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Causes of Inheritance and Impediments

Causes of Inheritance

There are three causes of inheritance:

a. blood relationship (*al-qarabah*),

b. marriage concluded by a valid contract, and

c. *al-wila* '.

We can bring these three causes under two heads: consanguinity (*nasab*) and affinity (*sabab*). By *nasab* is meant blood relationship and *sabab* includes both marriage and *al-wila* '. *Al-wila'* is a bond existing between two persons which creates between them a relationship similar to *nasab*. Hence a person manumitting a slave becomes his *mawla* and inherits from the latter if he has no other heir. We will not discuss here *al-wila'* with its different meanings and forms because it has no practical application today, and will discuss only the two other causes.

Blood relationship (*al-qarabah*) is established between two persons through legitimate birth when one of them is a direct descendant of the other (such as fathers how highsoever, and sons how lowsoever), or when both of them are descendants of a third person (such as brothers and maternal and paternal uncles). Legitimate birth materializes through a valid marriage as well as through 'intercourse by mistake.' But the marital bond will not materialize except through a valid marriage between man and woman. There is no difference of opinion regarding mutual inheritance between husband and wife. The schools, however, differ concerning the right of inheritance of certain relatives; the Shafi'i and the Maliki schools deny them such a right and consider them exactly like strangers.

These relatives are: Daughter's children, sister's children, daughters of brothers, children of uterine brothers, all kinds of paternal aunts, uterine paternal uncle, maternal uncles and aunts, daughters of paternal uncles and the maternal grandfather. Therefore, if a person dies and has no relatives except

one of those mentioned the heritage escheats to the public treasury (*bayt al-mal*) and they will not receive anything, according to the Shafi'i and Maliki schools, because they are neither among the sharers (*dhawu al-furud*) nor among the residuaries (*'asabat*). (*al-Mughni, 3rd ed. vol. 6, p. 229*)

The Hanafi and the Hanbali schools consider them capable of inheriting in the particular situation where there are no sharers and residuaries.

The Imamiyyah consider them capable of inheriting without this condition. Details will follow.

Impediments to Inheritance

The schools concur that there are three obstacles to inheritance:

a. difference of religion,

b. murder,

c. slavery.

Ignoring slavery, we will discuss the other two causes.

Difference of Religion

There is consensus that a non-Muslim will not inherit from a Muslim.[1] The schools differ regarding a Muslim inheriting from a non-Muslim. 'He inherits,' say the Imamiyyah; 'He does not,' say the other four schools.

If one of the decedent's sons or relatives who is a non-Muslim becomes a Muslim after his death and after the distribution of the heritage between the heirs, he is not entitled to inherit by consensus. The schools differ as to whether he inherits if he becomes a Muslim after the death but before the distribution of the heritage. He inherits according to the Imamiyyah and the Hanbalis, and not, according to the Shafi'i, the Maliki and the Hanafi schools.

The Imamiyyah state: If there is a single Muslim heir, he will take the whole heritage and the conversion of another to Islam will not entitle him to inheritance.

An Apostate (Murtadd)

A murtadd from Islam does not inherit in the opinion of the four Sunni schools, irrespective of his apostasy being *'an fitrah or 'an millah*,[2] except if he returns and repents before the distribution of the heritage. (*al-Mughni*, vol. 6)

The Imamiyyah observe: A *murtadd 'an fitrah*, if a male, will be sentenced to death without being asked to repent, and his wife will observe the *'iddah* of death from the time of his apostasy, and his estate will

be distributed even if he is not executed. His repentance will also not be accepted concerning the dissolution of his marriage, or the distribution of his estate, or the *wujub* of his execution, though it will be accepted in fact and by God, as well as in regard to other issues such as the ritual cleanliness of his body and the validity of his acts of worship (*'ibadat*). Similarly, he may own after his repentance new properties acquired through work, trade, or inheritance.

A murtadd 'an millah will be asked to repent. If he does so, he will have all the rights and obligations of Muslims. If he does not repent, he will be executed and his wife will observe the *'iddah* of divorce from the time of his apostasy. Then if he repents while she is undergoing *'iddah*, she will return to him and his property will not be distributed unless he dies or is killed.

A woman will not be sentenced to death irrespective of her apostasy being *'an fitrah or 'an millah*. But she will be imprisoned and beaten at the times of *salat* till she repents or dies. Her heritage will be distributed only after her death. (al-Sayyid Aba al-Hasan's *Wasilat al-najat* and al-Shaykh Ahmad Kashif al-Ghita's *Safinat al-najat, bab al- 'irth*)

Inheritance of Followers of Other Religions

The Maliki and the Hanbali schools say: Followers of different religions will not inherit from each other. Hence a Jew will not inherit a Christian and vice versa, and similarly the followers of other religions.

