

Chapter – 24

Laws of Inheritance

(ترکہ اور وراثت)

Quran:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُن لَّهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِّنَ اللَّهِ

{Allah commands you concerning your children; the son's share is that of two daughters; and if there are only daughters, for them is two-thirds of the inheritance, even if they are more than two; and if there is only one daughter, for her is half; and to each of the deceased's parents a sixth of the inheritance, if he has children; and if the deceased has no children but leaves behind parents, then one third for the mother; and if he has several brothers and sisters, a sixth for the mother; after any will he may have made and payment of debt; your fathers and sons, you do not know which of them will be more useful to you; this is the share fixed by Allah. (04:11) }

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَهَا وَلَدٌ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ

{O dear Prophet! They ask you for a decree; say "Allah decrees you concerning the solitary person; if a man dies childless and has a sister, for her is half the inheritance; and the man is his sister's heir if the sister dies childless; and if there are two sisters, for them is two-thirds of the inheritance; so if there are brothers and sisters, both men and women, the male's share is equal to that of two females. (04:176) }

Hadith:

Narrated Ibn 'Abbas:

The Prophet said, "Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased." (Sahih Bukhari: 6301)

Narrated Sa'ad bin Abi Waqas:

I was fallen seriously sick in Makkah. The Prophet came to pay me a visit. I said, "O Noble Prophet! I have much property and no heir except my single daughter. Shall I give one or two-thirds of my property in charity?" He said, "No, it is better for you to leave your offspring wealthy than to leave them poor, asking others for help. And whatever you spend for Allah's sake you will be rewarded for it. (Sahih Bukhari: 6302)

Narrated Al-Aswad bin Yazeed:

Ma'ad bin Jabal came to us in Yemen as a tutor and a ruler. We (the people of Yemen) asked him about the distribution of the property of a man who died leaving a daughter and a sister. Ma'ad arranged to give one-half of the property to the daughter and the other half to the sister. (Sahih Bukhari: 6303)

Narrated Huzail bin Shirahbil:

Abu Musa was asked regarding the inheritance of a daughter, a son's daughter, and a sister. He said, "The daughter will take one-half and the sister will take one-half. However, you go to Ibn Mas'ud, he is scholar and will tell you what is right." Ibn Mas'ud said, the verdict I will give in this case, will be the same as the Prophet did, i.e. one-half is for daughter, and one-sixth for the son's daughter. The rest one third is for the sister." (Sahih Bukhari: 6305)

Narrated Ibn 'Abbas:

During the early days, the inheritance used to be given to offspring and the legacy to the parents. Then Allah cancelled that order and decreed that the male should be given the equivalent of the portion of two females, and for parents one-sixth for each of them. For wife one-eighth (if the deceased has children) and one-fourth (if he has no children) should be given. For husband one-half (if the deceased has no children) and one-fourth (if she has children) should be given." (Sahih Bukhari: 6308)

Narrated Huzail:

'Abdullah said, "The judgment I will give in this matter will be like the judgment of the Prophet, i.e. one-half is for the daughter and one-sixth for the son's daughter and the rest of the inheritance for the sister." (Sahih Bukhari: 6311)

Narrated Jabir:

While I was sick, the Prophet came to me and asked for some water to perform ablution, and after he had finished his ablution, he sprinkled some water of his ablution over me, whereupon I became conscious and said, "O Noble Prophet! I have sisters (as the legal heirs). How should I do?" Then the Divine Verses regarding the laws of inheritance were revealed. (Sahih Bukhari: 6312)

Important Aspects of Islamic Doctrine

(See *Hasilat Tafseer-e-Siddiqui, Chapter 42*)

Before Islam, there was no share from the property of a deceased person for women and children. This practice was not specific to Arab only, but it was exercised by many governments as well. Islam has arranged share in property for women and an appropriate part for relatives too.

❖ ***When a person dies, following items are essential to be arranged before the distribution of his property:***

- All the details of wealth and property of the deceased should be collected.
- If any property is found mortgaged then first and foremost thing is to pay the due loan so that his property may be received back.
- All the arrangements of his burial should be made, because it is well known that the dead body cannot be laid unattended for longer time. The arrangements of burial should be compatible to the family status of the deceased. Neither any wastage is good or any half-heartedness.
- After that his loans should be cleared off.
- Finally, whatever is left it should be distributed to the successors.

