

ISLAMIC WILL  
TEMPLATE INSIDE



# INHERITANCE IN ISLĀM



by Shaykh Mawlānā Muhammad Saleem Dhorat  
*ḥafīzahullāh*

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INHERITANCE IN ISLĀM  
BY SHAYKH MAWLĀNĀ MUHAMMAD SALEEM DHORAT

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## Contents

<b><i>Inheritance in Islām (Discourse I)</i></b> .....	1
When Was This Verse Revealed?.....	3
Equality in Inheritance.....	5
Divinely Decreed Shares for Women.....	5
Allāh ﷻ’s Choice of Distribution .....	6
What Can Be Drawn from the Estate .....	7
1. Funeral Expenses (Bathing, Shroud and Burial).....	7
2. Debts .....	8
3. Waṣiyyah (Bequest in 33.33% of Estate).....	9
Causes of Incorrect Wills.....	11
The Three Criteria for Waṣiyyahs .....	12
Minors’ Consent.....	13
Settling and Dining at the Deceased’s House.....	13
Depriving Sisters – An ill within our Societies.....	15
Separate Ownership.....	17
<b><i>Inheritance in Islām (Discourse II)</i></b> .....	19
An Erroneous Custom .....	20
The Importance of Drawing Up a Will.....	21
Some Important Rules to Remember .....	22
An Inspiring Incident.....	23
Benefits of Adopting the Islamic Injunctions .....	24
What We Must Do Following a Death.....	25
The Precautious Manner of Muftī Muḥammad Shafī‘ ﷺ .....	26
Negligence Now Will Lead to Confusion Later .....	26
A Prevalent Yet Objectionable Custom.....	27
A Thought Provoking Incident.....	28
Final Word.....	29
Summary and Du‘ā.....	30



بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ  
وَالْأَقْرَبُونَ ، وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا  
تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ  
مِنْهُ أَوْ كَثُرَ ، نَصِيبًا مَّفْرُوضًا

*For men there is a share in what parents and the  
nearest of kin have left. And for women there is a  
share in what parents and the nearest of kin have  
left, be it small or large – a determined share.*

*(Glorious Qur'an 4:7)*



**Inheritance  
in Islām  
(Discourse I)**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ وَحْدَهُ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى مَنْ لَا نَبِيَّ بَعْدَهُ، أَمَّا بَعْدُ فَأَعُوذُ  
بِاللَّهِ مِنَ الشَّيْطَانِ الرَّجِيمِ، بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ: لِلرِّجَالِ نَصِيبٌ مِّمَّا  
تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ، وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ مِمَّا  
قَلَّ مِنْهُ أَوْ كَثُرَ، نَصِيبًا مَّفْرُوضًا.

صَدَقَ اللَّهُ مَوْلَانَا الْعَظِيمُ، وَصَدَقَ رَسُولُهُ النَّبِيُّ الْأُمِّيُّ الْكَرِيمُ، وَنَحْنُ  
عَلَى ذَلِكَ لَمِنَ الشَّاهِدِينَ وَالشَّاكِرِينَ وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ.

Respected ‘ulamā, brethren, elders, beloved young friends and my respected mothers and sisters. Through the Tawfīq of Allāh ﷻ, it has been my good fortune to recite in your presence a verse from Sūrah An-Nisā in which Allāh ﷻ says:

﴿لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ، وَلِلنِّسَاءِ نَصِيبٌ  
مِّمَّا تَرَكَ الْوَالِدِينَ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ، نَصِيبًا مَّفْرُوضًا﴾

For men there is a share in what parents and the nearest of kin have left. And for women there is a share in what parents and the nearest of kin have left, be it small or large – a determined share. (4:7)

When parents and relatives pass away, whatever wealth they leave behind which they had rightfully owned, whether it is little or more, significant or insignificant, it will be distributed to both the male and female inheritors in accordance with the shares determined by Allāh ﷻ.

This means that upon the death of an individual, according to the Islamic rules of inheritance, the bereaved members of the family are only entitled to that which has been stipulated by Allāh

ﷺ. Furthermore, only those relatives will inherit for whom the Islamic rules of inheritance has allotted a share. The classification of heirs, as well as the amount to which they are entitled, will vary from person to person as each case is an individual one. Therefore, the muftīs will need to be contacted to find out exactly what is due and to whom. These muftīs too will only judge by the Book of Allāh ﷻ, and do not have the right to make any alterations to the Commands of Allāh ﷻ. No human being, be it a scholar, jurist or the deceased himself, nor any other close relative, has any authority or personal say in either the distribution or the shares that have been fixed by Allāh ﷻ.

### **When Was This Verse Revealed?**

Before the advent of our Nabī ﷺ and the subsequently revealed Commands of Allāh ﷻ, widows, girls and orphans had no rights in Arabian society. During this age of ignorance, only that person was considered worthy of receiving inheritance who was capable of fighting on the battlefield and able to bring home the ‘spoils of war’. Normally women were not able to do that and therefore, whenever a man died, the thought of his wife receiving anything was not even considered. Rather, ignorance had stooped to such a low level, that the widow was also considered part of the estate. Thus, if a son by another wife came to inherit his late father’s estate, he was at will to do as he wished with his step-mother; to the extent that he would even marry her without her consent or marry her away to some other person.

