay their religious obligatory payments.

There are also some other believing people who pay their obligatory payments but are often indifferent to the poor and the deprived. Here, in this verse, the true pious believers are introduced as those who pay both their obligatory alms and recommended donations; as well:

"... and for the love of Him gives (of) his wealth"

Regarding this meaning, that is why that some Islamic narrations say that in the wealth of the rich, besides the poor-rates, there is a portion for the deprived and the poor. 2

And also, the one who goes to bed while he is satiated but someone in his neighborhood is hungry, has faith neither in *Allah* nor in the Hereafter. 3

Therefore, to feel responsibility for the hungry people, is a duty on us, whether we have paid the obligatory alms or not.

7- It is necessary to show patience and perseverance in all the followings:

Being patient and firm in facing with poverty and afflictions.

To show patience and endurance in having ailments.

To be patient in battle and at the time of Holy War.

However, patience is the cause of all virtues. So, the Qur'an introduces patience as one of the factors for entering Heaven, where it says: **"These shall be rewarded with high places because they were patient..."** 4

These are given high positions as a reward for the patience they had, while some others are honored by angels in Heaven with these words: **"Peace be on you because you were constant..."** 5

And, one of the conditions of obtaining the position of Imamate is to be patient, as the Qur'an says: **"And We made of them Imams to guide by Our command when they were patient..."** 6

8- The application of the term / berr / (righteous) is similar to the application of honey. Whoever or whatever is very sweet and wholesome is likened to honey, Then, whosoever is very good and benevolent is called 'righteous'; viz, , such a one is absolutely a right-doer.

Surah Al-Baqarah, Verses 178-179

يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلِ الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ
وَالْأُنثَىٰ بِالْأُنثَىٰ فَمَنْ عَفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدِّ إِلَيْهِ بِإِحْسَانٍ
ذَلِكَ تَخْفِيفٌ مِّن رَّبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَىٰ بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ

وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ

178. "O' you who have Faith! Retaliation (Qisas) is prescribed for you in the matter of the (unlawfully) murdered: the freeman for the freeman, the slave for the slave, the female for the female. But for him who is forgiven somewhat by his (aggrieved religious) brother, then prosecution (for blood-wit) should be made according to a fair manner (ma'ruf) and let the payment be made to him with kindness. This is an alleviation from your Lord, and a mercy; so whoever transgresses the limits after this, he shall have a painful punishment."

179. "And in (the law of) retaliation there is (saving of) life for you, O' people of understanding, so that you may guard yourselves (against evil)."

Occasion of Revelation

The custom in the Age of Ignorance among some Arabs was so that when an individual was murdered from their tribe, they would decide to kill as many members from the murderer's tribe as they could.

That thought was so harsh that they were ready to destroy even the entire people of the murderer's tribe for only a single murder. Then, the above verse was sent down and announced the just law of retaliation, (Qisas).

This Islamic decree was, indeed, a medial status between the two different injunctions which were current at that time. Before the revelation of this ordinance of Islam, some people considered retaliation necessary, with no changes, so that nothing else was permissible to substitute it, while some other groups believed that only the rule of blood-wit should be followed.

So, Islam decreed the law of retaliation in the case of the discontent of the heirs of the murdered, and blood-wit when both parties agree upon it.

Saving of Life in Retaliation

From this verse on, in the current Surah, a series of decrees and ordinances of Islam are stated and completed.

At first, it begins with the protection of the value of blood which is an extraordinary important problem in social connections. Through this verse, Islam makes all the concerning old customs invalid. The Qur'an, addressing the believers, says:

"O' you who have Faith! Retaliation (Qisas) is prescribed for you in the matter of the (unlawfully) murdered..."

The Holy Qur'an, in the case of some indispensable commands, sometimes makes use of the phrase: **"It is prescribed for you"** to state the matter. The above verse, for example, is an instance of this application where the coming verses, which speaks about 'making bequest' and 'fasting', are other ones.

In any case, this particular phrase makes the importance and emphasis of the theme clear, because those matters are always written that, from any point of view, have reached to the state of positiveness and are earnest.

As it was pointed out in the occasion of revelation, these verses, with the application of the term retaliation and in order to moderate the intemperance which the Age of Ignorance fulfilled about murder, show that the heirs of the murdered are rightful to accomplish, against the murderer, exactly the same that that person has committed upon the murdered.

