Addaiyan Journal of Arts, Humanities and Social Sciences

(An international Publisher of Research & Academic Resources)
Journal Homepage: https://aipublisher.org/projects/ajahss/

OPEN ACCESS

ISSN : 2581-8783 (Online)

Obligatory Will in the Civil Code of Afghanistan: Analysis, Sharia Verification, and Case Solutions

Sher Maqsood Hidary,
Senior Teaching Assistant, Faculty of Islamic Law,
Kabul University, Afghanistan,

Research Article

Corresponding Author*
Sher Maqsood Hidary

Article History
Received: 13.03.2020
Accepted: 16.03.2020
Published: 31.03.2020

Abstract: Sharia status of Obligatory will is a controversial issue among Islamic Law's jurisprudents, with two leading views in this regard as follows: 1. According to Imam Abu Hanifa, if the deceased person has left some wealth behind, there will be no will obligatory upon him unless there is some right left on him that there is no way for its fulfillment except through a will. The author of Tafsir-al-Jassas emphasizes on the necessity of obligatory will in this case. 2. A number of jurists and Hadith scholars such as Saeed ibn Musayyab, Hassan Basri, Davood Zahiri, Isaac ibn Rahvaih, Ibn Hazm Zahiri and Imam Ahmad ibn Hanbal hold that will is obligatory for some of the relatives who are deprived of the inheritance. In order to provide social interests, and to prevent from hatred and jealousy among the non-heir grandchildren who have lost their father while their grandfather has been alive, so they are deprived of their grandfather's inheritance, the Afghan civil code does not regulate the obligatory will in accordance with Hanafi jurisprudence. But rather, it deems the will obligatory for non-heir relatives, specifically the grandchildren who could inherit from their parents by either quota or residuary, with certain conditions, under articles 2182 to 2188. Accordingly, it states that obligatory will has priority over any other wills.

Key Terms: obligatory will, inheritance, heir, Afghan civil code, inheritance share, descendant of the deceased.

INTRODUCTION

It is the requirement of one's general capacity and his or her ownership right that so long as he or she is alive, he or she may take any action on his possessions which does not conflict with public order and social interests, whether its effect appears after or prior to his or her death.

This issue has been universally accepted in all the statute laws of various Islamic countries, regardless of whatever disagreement in their related doctrine of jurisprudence exists.[1,2]

As per Islamic jurisprudence, considering the human and social aspects, any action related to the after death is permissible solely under two legal institutions that are inheritance and will. [3]

According to the law of inheritance, only a few of the deceased's relatives will benefit from inheritance based on a specific account, whereas it is likely that there would be some necessitous and

needy relatives who are completely deprived of the inheritance or whose shares are not sufficient for their basic necessities. Moreover, it is contradictory to the spirit and comprehensiveness of Islam for such a gap not to be considered.

Therefore, by providing the regulations for an obligatory will which bestow a person a right over one-third of his own property after his or her death, this problem has been solved; as it is consistent with the spirit of Islamic law in terms of the distribution of wealth on the basis of fairness and rationality. [4]

Additionally, the institution of will grants people the right to give a third of their inheritance to some heirs who have been, for any reason, deprived of their inheritance, or to spend it for the sole charity affairs of themselves.

It is on the basis of these great personal and social interests that Quran in Sura al- Baqarah gives order, especially for the pious people, for making a will, as it states: «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]

Alusi in regard to the above Ayah says: "Moreover, those Quranic exegetes who claim *Naskh* (abrogation) regarding the provision of the obligatory will, their views differ among themselves; as some of them maintain that the obligation of will is abrogated only for the relatives who inherit. Hence, it is still enforceable for the ones who do not inherit, whether they are parents or any other relatives, for instance, if they are unbelievers. This view is held by Ibn Abbas and Ali Ibn Abi-Talib.

Some of them view that obligation of the will has been abrogated universally, so it is *Mustahab (*agreeable) to make a will for those who do not inherit. This view is held by the majority of Quranic exegetes". [6]

In the contemporary world, a specific type of obligatory will, which is derived from the views of some *Sahabah* and *Zahiri* doctrine, is adopted in the family laws of the Islamic and Arab countries; as Ibn Hazm states in this regard: "It is obligatory upon each Muslim to make a will for the relatives who are deprived of inheritance, whether for being a slave, infidelity or just for being excluded by another heir." [7]

Accordingly, in this study, it has been ascertained what is the obligatory will, what is its legal basis, who are its beneficiaries, what are its requirements, may it combine with an agreeable will and whether the children of the deceased inherit via obligatory will in the lives of their grandparents.