Similar was the position of young boys and girls. They too were considered unfit to receive inheritance, as they were incapable of fighting in battles and bringing home ‘war booty’, or able to generate any sort of income by any other means.

During the time of our beloved Nabī ﷺ, a Ṣaḥābī by the name

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of Sayyidunā Aws Ibn Thābit ﷺ passed away. He left a widow, a minor son and two daughters. In accordance with pre-Islamic culture they were thought to be unworthy of receiving any inheritance. His closest male relatives were two paternal cousins who were in the prime of their lives.

Both young men came and usurped the whole estate and this was not considered to be wrong by society; rather, a perfectly normal thing to do, as that was the prevailing custom. Whenever an incorrect practice becomes entrenched in a society, it becomes regarded as perfectly normal in the eyes of the people, no matter how unjust it may be. Consequently, when an attempt is made to reform a malpractice, such attempts are viewed as strange and thought of as incorrect.

Reluctantly, the poor widow resigned herself to fate. However, the thought arose in her mind, “I now have to fend for myself, my two daughters and my son. If only these two (the cousins) would marry each of my daughters, at least the responsibility of fending for them would be removed from my shoulders.” Accordingly, the widow of Sayyidunā Aws ﷺ proposed the marriage of her daughters to the two young men. Both openly refused.

This poor widow approached and related the whole episode to our beloved Nabī ﷺ who had always disapproved of this vile practice and had been awaiting a Command from Allāh ﷻ. Within a short time, the signs of Waḥy (revelation) became visible upon the noble face of Nabī ﷺ, and the above-mentioned verse was revealed, which once and for all annihilated this vulgar and cruel practice.



## Equality in Inheritance

The right to inherit is common to both men and women. So when the father passes away, just as the son has a right to inherit, so will the daughter. Similarly, when the son dies, just as the father is entitled to a share, so will the mother and wife. And should he leave behind only brothers and sisters, then they too will inherit.

The verse contains clear emphasis with regards to the entitlement of women. The entitlement of both men and women could have easily been contained in a single sentence, but Allāh ﷻ preferred to initiate a separate sentence to lay extra emphasis as regards the inheritance of women.

﴿لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ

مِّمَّا تَرَكَ الْوَالِدِ وَالْأَقْرَبُونَ﴾

For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left. (4:7)

This separate mention of women is to emphasise and make people realise that females too enjoy the right to inherit, as do men. Upon the revelation of these verses, Nabī ﷺ divided the estate in accordance with the Commands of Allāh ﷻ, which in this case resulted in both cousins receiving nothing. This was because in the rules of inheritance, the principle of ‘Al-Aqrab fal-Aqrab’ (closest before the close) is applied; i.e. should children of the deceased be living, the question of cousins receiving anything does not arise.

## Divinely Decreed Shares for Women

Accordingly, the Messenger of Allāh ﷺ apportioned one-eighth

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of the estate to the widow. The principle is that in the event of the deceased being survived by the wife and children, the wife will receive one-eighth (12.5%), and should he be survived by only his wife (and no children) then she will receive one-quarter (25%). Nabī ﷺ divided the remaining estate (87.5%) into four equal parts (21.875%) and granted one portion to each daughter and two shares (43.75%) to the son.

From the verse of the Qu'rān under discussion, we understand that irrespective of the amount the deceased leaves behind; be it only £50, an apparently trivial sum, which becomes even smaller when divided up, all the inheritors will receive their Divinely determined share. This is why our Fuqahā (jurists) have stated, through which the sensitivity and gravity of this Command will be understood, that even the clothing in which the deceased had passed away is part of the estate. No inheritor has the right to distribute or dispose of these clothes without the prior consent of every inheritor, irrespective of their whereabouts; whether they be present at home or abroad in another continent. This applies to everything belonging to the deceased, including such insignificant articles as bottles of perfume, rosaries, hats, spectacles, pens, sheets of paper; any possession whatsoever and however insignificant it may be.

### **Allāh ﷻ's Choice of Distribution**

We should all remember that it is Allāh ﷻ who has determined who receives what and how much, not even the deceased has any choice. One cannot claim that such and such a person has been a great friend and benefactor, therefore when I die, he should receive half of my estate; or of my two sons, this one was more loyal and devoted, therefore, he should receive the greater share. Likewise, the elders of a clan or community have no right to

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decide who should receive what. Remember,

﴿وَاللَّهُ عَلِيمٌ حَكِيمٌ﴾

And Allāh is All-Knowing, All-Wise. (4:26)

Allāh ﷻ's 'Ilm (Knowledge) is greater than ours, and as well as being Al-'Alīm (the All-Knowing) He is also Al-Ḥakīm (the All-Wise). It is with these great qualities that Allāh ﷻ has determined the shares of inheritance. No one has any say or opinion in the matter. After the death of the deceased, all his estate will become the property of the inheritors and will be distributed in accordance with the Islamic rules of inheritance. The experts in Islamic jurisprudence are none other than the respected 'ulamā and muftīs. Therefore, we will need to consult them and present them with all the facts, including the minutest detail regarding the estate and number of family members, and seek their explanation on how much to distribute and to whom.

