

# Dimensions of the Provisions Regulating the Mandatory Will in Jordanian Personal Status Law no. (15) of 2019 "Critical Analytical Study"

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The study looked at the provisions regulating the mandatory will in Jordanian Personal Status no. (15) of 2019; to demonstrate the extent of the Jordanian legislator's observance of justice in judgements regulating the mandatory will in the law, reaching to legal, legitimate, social and economic dimensions of these provisions, through the descriptive approach based on studying the provisions regulating the mandatory will, and through the inductive approach by tracking the provisions regulating the mandatory will in Jordanian Personal Status Law, and then analyzing these provisions depending on the analytical approach to reach the intended objectives of this study. The study concluded that Jordanian legislator was probably wrong upon adoption of the provisions regulating the mandatory will and applying it in Jordanian Sharia Courts. The study recommended the necessity of reviewing the provisions regulating the mandatory will in Jordanian Personal Status Law to include grandfather branches of son's side and of daughter's side as well; those who passed away in their father's or mother's life, to achieve justice between them.

**Keywords:** Mandatory will, dimensions, Jordanian Personal Status Law.

## 1. Introduction

It is well known that justice is the intention for the legislator in all of the legitimate provisions in our honorable Sharia, therefore, the Islamic sharia has endeavored to achieve this justice in all its fields without distinguishing between human beings of different species, colors and religions, no difference between male and female, black and white, Muslim, non-Muslim or

rich and poor. So, it is imperative to work towards achieving it in the legal, social, economic, and political fields, ...etc., especially, with almost toxic suspicions directed at many legitimate provisions enplaced in Islamic jurisprudence books, which aims at questioning those provisions, appealing their justice, and underestimating them, and hence, we had to lock all outlets which would achieve their poisoned objectives, and since the judicial domain was one of the most important areas seeking justice among opponents, so its positives are reflected on the community, and as a result security, stability and psychological satisfaction are achieved at all society levels.

Since Jordanian Personal Status law was a legitimate law in all its rationed jurisprudence choices, it was necessary to achieve that justice in all its provisions regulating all the subjects covered by law. One of the subjects addressed in Jordanian Personal Status Law is the mandatory will, which had special regulatory provisions in the law. In view of those provisions, we find it necessary to analyze and address them to achieve a rule of the overall rules of Islamic Sharia': that is justice, to slam the door before those tendentious individuals to poison those provisions, which would affect the legal, legitimate, social, and economic entity when applying those legal provisions.

#### Study Problem:

The study problem is to answer the two following questions:

1. What is the extent of the Jordanian legislator observance of justice in the provisions regulating the mandatory will in Jordanian Sharia Courts?
2. What are the legal, legitimate, social, and economic dimensions of the provisions regulating the mandatory will in Jordan's personal status law?

#### Study Objectives:

1. Demonstration the extent of the Jordanian legislator's observance of justice in the provisions regulating the mandatory will in Jordanian Personal Status Law.
2. Access to the legitimate, legal, social, and economic dimensions of the provisions regulating the mandatory will in Jordanian Personal Status Law.

#### The importance of the Study:

The importance of the study is represented in the following:

- Theoretical aspect: The study addresses the provisions regulating the mandatory will in Jordanian Personal Status Law; to clarify the legislative voids within those provisions, which would impair justice when applied in Jordanian Sharia Courts.
- Practical aspect: The study contributes to accessing the legitimate, legal, social, and economic dimensions of the provisions regulating the mandatory will in Jordanian Personal Status Law and suggesting what is needed to achieve justice in those provisions.

#### Study Limitations:

This study is considered a purely legal study of the provisions regulating the mandatory will in Jordanian Personal Status Law no. (15) of 2019 to demonstrate the extent of Jordanian legislator's observance to achieve justice in those provisions, and to address the jurisprudential

aspect in the topics that serve the study objectives.

#### Study Approach:

This study is based on the descriptive approach based on studying the subject of the mandatory will, and the inductive approach by tracking the provisions regulating the mandatory will in Jordanian Personal Status Law, and then analyzing those provisions by adopting the descriptive analytical approach to reach the desired objectives of this study.

