

The Father's Share in Inheritance

Following are the different situations relating to the father's share in inheritance:

1. The schools concur that the father, in the absence of the mother, children, children's children, grandmothers and spouse, is entitled to the whole estate, though by relationship (*qarabah*) according to the Imamiyyah, and through *ta'sib* according to the rest, i.e. the difference lies in naming the cause leading to inheritance, not in the actual inheritance and his share in it.
2. If a spouse exists with the father, he/she will take the maximum share to which he/she is entitled and the remainder, as per consensus, will go to the father.
3. If there are with the father a son, or sons, or sons and daughters, or the son's son how lowsoever, the father will take one-sixth and the remainder, as per consensus, will go to the others.
4. If there is a single daughter with the father, they will be entitled to a half and one-sixth respectively as sharers. The remaining one-third will return to him by way of *ta'sib* according to the Sunni schools. Hence the daughter receives half as share, and the father the other half as share and 'return.' The father excludes the grandfathers, brothers and sisters, both paternal and maternal, irrespective of their being full, consanguine or uterine.

The Imamiyyah observe: The remainder will return to the father and the daughter together, and not solely to the father. The remainder will be divided into four parts, the father receiving one part and the daughter three parts, because in every instance of 'return' in which two sharers are involved, the remainder will be divided into four parts, and if three sharers are involved, it will be divided into five parts (*Miftah al-karamah*, vol. 28, p. 115).

5. If there are two or more daughters with the father, according to the Sunni schools the daughters will take two-thirds and the father one-third.

The Imamiyyah say: The father receives one-fifth and the daughters four-fifths, because the one-sixth which remains after they have taken their shares returns to all of them and not solely to the father, as mentioned in the preceding example.

6. If a maternal grandmother is present with him, she will take one-sixth and he the remainder, because in the opinion of the Sunni schools a maternal grandmother is not excluded by the father (*al-‘Iqna’ fi hall al-faz Abi Shuja’*, vol. 2, *bab al-farai’d*)

The Imamiyyah observe: The father will receive the whole estate and the grandmother is not entitled to anything in any manner, because she belongs to the second category and he to the first.

7. If there are the father and mother together, she will take one-third if not prevented from it according to the Sunni schools, by two brothers or sisters, and by two brothers or one brother and two sisters or four sisters according to the Imamiyyah, as mentioned while explaining *hujb*; the father will take the remainder. But if she is partially excluded by the brothers, her share will be reduced to one-sixth and the father will take the rest. A consensus prevails here.

A question might be appropriately raised here: Why do the Imamiyyah not return the remainder to both parents, as done by them if a daughter inherits with the father?

The reply is that both the father and the daughter are sharers when they inherit together, and when sharers inherit together each takes his determined share and the remainder 'returns' to all of them in proportion to their shares. In the present case, the father while inheriting with the mother inherits as a residuary and not as a sharer because there is no child present, whereas the mother inherits as a sharer, and whenever a sharer inherits together with a residuary the latter takes the remainder. (*al-Masalik*, vol. 2, *bab al-mirath*)

8. If a daughter's son is present with the father, the father will take the whole estate and the daughter's son, according to the four Sunni schools, will get nothing because he is among the distant kindred.

The Imamiyyah say: The father will receive one-sixth as his share and the daughter's son will take half as his mother's share. The remainder will return to both exactly in the manner mentioned in the fourth illustration pertaining to his inheriting with the daughter.

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