The purpose for this explanation is to emphasise that everything the deceased leaves behind which was his/her property, will fall under the estate, which now becomes the property of every inheritor. It is therefore not permissible for some of the inheritors to take decisions regarding the estate without the consent of the others, as each of the heirs will have a claim and right on every penny, until it be divided in accordance with the Islamic rules of inheritance.

## **What Can Be Drawn from the Estate**

### **1. Funeral Expenses (Bathing, Shroud and Burial)**

From the estate, the first right of the deceased is that of the funeral expenses. It is of course, quite another matter, if out of love and affection one or more of the inheritors decide to personally

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bear this expense. However, if the deceased be a woman survived by her husband, then her husband will bear the funeral expenses. This will be his responsibility, irrespective of whether she has left behind an estate or not.

A point to remember here is that, regarding the shroud and burial, neither should one indulge in extravagance nor miserliness, but rather adopt a path of moderation. The deceased has now left this world, so what benefit is there in lavishing money on the purchase of something as simple as a shroud? Sayyidunā Abū Bakr Aṣ-Ṣiddīq رضي الله عنه, at the time of his death, directed those present with the following words: “Bury me in these very clothes that I am wearing, as new clothes befit a living person.” (Al-Bukhārī) This was the condition of our pious elders and predecessors. On the contrary, today, we find that people purchase highly expensive coffins and shrouds and indulge in lavishness, whereas simplicity would suffice.

## 2. Debts

After settling the funeral expenses, one will need to ascertain whether the deceased had left any unpaid debt. Scrutinise his diaries, record books and statements. Besides, people themselves will come and claim that the deceased owed them such and such an amount. Therefore, the second priority will be to pay off all unpaid debts. Should the deceased leave behind a house valued at £150,000 and also have debts amounting to the same, then the house will have to be sold in order to pay the debts. The inheritors will, in such circumstances, receive nothing. If the inheritors refuse to clear the debts and unjustly claim the £150,000 for themselves, then the money will be deemed to be wrongfully seized and therefore ḥarām.

Many of us today are quick to take advantage of favourable situations, whether fair or foul. We fully remember what is

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owed to us and readily furnish our claims with written evidence found in the records of the deceased. However, we conveniently overlook what the deceased owed to others, which may also be well-documented. Accordingly, when a debtor arrives to claim his money, which the deceased may have clearly written down, the reply is, “Our late father never mentioned anything about this to us, therefore present your evidence!” Do not glee upon having deprived this person of his rightful wealth; rather ponder over the punishment which will befall such a person who usurps the rights of others. There is also the possibility of the father being punished in the grave, if he failed to leave behind instructions concerning the debts he owed to other people.

Loyalty demands that children acknowledge and endeavour to clear any genuine debts that their father had left behind. The reply of such loyal children is, “Although our father did not leave sufficient money to clear the debt immediately, please be patient whilst we strive to repay you. Do not worry, from today fulfilment of his debts is our responsibility.”

This is the demand of affection for the father, the person who nourished and nurtured us from childhood. Today Allāh ﷻ has granted us an opportunity to assist him, yet our actions and selfish behaviour becomes a means for his suffering in the grave.

Therefore, should a person leave behind an estate valued at £50,000, with debts of £45,000, then these debts will be cleared first. The remainder will be distributed amongst the inheritors in accordance with the Islamic rules of inheritance, by consulting an ‘ālim.

### **3. Waṣiyyah (Bequest in 33.33% of Estate)**

A person has the right to make a waṣiyyah (bequest). For example, he can state, “Upon my death, ‘x’ amount should be

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given to the following person/s or institutions, from my estate.” However, even in a waṣiyyah certain rules will apply. Firstly, the deceased cannot make a waṣiyyah for any of his inheritors. Whilst his wife will receive her determined share, he cannot for example bequeath that, “She should be the beneficiary of an extra £1,000,” because Nabī ﷺ has stated,

لَا وَصِيَّةَ لَوَارِثٍ

There is no waṣiyyah for an inheritor. (Abū Dāwūd)

Therefore, waṣiyyah can only be made for those who are not going to inherit. For example, in the event of the deceased leaving behind a wife, sons, daughters and parents, the deceased’s brother, in this particular case, will not receive a part of the inheritance. So he would be allowed to be a recipient of waṣiyyah, as he is not an inheritor. However, a muftī should be consulted before taking any decisions.

The second point to remember is that waṣiyyah only operates in one-third (33.33%) of the estate, after deducting the funeral expenses and any debts. If a person makes a waṣiyyah, for example, of £5,000 to be donated to a particular masjid, the masjid will be eligible for what had been stipulated in the waṣiyyah, as the masjid is not an inheritor of the deceased. However, upon death, if after deducting the funeral expenses and debts, it is found that only £9,000 remain, the masjid will not receive £5,000 as proposed in the waṣiyyah, it will only receive £3,000. This is because waṣiyyahs operate in one-third of the estate only and that too after the deduction of funeral expenses and debts. For clarity, the following illustration is given:

Waṣiyyah.....	£5,000
Estate (after funeral expenses and debts).....	£9,000
Two-Thirds for Inheritors .....	£6,000
Amount actually donated to the masjid .....	£3,000

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## Causes of Incorrect Wills

The two fundamental rules regarding the waṣīyyah should be borne in mind:

- Firstly, the deceased may only make a waṣīyyah up to a maximum of one-third of the estate, and the remaining two-thirds will be distributed in accordance with the Islamic rules of inheritance; and
- Secondly, it is not permissible to make waṣīyyah for any inheritor.

