

# **Inheritance, From Al-Mizan, An Exegesis Of The Qur'an, Vol. 8**

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A discussion about inheritance starting from the commentary of verses 11 to 14 of Chapter 4 of the Holy Qur'an.

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# Inheritance, From Al-Mizan, An Exegesis Of The Qur'an, Chapter 4, Verses 11–14

## [Chapter 4, Verses 11 – 14](#)

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۚ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ ۚ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ ۚ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ ۚ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دِينٍ ۚ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۚ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا

**Allah enjoins you concerning your children: The male shall have the equal of the portion of two females; then if they are more than two females, they shall have two-thirds of what (the deceased) has left, and if there is one, she shall have the half; and (as for) his parents, each of**

**them shall have the sixth from what he has left if he has a child, but if he has no child and (only) his two parents inherit him, then his mother shall have the third; but if he has brothers, then his mother shall have the sixth after (the payment of) any bequest he may have bequeathed or a debt; your parents and your children, you know not which of them is the nearer to you in usefulness; an ordinance from Allah: Surely Allah is knowing, Wise (4: 11).**

لَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ ۖ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ ۖ مِنْ بَعْدِ وَصِيَّةٍ يُوصِيَنَّ بِهَا أَوْ دَيْنٍ ۖ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ ۖ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمْنُ مِمَّا تَرَكَتُمْ ۖ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ ۖ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ ۖ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ ۖ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍ ۖ وَصِيَّةٌ مِنَ اللَّهِ ۖ وَاللَّهُ عَلِيمٌ حَلِيمٌ

**And you shall have half of what your wives leave if they have no child, but if they have a child, then you shall have a fourth from what they leave after (payment of) any bequest they may have bequeathed or a debt, and they shall have the fourth from what you leave if you have no child, but if you have a child then they shall have the eighth from what you leave after (payment of) a bequest you may have bequeathed or a debt; and if a man or a woman leaves property to be inherited by neither parents nor offspring, and he (or she) has a brother or a sister, then each of them two shall have the sixth, but if they are more than that, they shall be sharers in the third after (payment of) any bequest that may have been bequeathed or a debt that does not harm (others); this is an ordinance from Allah: and Allah is Knowing, Forbearing (4: 12).**

تِلْكَ حُدُودُ اللَّهِ ۖ وَمَنْ يُطِعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ۖ وَذَلِكَ الْفَوْزُ الْعَظِيمُ

**These are Allah's limits; and whoever obeys Allah and His Messenger, He will cause him to enter gardens beneath which rivers flow, to abide in them; and this is the great achievement (4: 13).**

وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا خَالِدًا فِيهَا وَلَهُ عَذَابٌ مُّهِينٌ

**And whoever disobeys Allah and His Messenger and goes beyond His limits, He will cause him to enter fire to abide in it, and he shall have an abasing chastisement (4: 14).**

## **Commentary Of These Verses**

Qur'an: Allah enjoins you concerning your children: The male shall have the equal of the portion of two females: "al-Isa'" and "at-tawsiyah" (الْإِيسَاءُ، التَّوْصِيَةُ) = to entrust, to enjoin); ar-Raghib says in Mufradatu 'I-Qur'an: "al-Wasiyyah" (الْوَصِيَّةُ) = to direct someone - with a shade of exhortation - to do something." The use of the word alawlad (الأَوْلَادُ = children) instead of al-abna' (الْأَبْنَاءُ = sons) shows that the rule of

one or two shares is restricted to the deceased's immediate children. As for the children's children, how low so ever, they should get the share of their progenitor through whom they are connected to the deceased; thus a son's daughter would get two shares while a daughter's son would be given one share – provided there is no one nearer to take their precedence. Likewise, the offspring of brothers and sisters would get the share of him or her through whom they are connected to the deceased. (All this is inferred from the word, al-awlad whose root word signifies birth.) But the word, al-ibn (الابن = son) does not necessarily mean immediate child, as the word, al-ab (الاب = father) may be used in a general sense for other than the immediate progenitor.

As for the divine words at the end of the verse: your parents and your children, you know not which of them is the nearer to you in usefulness, we shall explain later that there is a special consideration which has made the word, al-abna' (الابناء = lit. sons) preferable to al-awlad (الاولاد = children).

The expression, ***“The male shall have the equal of the portion of two females”***, was chosen to point to the nulification of the system prevalent in the era of ignorance whereby women were not given any share in inheritance. This expression takes the females's share as granted and confirmed, and based the male's share on it – that it is double of it. Or let us say that the female's share is treated as the yardstick of legislation and the male's share is fixed with its help. If it were not for this consideration, it could simply be said: the female shall have the half of the male's share; but it would not have given that connotation, and the context would have changed – as you may see. This theme has been mentioned by a scholar and the point seems well-established. The idea is also strengthened by the fact that the verse does not describe explicitly and independently except the women's shares; if and when it explains some of men's shares it is always done as an adjunct to the women's shares, as may be seen in the following verse and in the verse at the end of this chapter.

In short, the statement, “The male shall have the equal of the portion of two females”, explains the beginning clause “Allah enjoins you concerning your children”. The definite article in “the male” and “the two females” denotes genes or category, i.e., the category of male is equal in share to the two of the female category. This principle shall be applied when there are males and females among the heirs, as the male shall have twice the share of a female. The verse did not use such expressions as, “The male shall have equal to two shares of a female”, or, “double of a female's share”; because the chosen expression explains also the share of two females when they are the only heirs, as will be explained later – and all this with such brevity.

In any case, when there are males and females among the heirs, every male shall have two shares and every female one share – no matter what their number may be.

***Qur'an: then if they are more than two females, they shall have two-thirds of what (the deceased) has left,:*** This sentence, coming after the preceding one, ***The male shall have the equal of the portion of two females***, apparently shows that it is in conjunction with a deleted but understood clause, i.e., ‘This law is when there are males and females among the heirs’, but if they are more than two females

Such deletion is common in usage. For example, look at the following two verses:

***And complete the hajj and 'umrah for Allah, but if you are prevented, (send) whatever offering is easy to obtain (2: 196).***

***For a counted number of days; but whosoever among you is sick or on a journey, then (he shall fast) a (like) number of other days (2: 184).***

The conjunctive personal pronoun hidden in the verb *kunna* (كُنَّ = they are) refers to the 'children' (in the phrase, "your children"); the feminine gender has been used to make it agree with the predicate 'females'; the other such pronoun hidden in the verb, "has left", refers to 'the deceased', which is understood from the context.

***Qur'an: and if there is one, she shall have the half;*** The pronoun refers as above to the "the child", understood from the context, and its feminine form agrees with the predicate; "the half" refers to the half of what the deceased has left – thus the definite article stands for the second construct of the genitive case.

The verse is silent about the share of two females, because it may be understood from the clause: ***The male shall have the equal of the portion of two females.*** Let us suppose there is a male and a female heir; according to this verse, the female shall have a third of the estate and the male, the two-thirds – as it is the share of the two females. In other words, two females shall have two-thirds of the inheritance. This much may be inferred from the verse in a general way, but it is not in itself the verse's definitely fixed connotation; there would have been no contradiction if the verse had continued to say, for instance, and if there are two females they shall have a half (or the whole) of the estate.

But the verse by its silence about their share confirms the inferred meaning; and the clear statement about the share of the more than two females indicates that that silence is intentional, and not an oversight. Moreover, the fact that they should get two-thirds of inheritance is confirmed by the Prophet's practice, and the said Sunnah has continued uninterrupted since the days of the Prophet till this day, with complete unanimity of the Muslim jurists – except one reported dissent by Ibn 'Abbas.

This is the best explanation why the two females' share has not been clearly stated. al-Kulayni (may Allah have mercy on him!) has written in al-Kafi: "Surely Allah has appointed the two females' share as two-thirds; because He says: ***The male shall have the equal of the portion of two females;*** so when a man leaves a daughter and a son, the male shall get the equal of the two females' share, that is, two-thirds; therefore the share of two females is two-thirds. After this, there was no need to say that two females would get two-thirds."

The same explanation has been quoted from the exegete, Abu Muslim: "(The said rule) is inferred from the divine words, ***the male shall have the equal of the portion of two females.*** A male with a female gets two-thirds; thus two-thirds shall be the share of two females." But these two explanations are not

perfect; they should be completed in the light of what we have written above. Ponder on it.

There are some other explanations given for this verse which are quite unworthy of divine words. For example, someone has written that the words; if they are more than two females, means, two females or more; thus this sentence contains the description of the share of two females as well as of more than two. Another writer has said that the share of two daughters is known by analogy from the law concerning two sisters (coming at the end of the chapter) where it apportions two-thirds to them. There are other similarly ridiculous claims.