#### Previous Studies:

There are several studies that addressed the subject of mandatory will whether from jurisprudential or legal side. And after considering most of those studies, I have not encountered any analytical study of the provisions regulating the mandatory will to reach its dimensions, to demonstrate the legislative voids within law texts, and to propose what is needed for the Jordanian legislator to achieve justice in those texts.

1. Bani Salama Study, Mohammad Khalaf, Aldous, Rassmiyah, Jwihan, Ma'an, Research titled: (Mandatory will and its applications in Jordanian Sharia Courts), published in the yearbook of the Faculty of Islamic Mission in Cairo, 2017: This study demonstrated the legal provisions associated with the will in general and the mandatory will in particular, clarifying the practical aspect of how to proceed with the will lawsuit before the Jordanian Sharia judiciary, indicating the provisions related to it in the Islamic jurisprudence and Jordanian laws, as well as referring sometimes to some Arab laws related to Mandatory will.

2. Abu Al-Basal, Abd Al-Nasir Study, a research entitled; (Mandatory will between jurisprudence and Jordanian Personal Status Law: A critical comparative study), published in Human and Social Sciences Series, Yarmouk University, 2021: This study addresses the will issue given by law to children of who passed away in the life of their father or mother, where the research touches on the origin of its creation, the conditions of applying it, the problems arising when applied, and the solutions proposed from these problems.

This study is distinguished from the previous two studies by demonstrating the extent to which the Jordanian legislator considers justice in the provisions regulating the mandatory will in Jordanian Personal Status Law, and the access to the legitimate, legal, social, and economic dimensions that would exclude justice in those provisions.

## 2. Study plan:

The study plan is as follows:

- Abstract
- Introduction
- First Section: What is the mandatory will linguistically, jurisprudentially, and legally?

First requirement: The definition of mandatory will linguistically, jurisprudentially, and legally.

Second requirement: Legality of the mandatory will.

Third requirement: Formation of the mandatory will, and its form in the law.

- Second Section: Dimensions of the provisions regulating the mandatory will in Jordanian Personal Status Law.

First requirement: Legitimate dimensions of the provisions regulating the mandatory will.

Second requirement: Legal dimensions of the provisions regulating mandatory will.

Third requirement: Social dimensions of the provisions regulating mandatory will.

Fourth requirement: Economic dimensions of the provisions regulating mandatory will.

- Conclusion, which includes:

- Results

- Recommendations

First section: What the Mandatory will is linguistically, jurisprudentially and legally

In order to demonstrate what the mandatory will is, we must be aware of the linguistic, jurisprudential and legal meaning of the mandatory will, its legitimacy, and its form in accordance with Jordanian Personal Status Law. I arranged this section in three requirements, I will demonstrate them as follows:

First requirement: Definition of the mandatory will linguistically, jurisprudentially and legally

First branch: Definition of the mandatory will linguistically

The origin of the word will from (will) we say: "He willed (bequeathed) something to him, and he willed to (bequeathed to) him, means to make him a will, and the noun is will, we say: he willed to (bequeathed to) him, and the will has several meanings:

1. We say: I bequeathed something: I got to someone, it is said we treaded grassy land, which means full of grass.
2. We say: People bequeathed which means they bequeathed each other.
3. The will is named for the meaning of pledging others doing something.

We note from the previous definitions that they are close, and perform the same meaning in our study, and this will be clear when the jurisprudential meaning of the will is demonstrated in the next branch.

Second branch: Definition of the mandatory will jurisprudentially

The ancient jurists did not address to define the mandatory will as a compound term, but they addressed the meaning of the will, their definitions of the will varied as follows:

- Messrs. Hanafi defined it as: "Ownership added to after death by donation, whether it be in kind or a benefit".
- Messrs. Maliki defined it by saying: "A contract that entitles a right in one third of the contractor's that is required after his death or on his behalf thereafter".
- Messrs. Shafei defined it as: "A donation of an added right albeit in appreciation for post-

death".

