

"O, People! Learn the knowledge of inheritance and teach it to others. For it is half of the knowledge" (Al-Hadeeth)

COMMON SHORTCOMINGS COMMITTED IN INHERITANCE

(Meeras)

AND THEIR SOLUTIONS



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Translated by: **(Mufti) Nazar Kaleem Qudsee Al-Qasmi**

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Come together!

We strive to earn the
favour of Allah
Almighty and discharge
human duties through
our social services in
accordance with the
Glorious Qura'an and
the Sunnah of the Final
Prophet, Muhammad (PBUH).

MARKAZUL MA'ARIF, INDIA

INHERITANCE (Meeras)

Compiled in Urdu by: Ali Mohammad Ulyanee

Translated in English by: (Mufti) Nazar Kaleem Qudsee Al-Qasmi

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Publisher's Note

At a time when humanity finds itself under the constant onslaught of western selfishness that employs techniques in the propagation of so-called human rights and modern developments, self-interest, legally or illegally, seems to be the preferable practice where the weaker class is always an easy victim of the stronger one. In spite of the importance given in the Glorious Qura'an and *Ahadith* of the final Prophet (PBUH) about the knowledge of Inheritance and its proper distribution, common Muslims have been noticed negligent of the subject at large. Some how or the other, due to lack of proper knowledge, distribution of the inheritance generally becomes a big issue just after the death of a close relative and sometimes it takes a serious turn and destroys the desired peace of the entire family. Although Islam is the first protector of women's rights and their dignity yet Muslim women are being shamefully denied their due shares and are widely neglected their rights.

Thus, it is very important that the distribution of inheritance is done properly in accordance with the prescription of Islam, so as to safeguard not only the weaker class of Muslims but also to protect the general interest of humanity. Herein lies obedience and submission to the will of our Creator.

It is primarily for this reason that we, at Markazul Ma'arif for Research & Communications (MMRC), have decided to publish this booklet '**Common shortcomings committed in inheritance and their solutions**', compiled by Br. Ali Muhammad Ulyanee in Urdu and translated by

Br. Mufti Nazar Kaleem Qudsee Al-Qasmi (Research Scholar at (MMRC) in English.

This booklet contains necessary knowledge of the Islamic system of inheritance, brief introduction of its shareholders and proper distribution of the inherited wealth. It presents the injunctions of Shariah on legacy and issues related to it, in a simple manner. It has been shaped on the pattern of questions and their short answers in simple language so that common English readers may benefit easily.

We believe that this booklet will be of great help to the people who are concerned with proper distribution of inherited property of a Muslim, who are concerned with values of Islamic doctrines and for the people who take care of others' rights.

We would like to thank Muhtaram Muhammad Umar Gautam, Director of Markazul Ma'arif, Delhi Branch and Brother Mufti Nazar Kaleem Qudsee Al-Qasmi for their good gesture and virtuous efforts in this regard. And lastly we express our gratitude to Br. M. Burhanuddin Qasmi and his all Research Fellows at Markazul Ma'arif for Research & Communications, Mumbai for their appreciable steps towards universalizing Islamic studies in English, as it is a part of their Da'wah activities, whose combined initiative brought about this booklet in this shape.

May we request you to please remember us in your pious prayers. Please inform us if any correction is required.

Wassalam

(Maulana) Badruddin Ajmal Al-Qasmi

President: Markazul Ma'arif, India

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Foreword

The Islamic law of inheritance formed a unique and dynamic chapter in the history of mankind. It proved a landmark in the annals of legal and social reform. Since its principles are based on divine knowledge and wisdom and not on human knowledge and conjecture, it is far from any remote possibility of any defect or shortcoming. Islamic rules of inheritance are so accurate, just and perfectly balanced that they have been held even by many non-Muslim scholars and philosophers as the most appropriate and equitable system of inheritance in the world. **Rumney**, the European annotator of the book *Sirajiyya* observes, "The Muhammedan law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world". (The Muslim Law of inheritance, preface p.1). **Macnaughten**, another European philosopher remarks in his book *Principles and precedents of Mohammedan Law* "In these provisions we find ample attention paid to the interests of all those whom nature places in the first rank of our affections; and indeed it is difficult to conceive any system containing rules more strictly just and equitable."