The detailed sharing for the successors or legal heirs is given as under:

1. ***Legal heirs*** (اصحاب فروض): Shares of legal heirs are already described by Allah سبحانه و تعالی.
2. ***Relatives*** (عصباء): Their shares are not fixed. Whatever remains from the legal heirs it will be given to the relatives. Relatives are of two types:
 - (1) Blood relations, for example; son, father.
 - (2) Miscellaneous Relation, for example; a bondman who has been free. If there is no blood relation then for this free bondman will be considered. And in his absence even his successor would be the legal heir.

3. **Other than relatives** (زَد): If no relatives are available then shares will be given to the successors of relatives. Or
4. **Far relations** (ذوى الارحام): Those relations which are not closed, for example; maternal grandson, nephew, uncle, aunt, etc. Or
5. **Brotherhood** (مولى الموالاة): Those in which a brotherhood is established. Or
6. **Unproved relation** (مقرله): In which the relation is not proven.
7. **Legacy** (وصيت): If there is a will for more than one third share.
8. **Islamic Fund** (بيت المال): Be noted that wealth left by a Muslim should never be in the hands of a Non-Muslim. Look! In Islam there is no تبييت (in which Non-Muslim are made legal heirs). In India, Islamic properties are given to Non-Muslims. This is not correct in any way.

❖ ***In Quran, verse 11 of Surat-un-Nisa, the distribution of shares of Inheritance among the legal heirs is as follows:***

- **If the successors are son and daughter:** In this case son will get 2 shares and daughter will get 1 share. This is because women have her husband whereas man has to earn himself.
- **If the successors are two or more daughters:** In this case they will get 2/3 share.
- **If the successor is one daughter:** In this case she will get 1/2 share.
- **If the successors are mother and father:** In this case each will get 1/6 share. This share is applied when son is also present.
- **If the successors are mother and father but there are no children:** In this case mother will get 1/3 shares and father will get 2/3 share.
- **If the successor is husband and mother and father is present:** In this case husband will get 1/2 share and mother will get 1/6 and father will get 1/3 share.
- **If the successor is wife and mother and father is present:** In this case wife will get 1/4 share and mother and father both will get 1/3. And the remaining 1/12 will be given to relatives. In this way father will get a collective share of 5/12. If brothers are many then mother will get 1/6 share.

Note: In the presence of daughter, the deceased can give share through his will, to grandson and granddaughter for their good deeds, but it cannot exceed 1/3 shares. Anyways, if successors permit to give more, the 'Will' can be prepared accordingly.

❖ *In Verse 12 and Verse 176 of Surat-un-Nisa, Quran has specified the legal distribution of shares to wife and husband particularly **الزَّكَاةُ** (when the deceased parents are not alive nor he has any children) are as below:*

- *Wife's Inheritance:* If there are no children then husband will get 1/2 share. And if children are there then the share for husband will be 1/4.
- *Husband's Inheritance:* (1) If there are no children then wife will get 1/4 share. And if children exist then the share for husband will be 1/8. (2) If husband has one brother and one sister as successor then each will get 1/6 share. (3) If husband has more than one brothers and one sisters as successor then each will get 1/3 share.

❖ *In inheritance, those who are not entitled to get any shares are discussed below:*

- *Assassin:* Any killer will not be the successor of the deceased. This is because no one could kill for the sake of money.
- *Different Region:* Any Non-Muslim cannot be a successor of a Muslim. The basic reason is that Islam has to be protected.
- *Difference in Countries:* People living in two different countries cannot be the successors. The reason behind this is that the wealth of a Muslim country should not be transferred to a Non-Muslim country. --- This should be made clear that when both countries have their own military and their own laws then these will be treated as two different states.
- *Slavery:* Any bondman cannot be the legal heir because slave cannot be an owner of the property.
- *Indefinite environments of death:* When it is not possible to determine that who died first, for example; father and son were travelling in a ship and all of a sudden sinking of ship occurred. Now this is not easy to know who died first. In this situation among each other no one will be the successor. Otherwise, there will be an unwanted preference.

❖ *Notes:*

- The whole shares described above will be settled after clearing the loans and after completing the 'Will' of the deceased.
- The problems of legal heirs are difficult. Therefore, for this, books are to be referred, rather expert's opinion should be taken.