**Qur'an: and (as for) his parents, each of them shall have the sixth of what he has left if he has a child then his mother shall have the sixth:** The conjunction of parents with the law of the children shows that the parents are co-sharers with the children and together they constitute one class. The words: **“and (only) his two parents inherit him”**, indicate that they are the only heirs. The words: **“but if he has brothers”**, (coming after the clause: “but if he has no child and (only) his two parents inherit him”) show that brothers come into second class, after the class of sons, daughters (and parents), and they would not inherit as long as there is an heir of the first class – but the brothers shall partially exclude the mother from one-third (as it would be reduced to one-sixth).

**Qur'an: after (the payment of) any bequest he may have bequeathed or a debt;: Bequest and will has been enjoined by the divine words: Bequest is prescribed for you when death approaches one of you, if he leaves behind wealth (2: 180).**

Although in this verse bequest precedes debt, it does not contradict the Sunnah which says that debt takes precedence of bequest at the time of payment; because sometimes during a talk one mentions less important things first and then progresses towards more important ones. It is done when an important matter, because of its position and strength, does not need as much emphasis as the unimportant one does – and giving precedence in description is one way of emphasizing. Accordingly, the words: “or a debt”, put the things in ascending order of importance.

This also shows why “bequest” has been qualified by the words, “he may have bequeathed”; it puts further emphasis on it, and also points to the necessity of showing reverence to the deceased and honouring his wishes when he has made a bequest. Allah has said: **Whoever then alters it (i.e., the bequest) after he has heard it, the sin of it then is only upon those who alter it (2: 181).**

Qur'an: your parents and your children, you know not which of them is nearer to you in usefulness; It is addressed to the heirs, that is, the general public, inasmuch as everyone inherits his deceased relatives. The sentence alludes to the reason why the inheritance share of the parents differs from that of the children. It also provides a sort of education to them; that is why they have been addressed with the words: “you know not”; and such expressions are commonly used by the people.

Had the verse been addressed to other than the heirs, i.e., to the dying people who would, after their death, be inherited by their parents and children, there would have been no reason to say: “which of

them is nearer to you in usefulness”; because apparently usefulness and benefit implies making use of, and benefitting from, the inherited property, and it fits on the heirs, not on the deceased.

The parents have been mentioned before the children; it is a sort of a hint that the parents are nearer in benefit than the children. It is like the verse: ***Surely the Said and the Marwah are among the signs of Allah (2: 158)***, as we had quoted the tradition that the Prophet had said: “I begin with what Allah has begun ...”

From the point of view of relationship and considering the human sentiments, it is a fact that man feels more compassion towards his children than towards his parents. In his eyes, his child’s existence is his own – but not so that of his parents. Man’s parents have stronger connection with him, when compared to his children’s attachment to him. When usefulness is based on this principle, then at the time of dividing an inheritance, man should naturally get, for example, from his father a greater share than he would from inheriting, for example, his son – although it would appear from a superficial glance that the opposite should be the case.

This verse (i.e., your parents and your children, you know not which of them is nearer to you in usefulness) proves that Allah has based the inheritance law on a creative reality found outside imagination – like other natural Islamic laws.

This principle is also supported by other unrestricted Qur’anic verses which speak about legislation in general. For instance: ***Then set your face uprightly for the (right) religion in natural devotion (for the truth); the nature made by Allah in which He has made men; there is no alteration in the creation of Allah; that is the right religion (30:30)***. In presence of such verses, it is unthinkable that the Shari’ah would contain such compulsory and unchangeable rules and laws, without there being to a certain extent basis for them in the creation.

It may possibly be inferred from this verses (your parents and your children ...) that children’s children would have precedence over grandfathers and grandmothers; the grandparents will not inherit as long as a child or a child’s child (how low so ever) is present.

**Qur’an: an ordinance from Allah ...:** Apparently it is in accusative case governed by a deleted verb, e.g., obey, or, hold fast, etc. It has a reinforced emphasis that the described shares are decreed and fixed, and that they cannot be changed.

This verse prescribes the shares of the first class of the heirs, i.e., the children, the father and the mother, with all the variations, either explicitly or implicitly.

Explicitly: Shares of the father and the mother: They get a sixth each if the deceased has a child or children; but in the absence of children, the mother gets either one-third or one-sixth (depending on the details mentioned in the verse);

Share of a single daughter: She gets a half;

Share of several daughters when they are the only children: They get two-thirds;

Shares of sons and daughters when they are together: The male shall have the equal of the share of two females;

And to this is added the share of two daughters, and it is two-thirds, as explained above.

Implicitly: Share of the only son: He shall get the whole property; it is understood when we read the clause: ***The male shall have the equal of the portion of two females***, in conjunction with the clause, and if there is one (daughter), she shall have the half.

Likewise, when he has left only the sons as heirs, they shall share it among themselves equally, because the clause, The male shall have the equal of the portion of two females, indicates that the males shall have equal shares among themselves.

The verse is truly amazing in its comprehensiveness with such brevity.

It should be noted here that the verse with its unrestrictedness shows that there is no difference whatsoever – in matters of inheritance – between the Prophet and the other people. We have seen similar unrestrictedness or generality in the divine words: Men shall have a share of what the parents and the near relatives leave, and women shall have a share (4:7). Someone has opined that the general Qur'anic declarations are not applicable to the Prophet, because he had announced them himself. But such views are not worth looking at. Of course, there is a dispute between the Sunnis and the Shi'ahs whether a prophet is inherited by his heirs or whatever he leaves goes to charity. This originates from the tradition which Abu Bakr had narrated in the case of Fadak. This discussion is beyond the scope of this book; therefore we think it better not to go into it here; the reader should consult relevant books for it<sup>1</sup>.

***Qur'an: And you shall have half of what your wives leave if they have no child after (payment of) any bequest they may have bequeathed or a debt;*** The meaning is clear. The half share has been described in possessive case, "half of what your wives leave"; but the one-fourth share is disconnected; and they shall have the fourth from what you leave; when on such occasions a possessive construct is disjointed, it becomes necessary to complete it with min (من = from) – either in words or implied and understood.

This min gives the connotation of taking from and beginning; this meaning seems appropriate when the word related to min is a negligible portion of the whole, when it is a small part or ratio of the original, like one-sixth, one-fourth or one-third; but not when it is a larger portion like a half or two-thirds. That is why Allah has said: sixth from what he has left; the mother shall have the third; you shall have a fourth from what they leave – all this with disjointed possessive. But He has said: half of what your wives leave;

two-thirds of what (the deceased) has left – all this in possessive case; also He has said: she shall have the half as the definite article, “the”, stands for the second construct of the possessive case, i.e., half of what he has left<sup>2</sup>.

**Qur'an: and if a man or a woman leaves property and Allah is Knowing, Forbearing:** ‘al-Kalalah’ (الْكَالِلَةُ) is in fact a masdar which means to encompass; from it is derived al-iklil (الْإِكْلِيلُ = icrown) because it encircles the head; also al-kull (الْكُلُّ = whole, all, total) comes from it because it encompasses its parts; another derivative is al-kall (الْكَلُّ = to be tired, dull); it implies a sort of wearisome encompassing against the one on whom he depends. ar-Raghib says: “al-Kalalah is an heir other than the child and the father.” Again he says: “It has been narrated that the Prophet was asked about al-kalalah. He said: ‘He who dies and does not leave behind a child or a parent.’ Thus he (the Prophet) has taken it as an attribute of the deceased; and both explanations are correct, because al-kalalah is a masdar which encompasses the inheritor and the inherited, both.”

**The author says:** In that case, it is possible to treat ‘kana’ (كَانَ = was – it is not included in the translation of the verse,) as an auxiliary verb, and “a man”, as its subject, with “to be inherited”, as an adjectival phrase related to the said subject, and al-kalalah as its predicate. Then the meaning will be as follows: and if a man or a woman who is to be inherited is neither a parent nor an offspring of the heir.

Also, we may take kana (was) as a perfect verb, with, “a man or a woman to be inherited”, as its subject, and kalalah as a masdar used as a circumstantial clause. The meaning again will be the same: that the deceased is neither a parent nor an offspring of the heirs. az-Zajaj has reportedly said: According to those who have recited yurithu (يُورِثُ = makes someone his heir), kalalah will be the object; and according to those who recite yurathu (يُورَثُ = is inherited by), kalalah is a subjective, being a circumstantial clause.

The clause, that does not harm (others), also is a subjective and a circumstantial clause. al-Mudarrah (الْمُضَارَّةُ = to harm, to impair).

Obviously, it forbids the dying person to harm the heirs through the debt; he should not indulge in borrowing with intention of harming the heirs and depriving them of inheritance. Another interpretation: He should not harm their interest by bequeathing more than one-third of his property.

**Qur'an: These are Allah's limits, And whoever disobeys he shall have an abasing chastisement:** al-Hadd (الْحَدُّ) means a barrier between two things which prevents their mixing together and keeps their mutual distinction and differentiation intact, like the limit or boundary of a house or a garden. The word, as used here, refers to the inheritance laws and the decreed shares. Allah has shown their utmost importance by describing, in these two verses, the reward of obeying Allah and His Messenger in this respect, and the abasing everlasting chastisement for him who disobeys Allah and His Messenger.