It should not be too difficult to appreciate that modern-day wills grossly contravene the Islamic rules of inheritance, as they operate in 100% of the estate, or at least in more than 33.33%, and that there is no distinction between those who will and those who will not inherit. If the amount for one's wife, for instance, is already determined as an inheritor, one will have no right to specify any portion of the estate for her as waṣīyyah, as the Islamic rules of inheritance forbids this. She should only receive that amount which she is eligible for, being an inheritor.

In instances where the deceased has failed to adhere to the rules of Islamic rules of inheritance, the beneficiary should not take advantage of legal rights and court proceedings to enforce the will. The acquisition of wealth or possessions in such a manner, will be akin to usurpation and theft, and be a violation of the Commands of Allāh ﷻ. Moreover, should orphans be amongst the deprived inheritors, then the gravity of the sin will increase.

﴿إِنَّ رَبَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ  
نَارًا، وَسَيُصْلَوْنَ سَعِيرًا﴾

Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. (4:10)

## The Three Criteria for Waṣiyyahs

When a person dies, first deduct the funeral expenses and debts from the estate. Secondly, ensure all waṣiyyahs are within one-third of the estate and see whether it is incorrectly in favour of any inheritor. Thirdly, scrutinise whether the waṣiyyah is for any ḥarām or sinful act.

An example of a sinful waṣiyyah could be that of a man who makes a will solely to deprive his heirs, such as his children, who failed to fulfil his every whim and desire. He consults with his lawyers to draw up such a will wherein the local masājid, for example, will receive a share of his estate. The reason for such apparent generosity to a good cause? Nothing other than to spitefully deprive his children from their rightful due! This is a sinful waṣiyyah. Therefore, sincerity is extremely important when drawing up wills, particularly when making waṣiyyah in one-third of the estate. It may appear that the person has performed a very good deed by donating to a good cause, a means of pleasing the Lord, but in reality such a waṣiyyah will bring about exactly the opposite outcome.

It is therefore incumbent for people to consult and seek guidance from the ‘ulamā with respect to matters relating to inheritance, and they should do so without any delay. Wills should be drawn up with their guidance, wherein it should be stated very clearly that it is the wish of the testator that the estate be distributed in accordance with the Islamic rules of inheritance. It would also be wise to specify a reliable ‘ālim, muftī or some Islamic institute, under whose authority one would like the distribution to be carried out and who would have the final say in matters should any dispute arise.

Such waṣiyyahs are a means of acquiring reward and the Pleasure of Allāh ﷻ, for as well as saving oneself from sin, the person

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would also close all doors of misappropriation following his death. Even if his children should squabble amongst themselves and take their arguments to a court of law, the ruling will inshā'allāh be in compliance with the deceased's wishes and in accordance with the Commands of Allāh ﷻ.

## **Minors' Consent**

Sometimes, the deceased leaves behind inheritors who are minors. Their consent is not acceptable according to Islamic teachings, until they reach the age of maturity. Why? Simply because they are too young to decide for themselves and may take wrong decisions due to persuasion and coaxing by relatives.

## **Settling and Dining at the Deceased's House**

Among the prevailing yet incorrect customs of current times, is that following the death of a person, relatives, friends and associates descend on the bereaved home and without feeling the need to seek the consent of the inheritors, will dine there, and some will even settle there for days, all at the expense of the deceased. Only after a lengthy period has elapsed will they sit down to settle accounts. Such abhorrent customs should be abandoned. Another custom is related to the funeral expenses. These expenses should be drawn from the estate of the deceased before its division. However, one should remember this only incorporates the expenses of bathing, shroud, soaps and perfume, plot in the cemetery and transportation. Nowadays, people also include the expense of hosting and feeding the condoling guests, especially those who come from distant places. This cost has no association to the deceased, yet people deduct it from the estate as part of the funeral expenses.

Accordingly, when minor children are also amongst the inheritors, then all these unnecessary expenses of hosting and feeding are in actual fact usurpation of wealth which belongs to orphans! All those who consume this food are also eating from the wealth of these orphans. Remember, Allāh ﷻ says:

﴿إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ  
نَارًا، وَسَيَصْلُونَ سَعِيرًا﴾

Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. (4:10)

Reflect upon this verse and hasten towards eliminating these incorrect customs which are rampant in our societies. Within our towns, cities and communities such ‘ulamā are present, who are willing to guide and help you; turn towards them and inquire as to the correct method for distributing inheritance.

Nabī ﷺ said:

يَبْعَثُ يَوْمَ الْقِيَامَةِ الْقَوْمَ مِنْ قُبُورِهِمْ تَأَجَّجُ أَفْوَاهُهُمْ نَارًا، قِيلَ: يَا رَسُولَ  
اللَّهِ مَنْ هُمْ؟ قَالَ: أَلَمْ تَرَ أَنَّ اللَّهَ قَالَ: إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ  
ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا، وَسَيَصْلُونَ سَعِيرًا.