In pre-Islamic Arabia, inheritance was confined to only strong males, and was denied to women, helpless and minor boys on the principle that only those had right to inherit who could fight in the battlefield. Mothers, sisters, daughters, wives and widows had no share in the heritage. In Jewish law daughters were excluded by the sons, and

mothers inherited nothing from their children. Illegitimate children had the same right as legitimate ones. According to the Hindu code bill, father is excluded by sons, and the widows and other females get no absolute share. There is also a distinction between self-acquired and ancestral properties. All these inequalities and exclusion of women from inheritance and degrading them to the position of chattels have been eradicated by the magic touch of the final Prophet Muhammad (PBUH). All such barbaric customs have been eradicated and swept aside by one stroke of the Glorious Qura'an. Islam, holding aloft the torch of justice and equality ensures the absolute rights in inheritance for mothers, sisters, daughters and wives. Their shares have been fixed and guaranteed and thus their status has been greatly elevated. The Qura'an says: "To males shall be a share of what their parents and other kinsmen may leave; and to females shall be a share of what their parents and other kinsmen may leave whether it be small or large; a portion allotted". (Chapter: 4, Vers: 7)

Putting much stress on the right of inheritance, Allah Almighty has broadly laid down its principles in the Qura'an. In the Qura'an, Allah has clearly mentioned reward for those who accept those principles and severe punishment for those who violate them. He declares in the Glorious Qura'an, "Those are limits set by Allah: Those who obey Allah and His messenger will be admitted to Gardens with rivers flowing beneath, to abide therein (for-ever) and that will be the supreme achievement. But those who disobey Allah and His messenger and transgress His limits will be admitted to a Fire, to abide therein: and they shall have a humiliating punishment." (Ch. 4: V. 13-14). Keeping the importance of

inheritance in view, the Prophet is reported to have often stressed the importance of acquiring the laws and knowledge of inheritance. He said, "Acquire the knowledge of inheritance and teach it to others as it is half of knowledge".

In present times, people have become indifferent to the Islamic system of inheritance system and the property left by the deceased Muslim is not divided among heirs according to Islamic Law. The wrong practice of negligence of women in inheritance is rapidly growing in Muslim society. Having realized the crying need of society, Ali Mohd. Ulyaani penned this inheritance manual on question-answer pattern in Urdu. To enlarge the horizon of its advantage, and to serve the need of the English-speaking people, Mufti Nazar Kaleem Qudsee Qasmi (Research Scholar, Markazul Ma'arif, Mumbai) took great pains to render this book into English. Being a Mufti (expert in Islamic Law) his translation stands as a correct, apt and ideal translation of this book deserving the famous maxim '*An axiom requires no proof.*'

May Allah accept this sincere effort of both the compiler and the translator, reward them and make this effort a source of guidance for people. Aameen!

(Mufti) Md. Obaidullah Mohiuddin Qasmi
Research Scholar (MMRC) Mumbai -3 (India)

In the Name of Allah, the Most Gracious, the Most Merciful

Basics of *Ilmul Faraaiz*

Question: What is *Meeras*? Have the laws of *Meeras* been mentioned in the Glorious Qura'an and Ahadith?

Answer: *Meeras* or inheritance is a divine right of heirs in the assets of a deceased (*Mooris*). The outlook of *Meeras* has been described in the Glorious Qura'an Chapter No.4 verse No.7 whereas the detailed description has been mentioned in verse Nos. 11, 12, and 172 of the same chapter. Stating all the heirs, the Glorious Qura'an has fixed the portion of all the heirs as half, one fourth, one eighth, one third, two third and one sixth. Since, in this knowledge of *Meeras* the portion of each heir has been fixed, this knowledge is called *Imul-Faraaiz* (the knowledge of Portions). Unlike other commandments of the Islamic Shariah such as Salat, Fasting, Zakaat and Hajj, the knowledge of *Meeras* is the only knowledge which has been mentioned in Qura'an in full detail. *Meeras* has also been described in the holy Hadeeth of the Prophet (PBUH) and has been approved by *Ijmaa-e-Ummat* (Unanimity of the Muslim Scholars) as the Narrators of Hadeeth have segregated a separate chapter in the name of *Faraaiz* and have collected the relevant Ahaadeeth.

(Fatawa Mazahirul Uloom)

The importance and virtues of *Ilmul Faraaiz*

The Prophet of Allah (PBUH) has given much emphasis on the subject of *Meeras* and has urged the Muslims to learn this subject. Speaking on virtues of *Meeras*, the Prophet

(PBUH) said "O, people! Learn the knowledge of Faraaiz and teach it to others, because it is half of all the religious knowledge."

Important terms of *Ilmul Faraaiz*

The deceased person is called *Mayyit* or *Mooris* and the assets and property that he leaves is called *Tarikah* (any thing left). *Warasah* is the plural form of *Waaris* (heir - the person who inherits the assets of deceased). *Sihaam* is the plural of Arabic word *Sahm* (respective portions of the heirs that they get according to the law of Shariah).

***Tarikah* and its uses**

Whenever a person dies the right of four kinds relates to his assets of which 3 rights are related to the *Mayyit* himself and one to the heirs.

The Rights of *Mayyit*

1. **The Burial Expense:** This is the first right of a *Mayyit* and has to be spent from his left property. The obsequies or the burial expenses should be made reasonably. Neither it should be too high nor too low but the status that he maintained during his lifetime should be considered.