But the Qur'an does not suffice only to this amount. In this very verse, it exposes the problem of equality to discussion with a particular explicitness where it continues saying: '**...the freeman for the freeman, the slave for the slave, the female for the female...**'

Allah willing, we will explain that this idea is not an evidence, as some have considered, for the superiority of the male-blood to the female-blood, and that a male murderer, under certain conditions, can be punished by the law of retaliated for the murder of a woman.

Then, to make it clear that the subject of retaliation is merely a right for the heirs of the murdered and it is not a convincing ordinance for them when they can simply forgive the murderer, if they wish, and take a blood-wit, or even, they can take no blood-wit at all, it immediately adds:

"...But for him who is forgiven somewhat by his (aggrieved religious) brother, then prosecution (for blood-wit) should be made according to a fair, manner (ma'ruf) and let the payment be made to him with kindness...."

Thus, on one hand, the avengers of blood are advised not to be immoderate in taking a blood-price if they dispense with retaliation, and take the blood-wit with a fair price and according to what Islam has appointed and also by installments so that the party be able to pay it.

And, on the other hand, through the sentence: **"...let the payment be made to him with kindness"**, it recommends the murderer to pay the blood-price in a right style and without any negligence so that his debt be entirely paid on time. Therefore, the Qur'an has defined the duty of each party and how they should treat to each other.

At the end of the verse, for emphasis and to attract the attentions to the fact that transgressing the limits of Allah, from the side of whoever it may be, deserves a severe punishment, it says:

"...This is an alleviation from your Lord, and a mercy; so whoever transgresses the limits after this, he shall have a painful punishment."

This equitable command for 'retaliation' and 'forgiveness' which makes up a quite logical manly assemblage, condemns, on one hand, the wrong method of the Ignorance Age which considered no equality in retaliation and, similar to the tyrants of this very age of space, sometimes killed hundreds of

people in excuse of the murder of one person.

And, on the other hand, it does not shut the door of pardon to people. In the meantime, it does not lower the respect of blood, and does not allow murderers to become bold and presumptuous. And also, thirdly, it announces that neither of the two parties is permitted to transgress the limits after accepting the principle of pardon and blood-wit.

This command was issued in spite of the old custom of the Ignorant tribes where the heirs of the murdered might kill the murderer even after forgiving him and taking the blood-wit.

The next verse, in a short but very expressive sentence, answers a great deal of questions in regards to the problem of retaliation. It says:

***"And in (the law of) retaliation there is (saving of) life for you,
O' people of understanding so that you may guard yourselves (against evil)."***

This verse, which in the Qur'anic text consists of ten particles, is expressed in utmost eloquence and clarity. It is so interesting that its first phrase has become as an Islamic motto used by common Muslim people.

It clearly shows that Islamic law of retaliation is not for revenging at all, but it is a door-way to life for men to let them continue living.

Retaliation, on one hand, guards the safety of the life of the society, because if the ordinance of retaliation were not in any form at all, the hard-hearted persons would feel security and, consequently, the lives of people would be in danger.

The evidence for this is the countries wherein the law of retaliation has been nullified and the number of murders and crime has incredibly increased.

On the other hand, the law of retaliation causes the life of a homicidal person be saved since it prevents him considerably from the thought of murder and brings him under control.

For the sake of the necessity of equality and order, the law of retaliation is a hinder against the frequent slaughters and puts an end to the customs of some Ignorant tribes in which a single murder has been the pretext of several murders and the latter, in turn, has been the cause of further slaughters, too. By this way, the law of retaliation has also stopped some of those homicides and caused a few societies continue to live peacefully.

Regarding the fact that it is only in the absence of pardon that the ordinance of retaliation can be executed, the existence of the Islamic law of retaliation, in general, is also another phase opened to life and living.

The concluding phrase which says: "... ***so that you may guard yourselves (against evil)***" completes this wise ordinance of Islam. This meaning is also considered as a warning which halts or retards any oppression and transgression.

Retaliation & Pardon, a Complete Assemblage

Islam, in all respects, follows the problems inclusively and with their proper practical aspects. It has stated the right perfect idea about the proposition of unlawfully murdered, far from any injustice or excessive progressiveness.

This Islamic law is similar neither to the perverted Jewish law, which emphasizes only on mere retaliation, nor to the present Christianity, which advises its followers to pave only the way of either pardon or compensation; because the latter causes to embolden the homicides and the former can become a factor of harsh vengeance and brutality.