On the Day of Judgement, a group of people shall be raised from their graves, fire shall be belching out of their mouths. It was asked, “Who are these people, O Messenger of Allāh?” He replied, “Do you not see? Verily, Allāh says: ‘Surely, those who eat up the property of orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell.’” (Tafsīr Ibn Kathīr)

Ibn Kathīr ﷺ’s commentary elaborates that those who unjustly eat the wealth of orphans will, when they arise from their graves

on the Day of Qiyāmah, be in a condition where embers of fire will be in their stomachs and flames will belch out from their ears, mouths, eyes and noses. (Tafsīr Ibn Kathīr)

Once a saint went to visit an ill person at night. A lamp was burning near the ailing man's bed. As fate had destined, this ill person passed away in the presence of this saint. Immediately, the saint extinguished the lantern and ordered an accomplice to go and bring another lantern and some oil. These were brought and the lantern was lit. Someone present enquired, "Shaykh, what need was there for this trouble, especially at this hour of night?" The saint replied, "As long as this person was alive, the oil and lantern belonged to him and was ḥalāl for us to benefit from. However, the moment his soul departed, all his belongings, including this lantern and its oil became the property of his inheritors. Now, it is not permissible to make use of anything without the consent of all of them, and not all of them are present here. Therefore, I did not consider it appropriate to make use of this property."

## **Depriving Sisters – An ill within our Societies**

Another custom, which is quite prevalent amongst our societies, is the disinheriting of the daughters, based upon the false notion that the father had given to his daughters what he wanted to during his lifetime. This is not correct.

What is the meaning of the Arabic word 'mīrāth'? What is the meaning of the English word 'inheritance'? What is the meaning of the Urdu word 'wirāsat'? Each of the above gives the same meaning, i.e. the distribution of a person's estate after his death! Obviously, anything which a father gives to his children during his lifetime is called a gift. After death, no account is taken of these gifts, no matter what their size or nature, for after death a new system of accounting comes into order, namely the rules of

inheritance.

Many males who label themselves as pious, contact their sisters and very cunningly state, “Sister, as I intend to go by the Islamic rules of inheritance, I would like to ask you what to do with your share of the estate left by our beloved father?” Observe how sisters are pressurised and embarrassed in a society wherein ladies are expected to waive their shares. These poor souls will feel compelled to reply, “My brother, I am content and happy in my home. I am not in need of my share so you do as you wish with it.” Ponder my friends, when we owe somebody money, do we go up to them and ask, “I owe you £50, what shall I do with it?” Of course not, we physically hand over the money. Then, why do we ask our womenfolk whether they wish to receive their share of the inheritance?

This is a deception and fraud; it is a surreptitious ploy to deprive women from their rightful due. On such occasions, the womenfolk should not be given an option or asked for their opinion, rather, money should be physically handed over to them. Should they state, “Brother, do as you wish with this money”, one may reply, “Accept it for now, as this is your rightful share.” If after a few months or so, she still insists, without coercion, that the brother should have it, then that would be a different case altogether.

The supposed financial well-being of married daughters and the poverty of the sons is irrelevant as far as distribution of the estate is considered. Should brothers refuse to hand over to the womenfolk their share, this will be ḥarām wealth in their possession, which will be transformed into embers of fire in the grave and the Hereafter.

## Separate Ownership

Another matter, quite often overlooked, is the need during one's lifetime to maintain correct records of everything owned by separate members of the family. We find joint bank accounts in the name of the husband and wife, wherein both deposit their money. What will happen when one of them dies? How will we know how much belongs to whom?

When the 'ulamā are approached in this regard, they are usually asked to determine the shares according to the Islamic laws of inheritance, yet cannot determine themselves the size and amount of the estate of the deceased. When asked, the normal reply is, "We had never kept any records." Under such circumstances, how can one correctly ascertain what and how much to distribute? The same problem often arises in business partnerships and joint accounts between father and children. The son hands over his weekly wage to his father for safekeeping. Now, when the father dies, the son will, quite rightly, wish to reclaim his earnings, but other family members may protest and say, "This was father's own wealth!" Now disputes begin to arise within the family and complicate matters further for the 'ulamā.

Similarly, there might be a car in the household, jointly owned by father and child. One person may have paid £1,200, whereas the other may have contributed a mere £300. What will happen upon the death of either? Therefore, keep a written record to avoid problems arising later.

It is well-documented about the late grand Muftī of Pakistan, Muftī Muḥammad Shafī' رحمۃ اللہ علیہ, that at the time of his death, it was possible to know each item he owned, right down to the pen and pencil, as he had only allowed that item to be kept in his room, which belonged to him.

If this appears pedantic, just ponder how humans react later. The wife may purchase a fridge with her own money and the whole family will use it. However, because no written records were kept, upon death or divorce, arguments will start; both parties will claim possession. Had separate records been maintained, such disputes would not arise.

Reflect upon how a husband and wife keep their clothes separately. Would anybody say, “All this because they do not have love for each other”? Of course not, as they fully appreciate that this is done to ensure convenience. Consequently, why would it be improper to maintain separate bank accounts and a record of ownership for each item owned? Mutual love does not diminish by keeping records, rather, it would prevent relationships from deteriorating or even being severed, which is often witnessed upon a death. Moreover, as the correct distribution of inheritance is a Command of Allāh ﷻ, maintaining a record of ownership is something greatly stressed in Dīn.

