



BISMILLĀHIR RAHMĀNIR RAHĪM

Inheritance (Part 3)

14/03/20 - Mawlānā Suhail Manya



INHERITANCE (PART 3)

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا

For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share (4:7)

Hadrat Umar would emphasise to teach ones children the rules of inheritance - it should not be a forgotten science in the community. Each and every Muslim, male and female, at some point in their lives will have to deal with the rulings of inheritance.

Allāh swt has mentioned the rulings in the Qur'ān very explicitly. There is no other religion in the Qur'ān that has mentioned the rulings of inheritance like Islam has. It supersedes all other religions. In the days of Ignorance, prior to Islam, women were not given rights. They used to think men represent the clans and families in the battlefield, and they physically take part so it is only the men who should receive inheritance. Women were deprived at that time globally, not just within the Arabs, despite Christianity and Judaism being present for centuries.

One is knowing your rights, and second is to exercise those rights. We need to acquaint ourselves with those rights. Qur'ān emphasises this again and again. These laws weren't man made after trial and error. These teachings comes from a Being that does not err, a Being that doesn't make mistakes, a Being that does not depend trial and error/ experiences. There can be fault in the teachings of every man, but there is NO fault in the teachings of Allāh swt.

Common Errors (continued...)

More than 70% of the community are involved in the common mistakes and errors found when it comes to inheritance

5. Depriving Women

Islam brought about equality in the sense that the right to inherit is common to both men and women. Brothers tend to hold the false notion that their father had given all he wanted to his daughters during his lifetime and thus, they should not inherit. Allāh swt has revealed the āyah (mentioned at the start), which shows that inheritance for women is stipulated by Allāh swt.

This is an intentional misunderstanding sometimes. This is a huge error, and results in a major sin.

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا

Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze (4:10)

A person who devours the wealth of an orphan and benefit from it, Allāh swt says they are consuming the fire of Jahannam, which means for sure they will enter Jahannam. So similarly, when a brother takes the right of his sister, he is consuming the fire of Jahannam. Imagine someone who doesn't give this right for 40 years - he is being engrossed in a major sin continuously for day and night for 40 years. He may be praying *salāh*, may be praying *Tahajjud*, may be making *du'ā* but it will also be written that this person has usurped the rights of his sister. This continuous sin will go on until he dies!

On one side of the spectrum we have men depriving women completely, and on the other we have women who demand they should get the same as their brother.

...يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ

Allāh swt instructs you concerning your children: for the male, what is equal to the share of two females...(4:11)

Many people object to this and say Islam does not teach equality. Islam stipulates something that no other religion had before this. A woman in Islam has no financial obligation. She is not responsible for a penny. When she isn't married, the responsibility is her fathers and it will be transferred to her husband when she gets married. A man has been given all financial liability and responsibility, hence Allāh swt has stipulated two shares for the male. This is equality! Bring forth an example that is more just than this - this challenge was made 1500 years ago, and no one has an answer, nor will they be able to.

A woman who demands the same as her brother is going in direct contradiction to this verse of the Quran. It is as though they are saying they are not happy with the distribution of Allāh swt. It is *harām* to demand such! This questions their *īmān* (faith) - make *tawbah* if you have ever said this. Share these teachings with others.

(Side note: Many people hear things from YouTube or Mufti Google and come to 'ulama and saying this or that is a *da'if* (weak) *hadīth*. This is completely wrong, especially since once hasn't studied the science of *hadīth*. When we don't want to do 'amal on something, we claim it is not in Qur'an or its from a weak *hadīth*)

People with family businesses generally give their daughters money whilst they are alive (£20,000, £30,000 etc), with the intention that that money has been given to them, hence the son could inherit the business after their passing. This is wrong! Whatever you give it in this world is classed as a gift. She will still have a share in the business. She will have an automatic share at the passing of her father in the family business, despite the father giving money to her whilst he is still alive! In every single asset will there be a share for women! Whilst distributing, if the sisters are willingly giving up their share in exchange for something else, without any expectation or force, then that is different case (and is allowed).