- Messrs. Hanbali defined it as: "Donation of money after death"

The tracker of the previous jurists' definitions notes that the definitions are quite close, but Hanafi considered that the will is an ownership includes all transferring ownership contracts such as sale contract, and their restriction of the will through donation bring out the recognition of debt, while Maliki adapted the will as a contract resulting in owning the legatee one third of the legator's money after his death, whereas Shafei and Hanbali viewed the will as a donation added to post-death. These definitions entirely serve the general meaning needed in our study.

Jordanian Personal Status Law stipulated the definition of the mandatory will in article (254) as: "The will is a disposition of heritage added to beyond the death of the legator" The Jordanian legislator did well when he expressed the will as "disposition", which is a broader word in terms of content, but restricted it to beyond the death of the legator. The Jordanian legislator has thus committed to jurists' definition on one hand and has expressed it by the word "disposition", avoiding what jurists have expressed in their books, that it is a contract, ownership, or donation, on the other hand.

Third branch: Definition of mandatory will legally

Definitions of mandatory will have varied among law jurists. To demonstrate its meaning and purpose, some of its legal definitions must be found.

As we have previously stated, the ancient jurists did not define the "mandatory will" as it is with the contemporary jurists. The mandatory will is nascent and updated in this era, and in order to detect what it is, we review some legal definitions among law jurists and Jordanian Personal Status Law as follows:

- Badran Abu al-Enin defined it as: "The mandatory will for grandchildren whose fathers and mothers die in the lives of their father and mother, and who do not inherit anything after the death of their grandfather or grandmother because of the presence of those who obscure them from inheritance"

- Dr. Omar al-Ashqar defined it as: "An ownership of a known share of the inheritance, reparation to the branch of son who passed away in the life of his inheritor, on special terms".

- Ahmad Al-Ajooz said "It is the proof of the inheritance from one of the children who passed away before the death of his inherited father and the transfer of his inheritance to his children after"

However, the Jordanian legislator stipulated the mandatory will according to the article (279) : "If a person passed away with children of a son passed away before or with him, his grandchildren must have one third of his inheritance by bequest according to the following amount and conditions:

a. The mandatory will is equal to the amount that their father inherits from his deceased origin on the imposition of the death of their father following the death of his mentioned origin, but not more than one third of the inheritance.

b. Grandchildren are not entitled to a will if they inherit their father's ancestry, whether

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he is a grandfather or a grandmother, unless the owners take the inheritance.

c. Grandchildren are not entitled to a will if their grandfather has bequeathed or has given them in his life without compensation an amount equal to what they deserve in this mandatory will, so if he bequeathed or gave them less than that, it must be completed, and if he bequeathed more, the excess is an optional will, and if he bequeathed to some of them, other must have as much as a share.

d. The will should be to the children of the son and the children of the son of the son, and down with one or more as the male has the share of two females. Each origin blocks his branch and not other branches, and each branch takes its origin's share only.

e. The mandatory will is provided on the optional will in entitlement from one third of the inheritance."

We will deal with this article in the chapter of demonstration of the form of the mandatory will according to the provisions regulating it in Jordanian Personal Status Law.

Looking at the previous definitions, we note that all definitions have agreed that the mandatory will is unique to grandchildren from the son's side and not the daughter's side, however, Dr. Abu Al-Enein did not restrict the entitlement of the mandatory will for descendants of a certain gender, but made the definition on its absoluteness.

#### Second Requirement: Legitimacy of mandatory will

The mediator of the sources of Islamic legislation does not find such an explicit provision on the mandatory will related to our study, but we find many provisions that indicate the absolute legitimacy of mandatory will without a restriction with the word (mandatory), of which we mention what is stated in the following legislative sources:

##### 1. The Holy Qur'an:

Allah said: "Prescribed for you when death approaches one of you if he leaves wealth a bequest for the parents and near relatives according to what is acceptable- a duty upon the righteous" (Al-Baqara/ 180)

And the Almighty said: "after any bequest he may have made or debt" (An-Nisā/ 11)

##### 2. The Honorable Sunnah:

Ibn 'Umar -may Allah be pleased with them both- reported God's Messenger as saying, "It is the duty of a Muslim man who has something which is to be given as a bequest not to have it for two nights without having his will written regarding it."