2. **The payment of debt:** This is the second right of a *Mayyit* and has to be paid from his own assets. It is all right, if the debt is paid from the assets of *Mayyit*; in case, the property is not enough to pay the dues or there are more

than one creditor and moneylenders then the payment of loan would be according to the rate of loan of each creditor.

3. Effect of *Waseeyat*: The third right of a *Mayyit* is to fulfil his *Waseeyat* (wills) from his left assets. And this is after the burial expenses and payment of dues, if *Mayyit* had made any will for anyone other than the heirs or he had asked that this much amount from his property should be spent on poverty-stricken people or that much should be endowed in any *Madrasa* or *Masjid* or, he informed that he had some Salaat to be offered or Hajj to be performed then his *Waseeyat* should be given effect in one third of his left property. It is not incumbent upon the heirs nor anyone has right to spend more than one third of the property to fulfil his *Waseeyat*. Yes, if all the heirs give their cordial consent to fulfil it then only one can do. But it should be kept in mind that the permission of child heir, who is a minor, (against his favour) is null and void therefore, his portion should not be spent in any case.

The right of heirs

The right of heirs has to be implemented after the above mentioned three rights. After burial, payment of debt and legacies each and every heir is entitled to get his respective portion fixed by Allah (SWT) in the Qura'an and by His beloved prophet Mohammad (PBUH) in his Hadeeth or by what is approved by the *Ijmaa* (unanimity) of Muslim Scholars.

(Fatawa Mazahirul Uloom, Vol. 8, P. 389)

Warning against violation of the laws of Meeras

Question: What does the Islamic Shariah say about those who violate the law of Inheritance?

Answer: Those who disrespect the law of inheritance are regarded as snatchers of others' property and rights and are considered transgressors of Islamic Shariah, be their violation partially or wholly. Allah (SWT) has given a severe warning against the violation of the law of Inheritance. Allah the Exalted in power, has said, just after the description of inheritance, in the Qura'an,

"Those who disobey Allah & His Messenger and transgress His fixed limits, will be admitted to a fire to abide therein and they shall have a humiliating punishment." (4: 14)

Hazrat Saalim (son of *Hazrat Abdullah*) narrated from his father and his father from the messenger of Allah (SWT) that the Prophet had said 'whosoever usurps any thing of others illegally without his permission he, on the Day of judgement, would be thrust into seventh layer of the earth'.

(Fatawa Mazahirul Uloom)

To deprive women of Inheritance is a grave sin

Question: There are some brothers who say that since their father has spent a lot of money on their sisters' marriages, their sisters have no right in inheritance and therefore, sisters would not get any thing from inheritance. Is the above statement of brothers valid in view of the Shariah?

Answer: The statement of brothers that large expenditure in sisters' marriages has terminated their right of inheritance, is a wrong statement that is against the law of Allah. Who could dare to change the law of inheritance that Allah Himself has laid down? Allah (SWT) never asks anybody to spend his property lavishly. The extravagance in the marriage for no other reason than to show off, can not cancel the right confirmed by Allah. Moreover, what a father spends on his children during his lifetime is considered as *Ateeyah* and *Hibah* (gift). That is not counted in inheritance, because inheritance is a right, confirmed only after the death of *Mooris*. Therefore, to count those expenditures, that father has made during his lifetime, as their shares and on that basis to deprive the sisters of inheritance is a heinous crime as well as deviation from Shariah.

(Fatawa Mazahirul Uloom)

Question: There are some people who request their sisters to give up their rights and the sisters (either under the pressure of society or to continue their harmonious relations, willingly or unwillingly) surrender their rights of inheritance and brothers take all the inheritance. How is this?

Answer: Any act of this sort is absolutely unlawful in the sight of Shariah and the shares of sisters taken by the verbal permission do not become *Halaal* (permissible) for brothers because, this type of permission is always under ritual pressure and customs. The Prophet of Allah (PUBH) said "Beware! Never do injustice to anyone. No property of a person is lawful for others without his cordial consent". Well, if brothers distribute the inheritance and hand over

the portions to each sister then sisters return their portions to their brothers then only brothers can use it. This is the only lawful way.

(Fatawa Mazahirul Uloom)

Women's right of inheritance

Question: How much does a daughter get from her deceased father's property? How much does a wife get from her husband's property?

Answer: There are three conditions of a daughter and in each condition she gets a different share from her deceased father's property. These three conditions are:

1. If the deceased has left only one daughter she gets half of the entire property (i.e. $\frac{1}{2}$).
2. If the deceased has left two or more than two daughters only, the daughters get two-third of the property (i.e. $\frac{2}{3}$).
3. If the deceased has left both daughters and sons, then daughters become *Asbah* and get half of the portion that sons get.