Study Problems

1. Obligatory will is related to the inheritance law of Sharia, and as it is obvious, Sharia inheritance law is somewhat complicated compared to other branches of Sharia knowledge.
2. As the predominant jurisprudence practiced in Afghanistan is Hanafi, and it does not consider obligatory will legitimate; moreover, the Afghan civil law deems obligatory will necessary under certain circumstances, it becomes certain for such a study to refer to in-depth analysis in the subject within the literature of other Sharia jurisprudence schools.
3. Understanding the different forms of obligatory will and providing solutions for inheritance cases while there are no such problem-solving mechanisms in the civil code, adds up to the difficulty of the study.

Study Questions:

A: Main questions:

1. What is the obligatory will?
2. What views are held by Sharia jurisprudents regarding the obligatory will?
3. Whether the Afghan civil code deems obligatory will legitimate?

B: Subsidiary Questions:

1. Who are the beneficiaries of obligatory will?
2. What are the requirements for an obligatory will?
3. How much of the inheritance can be included in an obligatory will?
4. Is the enforcement of obligatory will on account of the inheritance or a will?
5. What are the approaches for solving the cases of obligatory will?

Methodology

The approach adopted throughout this article is generally desk research, although there are practical solutions with various examples provided for certain cases of obligatory will. Moreover, the issue of entitlement of the descendants of an ascendant who has died in the life of his or her parents has been approached with comparative and practical solutions.

Literature Review

While being a controversial issue among jurisprudents, the obligatory will is a kind of will in general; therefore, obligatory will has the same root with the will that has been legalized via the revelation of the Quran on Muhammad (PBUH).

But the first introduction of obligatory will to the legal systems and the law of Arabic-Islamic countries happened in Egypt, as its relevant provisions were regulated under articles (76-79) of Egypt's *will law*, no. 71, 1946. The reason behind the above fact is that prior to the mentioned date, Egypt and most other Arabic countries were under the rule of the Ottoman caliphate, and hereby, their will and inheritance law were regulated in accordance with Hanafi jurisprudence. [8]

Following the above trend, in Syria, obligatory will was included in its legal system under article 275 of *will law* ratified in 1953, as the enforced law prior to the above-mentioned was the relevant Ottoman law of 1973.

Subsequently, it was included in Iraq's legal system under article 74 of *will law*, ratified in 1979. [9]

In Afghanistan, before the enactment of civil code, will was be practiced under the Hanafi school of jurisprudence, but from the enactment of the civil code of 1977 onwards, it regulates obligatory will under articles 2181 to 2189.

Study Objectives

1. Understanding the nature of obligatory will plus jurisprudential views in this regard.
2. Explanation of the fact that obligatory will in the Afghan civil code, while having no consistency with Hanafi jurisprudence, does have Sharia legitimacy.
3. Familiarity with various forms of obligatory will in addition to the practical solutions for each one.

1. Concept of Obligatory Will

Will is generally defined as the transfer of ownership attributed to the after death, as a grant, whether the subject of will is property or benefit. [10]

Obligatory will, on the other hand, is defined as granting a portion of the inheritance to non-heir relatives of the deceased based on a binding will, even though there was no will made by the deceased during his or her life.

2. Sharia and Legal Status of Obligatory Will

There are various views held by Islamic jurisprudents regarding the Sharia status of obligatory will:

1. According to Abu Hanifa, if the deceased person has left some wealth behind, there will be no will obligatory upon him unless there is some right left on him that there is no way for its fulfillment except through a will.
2. A number of jurists and Hadith scholars such as Saeed ibn Musayyab, Hassan Basri, Davood Zahiri, Isaac ibn Rahvaih, Ibn Hazm Zahiri and Ahmad ibn Hanbal hold that will is obligatory for the relatives who are deprived of the inheritance.