##### 3. Unanimity:

Scientists were unanimous in the wills' permissibility and legitimacy; that human needs to seal his work with proximity in excess to the proximity he previously provided, or in response to his shortened work, and this beautiful meaning is achieved by the will.

#### Third Requirement: Formation of Mandatory Will and its Form in Law

##### First Branch: Formation of Mandatory will

The mandatory will arose in the context of questioning the fate of the inheritance of grandchildren in case of the death of their ancestor (father or mother) in the life of his mother and father. Are his offspring deprived of the inheritance he deserves if he was alive because the inheritance system in Islam does not give them any of the grandfather and grandmother's inheritance because there are those who obscure them, and as a result of this brain storming, Modern jurists have created the mandatory will to address this social problem.

The Egyptian legislator was pioneering in introducing legal texts related to the mandatory will in 1946, in the articles 76 – 79 that he gave the mandatory will to the deceased child's branch in the life of his or her origin, regardless of the son's branch whatever he is down as he is from the back's children. But, if he was a belly boy, he deserves it only if he was from the first layer. The back's children are those who do not belong to the dead by a female, such as the son, the son of the son, and the son of the son's son whatever he is down, and the son of the daughter whatever he is down. The belly boys are those who belong to the dead by a female, such as the son of the daughter, the son of the daughter's son, and the son of the son's daughter.

The Jordanian legislator got the mandatory will in the Personal Status Act of 1976, and introduced legal texts of its own.

The question that arises is: Is there a legitimate document of the mandatory will that authorized it by modern jurists or is it just a matter of jurisprudence?

In fact, the inspector on the jurists' books finds that Imam Ibn Hazm Al-Dhahiri has singled out the idea that if the legator passed away and did not bequeath to his relatives who are not entitled to inherit, then, the judge is acting in his place by allocating a portion of his will as an mandatory will, and we note that Imam Ibn Hazm Al-Dhahiri did not specify who of the relatives who are not entitled to inherit must have the will, and did not determine its amount".

Modern jurists who have authorized the mandatory will have relied on their extrapolation from jurisprudence that every permit is ordered by the Imam for an interest, so, the parish must do it.

In summary, there is no clear and explicit legal evidence states the mandatory will, but it an issue of jurisprudence, supported by some jurists and disputed by others by mental evidence, we will describe in this study.

#### Second branch: The Form of Mandatory Will in Law

Jordanian Personal Status Law no. 15 of 2019 in article 279 stipulates the mandatory will, indicating its form and the conditions of its entitlement according to the law.

“If a person passed away with children of a son passed away before or with him, his grandchildren must have one third of his inheritance by bequest according to the following amount and conditions...”

So, in case the son passed away before or with his father and the son left children, then the grandparent passed away, the grandchildren (children of the deceased son) have the right of one third of the inheritance, with the necessity of meeting the conditions that the law has stipulated in the same article.

By inspecting the terms of the previous article, and according to applying the mandatory will



in Jordanian Sharia Courts, we find that the mandatory will is for the children of the son and the children of the son's son, and down with one or more as the male has the share of two females, thus the mandatory will is mandatory for the children of the son males and females, and for the children of the son's son and down, and not for the children of the daughter, so if the daughter passed away before her father and she was married and has children, the mandatory will is not mandatory for them.

Example: A man passed away and he has three children, a wife, and children of a son, so, each inherits their share and the children of the son inherit their father's share as if he was alive unless their share did not reach one third of the inheritance.

Furthermore, Jordanian legislator has stipulated the conditions of eligibility of the mandatory will as follows:

- a. The mandatory will is equal to the amount that their father inherits from his deceased origin on the imposition of the death of their father following the death of his mentioned origin, but not more than one third of the inheritance.
- b. Grandchildren are not entitled to a will if they inherit their father's ancestry, whether he is a grandfather or a grandmother, unless the owners take the inheritance.
- c. Grandchildren are not entitled to a will if their grandfather has bequeathed or has given them in his life without compensation an amount equal to what they deserve in this mandatory will, so if he bequeathed or gave them less than that, it must be completed, and if he bequeathed more, the excess is an optional will, and if he bequeathed to some of them, other must have as much as a share.
- d. The will should be to the children of the son and the children of the son of the son, and down with one or more as the male has the share of two females. Each origin blocks his branch and not other branches, and each branch takes its origin's share only.
- e. The mandatory will is provided on the optional will in entitlement from one third of the inheritance.