Likewise a wife has also two conditions and in each condition she gets a different share as:

1. If the deceased husband has left no child, wife gets one fourth of the property (i.e. $\frac{1}{4}$).
2. If the deceased has left any child, wife gets one eighth of the property (i.e. $\frac{1}{8}$).

NB: Distribution in all cases is after the payment of all debts and legacies.

(Al-Qura'an - 4:11-12, Fatawa Mahmoodiyah Vol. 8: P. 356)

Question: What does the Shariah say about those brothers who don't wish to give shares of Inheritance to their sisters?

Answer: Disobedience to the commandments of Allah and violation of the law of Inheritance by denying sisters of their fixed portions is an act of crime. Such denial may lead a person to infidelity. Allah (SWT) has said in the Qura'an in Surah Nisaa, just after the description of inheritance, "Those who disobey Allah & His Messenger and transgress His fixed limits will be admitted to a fire to abide therein and they shall have a humiliating punishment". (4:14). It is incumbent upon brothers to give their sisters their divinely fixed portions and follow not the path of the unbelievers.

(Fatawa Raheemiyah Vol. 2 P. 254)

The rights of daughters in Mother's wealth

Question: Late Zaid, during his lifetime, gifted his property to his daughter Zubaida who has two children - a son and a daughter. Zubaida's husband is dead. Now someone has poisoned her ear and she wants to deprive her daughter and allot her whole property to her son. Has a daughter no right in her mother's property? Please comment on the validity of the mother's decision?

Answer: As per the Islamic rules of inheritance, a daughter is also an heir of her mother. And after the death of her mother she is entitled to get her inheritance. Even if the mother wanted to deprive her daughter or made a will that after her death all her assets would be only for her son or wrote that the share of her daughter should be decreased, the daughter will have full right to get her inheritance after her mother's death. As far as the mother's choice during her lifetime to gift her all property to her son is concerned, she can; but she should not forget that to deprive any heir is

injustice as well as against the nature of maternal affection and also an act of sin. The holy Hadeeth of Prophet Muhammad (PBUH) narrated by *Hazrat* Anas says "Whosoever deprives an heir of his/her rightful due without any genuine reason, Allah shall deprive him/her on the Day of Judgement" (of His special favour). However, if she is willing to dispose of her property during her lifetime, she should distribute equally between the children - son and daughter. The disposal of wealth and property among the heirs in lifetime is called *Hibah* and the Shariah guides that in *Hibah* one should equally distribute his/her property among the heirs. Yes, if a son or a daughter is given more portions than those of others, due to other genuine reasons, such as education and poverty with no intention to harm anyone, it is permitted because Allah knows all the intentions and all actions of human beings, and they will be judged accordingly. -

(Fatawa Raheemiyah Vol. 6 P.253)

Preferring one child to the other

Question: Suppose, there is a hospital or any commercial establishment that is shared by a father and one of his 6 sons. The shareholder son, who is a doctor, has been running the hospital and has made all the expenditures of hospital. He has also been responsible for all kinds of needs, feeding, clothing of his parents and two sisters for twelve years. Now the father wishes to give up his share in this commercial establishment for his shareholder son. Please, comment on the decision of the father in view of the Shariah.

Answer: If the father gives his share to his doctor son, surely he will be depriving his other five sons, daughters and wife. Moreover, he would be considered a sinner. He should deal with all his children equally and should not forget the right of his wife too. In a Hadeeth, it is narrated that 'there are some people who spend their whole life in acts of worship and obedience of Allah, however, on the eve of their meeting with Allah (i.e. when they are about to die) they usurp the rights of the heirs, and in consequence, they are dispatched directly to *Jahannam*. (Hell fire)'. In another Hadeeth it is also narrated that 'whosoever deprives his heirs of their inheritance, Allah (SWT) shall deprive him of His special mercy on the day of Judgement'.

(Fatawa Raf'iemiyah Vol. 6 P. 150)

A mere nominee doesn't become the owner of Property

Question: It is obvious that for avoiding official problems or escaping from unnecessary taxes, a father transfers his property in the name of one of his children but after the death of the father, it is observed that the nominee considers himself to be the owner of that property and deprives other heirs. Does a nominee really become the owner?

Answer: No and never, because everyone knows that this kind of transfer of property is only for avoiding the severe government taxes, unnecessarily laid upon the proprietors. If this had been a real transfer, father would have used the word of *Hibah* or *Ateeyah* or any word that authorizes the

nominee to use it according to his will, along with other conditions of *Hibah* or gift. Therefore, all other sons, daughters and heirs will get their inheritance from that property. Yes, in above mentioned question, if the transfer has been made with the word of *Hibah*, *Ateeyah* or any word that denotes the possession of nominee only then the nominee would be the real owner of that nominated property.