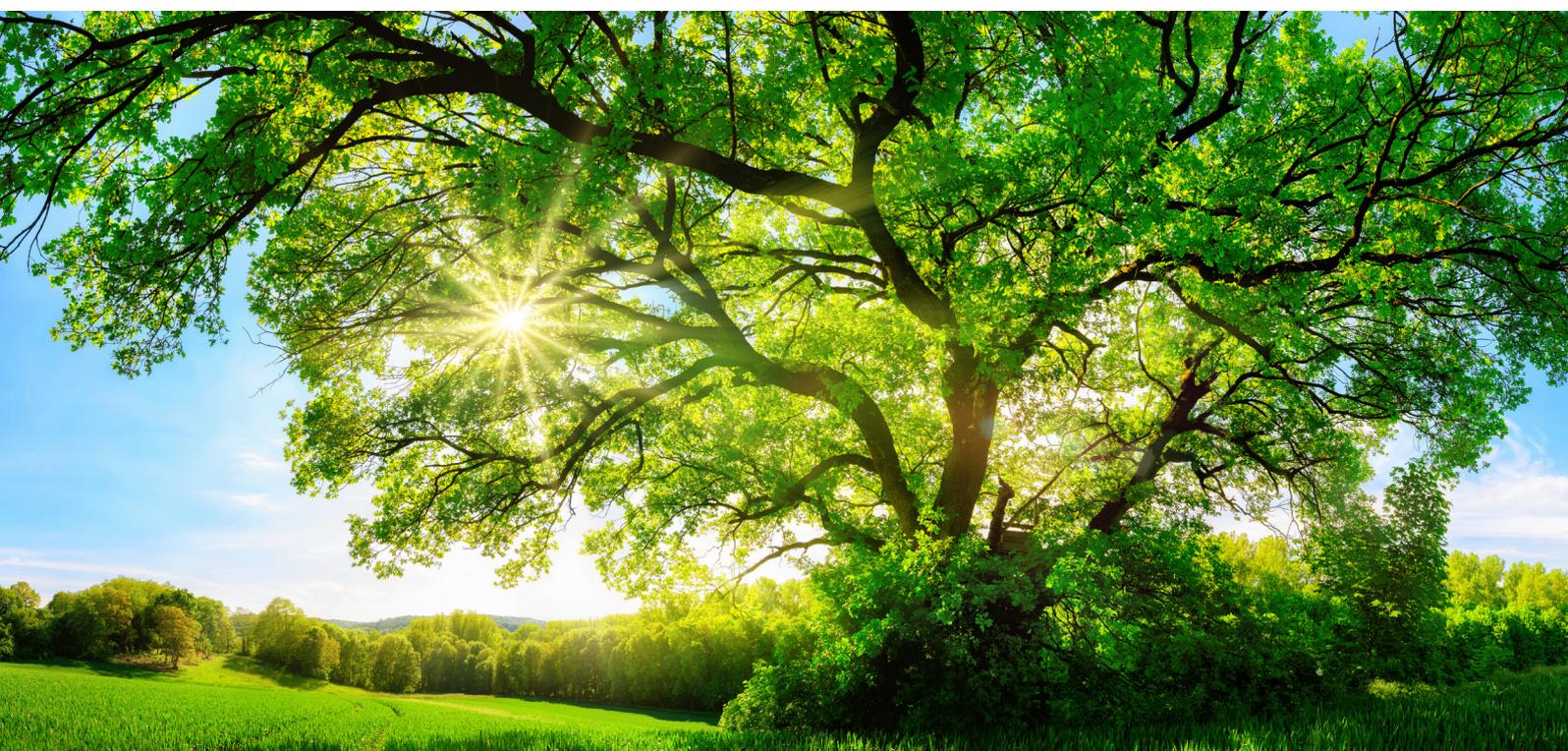
Another error is that some men have an estranged wife (not divorced, but they are living separate). As long as the nikāh is intact and divorce hasn't been issued, then the estranged wife will get the same share as the wife who is living with that husband. Sometimes when these women demand that right, people frown upon her. *Shari'ah* has given her the right as long as a divorce has not taken place.

Another thing some brothers tend to do when estate is being distributed is that they will get the right fatwā in regards to how to distribute, but then they will ring their sister and mention how her share should be given to them since she might be well-off as they are struggling financially, or tell her that we are giving our share to charity so you should too. They put psychological pressure - this is wrong. You should distribute the shares. If she wishes to forgo her share, then that is great and that is up to her, but the males shouldn't request or suggest this.

Whatever comes in your allotted share is yours - it is your decision to make.

6. Wasiyyah to deprive an heir

In *shari'ah*, it is sinful to make a *wasiyyah* whereby the intention is to make sure that a portion of one's estate is given away in order to reduce the wealth that a potential heir would inherit. Although the bequest is of a worthy cause and it appears that a person has done a very good deed, his ill intention will rather earn him the displeasure of Allāh swt. For e.g. someone has no children and his parents have passed away, so he doesn't want to give it to his siblings, hence he gives a lot of his wealth to charity or to the masjid with the intention that they get less. This is wrong. Although from the outset he seems very generous, the intention is wrong and he will be sinful.