## A General Discourse On Inheritance

These two verses: Allah enjoins you concerning your children Allah is Knowing, Forbearing; together with the verse at the end of the chapter: They ask you for a decision of the law. Say: **“Allah gives you a decision concerning the person who has neither parents nor offspring “ (4: 176)**, in conjunction with the previously explained verse: **Men shall have a share of what the parents and the near relatives leave (4:7)** and the verse: **and the possessors of relationship have the better claim in the ordinance of Allah to inheritance (33:6; 8:75)**, give the fundamental Qur’anic principles of inheritance in Islam; and the traditions provide the explanations in clearest terms.

The principles, which are inferred from them and form the basis of detailed laws, are as follows:

1. The principle already explained under the verse: your parents and your children, you know not which of them is the nearer to you in usefulness. It shows clearly that nearness and distance from the deceased has effect on inheritance. Also, this sentence, read in conjunction with the rest of the verse, shows that this matter affects the share of inheritance – whether the heir would get a larger or smaller portion. When it is read together with the divine words: and the possessors of relationship have the better claim to inheritance, it guides us to the principle that a nearer relative debar a remoter one from inheritance.

The nearest of all to the deceased are his father, mother, son and daughter, because their relationship with the deceased is direct; there is no intermediary between him and them. The son and the daughter debar the grandchildren from inheritance, because the grandchildren are related to the deceased through the children. Of course, if there is no child, then grandchildren will take their place.

Then comes the second class of heirs, i.e., the deceased’s brothers, sisters, grandfathers and grandmothers; they are related to him through one intermediary link only, i.e., through his father or mother. (If there is no brother or sister, then) their children will take the place of their father or mother. Every nearer generation will debar the remoter one, as explained above.

After that comes the third class of the heirs. They are the deceased’s paternal uncles and aunts and maternal uncles and aunts. There are two intermediary links between them and him, i.e., a parent and a grandparent. The other details are the same as above.

The principles of nearness and remoteness also shows that an heir having a double relationship will debar the one having a single relationship. For example, a consanguine brother or sister debar an agnate brother or sister, although an uterine brother or sister is not debarred<sup>3</sup>.

2. There is found another type of precedence or sequence among the heirs from another angle. Sometimes various shares combine in such a way that their sum–total exceeds the original. Now there are some heirs whose share has been reduced to another fixed ratio in case of such “crowding”; for

example, husband's share is a half, but when he is joined by a child, his share is reduced to one-fourth; the same thing happens to the wife with her one-fourth and one-eighth. Likewise, mother is allotted a third, but in case of there being a child or brothers, her share is reduced to one-sixth; but father's share remains the same – one-sixth – whether there is a child or not.

On the other hand, there are heirs whose share has been fixed, but nothing has been said about it in case of "crowding". For example, one daughter or sister, and two or more daughters or sisters have been given a half and two-thirds, respectively, but nothing has been said concerning them when the heirs seem to crowd together.

It is inferred from this difference in approach that the former heirs are not to suffer any further loss in cases where the sum-total of shares exceeds the original; the loss, whatsoever, shall be borne by the latter heirs who have been allotted any reduced fixed share for such contingency.

3. Sometimes shares exceed the original (as mentioned just above); for example, let us say, there is the husband and two or more consanguine sisters; their shares are a half and two-thirds respectively, (but  $1/2 + 2/3 = 1.1/6$ ) i.e., more than the original (because the total of all shares should come to 'one' only). Likewise, if the deceased has left her father, mother, two daughters and husband, their shares will exceed the original, because it will be  $1/6 + 1/6 + 2/3 + 1/4$  (with a sum-total of  $1.1/4$ ).

On the other hand sometimes the property exceeds the shares. For example, if there is only a daughter (who shall get a half) or only two daughters (with a share of two-thirds; leaving another half or one-third un-allotted, respectively).

The traditions narrated from the Imams of Ahl al-Bayt ('a) which explain and expound the Divine Book – clearly say that in former cases, when the shares exceed the original, the loss shall be borne by those heirs who have been allotted only a single share, and they are the daughter/s and sister/s, but not the mother or husband whose shares have been fixed – albeit on a reduced scale – for the changed conditions too. Likewise if the property exceeds the shares, the excess shall be returned to only those heirs who are expected to bear the loss in the former example. For example, if there is a father and a daughter, then the father shall get his one-sixth, and the daughter her one-half by allotment; and also she shall be given the remaining one-third by return, (thus she shall get five-sixths of the property).

'Umar ibn al-Khattab, during his reign, started the system of al-'awl (الْعَوْلُ) = to provide, to deviate; in Islamic law it refers to the system by which all the shares are proportionately reduced in case they exceed the original); and people in early days of Islam resorted to at-ta'sib (التَّعْصِيبُ) = to wrap around; in Islamic law it refers to the system by which agnate relatives were given preference). We shall write about these two systems under the coming "Traditions".

4. On pondering on the shares of men and women in inheritance, we find that on the whole a woman's share is less than that of a man – except in the shares allotted to the parents. A mother's share sometimes exceeds that of the father. The mother has been given equal to, or more than, the father's

share: it is probably because, in the eyes of Islam, she is more strongly attached to her child, and she undergoes a lot of troubles and hardships during pregnancy and delivery, as well as in looking after the child and bringing him up. Allah says:

***We have enjoined on man doing of good to his parents; with trouble did his mother bear him and with trouble did she bring him forth; and the bearing of him and the weaning of him was thirty months (46: 15).***

The fact that her share – instead of being half of man’s portion – is equal to, and sometimes double of, the father’s share, gives precedence to her without any doubt.

However, the question arises why man’s share in general has been fixed as double of that of woman. Two factors have been kept in view concerning this matter: Man’s excellence over woman in rationally managing the affairs of life; and his responsibility to maintain the woman and spend on her. Allah says:

***Men are the maintainers of women because of that with which Allah has made some of them to excel the others and because of what they spend out of their property (4:35).***

“al-Qawwam” (الْقَوَّامُ = translated here as maintainer) is derived from al-qiyam (الْقِيَامُ = to stand up) which refers to management of livelihood; the excellence points to man’s superiority in rational thinking. Man’s life is dominated by intellect while that of woman is run by emotions and sentiments. It is much better and more proper to leave financial affairs in the hand of a thinking and contemplating person than to an emotional and sentimental being. If we look at all the wealth found in the world – which is to pass from the present generation to the next one – and consider this Islamic arrangement, we should find that two-thirds of this wealth would come under the authority and management of men, and the remaining one-third would be managed and administered by women. In this way the intellectual management will dominate the sentimental administration; the society will reap its benefits, and life will be happier and more worthy of living.

The deficiency in woman’s share has nevertheless been made up in an amazing way. Allah has enjoined man to treat his woman with justice and equity. Man accordingly is expected to treat her as an equal partner in his two-thirds. In other words, the woman would have the benefit and usufruct of (another one-third, i.e.,) a half of the two-thirds which man has got, and it would be in addition to her own one-third.

The net result of this marvellous ordinance is that man and woman have inverse relation in the spheres of possession and usufruct: Man owns two-thirds of the world’s wealth but uses only one-third; while woman, who owns only a third of that wealth, has usufruct of two-thirds. As mentioned above, consideration has been given to predominance of contemplation and intellect over emotion and sentiment in man (and financial management, saving, exchange, production and investment are more germane to rational thinking than to emotion) and to primacy of sentiment over intellect in woman (and that is more relevant to making use of, and benefiting from, a property). This is the underlying reason

why Islam has differentiated between men and women in matters of inheritance and maintenance.

Obviously, it is this natural pre-eminence in man of intellect and rationality and his superiority over woman in this field which Allah has described in His speech as excellence: ***Men are the maintainers of women because of that with which Allah has made some of them to excel the others (4:34).***

Apparently it does not refer to men's superiority in strength, hardiness and intrepidity. Admittedly, roughness and hardiness is a distinguishing feature of man, and many great things in society depend on it, like defence, security, hard labour, endurance of hardships and afflictions, and steadfastness and composure in face of commotion and horror. These are essential aspects of life which nature has not equipped women for. It has equipped them instead with opposite qualities, i.e., delicate emotions and benevolent sentiments – which no society can flourish without. These are essential factors of life which give rise to love and affection, mercy and kindness; they enable the woman to bear the burdens of pregnancy and delivery; and create in her a natural inclination for bringing up the children and looking after them; and it is this quality which makes them pre-eminently suitable for nursing and house-keeping. Humanity cannot progress with roughness and hardiness alone, it also needs softness and kindness; mankind will be incomplete if its anger is not balanced with desire. World's affairs are not run by repulsion if it is not counterpoised with attraction.