Suppose that the murdered and the murderer be two brothers, or they have some background of friendship or social connections. In this case, bonding to retaliation, may produce a new additional grievance for the family of the murdered, especially when the concerning people are full of human love and affection, then, forcing them to execute the act of retaliation, itself, can be considered another grief and torture upon them. On the other hand, limiting the law to pardon and compensation alone also makes the corruptive people bolder.

This is why Islam has decreed the law of retaliation as the main ordinance and, to moderate it, has added the ordinance of pardon beside it and along with it.

In other words, the heirs of the murdered are rightful to choose one of the following varieties:

- 1- The execution of retaliation
- 2- To pardon without taking any blood-wit.
- 3- To pardon with taking the blood-wit. (In this case, of course, the consent of the murderer is also necessarily considered.)

Explanations

It is possible that some groups object that the command in the verses of retaliation is that a 'man' should not be killed for the murder of a 'woman', then, what is the difference between the life of a man and that of a woman?

Why should a male not be killed under the punishment of the law of retaliation for the slaughter of an innocent female, –a gender (i.e. the feminine gender) that forms half of the population over the earth?

The answer to this question is that: the verse does not mean a 'male' should not be retaliated against by capital punishment for a 'female'. But according to what is detailed in the books of Islamic jurisprudence,

the heirs of the murdered woman can punish the male-murderer by the law of retaliation (i.e. capital punishment) on condition that they pay half of the blood-price.

In other words, the purpose of the lack of retaliation (Qisas) of a 'man' for the slaughter of a 'woman' is retaliation without any condition; but his killing is permissible, of course, when half of the blood-price is paid.

No explanation is necessary here that the payment of the aforementioned sum for the execution of the punishment under the law of retaliation does not mean that a woman, from the point of philanthropy, is lower than a man or a female is less dear than a male. This is, indeed, absolutely a wrong and illogical imagination.

The apparent form of the term 'blood-price' may have been the origin of the appearance of this imagination. The act of the payment of the half sum of blood-price is only for the compensation of the loss that the man's family members suffer from his capital punishment by the law of retaliation.

The expansion of the explanation is that: males are usually the effective financial factor of their families. It is often men, in families, who earn a living and pay money for the expenditures, in general, and run the economical affairs therein.

Therefore, the difference between a man and a woman, from the point of economy and finance in their own family, is quite clear to everybody. If this difference be not observed, the remaining family members and the innocent children of the murdered man have surely to suffer an amount of unreasonable financial damage.

Hence, Islam, with the rule of the payment of half of the blood-wit for the punishment of a 'man' by the law of retaliation, has considered the rights of all members, and prevented the unforgivable injury and stroke that a family may be given.

Islam never lets the rights of some individuals, such as the children of the person who has been punished by the law of retaliation, be trod under the pretext of the term 'equality'.

It is possible, of course, that some women earn a living in their own family better than men there. But we know that a law or an ordinance does not turn around the pivot of an individual, and we must compare the totality of men with the totality of women.

Another point that attracts the attention, and is understood from the phrase "**by his brother**", is that Islam strengthens the relation of brotherhood between its followers so firm that even after the illegitimate shedding of blood it is still valid.

So, to encourage the heirs of the murderer to forgiveness and moderation, and also to put their affection in motion, Islam introduces them as the brothers of the murderer. And, this meaning is both surprising and interesting.

The mentioned situation, of course, is about those murderers who have taken action in this great heinous sin under the force of emotion, wrath, and the like of them, and the murderers have also become regretful and repented of their wrong action.

But, the murderers who are proud of their crime and, with no regret or repentance, boast about it, are neither worthy of the appellation of 'brethren' nor are they eligible for pardon.