May Allāh ﷻ give us all the true understanding of the Dīn and the tawfīq to practise upon it fully. Āmīn.



**Inheritance**  
**in Islām**  
**(Discourse II)**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْحَمْدُ لِلَّهِ وَحْدَهُ، وَالصَّلَاةُ وَالسَّلَامُ عَلَى مَنْ لَا نَبِيَّ بَعْدَهُ، أَمَّا بَعْدُ قَالَ  
النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: تَعَلَّمُوا الْفَرَائِضَ وَعَلَّمُواهَا فَإِنَّهُ نِصْفُ الْعِلْمِ  
وَهُوَ يُنْسَى، وَهُوَ أَوَّلُ شَيْءٍ يُنْزَعُ مِنْ أُمَّتِي.

Nabī ﷺ has stated:

تَعَلَّمُوا الْفَرَائِضَ وَعَلَّمُواهَا فَإِنَّهُ نِصْفُ الْعِلْمِ وَهُوَ يُنْسَى، وَهُوَ أَوَّلُ شَيْءٍ  
يُنْزَعُ مِنْ أُمَّتِي.

Acquire the knowledge of inheritance and teach it to people, for it is half of knowledge and it will be made to be forgotten and it is the first knowledge to be taken away from my Ummah. (Ibn Mājah, Al-Hākim)

## An Erroneous Custom

It is generally observed, especially among the communities originating from the Indian subcontinent, that people tend to allocate proportions of their estate and wealth before their death to various members of their families, but without making them owners. The actual distribution of their estate is carried out after their death by the relatives according to the proposed division. This custom is prevalent in India and is also practised by many in the Western countries. In the case of the modern thinking Muslims of these countries, the drawing up of a will seems to be a better option. Shares are allocated to various individuals and recorded in the will, but, here too, the actual distribution takes place after their death. In both cases, the deceased, prior to their death, states their desires regarding the distribution of their possessions, but does not make anybody an owner for as long as



they are alive. As such, both of these methods of distribution are incorrect, as the actual distribution takes place after death. The Islamic rules of inheritance require the distribution of the estate after death to be only in accordance with the distribution that has been predetermined by Allāh ﷻ.

## **The Importance of Drawing Up a Will**

In the case of drawing up a will, the laws of the country usually dictate that the distribution of the estate will be enacted in exact accordance to what has been stated in the will. Therefore, if one wishes to adhere to the Islamic rules of inheritance, one simply has to draw up a will in the Islamic manner with the help of an ‘ālim or muftī and his relatives will inherit in the manner required by Islām. There is absolutely no difficulty in applying the Islamic rules of inheritance in this country, provided one makes a little effort to carry out the above procedure. It is important to note that once the will is drawn up, under no circumstances will it be subject to abrogation or alteration of any kind after the death of the individual concerned.

There are many who are completely unaware of the fact that there are rules in Islām regarding inheritance and compliance with these are as important as rules relating to any other aspect. The estate, following their death, lies at the mercy of the inheritors, where deception and misappropriation is not something very unusual. In such prevailing circumstances, it becomes binding upon us to make a will that conforms to the Islamic rules of inheritance, hence ensuring an equitable distribution of the estate.

In any case, my intention is to emphasise the importance of adhering to the Commands of Allāh in the distribution of an estate, as well as every other aspect of life. In order to achieve this aim in this country, the drawing up of a will, which meets the criteria

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of both the Islamic and the national legislation, is a necessary requirement. For those residing in the UK such a will has been designed and prepared by the *Islāmic Da'wah Academy* and is available to the public on request. I urge all readers to complete this and fulfil a fundamental requirement of Islām.

## **Some Important Rules to Remember**

A point that needs to be deeply inculcated within our minds is that the Commands of Allāh ﷻ on every aspect, including inheritance, are clear-cut and precise. The Islamic rules of inheritance state that nobody has the authority to devise methods of distribution, as this has been predetermined in the most perfect and just manner by the Creator Himself. In light of His Command, one is allowed to make waṣiyyah (bequest) in up to one third of the estate only. Furthermore, waṣiyyah can only be made for those who are not due to inherit under the Islamic rules of inheritance. As far as the inheritors are concerned, they shall only receive what has been determined for them by Allāh ﷻ. Waṣiyyah cannot be made for them and if it has, it will not be enacted, even if it is relatively negligible.

Another point to remember here is that the above restrictions, i.e. 'waṣiyyah can be made from only one third of the estate and not for the inheritors,' applies only when the distribution is to take place after the death of the owner. Such restrictions do not apply if one wishes to distribute and transfer the ownership of one's wealth and/or possessions during one's lifetime.

After the death of the individual, his/her entire estate, except for the waṣiyyah in a third if he/she has made any, will be divided in accordance with the principles of the Islamic rules of inheritance. These rules will be applicable in even the most insignificant of possessions, such as a box of matches and even a

single matchstick.

Upon the death of an individual, nobody will have any right over any item belonging to the deceased, except for what will fall in their share after distribution according to the Islamic rules of inheritance. In order to determine the amount that each inheritor will receive, one will have to consult those who have a thorough knowledge of the rules of inheritance, i.e. a reliable ‘ālim or muftī.