In short, these two qualities maintain an equilibrium between man and woman and keep the scales of life well-balanced in a society which necessarily is constituted of both sexes. Far be it from Allah to commit injustice in His speech, action or judgment:

***Or do they fear that Allah and His Messenger will act wrongfully towards them? (24:50);***

***and your Lord does not deal unjustly with any one (18:49).***

***He Himself has said (about men and women): the one of you being from the other (3: 195);***

and it is to this mutual complementariness and interlocking existence that Allah refers in His words: ***because of that with which Allah has made some of them excel the others.***

He has also said: ***And one of His signs is that He created you from dust, then lo! you are mortals (who) scatter. And one of His signs is that He created mates for you from yourselves that you may find rest in them, and He put between you love and compassion; most surely there are signs in this for a people who reflect (30:20, 30:21).***

Ponder on the marvellous description the verses contain. Mortal (i.e., man – as it stands parallel to the “mates”, i.e., women) scatters, i.e., goes here and there to earn his livelihood; he it is who is made responsible to gather and obtain all necessities of life with his strength and hard labour – even leading to conflicts, forays and wars. Nevertheless, if this scattering were the only characteristics of mankind, the whole human race would have been divided between the attackers and the attacked, the pursuers and the pursued. But Allah created women and equipped them with qualities which men find comforting. He

puts between them love and compassion. They attract the men with their beauty and glamour, love and kindness. Thus the women are the premier cause and the basic agent for bringing the civilization into being.

That is why Islam has made the domestic life, i.e., marriage, the basis of society. Allah says: ***O people! surely We have created you of a male and female, and made you nations and tribes that you may recognize each other; surely the most honourable of you with Allah is the one among you who guards (himself) most (against evil) (49: 13)***. See how the verse first describes the marriage of male and female, and goes to the spreading of human race, and then proceeds to the larger society made of tribes and nations.

The end of the verse shows that the detail given in the verse: ***Men are the maintainers of women because of that with which Allah has made some of them to excel the others ...***, looks at equipping both sexes with faculties and characteristics necessary for managing the affairs of the worldly life in the best possible way, and which may keep the society in the best condition. Obviously, the “excellence” mentioned in the above verse does not mean the real superiority and honour in Islam, which denotes nearness to Allah. Islam in reality does not care about material amplitude or temporal or bodily strength which can be useful in the physical life only – these things are mere tools which have to be used to receive spiritual favours from Allah.

The above discourse makes it abundantly clear that men have been given excellence over women in their intellectual power, and this difference has led to the difference in inheritance and other similar matters; but this “excellence” means only increase (in intellectual power). As for the excellence in the meaning of honour before Allah – which is the main concern of Islam – it entirely depends on piety and fear of Allah, wherever it is found (be it in a man or a woman).

## Traditions

‘Abd ibn Hamid, al-Bukhari, Muslim, Abu Dawud, at-Tirmidhi, an-Nasa’i, Ibn Majah, Ibn Jarir, Ibnu ‘l-Mundhir, Ibn Abi Hatim and al-Bayhaqi (in his as-Sunan) have narrated from Jabir ibn ‘Abdillah, that he said: “The Messenger of Allah (S) and Abu Bakr came walking to visit me (in my illness) in Banu Salamah. The Prophet found me unconscious; so he called for some water and made ablution with it; then he sprinkled (it) on me, and I gained consciousness. So I said: ‘What do you order me to do with my property? O Messenger of Allah!’ Then (the verse) came down: Allah enjoins you concerning your children: The male shall have the equal of the portion of two females.” (ad-Durru ‘l-manthur)

**The author says:** It has been repeatedly mentioned that it is possible for several “reasons of revelation” (which have been narrated to us) to combine in respect of one verse; nor is there any difficulty if the verse goes beyond the scope of those specific reasons; also possibly an event might have coincided with the revelation and the theme of the verse corresponded with that happening. Therefore, there is no difficulty in the above tradition because of Jabir’s report that he had asked: “What do you order me to do

with my property? O Messenger of Allah!”, and then this verse was revealed. We should not worry how Jabir could have asked that question when the division of inheritance was not his responsibility.

Even more strange is another tradition narrated in the same book through ‘Abd ibn Hamid and al-Hakim from Jabir that he said: “The Messenger of Allah (S) used to visit me when I was sick. So I said: ‘How should I divide my property among my children?’ But he did not give me any reply; and then the verse was revealed: Allah enjoins you concerning your children ...”

Ibn Jarir and Ibn Abi Hatim have narrated from as-Suddi that he said: “The people of (the era of) ignorance did not give inheritance to the girls, nor to weak boys. Only that man inherited his father who had strength to (participate in) war. Then ‘Abdu ’r-Rahman, brother of the poet Hassan, died, leaving a wife, named Umm Kuhhah, and five girls. (Other) heirs came and took away the inheritance. Umm Kuhhah complained to the Prophet about it. Then Allah revealed this verse: then if there are more than two females, they shall have two-thirds of what (the deceased) has left, and if there is one, she shall have the half; then it was revealed about Umm Kuhhah: and they shall have the fourth from what you leave if you have no child, but if you have a child then they shall have the eighth from what you leave ...” (ibid)

The same two scholars of tradition have narrated from Ibn ‘Abbas that he said: “When the verse of shares (of inheritance) was revealed, in which Allah ordained what He ordained (of the shares) for male and female child and (for) parents, people (or, some of them) disliked it and said: ‘(How is it that) woman is given one-fourth or one-eighth, and daughter gets a half, and a small child is given (his share), while none of them can fight the people, nor can he gather booty?’ They used that (system) in the (era of) ignorance: They did not give inheritance except to him who could fight the people; and they gave it to the eldest, then elder (and so on).” (ibid.)

The author says: at-Ta’sib (التَّعْسِيبُ = agnacy) was a part of that system of ignorance. They gave the inheritance to the agnates of father if the deceased had not left a big son capable of fighting. The Sunnis follow the same system in the excess property which is left after giving the prescribed shares. Perhaps something may be found about it in their traditions; but the traditions coming from the Ahl al-Bayt (‘a) totally reject this theory and say that the excess property shall be returned to those heirs who at other times bear the loss, and they are children, consanguine or agnate brothers and in some cases, the father. As mentioned earlier, the verses in their connotation agree with this verdict<sup>4</sup>.

First:Second: a1-Hakim and al-Bayhaqi have narrated from Ibn ‘Abbas that he said: “The first person to introduce the system of al-‘awl (= to reduce all shares proportionately) was ‘Umar. The shares crowded over and began pushing each other aside. So he said: ‘By Allah! I do not know what to do with you. By Allah! I do not understand which of you Allah has given precedence to, and which of you He has deferred. And I do not find for this property anything better than this: that I should divide it among you proportionately.’ “ Then Ibn ‘Abbas said: “By Allah! if he had given precedence to him whom Allah had given precedence, and put behind the one whom Allah had put behind, there would have been no need

for proportionate reduction of shares.” He was asked: “And which of them has been given priority by Allah?” He said: “Every share which Allah has not brought down from a prescribed share but to (another) prescribed share, then that is which has been given precedence by Allah; and every share that – when it leaves its (original) position – does not get except the residue, then it is (the share) which Allah has put behind. Thus the share that is given precedence is like that of husband, wife and mother; and that which is put behind is like that of sisters and daughters. Therefore, if there gather together those who have been given precedence by Allah and those who have been placed behind, the division should begin with those having precedence, and he shall be given his complete share; then if something remains (of the property) it shall be for those (who have been placed behind) and if nothing is left they shall get nothing.” (ad-Durru ’l-manthur)

Sa’id ibn Mansur narrated from Ibn ‘Abbas that he said: “Do you suppose that He Who knows the number of the sands of the valley, ‘Alij, has prescribed in the property one half, plus one-third plus one-fourth?” (ibid.)

‘Ata’ says: “I said to Ibn ‘Abbas: ‘People do not follow my word or your word; and when you and I shall be dead, they will not divide the inheritance according to your verdict.’ He replied: ‘Then let them gather, and then we (i.e., both parties) should put our hands on the rukn (of the Ka’bah), then we should earnestly pray and put the curse of Allah on the liars. Allah has not ordered that which they say.’” (ibid.)