(Fatawa Mazahirul Uloom)

Question: We are three brothers who got a land from our forefathers. We were equal partners and all of us were cultivating the land and getting equal production even after we were separate. However, since the land was registered in the name of only one brother, now he regards himself as the only owner and is not ready to give us our shares. Please guide us as per Shariah and settle our dispute.

Answer: When the verbal dealing was mutually done and all brothers were equal partners and accordingly they were cultivating the land, getting production, even after separation, then there would be no chance of any dispute. In spite of the land being registered in the name of one brother, all three will be equal owners. This written registration will make no difference and would be regarded nothing short of a *Hazl* (Joke and fun). The detailed laws of *Hazl* may be read in juristic books.

Ateeyah and Meeras

Question: What is the difference between *Ateeyah* and *Meeras*?

Answer: The difference between *Ateeyah* and *Meeras* is that *Ateeyah* is always in lifetime whereas, *Meeras* is always after death, and this is why children have no right to demand *Meeras* from their father.

Question: Mr. Zaid, who has one son and two daughters, wishes to distribute his property among his children in his lifetime. Is it permitted for him to do so? If yes, then how to distribute?

Answer: Though the right of inheritance comes only after death yet Zaid has right to dispose and distribute his property among his children in his lifetime provided that he distributes it equally among sons and daughters. The rule of inheritance, (a daughter gets half of a son) would not be applicable here. (Fatawa Mahmudiyah Vol. 5 P. 60)

Question: A woman wishes to distribute her property among all the heirs in her lifetime and wishes to get relieved of the responsibility but she wants to apply the law of *Meeras*. Please tell us whether she can fulfil her desire or not. If yes, then how?

Answer: The distribution of property in one's lifetime is not inheritance but is *Hibah* and *Ateeyah* where equal portion is necessary to be given to sons and daughters. The Prophet of Allah (PBUH) guided that one should not make difference among the children in *Hibah*. The Prophet of Allah (PBUH) advises us " O, People fear Allah and make justice among the children". Giving double portion to a son is a law of *Meeras*, which is implemented only after the death of the owner of property. (Fatawa Raheemiyah Vol. 2 P. 259, Vol. 6 P. 45)

Equal share is necessary in *Hibah*

Question: A person has got seven sons and four daughters. Three of them three sons and two daughters have been married. The father has borne all expenditures incurred in the marriages of his five children. Four sons and two daughters are married so far. Now, two of the married sons demand their shares of inheritance and wish to be separated from joint family. Please tell us whether it is necessary for the father to accept their demand?

Answer: No! First of all, the same amount is to be given to each unmarried son and daughter which has been already spent in the marriages of sons and daughters earlier, so that they may use it in their marriages. The remaining property is of the father's alone. None has right to intervene in his property hence, sons have no right to ask for their shares. For, there is no right at all for sons or daughters in the property of the father as long as he is alive. If they wish to be separated, they can do so. But if the father gives any thing to his children during his lifetime, he should give all his daughters and sons, an equal share.

(Fatawa Raheemiyah Vol.6 P.14 9)

Question: A person got married and begot a child. Then his wife died. Later he married his sister in-law and begot seven sons and three daughters. The son by the first wife as well as the two sons and two daughters by the second wife have been married. All the brothers do their business jointly. The father built up or bought houses for his sons' accommodations and gave each of them a house. But the value and prices of the houses are not equal. Is it fair to give each son a house of different value and cost?

Answer: All children who are unmarried should be given the expenditure of their marriages. Similarly whose house is of less value should be given the rest amount to equalize the value of each house. And since the distribution of one's property among the heirs, in one's lifetime is a *Hibah*, all the sons and the daughters by the both wives should be given equal portions.

(Fatawa Raheemiyah Vol. 6 P. 148)

Inequitable distribution of wealth among children

Question: There is a person who wishes to dispose of his property in his lifetime, among his children, inequitably. Is it right according to *Shariah*?

Answer: Discrimination among children without any proper reason is a sin. Especially, when the intention is to harm someone or to deprive any heir. Even then, if someone does so, his decision should be given effect and whosoever is given more property will be the owner of it. Those who have been given less, are not entitled to ask those who have been given more to give them anything back to equalize the gifts. However, if the father discriminates due to any proper reason, for example to whom he gives a bit more is a pious and to whom he gives less is a sacrilegious or of bad character, then father would not be a sinner. Further, if someone believes that his heirs would spend the property against the will of Allah (SWT) and had confirmed it from any Islamic scholar, it is better for him to spend his wealth in the way of charity and should not leave anything for his bad heirs. However, one should not prefer one child to the other. If the father gives his

wealth to some of his children and deprives others, though it is not unlawful according to the opinion of *Imam Shaafa'ee*, *Imam Maalik* and *Imam Abu Haneefah* (May Allah be pleased with them all) yet it is *Makrooh* (undesirable). If he gives his complete wealth to only one of his sons, he would be considered a sinner but his decision would be implemented and that son would be the only owner of the property.