They have based their argument on the Quranic verse that states: «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». [11]

Their argument on the above verse is that will which was the basis of inheritance law at the beginning of Islam has been abrogated by the verse of inheritance that sets forth specific shares for each one of the heirs; hence, the obligation of the will for those relatives who are deprived of the inheritance is an enforced provision yet.

The author of Tafsir-al-Jassas emphasizes the obligation of will based on the denotation of the above-mentioned verse, as he states: "The verse explicitly expresses the obligation of will, similar to the verse that obligates *fast:* «decreed upon you is fasting». [12] Furthermore, for the emphasis of the provision, at the end of Ayah, Allah says: «according to what is acceptable - a duty upon the righteous». As, the word "duty" clearly denotes the emphasis on the subject matter, and due to the fact that "righteousness" is an obligation, and this verse considers enactment of will as a requisite for righteousness, hereby, one may conclude that will is elevated by this verse to the level of obligatory provision." [13]

2.1 Civil code of Afghanistan

In order to provide social interests, and to prevent from hatred and jealousy among the non-heir grandchildren who have lost their father while their grandfather has been alive, so, according to the rules of inheritance, they get deprived of their grandfather's inheritance, the Afghan civil code, based the non-Hanafi view, deems the will obligatory for non-heir relatives under certain conditions. Following are the Afghan civil code articles that treat the issue of obligatory will:

Article 2182:

If the deceased does not make a will for a descendant of his son who died when the deceased was alive or died, really or legally, simultaneously with the deceased, on an amount equal to the share to which the mentioned son would have been entitled had he been alive at the time of his death, a will for the mentioned descendant, proportionate to the mentioned amount of entitlement, within the limits of one-third of the inheritance, shall be obligatory, provided that the descendant is not an heir and that the deceased, when alive, did not gratuitously give him a property by another action that was proportionate

to the obligatory portion. If he gave him the property but it is less than the obligatory share, he shall be entitled, through the obligatory will, to an amount that will complete the mentioned share.

Article 2183:

The will be stated in Article (2182) of this Law shall be for the first category of children of full daughters and for children of full sons, even in a lower degree, in an order that each ascendant shall exclude his descendant without another descendant, and the share of each ascendant shall be divided to his descendants, even if the division of inheritance goes lower in its degree, such as if ascendant or ascendants, through whom the person relates to the deceased, have died after him and their death have happened in order of categories.

Article 2184:

Observation of provisions of Articles (1999) and (2000) of this Law in 'obligatory will' shall be imperative.

Article 2185:

In entitlement to obligatory will, descendant shall not be entitled to a share more than what his ascendant would have been entitled to if he had been alive after the death of the testator. Also, the person entitled to obligatory will may not be entitled to a share more than those of persons who have the same degree of relationship with the deceased as he has.

Article 2186:

(1) If the testator makes a will for a person entitled to obligatory will more than his share, the exceeding amount shall be considered optional and if the will is made for less than his share, the completing amount shall be mandatory.

(2) If a will is made for some of the persons entitled to obligatory will and not for the others, persons for whom the will is made shall be entitled to their shares.

(3) Share of a person for whom a will is not made and the remaining amount of shares of those for whom a will is made for less than their obligatory shares shall be paid out of the remaining part of the one third and if the one third is not sufficient, it shall be paid out of the one third and what is allocated for an optional will.

Article 2187:

Obligatory will shall be recognized as prior over other wills.

Article 2188:

If a will is not made for persons entitled to obligatory will while it is made for others, the person entitled to obligatory will shall be entitled, by way of an obligatory will, to an amount proportionate to his share from the one-third of the remaining part of the inheritance, if it is sufficient. If the one-third of the remaining is not sufficient for their share, they shall be paid out of the one-third of the remaining and what has been willed for others.

It should be noted that the non-binding of will for a non-heir relative is not a unanimous provision among jurisprudents.

3. Entitled People to Obligatory Will

Considering the articles (2182-2183) of the Afghan civil code, it becomes obvious that will is obligatory for the following people:

1. The first category of children of full daughters of the deceased, like the son of the daughter of the deceased and the daughter of the daughter of the deceased. That being so, a will is not obligatory

for the children of the daughter of a daughter or the children of the son of the daughter of the deceased.

2. Children of full sons if their relation to the deceased is established via a male. Thus, children of the son of the deceased, even to a lower degree.
3. The descendant of a person who has died with one of his parents in the same accident.
4. The descendant of someone who has been declared dead while his parents are alive, like a missing person.