The author says: This theme has been narrated from Ibn ‘Abbas also through the Shi’i chains, as is quoted below.

az-Zuhri quotes ‘Ubaydullah ibn ‘Abdillah ibn ‘Utbah as saying: “I was sitting with Ibn ‘Abbas when the talk turned towards description of inheritance-shares. Ibn ‘Abbas said: ‘Allah, the Great, be praised! Do you think that He Who knows the number of the sands of (the valley) ‘Alij, has appointed one-half plus one-third in a property? Well, these two halves have finished the whole property; now where is the slot of the (remaining) one-third?’ Zufar ibn Aws al-Basri then asked him: ‘O Abu ’l-‘Abbas! Who was then the first to reduce these shares?’ He said: “Umar ibn al-Khattab. When several shares gathered near him, pushing each other, he said: “By Allah! I do not know which of you Allah has given precedence to, and which of you He has deferred. And I do not find anything more accommodating than this: that I should divide this property among you proportionately, and let every right-owner get his right.” In this way he introduced the proportionate reduction of shares. By Allah! if he had given precedence to him whom Allah had given precedence to, and put behind whom Allah had put behind, there would be no need for proportionate reduction of shares.’ Zufar ibn Aws asked him: ‘And which of them has He given precedence to, and which has He kept behind?’ He said: ‘Every share which Allah has not brought down from a prescribed share but to another prescribed share, that is which Allah has given precedence to. And as for that which Allah has kept behind, it is every share that – when it leaves its (original) place – does not get except the residue, it is (the share) which Allah has put behind. As for that which has been given precedence, (it is these): the husband gets a half, but if a situation arises to bring his share down,

he comes to one-fourth, nothing removes him from there; and the wife receives one-fourth, but when she comes down to one-eighth, nothing removes her from there; and the mother is allotted one-third, but when she moves from it, she goes to one-sixth, and nothing removes her from it. These are therefore the shares which Allah has given precedence to. As for that which He has kept behind, it is the share of the daughters and sisters – they are entitled to one-half or two-thirds, and when (other) shares remove them from it, they do not get except what is left, so these are whom Allah has kept behind. When there gather together those whom Allah has given preference and those whom He has kept behind, it (i.e., the division) will begin with those whom Allah has given precedence, and he shall be given his full share; then if something remains, it will be for him who has been kept behind; and if nothing is left, he shall get nothing.’ Then Zufar said to him: ‘Then what prevented you from offering this opinion to ‘Umar?’ He said: ‘His dread.’ “ (al-Kafi)

The author says: ‘Ali (‘a) had rejected the theory of proportionate reduction of share, long before Ibn ‘Abbas did so. And it is the madhhab of the Imams of Ahl al-Bayt (‘a) as is described below:

al-Baqir (‘a) said, inter alia, in a hadith: “The Leader of the faithful (‘a) used to say: ‘Most surely, He Who knows the number of the sands of ‘Alij, (also) knows that the shares should not be deviated (i.e., reduced) from six; had you looked at its (proper) direction, it would not be more than six.’” (ibid.)

The author says: It is written in as-Sihah: “‘Alij is a place in a valley with sands.” The Imam’s words, “the shares should not be deviated from six”, means that no share could deviate in a way to change the six prescribed portions to some other portion. The six shares, explicitly mentioned in the Qur’an are as follows: a half, one-third, two-thirds, one-fourth, one-sixth and one-eighth.

as-Sadiq (‘a) said: “The Leader of the faithful (‘a) said: ‘All praise is due to Allah; there is none to let precede what He has set behind, and none to set behind what He has let precede.’ Then he struck his one hand with the other and again said: ‘O nation (that is) bewildered after its Prophet! If you had let that precede which Allah had given precedence to, and kept behind that which Allah had set behind; and had put authority and inheritance where Allah had put it, no friend of Allah would have remained in poverty, and no share from Allah’s ordained shares would have decreased, nor two people would have differed in Allah’s commandment; and the ummah has not disputed about any command of Allah but that ‘Ali has its knowledge from the Book of Allah. So (now) taste evil consequences of your affair and of your inordinateness in that which your hands have sent before; and Allah is not unjust to the servants; and they who act unjustly shall soon know to what final place of turning they shall turn back.’” (ibid.)

**The author says:** A further explanation of how some heirs’ shares are decreased is given below:

The shares, according to the Qur’an, are six: a half, two-thirds, one-third, one-sixth, one-fourth and one-eighth. Sometimes these shares gather together in a way it creates problem. For instance, in the first class of heirs, there may exist a daughter, father, mother and husband.

Their respective shares are a half, two-sixths and one-fourth – the total (1.1/12) exceeds the original

property (which is 'one'). Likewise, if there are two daughters, both parents and husband, their shares, two-thirds, two-sixths, and one-fourth (total = 11/4) exceed the original. In the same way, in the second class of heirs, there may exist together a sister, a paternal and a maternal grandfather, and a wife; and their shares, a half, one-third, one-sixth and one-fourth (total = 11/4) would exceed the original. Or, if there are two sisters, two grand-fathers and a husband, their shares – two-thirds, one-third, one-sixth and a half (total = 1.2/3) – would far exceed the original.

If we reduce all the shares proportionately, it would be al-'awl. On the other hand, if we leave the shares of parents, husband, wife and uterine relatives (i.e., one-third, one-sixth, a half, one-fourth and one-eighth) intact – because Allah has explicitly prescribed them and has not left them un-explained in any eventuality – then the deficiency will always fall on the shares of one or more daughters, and one or more consanguine or agnate sisters, and on the shares of male and female children – when there is one or more, for the reason explained earlier.

As for “returning” to the latter group the property left after distribution of prescribed shares, the reader should consult books of hadith and jurisprudence.

al-Hakim and al-Bayhaqi (in his as-Sunan) have narrated about Zayd ibn Thabit that he used to partially exclude mother (i.e., reduced her share from one-third to one-sixth) if the deceased had left two brothers. People said to him: “O Abu Sa'id! surely Allah says: and if he has brothers (and plural in Arabic indicates at least three), and you are partially excluding her by (only) two brothers?” He said: “Verily the Arabs call two brothers al-ikhwah (أَلْإِخْوَةُ = brothers (in plural)).” (ad-Durru 'l-manthur)

The author says: The same theme is narrated from the Imams of Ahl al-Bayt ('a); although it is generally said that al-ikhwah is plural of al-akh (أَخٌ = brother) and plural is not used for less than three.

as-Sadiq ('a) said: “The mother is not partially excluded from one-third except by (presence of) two consanguine or agnate brothers or four consanguine or agnate sisters.” (al-Kafi)

The author says: There are many traditions of the same theme. As for uterine brothers, they are connected to the deceased through the mother who by her presence debar them from inheritance. It is narrated in the traditions of both the Shi'is and the Sunnis that the brothers partially exclude the mother, but they themselves do not get any share in inheritance because of the presence of the parents who have precedence over them in class. Thus the law, that the brothers partially exclude the mother while they themselves do not inherit anything, has been laid down keeping in view the position of the father – because the excess portion shall be returned to him. That is why the uterine brothers do not partially exclude the mother, because they are not the father's dependants.

The Leader of the faithful ('a) said regarding the clause, after (the payment of) any bequest he may have bequeathed or debt: “Surely you recite in this verse the bequest before the debt, but the Messenger of Allah (S) has decreed (to pay) the debt before the bequest.” (Majma'u 'l-bayan)

The author says: This tradition has also been narrated by as-Suyuti in ad-Durru 'l-manthur from several traditionalists and exegetes.

as-Sadiq ('a) explained al-kalalah in these terms: "Other than parent and child." (al-Kafi)

The same Imam ('a) says about the clause: and if a man or a woman leaves property to be inherited by neither parents nor offspring, that Allah has meant by it specifically the uterine brothers and sisters. (ibid.)

The author says: There are numerous traditions of this theme and the Sunnis too have narrated them. The number of such traditions reaches near to mutawatir. These traditions also say that the law regarding consanguine and agnate al-kalalah is mentioned in the last verse of the chapter which says: They ask you for a decision of the law. Say:

***"Allah gives you a decision concerning the person who has neither parents nor offspring (4: 176).***

It is a further proof of this explanation that the shares allotted to those relatives in that last verse exceeds the shares mentioned in this verse by double or even more. We know from the context and the above-mentioned verses that Allah has made a male's share generally equal to that of two females – as far as possible. Relatives other than parents and children are connected with the deceased either through father and mother both, or through father or through mother alone. Naturally, the difference maintained between father and mother will be carried over to those relatives too, because they are connected through them. In other words, the consanguine or agnate relatives will get a larger share than the uterine relatives. It leads us to the above-mentioned conclusion that the verse giving smaller shares speaks about the uterine relatives and that prescribing larger shares about the consanguine or agnate relatives.

Muhammad ibn Sinan has narrated that Abu 'l-Hasan ar-Rida ('a) wrote in reply to his questions, inter alia: "The reason why women are given half of men's share in inheritance: It is because when a woman marries she receives (the dowry) and it is the man who pays; that is why men have been given more. Another reason why male is given twice of what female gets: It is because female is a dependant of male if she is in need; the male is obliged to maintain her and he is responsible for her sustenance; the woman is not liable to maintain the man nor is she held responsible to give his sustenance if he is in need; that is why men have been given more; and that is the word of Allah: Men are the maintainers of women because of that with which Allah has made some of them to excel the others and because of what they spend out of their property." (Ma'ani 'l-akhbar)

al-Ahwal said: "Ibn Abi 'l-'Awja' said: 'Why is it that a poor weak woman takes one share and men take two shares?' Some of our companions mentioned this to Abu 'Abdillah ('a) and he said: 'Verily, there is no jihad on woman, nor maintenance nor blood-money, (all) this is on men, that is why woman was allotted one share and man two shares.' " (al-Kafi)

The author says: There are very many traditions of this import, and we have shown that the Qur'an too

shows the same thing.