## **An Inspiring Incident**

I recall an incident which took place in a nearby town. A man had died leaving behind his wife and a few children. The wife’s father came to me to find out about the Islamic ruling regarding inheritance. Now, the relatives of the deceased that were to inherit according to the Islamic rules of inheritance were the mother, wife, one son and two daughters. The deceased’s father was not alive. The calculations revealed that the mother of the deceased, i.e., the mother-in-law of the widow, was to receive between £12,000 to £15,000.

As there was no will to be found and the ownership of the entire estate was under both the deceased and his wife’s name, by law the estate would have automatically transferred to his wife. The father of the widow returned and informed her of the Islamic ruling, in particular, that her mother-in-law was also due to inherit a substantial amount of the estate. One point to note here is that the widow and her mother-in-law were not on good terms. Moreover, the mother-in-law wasn’t even demanding her share, either because of the strained relationship, or due to ignorance of the Islamic rules of inheritance, she may have assumed that she had no share in the estate.

Despite the situation, when the widow was informed, she instructed that the estate be divided in accordance with the Command of Allāh ﷻ and her mother-in-law be given her rightful share. She explained that her contention with her mother-in-law had nothing to do with this distribution, and because of this, she didn't want to devour the mother-in-law's share of the estate and hoard wealth that was Islamically unlawful for her. I was greatly impressed with her stance and thought that if all of us adopted a similar attitude, our societies would become so peaceful.

### **Benefits of Adopting the Islamic Injunctions**

The reason why many of us refuse to accept the Islamic rules of inheritance is because, at times, we find ourselves better off by resorting to the laws of the country. One should, on such occasions, remember that if all the members of the family and society at large began to apply the Islamic rules of inheritance, then the apparent loss on some occasions will be compensated by the gain on many other occasions. Moreover, unlike the typical system of inheritance under national laws, the Islamic rules cater for a much wider group of relatives. Thus, if one relative feels that he/she is at a loss by applying the Islamic rules of inheritance, there are many others who will gain, who otherwise wouldn't have. To illustrate, if, for instance, a person decides to disinherit his sister thinking that part of the estate will end up in somebody else's possession i.e. his brother-in-law, he should appreciate that his wife is somebody's sister as well. How would he feel if she was disinherited by her brother on the grounds that the wealth would end up in his possession? Above all, we should remember that the Commands of Allāh ﷻ can never be unjust and inequitable. Even if we are to suffer an apparent loss, what is the reality of this worldly loss as compared to that of the Hereafter. As Muslims

our primary motive at all times should be to give preference to the Pleasure of Allāh ﷻ over everything else. Hence, each and every one of us should, at all times, be content with what has been decided for us, whether it be to our benefit or apparent loss.

## **What We Must Do Following a Death**

The foremost thing to remember is that following the death of a family member, we should first of all set aside all the possessions and wealth that belonged to him/her, including the most insignificant of items. Then, without any delay, the ‘ulamā should be consulted for the correct view on the Islamic method of distribution and the estate should be distributed accordingly. In order to carry out the first procedure, the family will need to determine what belonged to the deceased. This will be extremely difficult, or even impossible, if they have no knowledge of it. So to avoid confusion in such critical moments, every member of the family, at all times, should know what belongs to whom and preferably keep a record of this.

One thing that is quite common in this country is that both the husband and wife are listed as official owners of their property and estate. This would not cause any issue if both of them were aware of their actual respective possessions. Therefore, at the time of death, regardless of what is found in the official records, we would be able to ascertain, without the least doubt, what belonged to the deceased. However, nowadays the most common problem that arises is that the bereaved are totally ignorant of what exactly belonged to the deceased. So it is very important for every member of the family to know what he/she and others in the family own.

## The Precautious Manner of Muftī Muḥammad Shafī' رحمۃ اللہ علیہ

I have read in the writings of Muftī Muhammad Taqī Uthmānī *ḥafīzahullāh* that upon the death of his father, Muftī Muḥammad Shafī' رحمۃ اللہ علیہ, there was not the slightest confusion about any item in the house as to who was the owner of it. This was because during his life, Muftī Muḥammad Shafī' رحمۃ اللہ علیہ had kept a precise record of the ownership of every item in the house. He made sure that only those items remained in his room that belonged to him. This made the defining of the estate extremely easy for the family after his death.

This should be the situation of every household. However, unfortunately this is not the case. Today, we may have the precise knowledge of our shares as far as financial assets or properties are concerned, but this is certainly not the case regarding the furniture or other inferior articles of the house. Sometimes we borrow items from others and forget to return them. And after a lengthy period, we even forget whether we borrowed it or it belonged to us. Therefore, it is essential that we keep a record of what belongs to who, as this is a requirement of our Dīn.

## Negligence Now Will Lead to Confusion Later

In our societies, it is thought to be embarrassing and even offensive that the family, or other immediate relatives for that matter, should sit down and determine their respective shares in the estate. Regardless of what is considered to be acceptable in society, it is binding upon us to do this, as there is no other way of determining who owns what. With many couples for example, there is a single joint bank account within which money is deposited by both indiscriminately. In such cases, if there is an understanding between them, such as that irrespective of who

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deposits, the money will invariably belong to the husband or to the wife, or half-share respectively, there will be no confusion upon the death of either. However, more often than not, we face serious problems as there is no such understanding between the spouses.