However, in the entitlement of inheritance through obligatory will the two following points should be taken into consideration:

1. The ascendant who has excluded his descendant cannot exclude the descendant of another ascendant.

For instance, if the deceased has a son and a son of a son who has passed away, as the alive son is not the ascendant of the son of a son, he does not exclude him from an inheritance, though, if this son has children of his own, they will be excluded by him; in other words, just he will inherit from his father, not his children.

2. The distribution of every ascendant's share, either male or female, to his or her descendants that include both sexes, should be on the principle that a male shall inherit twice as much as a female. [14]

4. Conditions for the Entitlement of Obligatory Will

In view of the article (2182) of the civil code, there are two conditions required for the entitlement of obligatory will:

1. The descendant who is subject to receive obligatory will should not have received any share, even a small one, of the inheritance.
2. The deceased (grandfather or grandmother), when alive, has not gratuitously given the descendant by another action, like donation, endowment, and will, a property that was proportionate to the obligatory portion.

If he has given him the property that is less than his obligatory share, he will be entitled, through an obligatory will, to an amount that will complete his share of obligatory will. [15,16]

5. Quantity of Obligatory Will

The obligatory will is measured against the amount that the deceased ascendant of the person for whom the will is made receives from the inheritance had he been alive provided that his share does not exceed one-third of inheritance. Consequently, if his share exceeds the mentioned one third, the obligatory will shall be enforced only on the scope of one third, and enforcement of the exceeding amount will require the approval of the rest of the heirs. Thus, obligatory will is measured against the least of two amounts of inheritance:

1. The amount that the deceased ascendant of the person for whom the will is made receives from the inheritance had he been alive.
2. One third of the inheritance after discharging of expenses of funeral and its arrangements plus the debts for which the deceased was liable.

Accordingly, whichever of the above shares is the least will be enforced as obligatory will, hence, if the one third is the least amount, it should be enforced. Likewise; the amount of the will exceeding one third is considered optional will, so, its enforcement will depend on the approval by the rest of the heirs.

The above-mentioned amount of obligatory will is regulated by the law; although, Sharia jurisprudents who are in favor obligatory will have not determined any amount for it. [17,18]

The view of the civil code in this regard is as follows:

Article 2185:

In entitlement to obligatory will, descendant shall not be entitled to a share more than what his ascendant would have been entitled to if he had been alive after the death of testator. Also, the person entitled to obligatory will may not be entitled to a share more than those of persons who have the same degree of relationship with the deceased as he has.

Article 2186:

If testator makes a will for a person entitled to obligatory will more than his share, the exceeding amount shall be considered optional and if the will is made for less than his share, the completing amount shall be mandatory.

If a will is made for some of the persons entitled to obligatory will and not for the others, persons for whom the will is made shall be entitled to their shares. [19,20]

6. Solutions for the Cases of Obligatory Will

1. According to Islamic jurisprudence, along what is regulated by the article (1997) of the civil code of Afghanistan, the will should be discharged out of the inheritance, after paying off the expenses of the funeral and its arrangement, then debts of the deceased, from one-third of the inheritance; however, its discharge should happen prior to division of the remaining of the inheritance among heirs. Accordingly, per article (2187) of the civil code, the discharge of obligatory will out of inheritance has priority over other wills, hence over the distribution of the remaining of the inheritance among the heirs.

2. Obligatory will should not exceed one-third of the inheritance.

3. Obligatory will is discharged as part of the will, not as part of the inheritance, thus, it should be discharged out of the overall inheritance, not just one-third of it. [21,22]

4. While solving the cases of obligatory will, the rules of both inheritance and will be observed, accordingly; any solution for an obligatory will's case should be in the following order:

a. The person who has died while his ascendant being alive should be assumed living, then the inheritance should be divided among them all, so the share of the deceased who has been assumed alive becomes known.
b. One-third of the inheritance should be identified after the discharge of the cost of the funeral and its arrangements plus paying the debts off.
c. After the determination of the above-mentioned share, it should be assessed whether the determined share equals one-third of the inheritance, is more than it, or less than it. In the case of his share being equal to one third, likewise, if it is less than that, the descendant will receive his share as an obligatory will. However, if his share exceeds one third, he will become entitled to no more than one third.
d. After the discharge of the obligatory will's amount, the remaining of the inheritance will be divided among the heirs.

