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Distribution of the Heritage

As pointed out earlier, inheritance results due to marriage or consanguinity, and there is no difference of opinion that the husband or wife has a share with all other heirs, the husband being entitled to one-fourth when there are descendants and one-half in their absence, and the wife to one-eighth in the presence of descendants and one-fourth in their absence.

The schools differ concerning a daughter's off spring, whether he/she is in the category of descendants whose presence is capable of lowering the share of the spouse from its higher to its lower limit or if his/her presence and absence has no effect. Details of this will come while discussing the inheritance of spouses.

There is again no difference of opinion that the distribution of the heritage begins with *ashab al-furud* (the 'sharers,' whose shares have been determined by the Qur'an) and that there are six kinds of these shares. But the schools differ regarding the number of sharers entitled to these shares and regarding the residuaries (those entitled to the remainder after the sharers have received their shares).

The schools also differ about the capacity to inherit of: daughter's children; uterine paternal uncles and aunts; and maternal uncles, aunts and grandfather. We mentioned earlier that these heirs fall in the category of distant kindred in the classification adopted by the four Sunni schools, and the rules applicable to them differ from those applicable to the sharers and residuaries.

The Shares and Sharers

A 'share' (*al-fard*) is a fixed portion (of the heritage) determined by the Qur'an. According to consensus there are six such shares: 1/2, 1/4. 1/8, 1/3, 2/3 and 1/6. Some have summarized it by saying: "1/3 and 1/4, and the double and half of each."

1/2 is the share of the only daughter if there is no son sharing with her, and according to the four Sunni schools the son's daughter is like the daughter, while according to the Imamiyyah she takes the place of her father. Half is also given to the only sister, either full or half on the father's side, if there is no brother

sharing with her. A husband gets half if the wife has no offspring to inherit her.

1/4 is the husband's share if the wife has a descendant and the wife's if the husband has no descendant.

1/8 is the share of a wife if the husband has a descendant.

2/3 is the combined share of two or more daughters in the absence of male children, and of two or more sisters, full or consanguine, if there is no brother sharing with them.

1/3 is the share of the mother if the decedent has no male child, or brothers whose presence, as per the forthcoming details, prevents her from inheriting more than one-sixth. Two or more uterine brothers and sisters also inherit one-third.

1/6 is the share of the father and the mother in the presence of a child. The mother also gets one-sixth if the decedent has brothers. The same is the share of a single uterine brother or sister. The inheriting of one-sixth as sharers by the above three enjoys concurrence. The four Sunni schools add to these sharers entitled to one-sixth, one or more son's daughters along with the daughter of the decedent. Hence if the decedent has a daughter and a son's daughter, the former will take half and the latter one-sixth.

But if the decedent has two or more daughters and a son's daughter, the latter will be prevented from inheriting unless she has a male counterpart of her class, such as when she has a brother or, lower in order, her brother's son, i.e. the great grandson of the deceased. One–sixth is also given to the paternal grandfather in the absence of the father.

A grandmother, just like a mother, inherits a sixth if she is a paternal or maternal grandmother or mother of the paternal grandfather. Thus if she is the mother of the decedent's mother's father, she will not inherit. If two parallel grandmothers, such as the mother's mother and the father's mother are present together, the share of one-sixth will be equally divided between them. 1

Some of the six different shares coexist with some others. Hence, a half can exist with a half (e.g. husband and sister, each receiving a half), with one-fourth (e.g. husband and daughter, she receiving a half and he one-fourth), with one-eighth (e.g. wife and daughter, the former getting an eighth and the latter a half), with one-third (e.g. husband and mother, where her share is not reduced by a brother, he receiving a half and she a third), and with one-sixth, (e.g. husband and the only uterine brother or sister, the former receiving a half and the latter one-sixth).

One-fourth can coexist with two-thirds (e.g. husband and two daughters, he receiving a fourth and they two-thirds), with one-third (e.g. wife and two or more uterine brothers or sisters, she receiving one-fourth and they one-third) and also with one-sixth, (e.g. wife and a single uterine brother or sister, the former receiving one-fourth and the latter one-sixth).

One-eighth can coexist with two-thirds (e.g. wife and two daughters, she receiving one-eighth and they

two-thirds) and with one-sixth (e.g. wife and either parent in the presence of a child).

Two-thirds can coexist with one-third (e.g. two or more consanguine sisters along with uterine brothers) and with one-sixth (e.g. two daughters and either parent).

One-sixth can coexist with itself (e.g. parents in the presence of a child).

Those shares which do not coexist are: one-fourth and one-eighth, one-eighth and one-third, and one-third and one-sixth.

The Residuaries (al-'Asbat)

According to the four Sunni schools, there are three types of *nasabi* residuaries: 2 a residuary by himself (*'asabah bi nafsiha*), a residuary through another (*'asabah bi ghayriha*), and a residuary along with another (*'a abah ma'a ghayriha*).

A 'residuary by himself' includes all males between whom and the decedent there is no intervening woman, and the meaning of being such a residuary is that he is independent of others (in his right to inherit as a residuary), and that he is a residuary in all cases and situations. A 'residuary through another' and 'residuary along with another,' are residuaries in certain cases without being so in others, as will become clear later.