The Imami, the Hanafi and the Shafi'i schools state: They will inherit from one another because they are a single religious group, considering that all of them are non-Muslims. But the Imamiyyah lay down a condition in the case of a non-Muslim inheriting from another of his kind, that there be no existing Muslim heir. Therefore, if such an heir is present, even though distant, his presence will prevent a non - Muslim heir, even if he is closely related, from inheriting. This condition is not relevant to the other four schools, because according to them, as mentioned earlier, a Muslim does not inherit from a non-Muslim . (*Ghayat al-muntaha*, vol. 2, al-Shi'rani's *Mizan*, *al-Jawahir* and *al-Masalik*)

The Ghulat

Muslims are unanimous in holding that the Ghulat are polytheists (*mushrikun*) and do not belong to Islam and Muslims in any manner. The Imamiyyah have been especially severe concerning the issue of the Ghulat because a large number of their Sunni brothers have unjustly attributed to them the deviations of the Ghulat. The Imami 'ulama' have unequivocally mentioned in their books on doctrine and law that the Ghulat are *kafir*. Accordingly, al-Shaykh al-Mufid in *Sharh 'Aqa'id al-Saduq* (p. 63, 1371 H.) says:

The Ghulat feign to follow Islam. They are those who attribute divinity and prophethood to Amir al-Mu 'minin 'Ali and the Imams of his descent, and exceed all limits and deviate from the mean concerning their excellence in the religion and the world. They are misguided, unbelievers, whom Amir al-Mu'minin ordered to be killed and burnt, and the Imams judged them as unbelievers and apostates from Islam.

The Imami 'ulama' mention them in their legal works in the chapter on *taharah* (purification), and consider them ritually unclean. Their mention also occurs in the chapter on marriage, where it is observed that the marriage of Muslim women with them, as well as marrying their women, is *haram*, although the 'ulama ' permit marriage with women of *Ahl al–Kitab*. The mention of Ghulat is also made in the chapter on *jihad*, where they are considered polytheists in a state of war. In the chapter on inheritance, the 'ulama' prohibit their inheriting from Muslims.[3]

One Who Denies an Essential of the Faith

There is consensus among the schools that a person who denies any of the established and known doctrines of the faith and considers a *haram* as *halal* or vice versa, making that his creed, goes out of the pale of Islam and becomes an infidel. To this category also belongs one who attributes *kufr* to a Muslim.

It is worthwhile here to point out two issues that have been dealt in detail by the highly learned and leading Imami scholar Aqa Rida al–Hamadani in *Misbah al–faqih*, vol. I.

1. If a person appears to follow Islam and pronounces the *Shahadatan*, though we do not know whether he does so hypocritically, without having faith in it, or pronounces them with veritable faith, there is no difference of opinion in judging him a Muslim. But if we have knowledge of his falsity and know that he has no faith in God and the Prophet (*s*) but only presents himself as a Muslim hypocritically with a certain purpose in view, will we consider him a Muslim?

The gist of the Shaykh 's opinion is that this hypocrite has a reality and an appearance. As to the reality he is a non–Muslim, though his appearance presents him as a Muslim. It is our duty to leave his reality to God Almighty's judgement, and there is no doubt that God will deal with him as a non–Muslim, because it is presumed that he is such in reality. But we, Muslims, will accept his appearance and associate with him as a Muslim regarding marriage and inheritance, because we have been ordered to do so. It is stated in a tradition:

مَنْ قَالَ لَا إِلَهَ إِلاَّ اللَّه حُقِنَ دَمُهُ وَمَالُهُ

He who says 'la'ilaha ilia Allah,' his life and property are secure.

This implies that he will be treated as a Muslim, irrespective of any doubt on our part and our knowledge of his verity or falsity. This is also confirmed by the Prophet's treatment of the hypocrites, whom he treated in the same manner in which he treated other Muslims, though he knew of their hypocrisy (*nifaq*).

2. The secret behind the consensus of Muslims regarding the *kufr* of a person denying an established rule is that this denial as such necessitates the denial of the Prophet's prophethood. It follows from this that a person making such a denial, on becoming aware that his rejection amounts to rejecting the

prophethood and the messengerhood of the Prophet (*s*), will be doubtlessly considered a non-Muslim. But if he is not aware of it -- either because of ignorance, or his belief that his denial does not necessitate the denial of prophethood -- will he be considered a non-Muslim?

The summary of the Shaykh's reply is that an ignorant person can be viewed in different situations. At times his ignorance is the result of his absorption in sin and absence of attention to what is *haram* (like a person who has indulged constantly in fornication from the first day to his present old age, and this continuity has developed in him the belief that his act is *halal*, not *haram*); such a person is definitely a *kafir*.