Looking at the previous paragraphs of article (279), we notice that the Jordanian legislator has stipulated the conditions of eligibility of the mandatory will in Jordanian Sharia Courts as follows:

1. Paragraph (a) of article 279 indicated that the mandatory will of the grandchildren equals the amount of their father's share in the inheritance that he was going to take if he was alive provided that this share does not exceed one third of the inheritance, so, it is a will and not a inheritance, it means that we deal with the mandatory will as other optional wills with a difference that the mandatory will precedes other wills according to paragraph (e) of the article (279): "The mandatory will is provided on the optional will in entitlement from one third of the inheritance".
2. Then paragraph (b) of the same article indicated that one of the requirements of the mandatory will is that grandchildren are not entitled to a will; that there are no children in this case, because the son of the son inherits if there are no children for the dead person.
3. As well, the third paragraph (c) of the same article indicated that one of the



requirements of the mandatory will is that the grandfather has not given them in his life an amount equal to what they deserve in the mandatory will or bequeathed for them, but if he bequeathed or gave them less than that, the will must be completed.

4. Then paragraph (d) of article 279 indicated that the will should be to the children of the son whether they are males or females, and to the children of the son of the son, and down, and not to the children of the daughter. So, if the daughter passed away before her father and was married with children, there will not be an mandatory will for them.

The main idea which concerns us in our study is paragraph (d) of article (279) which stipulates that the mandatory will is for the children of the son whether they are males or females, apart from the children of the daughter whose mother passed away in the life of her father or mother. Then the subpoint of our study is in the same paragraph and article which stipulates that the mandatory will is for the sons of the son of the son, and down, while it is not for the children of the son's daughter and down. In this direction of the Jordanian legislator, many questions arise, such as:

Why the children of the daughter, whether they are males or females, are excluded of the mandatory will, when the daughter who passed away in her father's life is his own and deserves a share in the inheritance when he dies?

Then, why the Jordanian legislator restricted the mandatory will to the first class of son's daughter, while the mandatory will is for the children of the son and down?

Second Section: The Dimensions of Provisions Regulating the Mandatory Will in Jordanian Personal Status Law

In the previous section, we demonstrated the definition of the mandatory will, then we indicated its legality, its form, and its conditions of entitlement in Jordanian Personal Status Law. In this section, we demonstrate the legal, legitimate, social, and economic dimensions of the provisions regulating the mandatory will in Jordanian Personal Status Law no. (15) of 2019.

First Requirement: The legitimate dimensions of the provisions regulating the mandatory will

In the previous section, we demonstrated that the mandatory will according to Jordanian Personal Status Law is for grandchildren whose father passed away in the life of his origin (his mother or his father), so, it is for male children of the son and down, and for the daughter of the son of the first class within conditions mentioned in article (279) of Jordanian Personal Status Law. We also demonstrated that the mandatory will is a jurisprudence issue which does not have a clear direct legitimate document in Allah's book and our prophet's Sunnah, furthermore it was not in the righteous caliphs' period nor in the followers' period, and the jurists of the four doctrines did not talk about it, whereas all legitimate evidence indicates the absolute legitimacy of the will.

Moreover, the Jordanian legislator did not stipulate the right of daughter's children whose mother passed away in her parents' life according to the paragraphs of article (279) of Jordanian Personal Status Law.

By looking at the legitimate document upon which he relied to adopt the idea of the mandatory will, we find that this origin is narrated by great collection of followers' jurists and who

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followed them of jurisprudence and Hadith jurists, such as Said ibn Al-Musayyib, Al-Hasan Al-Basri, Tawus, Imam Ahmad, and Ibn Hazm. The origin is in Allah's say: "Prescribed for you when death approaches one of you if he leaves wealth a bequest for the parents and near relatives according to what is acceptable- a duty upon the righteous" (Al-Baqara/ 180), So saying "to give a portion of the deceased's money to the relatives who are not entitled to inherit as a will is mandatory in his money if he didn't bequeath it" is Ibn Hazm doctrine, and is taken from the sayings of some followers, and a narration in Imam Ahmad doctrine.