## **An Academic Essay On Inheritance**

### **1. How Inheritance Began**

Inheritance – taking possession, by some living persons, of the property left by the deceased – is one of the most ancient traditions of human society. It is impossible to find out from the available histories of nations and countries when this custom began – not unexpectedly it is hidden in the mist of antiquity. We understand by pondering on man's social nature that man yearns to get a property – and especially if it is not in any one's hand – longing to use it for his needs. It is one of his primary and most ancient customs to gain control of a property, especially if there is none to stop him. Also man, be he primitive or civilized, cannot be oblivious of the notion of nearness and close association (which give rise to the concept of being nearer and closer in relationship) between various members of society. It is this concept which has led to establishment of home, family, clan and tribe, etc. Inevitably, in a society some persons will be nearer to one another than the rest, like a child to his parents, a relative to another relative, one friend to another, a master to his slave, husband and wife to each other and a head to his followers; even a powerful person to a weak one – although different societies have different concepts and standards for identifying this nearness, a difference which it is almost impossible to record.

These two factors make us believe that inheritance is a custom prevalent in human beings since the earliest days of society.

### **2. Gradual Development of Inheritance**

This system, like all other social traditions, was intermittently changing from one position to another; evolution and gradual development playing a hand in it since its first appearance. But the primitive society was never well-organized and consequently no historical record can be found to give us a reliable picture of its gradual development.

Nevertheless, it is certain that they did not give any share to women and weak persons; inheritance was exclusively reserved for strong males. It was only because in their eyes, women and weak persons (like slaves and small children) were in the same category as that of tamed animals and merchandise – these things are always used by man without themselves getting any benefit from man or his property, nor are they entitled to the social rights that are accorded to the human race.

However, the connotation of 'strong' varied from time to time. Sometimes it meant head of the community or clan; at other times, it was head of the family; occasionally, it implied the bravest of the community. Such changes naturally meant fundamental alterations in inheritance rules.

Those customs prevalent from time to time were devoid of the bliss and felicity which human nature

aspires for; and consequently each was altered (or discarded) before long. Even civilized nations which were governed by legal codes or some well-established tribal laws, like Rome and Greece, went the same way. Uptil now no inheritance law prevalent in any community or nation has stood the test of time and remained alive as long as the Islamic inheritance law has – it has ruled over the Muslim nations from the day it was ordained to this day, for about fourteen centuries.

### **3. Inheritance in Civilized Nations**

The Romans had a peculiar social theory: A house was a self-contained social entity, independent of the greater society; its members were beyond the jurisdiction of the government in all their social rights; the house had its own rules and regulations and (consequently) its own system of reward and punishment, and so on. The head of the family was the deity of his family – of his wife, children, slaves and dependants. He was their absolute owner – no other person owned anything as long as he remained a member of the house. The head had total power over them and managed their affairs by his absolute authority. He in his turn worshipped his predecessor – the previous head of the family.

Whatever property there was, it was inherited by the house. Suppose a son died leaving some property (which he had earned and owned with permission of the family-head), or a daughter expired leaving what she had been given possession of (as dowry, etc.) with permission of the family-head, or some other relative died – in all such cases the property was inherited by the head of the family, because it was the inevitable consequence of his godship and absolute ownership of the house and its members.

When the head of the family died, one of his sons or brothers inherited him – who could do so. When several sons inherited him, then if they separated and established new houses, each became the deity of his house. But if they continued to live in the old house, their position vis-a-vis the new deity (their brother, for example) would be the same that was under their late father – all would come under the authority and absolute guardianship of the new deity.

Adopted sons had the right to inherit him; the system of adoption was prevalent among them just like the pre-Islamic Arabs. As for women (like wife, daughter and mother), they were not given any share of inheritance – lest the property of the house be transferred to another house if they changed residence on marriage; for it was not lawful to transfer a property from one house to another. It is probably this concept which someone had in mind when he said that they believed in society's communal ownership, not in private or personal one. But I think that it was based on something other than socialistic ownership. Even primitive barbaric communities, since early dawn of humanity, prevented other tribal groups to share or encroach in the pasture and fertile lands which they had taken under their hold; they protected it and even fought for it. It was a sort of common public property which was owned not by individuals but the society. Nevertheless, it was not disallowed for an individual member to reserve a portion of that common property for himself.

It was a valid kind of possession, although they could not keep balance in its management and use.

Islam respects such possession as we have mentioned earlier. Allah says: ***He it is Who created for you all that is in the earth (2:29)***. Therefore, the human society, i.e., the Islamic society and those who are under its protection, do own the riches of the earth in this sense; thereafter, the Islamic society is the owner of all that it has under its control. That is why Islam does not allow a non-Muslim to inherit from a Muslim.

Even today some nations follow a similar principle and do not allow foreigners to acquire ownership of any land or immovable property, etc., in the country.

As the house, in ancient Rome, had complete independence by itself, this old system had taken root therein like other independent nations and countries.

Now, the Romans followed the above-mentioned inheritance code; and also they did not allow marriage within the prohibited degrees. These two things together obliged them to divide the relationships in two categories: First, the natural relationship, originating from a common blood. On it was based the illegality of marriage within the prohibited degree and its lawfulness outside that circle. Second, the official or legal relationship. On this relationship depended inheritance or disinheritance, maintenance, guardianship and things like that. The sons had both types of relationship—natural and legal – with the head of the family and with each other; but women were recognized only as natural, but not legal, relatives. Consequently, they inherited from none: neither from father nor son, neither from husband nor brother, nor from anyone else. This was the inheritance code of the ancient Rome.

As for Greece, their old custom in establishment of the houses was almost similar to that of the ancient Rome. They gave inheritance to the most mature of the male children; women were totally debarred from it, be they wife, daughter or sister; also small children and others like them were not entitled to any share. But the Greeks, like the Romans, sometimes devised plans to give inheritance to small children or those women – like wives, daughters or sisters – whom they loved and were apprehensive for their welfare; with these devices, like will, etc., they could easily give them a small or large portion of property. We shall speak on it under the “Will”.

India, Egypt and China were not different from Rome and Greece in totally excluding the women from inheritance and debarring weaker children from it – or they continued to live under the authority and guardianship of the stronger male heirs.

As mentioned earlier, the Persians allowed polygamy and marriage with women within ‘prohibited degrees’; adoption was legal; the most beloved wife sometimes had a status equal to that of an adopted son and shared the inheritance equally with the son and the adopted son, debarring other wives. A married daughter was not entitled to inheritance, lest the property go out of the family: but an unmarried daughter was given half of a son’s share. In short, the wives (except the senior-most) and married daughters were debarred, while the senior-most wife, son, adopted son and unmarried daughter shared in the inheritance.

The Arabs gave no share to women or minor sons; the inheritance was taken by the mature sons who could ride a horse and defend the honour (of the family); if there were no such child, the agnatic relatives took away the property.

This was the state of affairs in the world when the verses of inheritance were revealed. These matters are described in detail or mentioned in short in various histories dealing with customs and civilizations of ancient communities, in travelogues, law books and other such writings which may be consulted by anyone who wants more information.

The above description shows, in short, that in those days it was the common practice throughout the world to deprive the women of the inheritance – be it a wife or mother, a daughter or sister. If one wanted to give them a share, one had to devise a plan for it. Also it was an established system to debar small children and orphans – except in some cases where they were taken under other relatives' guardianship – a perpetual guardianship that was never terminated.

#### **4. What Islam did in such a Situation**

It has been repeatedly said that according to Islam the correct foundation of rules and laws is the nature on which people have been created – and there is no alteration in the creation of Allah. Islam has laid down the inheritance on the 'womb' that is, relationship, which is a part of nature and an established creative factor. For the same reason, it has negated the custom of adopted sons' inheritance. Allah says:

***nor has He made those whom you assert to be your sons your real sons; these are the words of your mouths; and Allah speaks the truth and He guides to the way. Assert their relationship to their fathers; this is more equitable with Allah; but if you do not know their fathers, then they are your brethren in faith and your friends (33:4, 33:5).***

Then it removed the bequest from the general rule of inheritance and gave it an independent legal status, by which a dying person may bestow and a beneficiary may receive – although before that even bequest was called inheritance. But in Islam it is not just a nominal difference; there are two separate principles governing the inheritance and the will or bequest, respectively, with an independent natural basis for each. The factor that governs inheritance is relationship, and the deceased's wish or will does not effect it at all; while the basis of bequest is in compliance with the deceased's wish after his death (you may say, at the time of his bequeathing) in the property he owned when he was alive; implementation of bequest shows respect to the deceased's wish. If one included the will under the heading of inheritance, it would be merely in name, not in reality.

What the people, like the ancient Romans, called inheritance did not take into consideration the two factors of relationship and respect to the deceased's wishes. It was only based on the deceased's desire to prevent the transfer of property to another house; the intention was to keep it in the hands of the head of the family, (i.e., its deity); or on his desire to transfer it to someone he loved and was apprehensive of

his welfare. In any case, it only looked at the deceased's desires. Had it been founded on relationship and common blood, many of those who were deprived would have shared in inheritance.

