

Chapter – 42

Inheritance and Heirship

(ترکہ اور وراثت)

❖ لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ

مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا -

For men, there is a share from what the parents and near relatives leave behind; and for women is a share from what the parent and near relatives leave behind; whether the wealth (inheritance) is small or large; the share is fixed one. (04:07)

❖ إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ

نَارًا وَسَيَصْلُونَ سَعِيرًا -

Indeed those who unjustly eat greedily the wealth of orphans only fill their bellies with fire; and soon they will go into a blazing pit. (04:10)

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** (عصابات): 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** (ذد): If no relatives are available then shares will be given to the successors of relatives. Or
4. **Far relations** (ذوی الارحام): Those relations which are not closed, for example; maternal grandson, nephew, uncle, aunt, etc. Or
5. **Brotherhood** (مولی الموالات): Those in which a brotherhood is established. Or
6. **Unproved relation** (مقرله): In which the relation is not proven.

And

7. **Legacy** (وصیت): 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 **تبنیت** (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 **الكلالة** (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.

❖ 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.

❖ 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.

God has made it obligatory on us that everyone should write a ‘Will’ regarding his wealth before death. Quran says:

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

{It is prescribed for you that when death approaches one of you, and if he leaves wealth, he must bequeath it to parents and near relatives in advance with tradition; this is a duty upon the righteous. (02:180)}

Look! ‘Bequeath’ or ‘Will’ has been given importance greater than inheritance and loans. Because, legal heirs always consider that the deceased wealth is as their own. Similarly, the money lender knows how to get the borrowed material back. They never spare for it.

Moreover, considering the importance of ‘Bequeath’ or ‘Will’, Quran has instructed for the cover protection to arrange two witnesses at the time of its write-up.

Since the legal heirs are commonly close relatives therefore in Bequeath the maximum share has been limited to $1/3$, so that other inheritances should not suffer. Nevertheless, if the legal heirs have no objections then more than $1/3$ share can be given.

When a ‘will’ may prescribe any share for obsoletely a non-related person, some other relatives who are not considered as the legal heirs (like grandson, granddaughter, maternal grandson, maternal granddaughter, nephew, niece, maternal grandfather, aunty and uncle etc.) should also be nominated in the ‘Will’ for having a part of share. Rather, it is preferable.

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