The point of inference from the text is of two issues:

First: That the verse states that the will is a must, of two sides:

- 1) The word (prescribed) which means imposed.
- 2) His saying (a duty upon the righteous) which is of the semantics that indicate obligation.

Second: That if he did not bequeath a will, the will is conducted unwillingly by law. They attributed this direction to Ibn Hazm, given that Ibn Hazm did not say that, and the text of what Ibn Hazm said is: "If someone passed away and did not bequeath a will, it is obligatory to give alms as can be, and it is necessary, because bequeathing a will is mandatory as we mentioned, so, it is correct that part of his money should be taken out after his death, and when that happens, he loses his inheritance on what he should give away of his money, and there is no limit in this, except what heirs or guardian find without being unjust to the heirs.." until he said "Every Muslim must bequeath to his relatives who are not entitled to inherit either for slavery, or for disbelief, or because those who withhold them from inheritance, or because they do not inherit, so he bequeath to them what he himself pleased, no limit in this, but if he did not, they must give, what heirs or guardian find".

The mediator in the words of Ibn Hazm notes that Imam Ibn Hazm did not talk about the mandatory will that Jordanian legislator adopted with its details in the law texts, but he was talking about the will in general unless it breaks the rules of inheritance science. Ibn Hazm meant all the relatives who are not entitled to inherit, so he did not specify grandchildren only, also Ibn Hazm did not detect a specific amount of the will but left it to the dead person, so, if he did not bequeath, his heirs detect the amount they take out of the money to the relatives.

Some people, who objected to the mandatory will, offered a group of mental evidence to not consider it, of which are:

- What Dr. Samara mentioned: He demonstrated the impossibility of achieving the will after death; that dead person's money is now for his heirs, while the mandatory will in its legal form is a disposal of heir's money and not the dead's money.
- Also, Bani Salama and Al-Agha quoted some mental evidence in their book, which objectors mentioned as follows:
- The right is that there is no inheritance for who is not entitled to inherit, and this is fair.
- Promoting mandatory will on other optional wills cancels the testator's intention.
- Allah has enacted an integrated seamless system of inheritance in which children's kids are obscured by the children, and their inheritance is contrary to Islam's inheritance system.

After what we have mentioned of the replies and evidence, and in light of adoption of mandatory will by Jordanian legislator, we find that there is a legitimate dimension of the mandatory will that not all jurists and jurists agree, and as long as the idea of mandatory will ranges from a supporter to an opponent, it was better not to introduce it; because there is no clear and explicit legal document for its legitimacy, it is a case of jurisprudence, as we have previously shown, in addition, its application in front of legitimate courts with its defined form in law is avoiding the purpose of justice that it gives inheritance to the children of the son, whether they are males or females whose father passed away in the life of his parents (his father or his mother), and excludes the sons and daughters of the daughter who passed away in the life of her origin (her father or her mother). In this paradox, there is a serious legitimate dimension that contradicts the purpose of justice brought by sharia law of Islam to be determined in its sharia provisions in all aspects of life. And to avoid accusing our sharia of gender discrimination, and the poisoned arrows are directed to sow suspicion against our sharia law by showing such issues that would open the door to tendentious individuals, it was better that the Jordanian legislator did not adopt the mandatory will in its current form in Jordanian Sharia Courts.

Even if we were to concede the controversy to those in favor of mandatory will, the Jordanian legislator would have to amend its provisions related to mandatory will to include grandchildren on the side of the son and daughter whose parents passed away in their parents' lives, in order to achieve a holistic rule of our honorable sharia rules, namely justice in all aspects of life; to achieve security, stability and reassurance in human societies.