Surah Al-Baqarah, Verses 180-182

كُتِبَ عَلَيْكُمْ إِذَا حَضَرَ أَحَدَكُمُ الْمَوْتُ إِن تَرَكَ خَيْرًا الْوَصِيَّةَ لِلْوَالِدَيْنِ وَالْأَقْرَبِينَ
بِالْمَعْرُوفِ حَقًّا عَلَى الْمُتَّقِينَ

فَمَنْ بَدَّلَهُ بَعْدَ مَا سَمِعَهُ فَإِنَّمَا إِثْمُهُ عَلَى الَّذِينَ يُبَدِّلُونَهُ إِنَّ اللَّهَ سَمِيعٌ عَلِيمٌ

فَمَنْ خَافَ مِنْ مَوْصٍ جَنَفًا أَوْ إِثْمًا فَأَصْلَحَ بَيْنَهُمْ فَلَا إِثْمَ عَلَيْهِ إِنَّ اللَّهَ غَفُورٌ
رَحِيمٌ

180. *"It is prescribed for you, when death approaches (any) one of you, and if he leaves behind wealth for parents and near relatives that he makes a bequest in a fair manner - (this is) a duty (incumbent) on the pious ones."*

181. *"Whoever then changes it (the bequest) after he has heard it, the sin thereof shall be on those who change it. Surely Allah is All-Hearing, All-Knowing."*

182. *"But if anyone fears injustice or sin on the part of a testator, and establishes agreement among them (the parties concerned), then there is no sin upon him; surely Allah is Forgiving, Merciful."*

Bequest in a Fair Manner

The speech in former verses was about problems such as life, murder, murdered, and retaliation, while in these verses a part of the ordinances of bequest in relation with the financial affairs is referred to, where it says:

"It is prescribed for you, when death approaches (any) one of you, and if he leaves behind wealth

for parents and near relatives that he makes a bequest in a fair manner..."

Then, at the end of the verse, it adds:

"... (this is) a duty (incumbent) on the pious ones."

Bequest should not be considered as a bad omen. Some persons think that bequest is a sign of death or passing away soon, while bequest is a kind of providence and farsightedness. So, if the verse tells us to leave a bequest at the presence of death by saying: ***"When death approaches (any) one of you..."*** it is for the reason that those moments are the last occasions; else, an individual can lay down a bequest years before the time of death.

Some Islamic groups have considered the bequest an obligatory ordinance, but as it is understood from the phrase ***"... (this is) a duty on the pious ones"*** this action is voluntary, otherwise it would say: this is a duty on the believers.

According to the attitudes of the Islamic commentators and jurists, leaving a bequest is, of course, incumbent when the one is in debt to people or there is a religious duty upon the one which must be fulfilled.

These duties may be such as: one fifth levy (khums), poor-tax (zakat), performance of pilgrimage (Hajj), etc., and in other ordinary cases, similar to them, leaving a bequest is emphatically praiseworthy.

By the way, in this verse, the Arabic term 'khayr' has been applied for 'wealth' to make it manifest that Islam knows wealth a good thing and a blessing from *Allah* when it has been earned in a lawful way and is spent alongside the path of the help and benefit of people.

This idea nullifies the wrong attitudes of those who think of wealth substantially as a bad thing. Islam hates those deviated pretenders to piety who have not recognized the spirit of Islam and think of Islamic piety as a quality equivalent to poverty.

The wrong thought and behaviour of such apparent believers cause the stagnation of some Islamic societies and, consequently, the development of the exploiters.

In the meanwhile, this very meaning of the verse is a slight hint to the idea that the logical abundance of wealth is lawful in Islam. The evidence is that the unlawful wealth that a person leaves behind in this world is not 'fair', but it is adversity and evil.

Some Islamic traditions indicate that the word 'khayr', here, refers to the considerable wealth that needs being bequeathed. Therefore the inconsiderable properties, which the heirs can divide between themselves according to the canonical law of heritage, need not be bequeathed.

In other words, a small amount of wealth is not something that one separates one third of it to leave a

bequest for. 7

The phrase: "...**when death approaches (any) one of you,**" is for the statement of the last opportunity available for leaving down a bequest so that if it be postponed, it may be missed. At any rate, it is fairly appropriate that we, having forethought and utilizing our opportunity, prepare ourselves by writing down our bequest.

This manner, as it is understood from the Islamic literature, not only is good but also quite admirable.

The Messenger of *Allah* said: "*Whosoever dies and has left a bequest has died as a martyr.*"⁸ This meaning is considerably mentioned in some other traditions, too. Then, it is from improvidence of a person who imagines that leaving a bequest is a bad omen through which a person pushes his death forward.

But, bequeathing is a kind of undeniable factual farsightedness which, although it might not prolong the longevity, will surely never shorten the life time.