After that, Islam turned its attention to the inheritance. In its eyes, there are two basic factors affecting it:

(First:) The factor of relationship. It is the common bond that unites a man to his relatives. There is no difference in this respect between a male and a female, nor between an adult and a minor (or even a foetus in the womb). Nevertheless, various relationships have different effects; some get priority, others are kept behind, some prevent the others from inheriting. All this is related to the strength of a relationship, which in its turn depends on a relative's nearness or distance from the deceased – whether his relationship with the deceased is direct or through some intermediaries, and whether there are less or more intermediate links, for instance, son, brother and uncle. This principle bestows the right of inheritance on the relatives, and at the same time establishes different classes of the heirs according to their nearness or distance from the deceased.

(Second:) The factor of natural difference between male and female. It creates difference in their respective capabilities, as one group is more equipped with intellect while the other is more endowed with sentiments. Man by nature is a contemplating human being, while woman is an embodiment of sentiments and emotions. This difference very clearly affects their lives as far as management of property and its usufruct are concerned. This factor has led to the difference in the shares of men and women – even when they happen to be in the same class, like son and daughter, or brother and sister, as we shall explain below.

The first factor has led to grading of heirs in classes according to their nearness or distance from the deceased, keeping in view whether their connection with the deceased is direct or through one or more intermediary links. The first class consists of the heirs related to him directly – without any intermediary. They are son, daughter, father and mother. The second class is of brother, sister, grandfather and grandmother. They are connected to him through one link, that is, either through father, or mother or both. The third class consists of paternal and maternal uncle and aunt. They join the deceased through two intermediate links, that is, through a parent and a grandparent. In every class, children take the place of their parents in their absence and debar the next class.

As for husband and wife, marriage had mingled their blood, and accordingly they share with every class; neither any class debars them, nor they debar any class.

The second factor, that is, the difference between man and woman, has led to the principle of a male getting equal to the share of two females – except in case of the mother and the relatives connected through her.

The laid down shares are six (a half, two-thirds, one-third, one-fourth, one-sixth and one-eighth) although they may occasionally change. Likewise, the property received by an heir may differ at times from his prescribed share because of decrease or 'return'. Also, the share of father vis-a-vis mother and

the relatives connected through her does not conform with the general principle of the male's share being double that of female. Such variations make it difficult to give here a comprehensive description of Islamic inheritance laws. Nevertheless, the whole structure, inasmuch as the preceding generation gives place to the succeeding one, is based on the principle that one spouse is succeeded by the other, and the progenitors (i.e., fathers and mothers) give place to the progeny (i.e., children). And the shares, as decreed by Islam for both groups (spouses and children), give a male double of that allotted a female.

This general review shows that Islam provides for division of the world's wealth in two portions of one-third and two-thirds. The one-third belongs to the female and the two-thirds to the male. This is on the level of possession. But as far as the usufruct is concerned, it is governed by another principle. It says that maintenance of the wife is the husband's responsibility, and that he has to treat her with justice – both should equally share and use the man's wealth for their needs. Also it has given the woman freedom of will and independence of action in the wealth she herself owns – her husband cannot interfere in it. These three factors prove that woman has the right to make use of the two-thirds of the world's resources (one-third her own property plus a half of the two-thirds belonging to man) while man may use only a third.

## **5. The Position of Women and Orphans in Islam**

The orphans do inherit like stronger adult men. They are brought up, and their property continues growing, under their guardians' care, like the father (sic.) and grandfather, or the believers in general, or the Islamic government. When they attain to marriageable age and show the signs of maturity of intellect, their property is handed over to them, and they begin their independent life. It is the most just and equitable system that can be imagined for such cases.

As for women, as described above, from a general point of view they own one-third of the world's wealth and have the usufruct of its two-thirds. They are independent and absolute owners of what belongs to them; they are not put under any guardianship, be it permanent or temporary; and it is no concern of the men what the women do about themselves in a lawful and proper manner.

In Islam woman is recognized as an individual personality equal in every legal aspect to that of man; she has freedom of will and action in every way. Her position is not different from that of men, except as much as is demanded by her especial psychological traits that differ from those of man – that is, hers is a sentimental life while that of man is intellectual. For this reason, man has been given a major share in general wealth, in order that the management based on intellect and contemplation – in the world in general – may outbalance the management based on feelings and sentiments. But the deficiency of her share has been more than made up by giving her overwhelming share in usufruct. Also, she is obliged to obey her husband in conjugal relations, and has been compensated for it with dowry.

Likewise she is disqualified from occupying the position of a judge, a ruler or a fighting soldier, as these are the responsibilities that can best be discharged through contemplation, rather than emotion. This has

been balanced by making the men responsible for the women's security and safety, for protection of their honour and dignity. Man bears the burden of earning the livelihood and maintaining the wife, the children and the parents; while woman has been given the right of custody of children – without making it obligatory for her. All these rules have been counter-balanced with other things the women are obliged to do, like wearing hijab (الْحِجَابُ = veil), not mingling with men, looking after the household and bringing up the children.

The question may be asked: Why has Islam not allowed the (women with their) emotions and sentiments to occupy such public offices as defence, judiciary and rulership? Why does it refuse to give these departments into her hands? The answer may be found in the bitter harvest which humanity is reaping in modern days as a result of the domination of sentimentality on thought and contemplation. Just ponder on the great World Wars (the gifts of the modern civilization) and on the conditions prevailing throughout the world; then review them in the light of intellect and emotional feeling; you may then easily see where the temptation springs from and what offers good and sincere advice. And Allah is the Guide.

Moreover, the civilized nations of the West, since last many centuries, have spared no effort – have rather gone out of their way – to teach and train the girls together with the boys, in order that their potentials of perfection may be turned into reality. Nevertheless, if you look at the Who's Who of politicians and statesmen, legislators and judges, and military leaders and generals (the three above-mentioned fields of government, judiciary and war) you will not find women's names there in any considerable number, nor can their numbers be compared with the hundreds, rather thousands, of men's names. This in itself provides the most telling evidence that women by their nature, are not suitable for training in these fields – which per se require deep contemplation and planning; and the more chance is given to emotions to infiltrate into them, the more frustration and failure follows.

This and other similar observations provide conclusive rebuttal to the well-known theory that the only reason why women lag behind in society is the insufficient training given to them since the earliest days of human history; had they been given good and useful training, then – with their sentimentality and fine feelings – they would have overtaken or gone ahead of the men in all aspects of perfection. But this argument is almost like a selfdefeating syllogism. (The reality is the other way round.) Because it is the women's exclusive – or predominant – attachment to emotional feelings, that has kept them behind in all those fields which demand strong reasoning and domination of thinking over sentiments, like governing and judiciary; and has let the group having these qualities, that is, men, go ahead of them in these professions. Definitive experiments have proved that when a person possesses some psychological traits in strong measures, his/her training in related professions and occupations can be carried out very successfully. It naturally follows that men can be successfully trained in the fields of government and judiciary, and will surpass the women in achieving perfection in these spheres. On the other hand, the women's training in matters connected with sentiments and feelings can succeed tremendously, as for example in some branches of medical profession, painting, weaving and embroidery, as well as bringing up children, nursing sick persons, decoration, cosmetics and things like that. In other fields both sexes

have equal chances of advancement.

Moreover, if, as is claimed, the women's backwardness in the above-mentioned masculine fields is attributed only to chance, it should have, at least for some eras in the long human history, broken down or reversed itself – and they say that mankind is millions of years old. The same applies to those typically feminine activities in which men are behind. Really these are inherent characteristics which are inseparable from human society; and if we start counting these realities as mere casual and chancy affairs – especially when they are in total conformity with inner workings of human physique – then we cannot put our hands on a single characteristic in the whole human world which we could say was natural and intrinsic to man, be it his inclination to social life and society, his love of knowledge, or his curiosity that leads him to discover the hidden secrets of nature, and things like that. These too are inseparable attributes of humanity, and human structure is in complete agreement with these traits and characteristics. That is why we say they are natural attributes.

The same principle applies to women's advancement in luxuries and sentimental affairs and to their backwardness in intellectual matters or the affairs entailing severe hardships and dangers. This too is based on their natural characteristics. The opposite is true in those matters in which men are advanced or behind.

The only thing that remains is the offence that women might take at attribution of perfect intellect to men and of perfect sentimentality and feelings to them (women). But this objection is not tenable. In the eyes of Islam, intellect and sentiments both are valuable divine gifts, ingrained in human nature for truly divine purposes; neither has any excellence over the other. (Neither has any hand in achieving any honoured position before Allah.) Honour entirely depends on piety. As for other attributes – whatever they may be – they grow and develop only if they proceed on the right path; otherwise they turn into evil burdens, undesirable loads.

## **6. Modern Inheritance Laws**

These laws and codes had got support from, and were influenced by, Islamic laws of inheritance – although they differ from it in quantity (of shares) and mode (of division) as we shall describe here in short. There is a lot of difference between the stand taken by Islam and that of these legislations as far as women's inheritance is concerned.