Similarly, sometimes the father might find that the children are very disobedient, hence he doesn't want to leave his wealth for them. So he bequests with the intention to lessen his children's inheritance. This is wrong. This share stipulated from Allāh swt. The father doesn't have a right to deprive his children. Sometimes, people come and mention how their children haven't spoken to them for 15+ years, hence they don't want their son/daughter to inherit. Even if they wrote such a bequest, it is null and void as their share is stipulated from Allāh swt.

Adopted children will not automatically inherit as he is not biologically linked, so a bequest can be made for them. The adopted child will not be deprived. Also, for the child to inherit, he/she needs also to be legitimate. We are living in a day and age, where some have been involved with zinā and have illegitimate children. An illegitimate child cannot inherit from his father, but can do from his mother. Take guidance from 'ulamā.

If someone has children, then their own siblings will not directly inherit. The inheritance will go to the children. However, if your siblings are financially struggling, you can leave a bequest for them. There are two rewards here: one is of charity, and one is of fulfilling the rights of your relatives. This is better than giving it to other non-related poor people or giving it to a *dārul ulūm* etc

7. Gifts in one's lifetime

When a parent wishes to grant any of his/her children a gift, one should adopt equality between all whether male or female. The ratio of 2:1 is applicable ONLY in inheritance, not in gifting.

In some cases, a parent may need to take into consideration certain factors which will result in some children receiving more than others. It's advisable for the parent to make his/her intention apparent as well as the criteria for such a judgment for e.g. a certain child having a certain illness, a certain child has added responsibilities, or a certain child has assisted the parent during difficult times.

Inheritance only kicks in when you kick the bucket. There is no inheritance when one is alive.

The wealth belongs to the parents. If they burn their wealth, then that is up to them and they will answer to Allāh swt. As children, we cannot say what they should do with their wealth. Some children are very greedy and try to control their parents wealth. This is wrong.

Sometimes, those who are middle aged are very greedy like this; they try to influence their parents in how they should spend their money. This is wrong. We should be happy if our parents are spending their wealth in a *halāl* manner.

In this day and age, it is very important to have witnesses when gifting. Preferably, they shouldn't be someone who is an inheritor. The witnesses should see the gifting taking place. The siblings should understand why who got what. In this way, even if someone tried to claim a gifted item needs to be distributed in inheritance, the witnesses can be used to show how it was gifted. There will be no scope for objection.

If someone gifts something, but keeps the gift themselves, this is not a gift yet in terms of Islam. There should be no terms of condition. It must leave the ownership of the owner.

Parents can gift how they like, but they will also be answerable to Allāh swt. Parents sometimes give one child everything, despite other siblings also being in need. You are depriving the other siblings. This can still result in a sin because they failed to acknowledge the equality that was necessary. Islam teaches the parent that give gifts, and it's your right to, but do it with 'aql. Gift accordance to the teachings of Islam.

Parents sometimes wish to give their home to their youngest son who is living with them. This is an effect hailing from the subcontinent. This is not Islamic. They expect the other brothers and sisters to automatically assume there is no inheritance when it comes to the house as it belongs to the younger son.

However, we can learn from the following example how the house can be gifted in the right manner to one child. It might happen that all siblings have bought a property and the son that lived with the parents wasn't allowed to buy a property as he was living with them to take care of them. The cost of living for him was low, but as far as the future is concerned, he will need to start over again and buy a new property. The parents call the rest of the siblings and mention the justified reasoning as to why they want to gift the property to that son. The parents can do this, and they should have a witness. But just by writing on the paper and having witness doesn't mean the gift isn't transferred. How can one 'gift' to his son? No strings should be attached. No conditions should be placed for e.g. that the parents will be living there until they die. They should put their belongings in a box and pass the keys to the son. Only after this has been done, then the son can bring the belongings of his parents and allow them to live there. It is not necessary to put the house on his name. Shari'ah will just look at ownership and the witnesses...NOT the land registry etc.

Sometimes, parents give their daughter-in-law some gold. It now belongs to the daughter-in-law. The mother-in-law should not keep this gold, nor can demand it back if there was a divorce. The mother-in-law has got no right to even 1 gram of this gold. It is completely wrong to request gifts back or to return gifts at the time of divorce.

Granting a gift is regarded as a contract in *shari'ah* and takes effect through an offer by one party and acceptance by the other.