Bequest restricted with the term / bil ma'ruf / (in a fair manner) shows that a bequest must be reasonable in all respects. It should be done in a fair manner both from the point of amount of wealth and in respect of the person to whom the bequest is addressed, so that customary law and common-sense know it rationally a good action; not a sort of unjust discrimination which usually causes conflicts and deviation from the limits of justice and truth.

When a bequest contains all the above mentioned qualities, it is respectable and sacred in all aspects. Hence, any change or conversion in it is forbidden and is counted unlawful (haram), as the verse itself says: "**Whoever then changes it (the bequest) after he has heard it, the sin thereof shall be on those who change it...**"

And, if they imagine that *Allah* does not know their plots, they are intensively in err, as it says:

"...Surely Allah is All-Hearing, All-Knowing."

This verse may also point to this fact that the wrong actions committed by the executor of testament never nullify the reward of the testator. When such an evil happens, the sin is only upon the executor of testament who has changed something from the quality or quantity of the testament or has interfered with the fundamentals of the testament itself.

Yet, the testator will obtain his own concerned godly reward whether the testament that he has left be changed later, in any form, or not.

Another probability has also been cited in the commentary of the verse. It says that the purpose is: when

the property of the dead, as the result of the wrong actions of the executor of testament intentionally is given to some ones who are not deserving of it, (and they are not aware of that wrong action), there is no sin on them. So the sin is only on the executor of testament who deliberately has committed such a wrong.

It should be also noted that there is no contradiction between these two commentaries, and both can be gathered from the meaning of the verse.

So far, concerning this Islamic decree, it has become quite clear that any change, of any kind and of any amount, in testaments is a sin. But, since there may be exceptions in a law or ordinance, then, in the last verse of this group of verses, it says:

"But if anyone fears injustice or sin on the part of a testator, and establishes agreement among them (the parties concerned), then there is no sin upon him; surely Allah is Forgiving, Merciful."

Thus, the exception is only due to the instances where the testament has not been arranged properly. It is only in this status that a change made by the executor of testament is permissible.

Then, if the testator is still alive, the executor must notify him/her of that intention to change the testament, but if the testator has passed away, the executor takes action on changing it himself. This situation, from the point of the Islamic jurisprudence, is restricted to the following cases:

1. When the testator has bequeathed more than one third of his total wealth. According to the Islamic literature based on the traditions narrated from the holy Prophet (S) and the Immaculate Imams (Ahlul-Bayt) (as), a person can make a bequest on his wealth only up to one third of it, since more than that is not religiously permissible in Islam. 9

Therefore, making bequest over the entire property benevolently for good intentions, which is common among some unaware people, is, regarding the Islamic laws, perfectly wrong. So, the duty is upon the executor of the bequest to decrease it up to one third of the remaining wealth.

2. If the testator has bequeathed something of sin, transgression, and evil to be performed, it is up to the executor to change it. For example, when the testator makes bequest that a part of his wealth be spent on the spread and development of some mischievous centers, or, also, when the bequest causes a necessary duty to be abandoned unreasonably, the executor is allowed to change it.

3. When something of the bequest brings about means of conflict, corruption, or blood shedding, in this case, the circumstance should be adjusted under the direction of the Islamic judge.

By the way, the Arabic term / janaf /, which means a deviation from the path of Justice and a unilateral inclination, hints to the deviations that seize the testator unconsciously; while the term / 'iṣm / (sin) refers

to the intended deviations.

The final phrase of the verse which says: "... ***Surely Allah is Forgiving, Merciful***" may point to the fact that if the executor of testament effectively removes or improves the wrong that the testator has done and returns him to the right way, *Allah* forgives him, too.

Explanation

The Philosophy of Testament

Regarding the law of heritage, only a particular group of relatives, and with a definite portion, inherits the wealth. This situation may be in the case that some other near and far relatives, or some of the close friends and local people, are in dire need of some financial aid.

In addition to that, sometimes it happens that the religiously ordained portion, ordained concerning the amount of heritage, is not sufficient to supply the needs of some heirs.

The inclusiveness of the Islamic laws does not let these gaps be left unfilled. So, it has issued the law of testament alongside the law of heritage. It lets Muslims decide on one third of their wealth to be spent after their death in a manner they like.

Besides that, sometimes a person wishes to do some good actions, but during his life-time he is not able to perform them, because of some financial necessities that he has. The logic of intellect demands that he decides on a part of the wealth, that he has suffered to earn during his life, to be spent on these good affairs after his death, at least, and not to be deprived of them.