(Fatawa Mahmudiyah Vol. 5 P. 64)

Question: Zaid, the son of Umar does not respect to his father. Being aggrieved and annoyed by the ill treatment of his son, Umar wants to deprive him of his *Meeras*. How is this done?

Answer: *Meeras* is an unintentional right, therefore, the father has no right to deprive any heir after his death. Whatever Shariah has fixed for an heir, he would get it whether the *Mooris* is pleased or not. Yes, he has full power in his lifetime to dispose of his wealth according to his wish. He can sell, gift, devote or give in charity. But if the children are of bad character and the father is sure that they will misspend the wealth, it is better for him to consult a Muslim scholar (*Aalim*) and after getting his decision he should spend his wealth in the way of religion. As far as the misbehavior of Zaid is concerned, it is a grave sin and Zaid should abstain from such misbehavior. He should repent and return to Allah asking His forgiveness; otherwise, Allah will severely punish him.

(Fatawa Raheemiyah Vol. 5 P. 63)

Question: Zaid is the only owner of whatever he possesses. His sons are disobedient to him. They do their businesses separately. Zaid has a daughter who is unmarried so far. Zaid

wishes to give all his property to his daughter but the sons do not agree and threaten their father with dire consequences. In this circumstance, can Zaid give all his property to his daughter only or not?

Answer: Yes! Zaid is the owner of all his belongings and has full right to give his belongings to whomsoever he wishes. He can give to his daughter, provided that he does not intend to harm or deprive his sons, otherwise, he would be regarded a sinner. Disobedience does not terminate the right of heirs nor it makes any difference in one's rights. If the father did not give his property to his daughter in his lifetime, disobedient sons also will get their shares in the wealth left by the father. And the sin of disobedience would be on the shoulder of disobedient heirs and they will have to repent before Allah.

Long period does not terminate the right of *Meeras*

Question: A person had died in India 50 years back. All his properties are in the hands of his Indian heirs. One of his sons lives abroad and now asks for his inheritance after this long gap of 50 years. Is he entitled for *Meeras*?

Answer: Being a son of the deceased father, he is an heir of his father and has full right to ask for his *Meeras*. Long period (or distance) does not make any difference in the matter of *Meeras*.

(Fatawa Raheemiyah Vol. 2 P. 258)

NB: Similarly every heir has right of *Meeras* in the property left by his *Mooris*, no matter how long time has passed over the distribution of *Meeras* among the heirs.

The right of *Meeras* is never terminated if any heir could not take it

Question: Zaid has three daughters namely Hindah, Zainab, Kulsum and one son namely Umar and he passed away. All property came into the custody of his son Umar. Umar's sisters did not take their portions and passed away during the life of Umar. Umar also begot two daughters and one son Bakar. After that Umar also died and the property came into the custody of his son, Bakar. Bakar also said farewell to this world, leaving behind two sisters and one wife. Now the children of Bakar's paternal aunts demand their mother's *Meeras* from the property left by Bakar. Do they have right to demand their mother's *Meeras* when their mother did not take from her brother Umar?

Answer: If anyone could not take his/her inheritance, his/her inheritance is never terminated. In aforementioned case, if the three sisters have deliberately gifted their shares to Umar, then their children have no right to ask for their mothers' inheritance. Yes, if they have not gifted, then only the children can ask for their mothers' portions. As far as the shares of all heirs are concerned, they could be written only when the details and orders of all the deceased are provided

(Fatawa Mahmudiah Vol. 8 P. 359)

Expenses of upbringing and marriage of nephew and niece

Question: Zaid brought up and married his nephew and niece after the death of his brother. Can he take the expenses back from his brother's property?

Answer: The expenses of Zaid may be of two types. Either he has spent for them as an act of charity and kindness or he had intention to take his expenses back when they will come of their age and he has made some one a witness on this. In the former case both, neither he nor his sons can take any thing and in the latter he can take. (But it is pity to abstain from such demands). (Fatawa Mahmudiah Vol. 8 P. 347)

How much property can a man endow?

Question: There is a widow who has land worth Rs.25 thousand, a house and ornaments of Rs.15 thousand. She has no child but her brothers. She wishes to endow her property to get reward for her deceased relatives and for herself. Is this permissible by Shariah?

Answer: To deprive heirs is a grave sin yet she has full right to endow her property, give alms and charity provided that she does not intend to deprive her heirs or harm them. She is advised to endow one third of her property on the condition that she shall get benefited from her endowed property for her whole life. And after her death the trustee of *Waqf* will take the endowed property in his charge. (Fatawa Mahmudiah Vol. 6 P. 474)

The laws of *Hibah*

Question: Please, define *Hibah* and its conditions?