The conditions to make a valid and complete gift under the shari'ah law are as below:

- (a) The donor should be sane and major (*bāligh*) and must be the owner of the property which he is gifting
- (b) The thing gifted should be in existence at the time of gifting
- (c) If the thing gifted is divisible, it should be separated and made distinct for e.g. a phone car holder should be removed and given like that
- (d) The thing gifted should be such property to benefit from which is lawful under the *shari'ah* for e.g. cannot gift cocaine
- (e) The thing gifted shouldn't be accompanied by things not gifted i.e. should be free from things which have not been gifted
- (f) The thing gifted should come in the possession of the donee himself, or of his representative, guardian or executor

The father doesn't need to justify the gift, but he should consider everyone's needs. When Nabī ﷺ was ever told that a certain *sahābah* was giving such and such in the path of Allāh swt, he would question them as to whether they have children etc. and then tell them not to gift everything, but leave wealth behind for his children too. If someone's main possession is a house and they gift it to one son, it would be unfair to leave just the little amount left to be inherited. Speak to the *'ulamā* for guidance.

The father and son should explain to the other heirs of any investment the son has made in terms of the property e.g. kitchen extension example mentioned previously.

Gifting should be done with transparency, fairness and caution. You should inform your parents as children and give them the confidence to make those decisions. Sometimes, out of fear, they are not transparent.

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8. Partnerships/Family Businesses

A common example of a misunderstanding that arises is the assumption of ownership or partnership when either father or son has passed away.

A person who wishes his son, brother or father to join him in the business should rather appoint him as a partner and officially acknowledge him as one. If not, he should be paid a salary and considered an employee to avoid future misunderstandings.

If the sons are only employees of the business and have been helping the business for 20+ years, the business still should be shared equally between all the heirs! This might result in them not being happy as they have given most of their lives to the business.

Let's say there is a father and he has two sons. One scenario is that the entire business is divided between all siblings, and the brothers might not be happy. The way to deal with this is to make the sons partners so for e.g. the father owns 50% and the sons have 25% each. This way the inheritance will only be shared from the 50% of the fathers business and the two sons will also get a share from this 50%. This way, the sons have been compensated for the long hours they gave to this business.

Another misunderstanding that arises from not having clear records is when there is a business partnership or joint bank account between family members. It becomes extremely difficult to determine the exact amount of the deceased's estate as no records were kept as to how much each member contributed to the business or deposited in the joint account.

Joint accounts lead to problems. **Why is there a need for a joint account?** The man is responsible for the financial offers, so then why do we cause more problems by having a joining account. It complicates things. If you want to give your wife money, create a standing order. Islam says to keep things simple. If you have a joint account, split it to make things easier.

9. Registering assets in others names

Another common error is when someone registers assets in their child or wives names simply for tax purposes. If possession has not taken place, someone cannot claim it is theirs even if it is in their name.

So for e.g. a car or a property was put in the sons name for the protection of the father's assets or for whatever other reason, it does not mean the son owns the property or the car. One cannot lay claim to something just because it is in their name. This would be classed as stealing if they did claim such.

Whatever property or wealth is donated to a family trust by the father (to save themselves from the 40% inheritance tax) will form part of the estate of the donor upon his death. This should be made clear.

CASE STUDIES:

Case 1:

Hasan passes away. He has no parents. He leaves behind a wife, two sons and two daughters

Assets:

House: £150,000

Cash: £30,000

Car: £10,000

Other: £10,000

Total: £200,000

Wife: 12.5% = £25,000

Sons: 29.1% each = £58,200

Daughters: 14.6% each = £29,200

Total: 99.9% = £199,800

Left: 0.1% - can be given to charity = £200

Case 2:

Hasan passes away, but leaves behind a mother, a wife, a son and a daughter

Assets:

House: £200,000

Cash: £60,000

Car: £40,000

Total: £300,000

Mother: 16.6% (£49,800)

Wife: 12.5% (£37,500)

Son: 47.2% (141,600)

Daughter: 23.6% (70,800)

Left: 0.1% - can be given to charity (£300)

Question: Does a daughter in law inherit from the mother-in-law and father-in-law if her husband has passed away?

Answer: No, she will only inherit from her own mother and father. The grandchildren will not inherit either if their children are still alive. They will only get inheritance if there are no children. You can give as wasiyyah if you want for e.g. if there are orphaned children in their family

Case 3:

Hasan passed away and he leaves behind both his parents, a wife, a brother and a sister. He has no children

Assets:

Total: £400,000

Father: 50% (£200,000)

Mother: 25% (£100,000)

Wife: 25% (£100,000)

Brothers and siblings: 0%

If he had no parents, then in that situation, his wife will inherit as well as his siblings.

Conclusion:

- * Inheritance is the prerogative of Allāh swt - nobody has the right to question it.
- * In order to avoid problems, one should have one's financial matter in order.
- * It is incumbent that a person notes down the details of a second wife or estranged wife in his will.
- * The estate of the deceased should be wound up speedily and the rightful heirs must be given their respective shares.
- * It is extremely important that one has a proper Islamic will drawn up