

Al-Ta'ib

The six kinds of shares determined in the Qur'an at times equal the whole estate, such as two daughters along with parents ($2/3 + 1/6 + 1/6$). Here the question of *'awl* and *ta'sib* does not arise, because the two daughters will take two-thirds and the parents one-third.

At times the total of the shares does not exhaust the whole estate, such as a single daughter, whose share is half, or two daughters, whose share is two-thirds. This (in Sunni schools) results in *ta'sib*.

When the total shares exceed unity --such as when the husband, the parents and the daughter inherit together, the share of the husband, the daughter and the parents being one-fourth, one-half and one-third respectively-- the estate cannot cover all the three shares together. This results in *'awl*. *'Awl* will be discussed in the second chapter.

As to *ta'sib*, it has been defined here as the sharing of inheritance by the residuaries along with the closely-related sharers (such as where the decedent has two or more daughters and no son, or where he does not have any children, but has one or more sisters, no brother, and a paternal uncle).

Here, the Sunni schools regard the brother of the decedent as an heir along with the daughter or daughters, and he receives one-half with the one daughter, and one-third if there are two or more daughters. Similarly, they regard the paternal uncle to be an heir along with a sister or sisters.

The Imamiyyah state: *Ta'sib* is void, and it is *wajib* that that which remains after the sharers have received their shares be returned to the closely-related sharers. Hence, (in the above examples) the whole estate, according to them, will be inherited by the daughter or daughters and the brother will receive nothing, and if the deceased has no child at all, but has a sister or sisters, they will inherit the whole estate to the exclusion of the paternal uncle, because a sister is nearer to the decedent than him and the 'nearer excludes the remote.'

This difference between the Sunni schools and the Imamiyyah originates from the tradition of Tawus. The Sunni schools accept this tradition while the Imamiyyah reject it. The tradition states:

أَلْحِقُوا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَلِأَوْلَىٰ عَصَبَةِ ذَكَرٍ

Give the sharers their respective shares, and of what remains, the first in order is a male relative.

It has also been narrated in another form:

فَمَا بَقِيَ فَهُوَ لِرَجُلٍ ذَكَرٍ

And what remains is for the male relative.

Hence, the daughter being a sharer is entitled to half the estate, and the brothers being the nearest male relatives of the decedent after her will be given the remaining half. Similarly, if the decedent has no children at all, and has a sister without any brother, the sister will take half as a sharer and the other half will be inherited by the decedent's paternal uncle, because he is the decedent's nearest male relative after his sister.

The Imamiyyah do not endorse the veracity of Tawus's tradition and reject its attribution to the Prophet (s), because, according to them, Tawus is an unreliable (*da'if*) narrator. Had they endorsed this tradition they would have concurred with the Sunni schools, in the same manner as the Sunni schools would have concurred with them if they had rejected this tradition. After rejecting this tradition's attribution to the Prophet (s), the Imamiyyah negate *ta'sib* on the basis of the Qur'anic verse:

لِرِّجَالٍ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ

الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا مَّفْرُوضًا

Men are entitled to a share of what the parents and near relatives leave, and women are entitled to a share of what the parents and near relatives leave, whether it is little or more, a determined share. (4:7)

This verse proves an equality between men and women concerning the right of inheritance, because it speaks about the women's share exactly as it speaks about men's, whereas those who accept *ta'sib* differentiate between male and female relatives and give the males the right to inherit to the exclusion of females where the decedent has a daughter, a brother's son and a brother's daughter.

They give one half to the daughter and the other half to the brother's son, without the brother's daughter getting anything, although she is in the same category with him. Similarly, if the decedent has a sister, a

paternal uncle and a paternal aunt, they divide the estate between the sister and the uncle and exclude the aunt.

The Qur'an entitles both men and women to inheritance, while these schools entitle men and neglect women. This shows that the opinion justifying *ta'sib* is void because it leads to a void conclusion.¹

In objection to this stand, it is observed that the inheriting of the whole estate by a daughter or daughters is contrary to the verse of the Qur'an:

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ

وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

Then if they are more than two females they shall have two-thirds of what the deceased has left, and if there is only one, she is entitled to half the estate; and for his parents, each is entitled to one-sixth of what he has left if he has a child (4: 11)

Similarly, the inheriting of the whole estate by a single sister contradicts the explicit verse:

إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا

إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ فَإِنْ كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ

If a childless man dies and he has a sister, her share is half of what he has left, and he shall be her heir if she has no child; then if there be two sisters, their share is two-thirds (4: 176)

The Qur'an determines the share of a single daughter as half and that of two or more daughters as two-thirds. Similarly, it determines the share of a single sister to be half and that of two or more sisters to be two-thirds, while the Imamiyyah obviously oppose this law.

The Imamiyyah give the following reply in regard to the first verse (4: 11):

1. Certainly, the Qur'an has determined the share of two or more daughters to be two-thirds and that of a single daughter as half; but it is necessary that there be another person so that the remainder after the deduction of the share could revert to him. The Qur'an does not specifically mention this person, and had it done that, there would have been no difference of opinion. The Sunnah also makes no mention of it, neither explicitly nor implicitly, and the tradition, *وَأُلْحِقُوا الْفَرَائِضَ*, is not authentic as already mentioned.