Answer: *Hibah* is to gift something to someone without any return. It is necessary for the executor of *Hibah* that he should be mature & wise and gifted thing should be under ownership

of the gift-executor, and should be given the proper possession of recipient

NB. If a father gifts something to his child, the possession of that item with the child is not necessary. Execution of *Hibah* for a minor child is sufficient.

Question: What is *Marazul Wafaat*? Is *Hibah*, executed in *Marazul Wafaat* valid or not?

Answer: The disease that generally leads to death is called *Marazul Wafaat*, no matter if the disease puts the diseased on his/her deathbed or not. Likewise, the disease that has been declared by expert doctors as a fatal disease or a disease in which a person can't offer his *Salah* in standing position would also be called *Marazul Wafaat*. *Hibah*, executed in *Marazul Wafaat* is considered as *Waseeyat* (legacy) and is implemented in one third of the property, if the possession of donated property was completed before his death. On the other hand, if the gift-executor dies before the possession of recipient, the gift is null and void and all property becomes inheritance of heirs.

Hibah given to sons (or other heirs) in *Marazul Wafaat* is regarded as *Waseeyat*. As a rule, no *Waseeyat* is valid for an heir without the permission of other heirs. (The consent & permission of an immature heir is not valid). *Hibah* executed during a minor disease, is not a *Waseeyat* and is valid with the possession of the recipient. (Fatawa Mahmudiah Vol. 8 P. 355-381)

NB. A person in *Marazul Wafaat* has no right to give up his loan on anyone. Even if he had given debt to any of his heirs in his health period and he forgives it in *Marzul Wafaat*, the debt

will remain as it was and won't be forgiven. Therefore, the heirs have right to demand from debtor. Yes, if all the heirs are mature and forgive the debt with their heart and soul, the debt will be forgiven. If the *Mooris* forgave the debt on non-heirs, only the sum of debt equal to one third of property will be forgiven. It is also observed that wives give up their dower (*Mahr*) at the time of their death or the wives are advised to forgive their dower at the time of their husbands' death. This forgiveness is not valid. Similarly if a woman forgives her jointure or any thing at the time of birth-pain, this forgiveness and gift is not valid (Behishte Zewar)

The laws concerning *Waseeyat*

Question: What is *Waseeyat*? What is the importance of *Waseeyat* in Islam? When is *Waseeyat* to be fulfilled? Please answer the above questions in detail.

Answer: If the *Mooris* says that after his death such sum of amount should be given to so and so person or for any work is called a *Waseeyat*, no matter whether this *Waseeyat* has been executed in good health or during disease period, whether the executor died in that disease or not. If he forgives his dues upon someone or he himself gives something to someone, his forgiveness and gift will be effective in good health period as well as in the disease period in which he recovered. As far as the legacy made in *Marazul Wafaat* is concerned, we will mention it later. If someone has some previous prayers to be offered, or has unobserved fasts, unpaid-Zakah or unperformed Hajj or has to atone for his vows, but he has so much property that he can pay for all these left duties, it is obligatory upon him to do *Waseeyat*

before his death. Likewise, if *Mooris* is in debt or has others' deposit with him, it is incumbent upon him to make a *Waseeyat*. If he deliberately does not make *Waseeyat*, he would be regarded a sinner. It is also desirable to make *Waseeyat* if a person is blessed with enough wealth and his non-heir relatives are very poor. No *Waseeyat* is allowed for heirs such as mother, father, husband, wife and children etc. One can make *Waseeyat* for his non-heir relatives in only one third of the property. Therefore, if someone makes a will for an heir it will be effective if all the heirs agree. However, it should be kept in mind that the permission of immature heir is not valid against his benefit. And same is the answer if the *Mooris* made a will of more than one third of the property for anyone. Though, he has right to make will in one third of his property, it is better for him to make *Waseeyat* in less than one third. If he is not rich enough he should not make *Waseeyat* and let his heirs live comfortably. For, it is also an act of virtue and *Sawaab*. If someone has no heir he can make a *Waseeyat* of his all property. If someone has only wife and no other heir, he may do *Waseeyat* in three fourths of his property. Similarly, if the husband of a woman is the only heir, she may do *Waseeyat* in 50% of her property for others.

NB. *Waseeyat* of an immature child (or any kind of his dealing that is not in his favour) is not valid at all.

Question: A person made a *Waseeyat* that only XYZ should lead his funeral prayer, he should be buried in a particular city, or in a particular graveyard, beside a particular grave, in a particular cloth or his grave should be made by brick, or a tomb should be built up upon his grave or a reciter

of the Qura'an should be assigned on his grave, should his *Waseeyat* be given effect or not?

Answer: In all the cases, it is not necessary for the heirs to fulfil his *Waseeyat*. Further, to act upon the later three acts are sinful and forbidden. If someone had made a *Waseeyat* and then he himself rejected or denied, the *Waseeyat* is considered null and void.