The 'residuaries by themselves' are the closest of residuaries and inherit in the following order:

- the son,
- then the son's son, how lowsoever; he takes the place of his father,
- then the father,
- then the paternal grandfather, how highsoever;
- then the full brother;
- then the half-brother by father;
- then the son of the full brother;
- then the son of the half-brother by father;
- then the full paternal uncle,
- then the consanguine paternal uncle (who is father's half-brother by grandfather),
- then the son of the full paternal uncle,

• then the son of the consanguine paternal uncle.

If some of them exist along with others, the son will supersede the father, in the sense that the father will take his *fard* (share) —which is one–sixth— and the son will take the remainder as a residuary.

According to the four Sunni schools, the son's son will similarly supersede the father, and the father will supersede the paternal grandfather. They differ regarding the paternal grandfather as to whether he will supersede the brothers in inheritance or if they inherit jointly with him, so that all of them are considered as belonging to the same class.

Abu Hanifa observes: The grandfather will supersede the brothers and they will not inherit anything along with him. The Imami, the Shafi'i and the Maliki schools state: They will inherit with him because they belong to his class.

Among the residuaries, those related from bot h sides will supersede those related from only one side. Hence a full brother will supersede a consanguine brother and the full brother's son will supersede a consanguine brother's son. Similarly, in the case of paternal uncles the degree of their nearness (to the decedent) is taken into consideration, and the nearest is preferred. Therefore, the decedent's paternal uncle supersedes his father's paternal uncle, and he in turn will supersede the grandfather's paternal uncle.

The following four female relatives are considered 'residuaries through another ':

- 1. daughter or daughters,
- 2. son's daughter or daughters,
- 3. full sister or sisters,
- 4. consanguine sister or sisters.

It is known that all the above–mentioned inherit as sharers in the absence of a brother. 3 One of them is entitled to a half, and if more, to two–thirds, and if they have a brother they inherit as residuaries – according to the four Sunni schools— but not if they are alone, and will share the heritage with him, the male receiving twice the share of females.

As regards 'residuaries along with another,' they are full or consanguine sister or sisters that inherit along with a daughter or son's daughter. Therefore, a sister or sisters inherit as 'sharers' if there is no daughter or son's daughter inheriting along with them, and inherit as residuaries with a daughter or son's daughter. Hence the daughter or the son's daughter will take her share and the full or consanguine sister or sisters will take the remainder, thereby becoming residuaries along with the daughter.

After this explanation it becomes clear that a full or consanguine sister inherits in three different ways.

She is a sharer if she has no brother and the decedent no daughter, a 'residuary through another' if she has a brother, and a 'residuary along with another' if the decedent has a daughter. The same applies in the case of two or more sisters. It also becomes clear that full and consanguine paternal uncles will not share in the heritage along with the daughter except in the absence of full or consanguine brothers and sisters.

The four Sunni schools concur that if there is a single residuary without any sharers, he will inherit the whole heritage, and in the presence of a sharer he will take the remainder after the sharer has taken his share. If there is no residuary, according to the Maliki and the Shafi'i schools, the excess will escheat to the *bayt al-mal*, and according to the Hanafi and the Hanbali schools it goes to the sharers by way of 'return' (*radd*), and the estate will not escheat to the *bayt al-mal* in the absence of sharers, residuaries and distant kindred.

The Residuaries From the Imami Viewpoint

The Imamiyyah do not recognize these three different kinds of residuaries and limit the heirs to 'sharers' and 'residuaries' without differentiating between male and female residuaries. Hence, a single son is entitled to the whole estate; a single daughter and a single sister too are similarly entitled. They classify the heirs, both males and females, into three categories:

- 1. Parents and children, how lowsoever.
- 2. Brothers and sisters (and their children), how lowsoever, and grandparents, both paternal and maternal, how highsoever.
- 3. Paternal and maternal uncles and aunts and their children.4

Whenever there exists a male or a female heir in the higher category, it will prevent all others belonging to the lower category from inheriting, whereas in the opinion of all the other schools these different categories may combine and inherit together, and at times all the three categories may inherit together, such as a mother along with a uterine sister and a full paternal uncle, in which case the mother receives one–third, the sister one–sixth, and the uncle the remainder.

- 1. 'Abd al-Muta'al al-asa'idi, al-Mirath fi al-Shari 'at al-'Isllimiyyah, 5th ed., p. 14.
- 2. 'Asabiyyah is of two types, related to nasab or sabab, and by sabab is meant the wila' of the manumitter and his children.
- <u>3.</u> A single daughter and daughters, according to the Imamiyyah inherit as sharers as well as by 'return,' similarly, a single sister and sisters. But a son's daughter/daughters take the share of the person through whom they are related, that is the son.
- 4. These three categories of heirs are natural, because there is no intermediary between the decedent and his/her parents and children; hence they belong to the first category. Subsequently, after them, come the brothers/sisters and the grandparents, because they are related to the decedent through a single intermediary, the parents; hence, they belong to the second category. After them is the category of the paternal and maternal uncles/aunts, because they are related to the decedent through two intermediaries, i.e. the grandfather or the grandmother, and the father or the mother; hence they belong to the third category.

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