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Exclusion (al-Hujb)

By *Hujb* is meant the exclusion of some relatives from inheritance. *Hujb* is either exclusion from the actual inheritance itself (such as the exclusion of the grandfather by the father, which is called '*hujb al-hirman*') or prevention from a part of the inheritance (such as the reduction of the husband's share by a child from a half to one–fourth, which is called '*hujb al-nuqsan*').

The schools concur that parents, children, husband and wife are not excluded by *hujb al-hirman*, and whenever present they will take their share from the inheritance and no impediment prevents them from it, because they are the nearest to the decedent, being related to him without any intermediary, while *all* others are related through an intermediary.

The schools concur that the son excludes brothers and sisters from inheritance, and, with greater cause, the paternal and maternal uncles. The son does not prevent the paternal grandfather and the maternal grandmother, in the opinion of the Sunni schools, and the son's son in the absence of the son, is exactly like the son, inheriting as his father would have inherited and excluding in the same manner.

There is consensus among the schools that the father excludes the brothers and sisters from inheritance, as well as the paternal grandfather. But the maternal grandmother, according to the Sunni schools, inherits along with the father and takes one–sixth in the absence of the mother, and in the opinion of the Hanbalis the paternal grandmother inherits along with the father, i.e. her son. The Shafi'i, the Hanafi and the Maliki schools say: She will not inherit with him, because she is excluded by him. (*al–Mughni*, vol. 6, p. 211, and *al–Bidayah wa al–nihayah*, vol. 2, p. 344)

The Imamiyyah state: The father is similar to the son and none of the grandparents inherit along with him, because they belong to the second category while he belongs to the first of the categories of heirs.

The four schools say: The mother excludes all kinds of grandmothers (*al-Mughni*, vol. 6, p. 206), but does not exclude grandfathers, brothers or sisters, nor the full and agnate paternal uncles and aunts, and all of them share the inheritance with her.

The Imamiyyah observe: The mother, like the father, excludes all kinds of grandparents, brothers and

sisters.

The four schools state: The daughter does not exclude the son's son, and two or more daughters exclude the son's daughters, except when they have a male counterpart. But a single daughter does not exclude the son's daughters. A single daughter or daughters exclude cognate brothers.

The Imamiyyah say: A daughter is like a son and excludes the children 's children, both male and female, and, with greater justification, the brothers and sisters.

The schools concur that a grandfather and brother exclude paternal uncles and aunts, and a child, male or female, brings down the husband's share from a half to one-fourth and the wife's share from one-fourth to one-eighth. The schools differ regarding the minimum number of brothers or sisters required to diminish the mother's share from one-third to one-sixth.

The Malikis say: The minimum required to diminish her share is two brothers. The Hanafi, the Shafi'l and the Hanbali schools observe: Two brothers or two sisters suffice.

The Imamiyyah state: Brothers do not diminish the share of the mother unless the following conditions are fulfilled:

- 1. There should be two brothers, or a brother and two sisters, or four sisters. Hermaphrodites will be considered sisters.
- 2. The absence of impediments to inheritance, such as homicide and difference of religion.
- 3. That the father be present.
- 4. The brothers should be either full or agnate.
- 5. They should have been born. Hence, unborn brothers do not exclude.
- 6. They should be alive. Hence, if one of them is dead, he will not exclude.

On the whole, the difference between the Sunni schools and the Imami school is that the Imamiyyah prefer the nearer relative to the more distant, irrespective of his/her belonging to the same category (e.g. the son supersedes the son's son, and the father supersedes the grandfather) or another category (e.g. the son's son supersedes the brothers).

They say: One who is related through both parents excludes his consanguine (agnate) counterpart on the same side. Hence a full sister excludes a consanguine brother, and a full paternal aunt excludes a consanguine paternal uncle; but a full paternal uncle does not exclude a consanguine maternal uncle, because they are not from the same side. The Imamiyyah do not discriminate between male and female heirs regarding their right to inheritance. Therefore, in the same way as the children 's children represent the children in their absence, the children of brothers and sisters represent their parents in their

absence.

The Sunni schools do accept the doctrine of preferring the nearer relatives to the more distant ones, though not totally; rather, they lay down the condition of unity of class, i.e. the nearer one excludes another who is related through him/her, except the uterine (cognate) brothers, who are not excluded by the mother though they are related through her, and similarly the great grandmother, who inherits with the grandmother, i.e. with her daughter.

But if he/she is not related through another, he/she is not excluded; e.g. the father, though he excludes the paternal grandfather, does not exclude the mother's mother, and similarly the mother, though she excludes the maternal grandmother, does not exclude the paternal grandfather. The uncles and aunts of the decedent are preferred over the uncles and aunts of the decedent's father. Similarly, the grandparents of the decedent are preferred over his/her father's grandparents. The nearer grandmother excludes the more distant grandmother. All this is due to the doctrine of the nearer being preferred.1

These schools also differentiate between male and female heirs. Hence, the brothers of the decedent inherit with his daughters, though they do not inherit with his sons. The brothers' children do not inherit with the grandparents in the opinion of these schools, as opposed to the Imamiyyah.

This is a very brief account of the exclusions through which I intended to highlight the salient features of the Imami and the Sunni schools. Otherwise, the chapter on exclusions is a vast one and it is possible for a writer to include in it all the issues of inheritance. This will become clear from the forthcoming discussions.

1. The paternal grandmother does not exclude a distant maternal grandmother in the opinion of the Shafi'i and the Mliki schools (e.g. the father's mother with the mother's mother's mother), while in the opinion of the Hanafi and the Hanbali schools she is excluded. (al–Sa'idi's al–Mirath fi al–Shari'at al–Islamiyyah)

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