(Bahishti Zewar Vol. 5 P.58)

NB. Those *Waseeyat*, which are lawful for *Mayyit*, the heirs, are not bound to fulfill them. Similarly if the *Waseeyat* itself is illegal as above-mentioned, the heirs are not permitted to fulfill it. If *Waseeyat* leads to any kind of usurpation of others' right, or the implementation of *Waseeyat* harms any heir or the *Waseeyat* itself leads to disgrace of *Mayyit*, it is better for heirs to avoid and abstain from the implementation of such legacies.

Necessary steps for the distribution of inheritance

Question: Please write the Islamic manner of distribution of inheritance and mention the common shortcomings in implementation of inheritance with Islamic guidance?

Answer: If a person dies, his debt should be paid just after his burials. Paying the debts of the deceased is the first right of *Mayyit*. Dower of wife is also a debt hence it should also be paid. Having paid the debts, *Waseeyat* should be fulfilled in one-third ($\frac{1}{3}$) of the inheritance. Then remaining property will be the right of each heir. They should distribute according to their shares justly and fairly. Otherwise, they should consult any certified *Aalim/Mufti* and give the detail of all male, female, younger, elder heirs and according to his decision they

should distribute the property. It is an act of sin to take anything before proper distribution and without consent of other heirs. The consent of a child heir would not make anything lawful for anyone. Those who capture or snatch away others' rights should not forget that they would have to pay on the Day of Judgment. They shall have to pay the right of others by their virtues. Prophet Muhammad (PBUH) has advised such people that they should obtain pardon in this world before the time comes when they will be penniless. If an aggressor has some good deeds in his account the same would be deducted in equal proportion to his wrongs. If the aggressor has no good deeds in his account the sin of aggrieved would be added to the account of the aggressor in equal proportion. (Bukhari Shareef Vol. 1. P. 331). Daughters and sisters must be given their portions. It is often observed that heirs host the guest who attend the burial and give alms to the poor from inheritance, while all these acts are nothing but apparent charity acts, which are not permitted. To regard these acts as the acts of virtue is also a grave sin, because the inheritance is the rights of all heirs. Therefore, to take their rights without their permission is like to snatching away their rights or it is like giving alms from stolen goods. Even the cloths of *Mayyit* should not be given to anyone without permission of all heirs.

The common practice of dilly-dallies in the distribution of inheritance, and objection on the demand of inheritance by an heir and to regard him as greedy and ill wisher of *Mayyit* are wrong in the eyes of Shariah.

It is preferable to distribute inheritance and to give each of the heirs their portion after obsequies and payment of debt and legacies. There are some living incidents where the distribution of inheritance is delayed unto years and some of the inheriting

persons die before distribution and, after the passage of several years, distribution is made according to the old price. In this way mightier people usurp the right of weaker, whereas, Islamic Shariah guides us that the distribution of inheritance should be according to the latest price.

Virtues of proper distribution of inheritance

Hazrat Abu Humaid Saedee narrates that the Prophet of Allah (PBUH) said, " It is not permissible for a Muslim to take the assets of a Muslim illegally, because Allah has made the assets of a Muslim unlawful for a Muslim without his consent as He made it unlawful for a person to take the stick of his Muslim brother." This *Hadeeth* reflects that it is necessary to gain the consent of the person whose assets are being used. Hence, if a person knew that the permission was given under any kind of pressure and he is not happy with the use of his assets then his permission is null and void and the use of those assets becomes unlawful for others. It should be kept in mind that to deprive daughters and sisters or to take their rights is flagrant violation of Allah's command and is cruelty upon daughters and sisters. Whatever Allah (SWT) has fixed for them or for any heir should be given to them. Distribution of inheritance is a divine law and to abide by that law is an act of virtue and a way to derive Allah's pleasure and to violate that sacred law is to devise a way to Hell as it has been mentioned earlier. *Maulana Mufti Ashiq Elahi* has beautifully written in his book that Allah Almighty gave importance to the portions of daughters and said "*Lizzakari Mislul Hazzil Unsayain*" 'to the male a portion equal to that of two females'. (4. 11) meaning, Allah has not directly mentioned the portion of sons but He mentioned their portions by mentioning the portions of daughters.

Conclusion .

One should give others' rights and clear all the accounts before leaving this world. One should not leave any of his matter for *Aakhirah* where one will find no way to repent on his actions. No one will have there any money to pay. All dues will be paid by the virtues. In case, there is no virtue the sin of creditor would be put on debtors.

Silah Rahmee kee Azmat P: 65. (Significance of maintaining ties with relatives)

May Allah shower His special favour upon us ant help us to abide by His commands in each sphere and branch of life. A'ameen.

NOTE

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APPEAL

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