All these circumstances have caused that the law of testament be decreed in Islam, and it has been emphasized with the phrase: "***this is a duty on the pious ones.***"

Testament is not restricted only to the above mentioned aspects, of course, but a person should explain all his debts to people, the deposits that others have given him to charge of, and the like of them in the testament so clearly that there may remain no ambiguous subject concerning the rights of men or the rights of *Allah* which have been upon him.

In Islamic literature, testament is frequently emphasized on. For example, a tradition narrated from the holy Prophet (S) says: "*It is not appropriate for a Muslim believer to sleep at night except that his testament is under his head.*" 10

The phrase 'under his head', mentioned in the above tradition, is, of course, for emphasis and the purpose is that he must always be prepared in this respect.

Justice in Testament

Taking the abovementioned explanation about the lack of transgression in testament in mind, there are many traces in Islamic traditions emphasizing upon the lack of 'transgression' and 'damage' in testament which, on the whole, indicate that as much as making a testament is a good and worthy deed, the same quality transgression in it is blameworthy and counted among grievous sins.

Imam Muhammad Baqir (as), in a tradition, says: *"He who regards justice in his testament is like the person who has given the same amount as charity (in the way of Allah) during his own life; but the one who treats unfair in his testament will meet Allah on the Day of Judgment while He will have turned away His Grace from him."* 11

Transgression, treating unfair, and damage in testament is that a person bequeaths more than one third of his wealth and deprives the heirs from their religiously lawful rights. Or, he may make some undue distinctions for the sake of his unreasonable loves and hatreds.

In the cases that the heirs are in dire need, even, the recommendation is that bequeathing one third of the wealth be decreased to a quarter or one fifth of the wealth. 12

When we study the Islamic narrations and the statements of the leaders of Islam in relation to the subject, we understand the emphasis and importance that they have considered for the existence of Justice in testament. The following tradition is one of the concerning instances:

Once at the time of revelation, one of the men from the Ansar tribe passed away. He had some little children, but he had spent his wealth on the path of *Allah* in a manner that there remained no more property from him. When the Prophet (S) became aware of it, he asked: *"What did you do with that man?"*

Then, the people thereby answered that they had buried him. The holy Prophet (S) said: *"If I had been informed of it before, I would not have permitted you to bury him in the graveyard of Muslims, because he has left his little children reduced to beggary."*

Bequest, Obligatory or Recommended

As it was said before, making testament, in essence, is among the emphatically recommended actions, but sometimes it becomes obligatory for some people. For instance, when a person has neglected or failed to pay the godly obligatory rights, or there are some things with him belonging to people, (formerly deposited to him), and the one thinks that their rights may be transgressed if he does not bequeath, then bequeathing is obligatory.

More important than that is when the position of a person in a society is so that if he does not make a bequest it is probable that the safe system of that society or their religion be inflicted an irreparable

severe blow upon. So, in all of these circumstances, it is obligatory to bequeath.

Bequest, is Changeable during the Life

The testator is not restricted by Islam to what he has bequeathed himself. A person is allowed to review the amount, the manner, and the executor of the bequest as long as he is alive, because when the time passes, circumstances may vary and his attitudes upon the aforementioned subjects change, too.

This point is also necessary to be mentioned that we must make use of bequest as a means of repairing our former shortcomings, in a manner that even if some of our relatives had shown unkindness to us, we display affection to them by the way of testament.

It is cited in some Islamic narrations that the leaders of Islam bequeathed some money especially for those relatives who were not kind to them in order to attract their affection again.

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1. Al-Mizan, vol. 1, p. 615 (Persian version)
 2. Tafsir-il-Qurtubi; vol. 2. p. 242
 3. Usul-i-Kafi. vol. 2. p. 660
 4. Surah Furqan, No.24, verse 75
 5. Surah Ar-Ra'd No.13, verse 24
 6. Surah As-Sajdah, No. 72, verse 24
 7. Tafsir-i-Nur-uth-Thaqalayn, vol. 1, p. 159
 8. Wasa'il-ush-Shi'ah, vol. 13, p. 352
 9. Wasa'il-ush-Shi'ah, vol. 13, p. 361
 10. Wasa'il-ush-Shi'ah, vol. 13, p. 352
 11. Wasa'il-ush-Shi'ah, vol. 13, p. 359
 12. Ibid, p. 360

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