**Second Requirement:** The legal dimensions of the provisions regulating the mandatory will

It is known that Jordanian Personal Status Law no. 15 of 2019 included provisions regulating the mandatory will according article (279) of the law, and according to the application of provisions of mandatory will in Jordanian Sharia Courts, the Legitimate courts gives inheritance to the grandchildren of the son's side whose father passed away in his father's or mother's lives, and the amount of mandatory will is equal to their father's share of what he inherits from his passed away origin supposing the death of their father after the death of the mentioned origin, but not more than one third of the inheritance.

The Jordanian legislator set conditions for mandatory will entitlement from the side of their grandfather or grandmother, which were mentioned in the previous requirements.

It is well known that the developers of legal legislations in all countries of the world have ensured that justice is achieved among groups of society as a whole when they set provisions regulating any subject or legal procedure in their legislations, taking into account the purpose of justice among them in terms of rights, duties and penalties, as legal justice can generate psychological and factual satisfaction to the rule of law; to create a healthy environment free of hatred for the law, evasion of its application, and circumvent it.

And upon the application of provisions regulating the mandatory will on its entitled people, we find that there is another branch of grandchildren, the sons and daughters of the daughter whose mother passed away in the life of their grandfather, will not be given the share of their mother from their grandfather, and this is a crucial issue that will generate dangerous negative reflections against law, which will be described as discrimination, injustice and favoritism in

rights, and would therefore reflect a state of rebellion against the law and describe it with the most heinous terms, which the law does not seek for, and was never its intention when developing the legal legislation at all.

In the context of our study of the legal dimension of the application of the mandatory will in Jordanian Sharia Courts, we can ask a bunch of questions to the Jordanian legislator who has adopted these provisions:

- How is it possible to reconcile what is being applied of the mandatory will in Jordanian Sharia Courts with the purpose of legal justice pursued by legislations in all countries of the world?
- Wouldn't it have been better to inherit grandchildren from the mother's side to achieve justice among grandchildren, especially since a deceased son and a deceased daughter are core children of their origin in their father's or mother's life?
- How does the Jordanian legislator respond to criticism of the adoption of the provisions of the mandatory will in Jordanian Personal Status Law?

Reflecting on what previously demonstrated we note that the Jordanian legislator, when entitled the mandatory will and adopted its application in Jordanian Sharia Courts, has denied the legal justice for such legislation; due to the distinction between children of the son and children of the daughter, which is considered a serious dimension of the mandatory will legally, since it disagrees with the primary purpose of the legal legislation, namely justice.

Third Requirement: The Social dimensions of the provisions regulating the mandatory will

In our previous two requirements, we have addressed the legitimate and legal dimensions of provisions regulating the mandatory will in Jordanian Personal Status Law, and in this requirement, we will address its social dimension.

The Islamic Sharia was to renounce hatred, grudge, and spite among people, and to spread a culture of peace and love among members of society. And there are legitimate texts in the Holy Qur'an and the honorable sunnah, Allah said: "And those who harm believing men and believing women for other than what they have earned have certainly borne upon themselves a slander and manifest sin" (Al-Ahzāb: 58), and the Prophet said: "A Muslim is the one who avoids harming Muslims with his tongue or his hands"

This culture has been embodied in all the legislative provisions, through the justice between children, the forbiddance of the mother of the wife against the man once the marriage contract of her daughter is effective, and the forbiddance of combining between the woman and her aunt or auntie in marriage, all of these provisions are just to eliminate the grudge and hatred that may arise if we are not bound by them.

In view of the provisions regulating the mandatory will in Jordanian Personal Status Law, we find an exclusion of the daughter's sons and daughters from the mandatory will in case of death of their mother in the life of their grandfather or grandmother, which will inherit the grudge and hatred between them and the sons and daughters of the son who inherit from their grandfather or grandmother the share of their father who passed away in their lives. Given the relationship between these two branches, the sons and daughters of the daughter are cousins of the branch inheriting the mandatory will, so daughter's branch is deprived of mandatory

will while son's branch deserves it, and in this unexplained distinction, we have established a fertile environment for grudge and hatred between these two branches on the one hand, and between grandchildren of daughter's side and their grandfather or grandmother, who have not inherited them their mother's share in her father's or mother's life, on the other hand.