6.1 Example 1

Heirs: daughter, daughter, daughter of a son who has died while the deceased has been alive.

Inheritance: 120 dinars after the discharge of the funeral and its arrangements, and paying off the debts.
Solution:
Fist: the deceased father of the daughter or son, should be assumed alive, accordingly, the heirs are assumed to be: daughter, daughter, and son.

Table 1 *Inheritance shares of son,*

Deceased		
	4	
Son Independent residuary 2	Daughter residuary due to other 1	Daughter residuary due to other 1

- 120÷4=30
- So, the value of each share equals: 30
- Daughter's share=30
- Daughter's share=30
- Son's share=60

Second: one-third of the inheritance should be determined, as 120÷3=40
Third: On the ground of the above explanation, the share of the son who has been assumed alive is 60 dinars which exceed one third: 40, therefore, the daughter of the son does not become entitled to her father's inheritance share. Instead, she will receive one-third of the inheritance, that is, 40 out of 120 dinars. The remaining 80 dinars will be divided between the two daughters based on their inheritance share as follows:

Table-2

Table 2 *Inheritance shares of two daughters*

Deceased	3 redistribution to 2	
	Daughter	Daughter
	1 ..... 2/3	1

- 80÷2=40
- So, the value of each share equals: 40
- Daughter's share=40
- Daughter's share=40

6.2 Examples 2
Heirs: father, mother, two sons, and daughter of the son who has died while the deceased has been alive.

Inheritance: 1800 dinars after the discharge of costs of the funeral and its arrangements, and paying off the debts.

Solution:

Fist: the deceased father of the daughter or son, should be assumed alive, accordingly, the heirs are assumed to be: father, mother, and three sons.

Table-3

Deceased	6×3=18	
Three sons	Mother	Father
Independent residuary	1/6	1/6
4	1	1
12	3	3

- 1800÷18=100
- So, the value of each share equals: 100
- Father's share=100×3=300
- Mother's share=100×3=300
- Three son's shares=100×12=1200

Second: One-third of the inheritance should be determined, like 1800÷3=600

Third: Based on the above explanation, the share of the son who has been assumed alive is 400 dinars which are less than one third: 600, thus, the daughter of the son is entitled to her father's inherence share which is 400 out of 1800 dinars. The remaining 1400 dinars will be divided between the two sons based on their inheritance share as follows:

Table 4 *Inheritance shares of two sons, mother, and father*

Deceased	6	
Two sons	Mother	Father
Independent residuary	1/6	1/6
4	1	1

- 1400÷6=233.3 dinars
- So, the value of each share equals: 233.3
- Father's share=233.3
- Mother's share=233.3

- Two son's shares=933.3

7. Discussion

Obligatory will is not permissible according to the majority of Islamic jurisprudents. Their view is based on the fact that the rules and provisions for inheritance and will are obviously stated in Sharia, by which only the people identified to be heirs will receive their shares from the inheritance. That being said, the question arises as to why the civil code of Afghanistan has adopted obligatory will while going against the view of the majority of Islamic jurisprudents including Hanafi school that is the predominant one in Afghanistan.

Accordingly, the above view will be disputed as follows:

1. Some of the jurists consider obligatory will permissible on the basis of the Quranic verse: «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…». [23]They maintain that the obligation of will is abrogated solely for the relatives who inherit, hence, it is enforceable for the ones who do not inherit, whether they are parents or any other relatives, as if they are unbelievers.
2. Moreover, according to the political view of Islam, the head of the government has the authority to choose from different views held by *Mujtahid*s and jurisprudents to enforce the one that is in the very interest of the public. As for the obligatory will, there is no doubt that it provides social interests, and serves the public through prevention from hatred and jealousy.