At times his ignorance is due to his following a person whom it is not valid to follow. Such a person is also a non-Muslim even if he believes that his denial does not lead to denying the Prophet's messengerhood.[4]

It may be that none of the two above-mentioned causes are the result of his ignorance; rather, his ignorance may be the result of his lack of attention to the station of prophethood, so that if he is informed about it he would desist from his denial. Such a person is doubtlessly a Muslim because he resembles one who disputes regarding a certain thing with the Prophet (*s*) while not recognizing him, but when he comes to recognize that he is the Prophet (*s*), he refrains and is penitent.

There are other cases mentioned by the author of *Misbah al-faqih* which we leave for reasons of space. Those seeking details should refer to the first volume of the book.

Homicide

The schools concur that homicide, when intentional and without legal authority, impedes inheritance. This is based on the tradition:

لَا مِيرَاثَ لِلقَاتِلِ

There is no (*share in*) *inheritance for a murderer.*

Moreover, since the murderer's act expedites inheritance, his intention will be frustrated. Apart from this, the schools differ.

The Imamiyyah observe: He who kills his relative as *qisas* or in self-defence or on the orders of a just judge, or for similar other reasons justified by the Shari'ah, in these instances homicide is no obstacle to inheriting. Also, unintentional homicide (*alqatl al-khata'*) is no hindrance.[5]

The author of *al-Jawahir* states: The intentional act of a child and a lunatic is considered *khata'* (mistake). Similarly *khata'* includes a quasi-intentional act (*shibh al-'amd*). An instance of *shibh al-'amd*

is where a father beats his child with an intention of correcting him and the child dies as a result of the beating. Al–Sayyid Aba al–Hasan al–‘Isfahani writes in *al–Wasilah*: "Some of the causes which lead to death––like digging a well on a road, if a relative falls in it––the person having dug the well will inherit him, though he will be liable to pay the compensation (*diyah*).” Accordingly, there is no hindrance to the concurrence of the liability to *diyah* and inheritance.

Each one of the four Sunni imams has a separate opinion in this case. The opinion of Imam Malik concurs with the Imamiyyah. The opinion of al–'Imam al–Shafi'i is that unintentional homicide is an obstacle to inheritance, just like intentional murder; the same is the case where the murderer is a child or a lunatic.

The opinion of Imam Ahmad is that a homicide that calls for punishment, even if of a monetary kind, impedes inheritance. This excludes lawful killing, such as killing for *qisas,* or in self–defence, or in war, the killing of a rebel (*baghi*) at the hands of an *'adil* person –– in all these cases he will inherit.

The opinion of Imam Abu Hanifah is that a homicide which hinders inheritance is one which necessitates *qisas* or *diya* or *kaffarah* (atonement). This includes *al–qatl al–khata'*, but not *al–qatl bi al–tasbib* (where the accused is an indirect cause of homicide) or homicide by a lunatic or a minor. (*al–Mughni*, vol. 6, and Abu Zuhrah's *Mirath al–Ja'fariyyah*)

1. The word 'Muslim' includes all those who pray facing towards the Ka'bah (ahl al–qiblah). Hence a Sunni inherits from a Shi'i and vice versa, in accordance with Qur'anic nass, the Sunnah, and ijma'. Rather, this rule is among the essentials of the faith, exactly like the wujub of salat and fasting.
2. Al–Murtadd 'an fitrah is a born Muslim who apostatizes. Al–Murtadd 'an millah is one born to kafir parents who then becomes a Muslim and later deserts his faith.
3. I believe that there is no one today who considers 'Ali ('a) and his descendants to possess divinity and that this sect has become extinct. I have myself visited those places in Syria which are inhabited by the 'Alawis, who are accused of holding such beliefs. I lived among them for a few days and travelled from one village to another in their region. I saw them following Islamic practices like all other Muslims, without the least difference. What do we say about one who proclaims from the ma'adhin at the times of prayer "La ilaha ilia Allah, Muummad rasal Allah"? Is not negating the divinity of all except Allah contrary to accepting the divinity of others? Then how is it correct to attribute ghuluw to them, when God has said:

وَلَا تَقُولُوا لِمَنْ أَلْقَىٰ إِلَيْكُمُ السَّلَامَ لَسْتَ مُؤْمِنًا

And do not say to anyone who offers you peace: 'You are not a believer'? (4:94)

4. This when he can acquire knowledge of the facts but neglects to do so. But one incapable of acquiring such knowledge is excusable.
5. The author of al–Jawahir has narrated from a large number of Imami legists that a culprit in an unintentional homicide is prevented from inheriting the compensation, without being prevented from inheriting from the remaining heritage.

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