When the Islamic Sharia called for the rejection of hatred among members of society, it wanted to immunize it from psychiatric illnesses, as if a person caught a fire of hatred in himself, it would reach a dangerous stage of hatred that might lead to crime, attacks on honor, or insulting and demeaning degrading others; all are serious diseases that can create a fertile environment for an insolvent society.

It is known that the main objective of the law is to reach justice of judgement, which would achieve the psychological satisfaction of the parties to the adversary, a fundamental purpose that must be taken into account in the law's legislation.

The question to be asked here is:

Has the Jordanian legislator fulfilled the aspect of self-satisfaction of the branch which has been deprived of mandatory will? And did the provisions regulating the mandatory will serve to allay grudge hatred and hatred between an inheriting branch and a deprived branch of the same origin?

Fourth requirement: The economic dimension of the mandatory will

In this requirement, we will demonstrate another dimension of the dimensions of the mandatory will, which is the economic dimension.

In the first section, we touched on the legitimacy of the mandatory will, and we showed that the idea of the mandatory will is a discretionary idea that does not have a legitimate basis in the book of Allah and the honorable Sunnah.

One of the most important documents and rational arguments that the developers of the mandatory will relied on was the notion of (need) to address the issue of the children of the deceased son who are poor, and that is only achieved by the mandatory will.

And the context of the notion of (need) revolves around achieving economic balance among the branches of the grandparent for more than one son, in which the sons of the son and the daughters of the son of all the children of the grandparent are equal in their share of the mandatory will from their grandparent, taking into consideration the rule (The male shall have the share of two females), consequently, the mandatory will achieves an economic balance for grandfather's branches, as the application of the mandatory will eliminates, to some extent, the presence of poor branches and rich branches of the same grandparent.

Sheikh Mohammed Abu Zahra, may he rest in peace, has responded to this rational argument by stating: "Indeed, if we took the obligation (meaning the obligation of the will), we must consider the need; because wills are a matter of charity, they must be for the poor; and because the mandatory will is prioritized over others, kinship in it must be clearer".

And the truth is that the provisions regulating the mandatory will in Jordanian Personal Status Law have not taken into consideration the issue of (need) in those provisions, in addition, the practical application of the mandatory will in Jordanian Sharia Courts did not also take this

issue into consideration when distributing the mandatory will on the branches of the grandparent.

This is on one hand, and on the other hand, what about the branches of the grandparent from the side of the daughter who passed away during the life of her father, as the provisions regulating the mandatory will in Jordanian Personal Status Law completely exclude this branch from the mandatory will, and were not even included in the notion of (need) that the developers of the mandatory will relied on.

In conclusion of what we presented, the non-observance of (need) puts the developers of the mandatory will in an evident dilemma, which is ignoring considering it in the practical application of Jordanian Sharia Courts, and giving all grandfather branches from the side of the sons without looking into their logical basis upon which they relied in the application of the mandatory will.

### **3. Conclusion:**

After this theoretical and applied tour of provisions regulating the mandatory will in Jordanian Personal Status Law no. (15) of 2019, the study has reached several conclusions as follow:

1- The non-observance of the Jordanian legislator of justice in the provisions regulating the mandatory will applied in Jordanian Sharia Courts, where he made the mandatory will a share of the branches of the grandparent whose father passed away in the lifetime of their grandfather or grandmother, excluding the branches of the grandparent whose mother passed away in the lifetime of her parents from the will.

2- The non-observance of the Jordanian legislator of the gravity of the legitimate, legal, social, and economic dimensions when adopting the provisions regulating the mandatory will applied in Jordanian Sharia Courts.

Based on these findings, the researchers recommend the Jordanian legislator the following:

- The necessity of reconsidering the provisions regulating the mandatory will in Jordanian Personal Status Law, to include the branches of grandparent from the side of the son and from the side of the daughter who passed away in the lifetime of their father or mother, achieving justice between them.
- The necessity of the observance of the legitimate, legal, social, and economic dimensions when applying the provisions regulating the mandatory will in Jordanian Sharia Courts; preventing the suspicions that would be raised against the Jordanian legislator upon adopting those provisions.

Our last prayer is All praise and thanks be to the Lord of the worlds

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