Hence nothing remains to prove specifically to whom the remainder goes, except the following verse of the Qur'an:

وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ

Some relatives are preferred over some others in the ordinance of God. (33:6)

It proves that the nearer relative is to be preferred to the more distant, and there is no doubt that one's daughter is more closely related to one than one's brother, because she is related to him directly while his brother is related to him through either parent or both of them. Therefore, in such a case, the remainder will revert to the daughter or daughters, to the exclusion of the brother.

2. The Hanafi and the Hanbali schools observe: If the deceased leaves behind a daughter or daughters and there exists none else from among the sharers and the residuaries,² the whole estate will devolve on the daughter, half as a share and the other half by 'return,' and similarly on the two daughters, two-thirds as their share and the remaining by way of 'return.' If the verse does not prove the negation of the 'return' devolving on the sharers in this case, it will similarly not negate it in other cases, because a single proof is incapable of being broken into parts.

Furthermore, the Hanafi and Hanbali schools say: If the decedent leaves behind a mother and there are no other sharers and residuaries, she will take a third as a sharer and the remaining two-thirds by way of 'return'. If a mother can take the whole estate, it is similarly wajib that the daughter be also entitled to it, because both of them belong to the class of sharers. (*al-Mughni* and *al-Shi'rani's Mizan, bab al-fara'id*)

3. The four Sunni schools concur that if the decedent leaves behind his father and a daughter, the father will take one-sixth as a sharer and the daughter will similarly take half as a sharer, and the remainder will revert to the father, despite the Qur'anic verse:

وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

and for his parents, each is entitled to one-sixth of what he has left if he has a child (4: 11)

Hence as the share determined by this verse does not negate the father's right to receive more than one-sixth, similarly the share determined in the verse:

فَلَهُنَّ ثُلُثَا مَا تَرَكَ

they shall have two-thirds of what the deceased has left (4: 11)

will not negate the daughters' right to receive more than two-thirds nor a single daughter's right to the excess over half, especially after the shares of both the daughters and the father have been mentioned in the same verse and the same context.

4. The Qur'an says:

وَأَسْتَشْهَدُوا شَهِيدَيْنِ مِنْ رِجَالِكُمْ فَإِنْ لَمْ يَكُونَا رَجُلَيْنِ فَرَجُلٌ وَامْرَأَتَانِ

And call two witnesses from among your men, but if there are not two men, then one man and two women (2:282)

This verse explicitly states that a debt is proved by two male witnesses and also by the evidence of a male and two female witnesses. Some of the four Sunni schools consider it provable by a single male witness and an oath; rather, Malik says: It is proved by the evidence of two women and an oath. Hence, as this verse does not prove that a debt is not provable by a single male witness along with an oath, similarly the verse relating to inheritance does not prove the invalidity of reverting the remainder to a daughter or daughters, and to a sister or sisters.

The Imami reply in regard to the second verse (4:176) *إِنْ أَمْرٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ* is that the word *walad* is applicable to both a male and a female child, because it is derived from *wiladah* (birth), which includes son and daughter, and also because the common denominator between a person and his relatives is kinship, which is inclusive of males and females. The Qur'an has used the word *awlad* for children of both sexes.

وَصِيْبِكُمْ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ

God charges you, concerning your children: to the male the like of the portion of two females (4:11)

وَمَا يَنْبَغِي لِلرَّحْمَنِ أَنْ يَتَّخِذَ وُلْدًا

And it is not befitting the All-merciful to take a child. (19:92)

As these verses show, the word *walad*, stands for 'child,' irrespective of sex.

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ

O mankind, we have created you from a male and a female (49:13)

Accordingly, since a son prevents the brother from inheriting, a daughter will also prevent him. What has been said about the daughter's inheritance applies in the case of the sister as well. Apart from this, the Imamiyyah have raised a number of objections against the Sunni schools, bringing to their notice certain conclusions that follow logically from their thesis, which are as unnatural as they are opposed to *qiyas*, which is practiced by these schools.

Among these criticisms is the one mentioned in *al-Jawahir*, that if the decedent has ten daughters and a son, the son, in this case, will take one-sixth and the daughters the remaining five-sixths. If in the place of the son the decedent has a paternal uncle's son (i.e. if he leaves behind ten daughters and a paternal uncle's son), according to the rule of *ta'sib* the uncle's son will receive one-third and the daughters two-thirds, and consequently the son's position here is worse than that of the uncle's son!

This is despite the fact that man has greater affection for his children when compared to his brothers, and he sees in his children, sons and daughters, an extension of his own existence. It is for this reason that we see individuals belonging to the Lebanese families having only daughters changing their school of fiqh from Sunni to Shi'i solely because they fear that their brothers and uncles will become coheirs with their children.

Presently, there are many Sunni scholars thinking of forsaking the principle of *ta'sib* and accepting the Imami view concerning the inheritance of a daughter, exactly as they have abandoned the view invalidating bequest in favour of an heir and have accepted the Imami view despite the consensus of the Sunni schools regarding its invalidity.

1. Al-Shaykh Abu Zuhrah, in *al-Mirath 'inda al-Ja'fariyyah*, has dealt with the proofs mentioned by the Imamiyyah refuting *ta'sib*, but he has not mentioned this argument of theirs.

2. Full or consanguine sisters are residuaries with a daughter, and jointly share the estate with her like the full or consanguine brothers.

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