8. Conclusion

The findings achieved through this article are as follows:

- Obligatory will is part of the will, not part of the inheritance; hence it should be enforced prior to the distribution of inheritance among the heirs.
- Obligatory will shall be enforced prior to any other wills.
- According to some Islamic jurisprudents, the obligatory will is permissible; as it is consistent with the spirit of Islamic law, provides social interests, and prevents from hatred and jealousy among the non-heir grandchildren who are deprived of the inheritance of their grandfather for they have lost their father while their grandfather has been alive
- In Afghanistan, prior to the enactment of the civil code, will was be practiced under the Hanafi school of jurisprudence, but for the first time, the civil code of 1977 regulated obligatory will as permissible.
- While solving obligatory will's cases, the principles of both inheritance and will should be observed, thus, it is enforceable from the sole one-third of inheritance, and the exceeding amount will belong to the permission of the heirs.

*****

References

1. Faraj, Husain Ahmad, Imam Mohammad Kamaluddin. Nizamul-Irs wal-Wasaya wal-Awqaf fil-Fiqhil-Islami. 2nd Ed. Al-Halabi Legal Publications, Lebanon, 2002. p. 16.

2. Sibayi, Mustafa. Sharh Qanun al-Ahwal al-Shakhsiya. Al-maktabatal-Islamiyya, Beirut, 1996. p. 27.

3. Hurr Amili, Mohammad ibn Hasan. Wasayilul-Shia Ila Tahsil Masailul-Sharia. Dar Ihya al-Turath al-Arabi, Beirut, 1981. p. 352.
4. Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu. Dar al-Fikr, Damascus, 1989. vol. 8, p. 122.
5. *The Holy Quran*, Al-Baqara: 180.
6. Alusi, Shihbuddin Mahmood. Ruhul-Maani fi Tafsir al-Quran al-Azim was-Sabulmathani. Dar al-Kotob al-Ilmiyah, Beirut, 1994. vol, 1, p. 452.
7. Ibn Hazm, Ali ibn Mohammad. *Al-Muhalla.* Idāratal-Ṭibāʻahal-Munīrīyah, Egypt, 1932. vol. 9, p. 314.
8. Faraj, Husain ahmad, Imam Mohammad Kamaluddin. *Nizamul-Irs wal-Wasaya wal-Awqaf fil-Fiqhil-Islami*. 2nd Ed. Al-Halabi Legal Publications, Lebanon, 2002. p.18.
9. Shalabi, Mohammad Mustafa. Ahkamul-Mawarith Bain al-Fiqh wal-Qanun. Al-Dar al-Jameyiya, Beirut, 1982. p. 18.
10. Al-Zilayi, Usman ibn Ali. Tabyinul-Haqayiq Sharh Kanzul-Daqaiq. Al-Maktba al-Amiriya, Cairo, 1895. vol. 6, p. 182.
11. *The Holy Quran*, Al-Baqara: 180.
12. *The Holy Quran*, Al-Baqara: 183.
13. Al-Jassas, Ahmad ibn Ali.Ahkamul-Quran. Dar Ihya al-Turath al-Arabi, Beirut, 1985.vol.1, p. 203.
14. Ministry of Justice of Afghanistan. *Civil code*. Afghanistan justice and judicial project, Kabul, 2007. vol. 4, p. 109-112.
15. Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu. Dar al-Fikr, Damascus, 1989. vol. 8, p. 124.
16. Sanhori, Abdul-Razaq.Al-Wasit fi Sharhil-Qanun al-Madani. Dar Ihya al-Turath al-Arabi, Beirut. vol. 9, p. 216.
17. Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu. Dar al-Fikr, Damascus, 1989. vol. 8, p. 124.
18. Abu Zuhra, Mohammad. Sharh Qanun Al-Wasiyah. 2nd Ed. Anglo-Egyptian Bookshop, Cairo, 1950. p. 203.
19. Ministry of Justice of Afghanistan. *Civil code*. Afghanistan justice and judicial project, Kabul, 2007. vol. 4, p. 110-112.
20. Sanhori, Abdul-Razaq.Al-Wasit fi Sharhil-Qanun al-Madani. Dar Ihya al-Turath al-Arabi, Beirut. vol. 9, p. 216.
21. Al-Zuhaili, Wahbah. Al-Fiqh al-Islami wa Adillatuhu. Dar al-Fikr, Damascus, 1989. vol. 8, p. 122.
22. Ministry of Justice of Afghanistan. *Civil code*. Afghanistan justice and judicial project, 2007. vol. 4, p. 111.
23. *The Holy Quran*, Al-Baqara: 180.