Similarly, there are hundreds of articles present in many households that are used by the entire family, but without knowledge of exactly whom they belong to.

Even if it does not lead to any friction and controversy following a death, we still need to exercise extreme precaution in this regard, as this is required by our Dīn.

The first thing we need to do is determine the ownership of every item of the house. Secondly, we need to draw up a will stating that the estate should be distributed among the inheritors, in accordance with the Commands of Allāh ﷻ. The will prepared by the *Islāmic Da'wah Academy* can be very helpful in ensuring that the division of your estate will comply with the requirements of the Islamic rules of inheritance. You will be able to put down the names of three trustees of your choice. You can also state the name of an organisation or an institute of your choice, which will have the final say in the unlikely event that your chosen trustees disagree.

It is very important that we take these steps, especially in countries where we know for a fact, that the Islamic distribution of the estate will only come into effect when we have drawn up a will according to Islamic principles.

## **A Prevalent Yet Objectionable Custom**

At this point, I would like to draw your attention to something that is very common in our societies. The womenfolk of our

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communities are usually excluded from the list of inheritors. This is such a deep-rooted custom amongst us that, even when the womenfolk are encouraged to demand and receive their share, they feel as if they would be demanding something that does not rightfully belong to them. Many a time, brothers will approach their sisters, citing the amount that falls in their share, but instead of handing it over to them, they ask, “What do you want me to do with your share?” The womenfolk, in such cases, obviously, refuse to accept anything. How absurd! If the money belongs to them, why ask what to do with it? If you owe someone money and wish to repay it, do you go and ask him what to do with it?

Shaykh Mawlānā Ashraf ‘Alī Thānwī ؒ has gone to the extent of saying that if the womenfolk refuse to accept the money that falls in their share, you should compel them to take the money into their possession and leave them to do as they wish.

I advise you all to be very particular in these matters. It is important that we are aware of what the Dīn demands and in order to determine this, we need to consult the ‘ulamā. Those of us who may have disregarded these Commands of Allāh ﷻ in the past, should immediately contact the ‘ulamā and try to resettle their cases in light of Islamic teachings, even if that entails a heavy loss on our part.

## **A Thought Provoking Incident**

Once a man came to Shaykh Mawlānā Ashraf ‘Alī Thānwī ؒ and requested to join his spiritual circle of murīds (students in spirituality). The shaykh asked him whether he had come with a sincere urge. The man replied in the affirmative. So the shaykh said to him that since the Islamic rules of inheritance were not practised in his region, before he could pledge allegiance to him, it was necessary that he undertook the task of tracing back as far



as he could his lineage, to ensure the resettlement of the estates of all his deceased predecessors.

The shaykh explained that purification of wealth is an essential duty of a Muslim. As unlawfully distributed estates are a form of ḥarām income, the wealth that had thus reached him had to be cleansed and this was the only possible method. The man agreed to do what the shaykh had demanded but expressed how difficult it would be to accomplish such a task. The shaykh promised that he would guide him and all he had to do was follow his instructions. As he was sincere, he undertook the task very seriously and under the guidance of the shaykh managed to accomplish it.

Now, when we reflect on the circumstances of those days, like the poor means of transport and communication, it seems to be an extremely difficult task. However, as he had realised its importance he managed to overcome all the obstacles and repaid every person to whom he owed money.

Such incidents should inspire all of us to become more conscious towards the duties we are obliged to fulfil by Islām.

## **Final Word**

Now that we have realised the importance of distributing inheritance in accordance with the Islamic rules of inheritance, we should consult the ‘ulamā to understand the correct procedures in this regard. Remember, the ‘ulamā fully understand and appreciate the need to keep in confidence whatever you disclose. They will not go around publicising your matters. If you feel hesitant and do not wish to disclose your matters to them, then ask them about a hypothetical person. Describe your case without revealing your identity. Explain to them, for example, that a friend is concerned about the well-being of his daughters after his death, as he cannot

rely on his sons. Is there anything that can be done to protect the interest of the womenfolk? Present your problems and concerns to them and accept whatever they advise, no matter how bitter their suggestion. Inshā'allāh, in this way you will succeed in both this world and the next.

## Summary and Du'ā

We should take heed of the advices above and endeavour to act upon what has been related. Firstly, maintain a record of ownership of each item: this does not imply that no one may make use of our items, as there can be one owner with many users. Secondly, upon the death of an individual, segregate all the belongings of the deceased and thereafter consult an 'ālim who will decide how and among whom it is to be distributed. Thirdly, remember, this age is one of depravity, therefore, sit down with an 'ālim and draw up an Islamic will. Such a document is available from the *Islāmic Da'wah Academy*.

Finally, honestly reflect upon the mistakes we have made to-date. Whatever portion of inheritance we have failed to hand over to the rightful owners, especially our womenfolk, we should do so immediately, irrespective of any hardships involved. The endurance of such small and transient hardships will save us from the mighty and eternal hardship of the Hereafter.

May Allāh ﷻ grant all of us the tawfīq to conduct all our matters in accordance with His Pleasure. Āmīn.