As for Islam, it had initiated a thing which the world had never known, nor the earlier generations were ever told of by their progenitors; while these later laws were legislated when the Islamic laws were firmly established and constantly implemented in the Muslim ummah inhabiting a greater part of the then known world; hundreds of millions of people had been practising this code for more than a millennium, the progenies inheriting it from their ancestors. Obviously when a novel idea is put into practice and is accepted and implemented, and thus becomes a permanent feature of the society, then it becomes very easy for similar principles to appear on the scene. Every preceding social custom provides the ideational

substance for similar following customs; rather the former becomes the substance that is reshaped into the latter. Therefore, no social scientist should spurn the fact that the modern inheritance laws have got support from the Islamic inheritance code that had preceded them, and that it is the Islamic code which they have remoulded into their statutes – we are not concerned here whether they could do justice to it or not.

The most amusing is the claim sometimes made – may Allah destroy the ignorance of the yore! – that the new laws have got their ideas and substance from the ancient Roman code. You have already seen what that ancient Roman custom was, and what the Islamic Shari'ah has offered to the mankind. The Islamic code came into being and was implemented after the old Roman code and long before the modern Western laws; it was deeply rooted in the societies of millions, nay, hundreds of millions, of people continuously for long centuries. It is impossible to suggest that such a living code remained ineffective and did not influence the thinkings of these legislators.

Even stranger is the assertion by some writers that the Islamic code of inheritance was adapted from the ancient Roman code!

However, the modern laws prevalent in the Western nations, in spite of their differences in some details, are almost unanimous on one point: They treat females as equal to males in inheritance shares; the daughters and sons get equal shares as do the mothers and fathers, and so on.

The French code has divided the heirs in the following classes:

- i) Sons and daughters;
- ii) Fathers and mothers, and brothers and sisters;
- iii) Grand-fathers and grand-mothers;
- iv) Paternal and maternal uncles and aunts.

It has kept the marriage-tie separate from this classification, saying that it is based on the foundation of love. We are not concerned here with its details or description of other classes. If anyone wants it he should look into the relevant books.

But what we are concerned with is the net result of this prevalent customs. This type of legislation makes the woman equal partner of man in the wealth of the world – taken as a whole. Yet they have put the wife under the guardianship of the husband; she has no right to manage or control her own inherited property – except with the consent and permission of her husband. It means that although the world's wealth is divided half and half between man and woman (so far as ownership is concerned), the total wealth is placed in the hands of the man (so far as its management and control is concerned). Now, some groups and parties have risen up which are trying to make women truly independent owners of their properties, taking them out of men's control and guardianship. If they succeed, then the men and the women would be really equal in ownership as well as in control and management.

## 7. Comparison of these Codes: One with Another

We have already described in short the customs which were prevalent in ancient nations in old days. Now we leave it to research scholars to compare one with another and deliver their judgment for each, whether it was perfect or defective, and whether it was beneficial for human society or harmful – in short, whether it was on correct footing on the highroad of felicity and happiness. Then, he may compare the Islamic code with each and judge accordingly.

The basic difference between the Islamic laws and the others is in the respective aims and objectives. Islam intends that the world should achieve its righteousness, goodness and probity; while the other laws want it to get what it desires. All the branches sprout from these two different roots. Allah says:

***and it may be that you dislike a thing while it is good for you, and it may be that you love a thing while it is evil for you, and Allah knows, while you do not know (2:216);***

***and live with them kindly; then if you hate them, it may be that you dislike a thing while Allah has placed abundant good in it (4: 19).***

## 8. Will and Testament

It has been explained that Islam has given the will an independent status, unlinking it from the general rules of inheritance. It is because the will has an independent basis, that is, respecting the owner's wishes concerning what he had possessed in his life. In ancient nations, will was a device which the testator used to give his property – or a part of it – to someone who customarily was not entitled to it, to prevent it from going to the recognized heir, for instance, the father or the head of the family. That was why they were always busy enacting laws putting restrictions on testamentary bestowals lest it nullify the rules of inheritance completely; and such efforts are continuing in those societies upto these days of ours.

On the other hand, Islam has restricted the application of will to a third of the property; it is invalid beyond that limit. Some modern codes, like the French one, has imitated the Islamic principle in this respect; but the aims differ. That is why Islam exhorts people to bequeath, while other laws discourage it or are silent about it.

Meditate on the verses concerning bequest, alms, zakat, khums, and general spending in the way of Allah; and you will realize that these laws pave the way for setting aside about half of the properties and two-thirds of their benefits for philanthropy charity, for meeting the needs of the needy and poor. This brings various classes nearer, and narrows the gaps between them, thus strengthening the weaker sections of the society. It is in addition to the guide-lines given to wealthy persons as to how they should use their wealth – which brings them nearer to the poor. We are not going into details of this topic, as it will be written, Allah willing, in another place.

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1. The alleged tradition of Abu Bakr and the opinion based on it – that the prophets neither inherit anyone, nor anyone inherits them – is not so irrelevant to the exegesis of the Qur'an; because it goes directly against several Qur'anic verses, and accordingly it is necessary, for the purpose of removing any possible misunderstanding, to point to this contradiction. Suffice it to say that this tradition and the opinion are not only against the general and clear meanings of the verses of inheritance, but are also contradicted by some other verses. Allah says: And Sulayman inherited from Dawud (27:16); again He says quoting Zakariyya's invocation: And surely I fear my relatives after me, and my wife is barren, therefore grant me from Thyself an heir, who should inherit me and inherit from the children of Ya'qub (19:5 – 6). These verses cannot refer to prophethood or divine knowledge, because prophethood and divine knowledge come directly from Allah, they are not a thing to be inherited, nor was there any need for Zakariyya ('a) to be afraid of his relatives that they would take over the prophethood after him. The verses simply refer to inheritance of property (or, in case of the first verse, the Kingdom). Here we find Sulayman and Yahya ('a) inheriting properties from their fathers, Dawud and Zakariyya ('a) respectively; and all of them were prophets. Thus according to the Qur'an two prophets left their properties to their heirs, and two prophets inherited them. (tr.).

2. This explanation may be correct to a certain extent only. It is not allinclusive. For instance, the author has had to explain a single construction in two different ways to suit his purpose. Where the Qur'an says that, the mother shall have the third, he has implied that there is a min (from) hidden after it; but in another exactly the same construction, she shall have the half, he says that the word, the, stands for the deleted possessive construct, i.e., it means, half of what the deceased has left. It is an arbitrary way of interpretation.

We may interpret the verses in a more realistic way if we take the preposition, min (from) to denote, not the beginning, but at-tab'id (portioning), e.g., if we interpret, fourth from what you leave, as a fourth of a portion of your estate.

Where the Qur'an uses the possessive case, it means that the prescribed share or ratio is to be taken out from the whole of the estate; and where it prescribes a certain share "from it", it means that the said heir shall get that share, not from the whole estate, but only from a part of it.

Now let us look at each clause in this light: and (as for) his parents, each of them shall have the sixth from what he has left if he has a child: The eldest son is entitled to al-habwah (lit, gift; here it denotes gift of some personal effects of his father, like ring, sword, etc.) from the original estate before it is divided among the heirs. Therefore, the parents will not get one-sixth of the whole estate, as they will not get any share from the said habwah; hence 'the sixth from', not 'the sixth of'.

And you shall have half of what your wives leave if they have no child, but if they have a child, then you shall have a fourth from what they leave: When there is no child, the husband gets half of the whole property. But when there is a child, the son shall get the habwah before the estate is divided, so the husband will get a fourth of a portion of estate. and they [wives] shall have the fourth from what you leave if you have no child, but if you have a child then they shall have the eighth from what you leave: The wives never get their one-fourth or one-eighth share from the whole estate. It is because they are not entitled to any share in land; and as for other immovable property (like house, garden, etc.) they get only the price of their prescribed share, but not the property itself; and in case of there being a son he is given the habwah before the division. Thus the wife always gets her one-fourth or one-eighth from only a portion of the estate.

Other clauses, where possessive case has explicitly or implicitly been used, indicate that the heir gets his/her share from the whole estate. For example:

then if they are more than two females, they shall have two-thirds of what (the deceased) has left; and if there is one, she shall have the half: but if he has no child and (only) his two parents inherit him, then his mother shall have the third.

It is now clear that the two different styles have been used to describe two different legal eventualities. There is a solid legal reason behind the use of possessive case and that of the preposition, from. It is neither for literary beauty nor for denoting largeness or smallness of a prescribed share. (tr.).

3. The term, consanguine, is used for a relative who is connected to someone through father and mother both, e.g., two brothers having the same father and mother are called consanguine brothers. Agnate is a relative connected only through father or through other males, while uterine is one related only through mother or through other females. (tr.).

4. The system of at-ta'sib which Islam had taken such pain to abolish and eradicate, was revived for political reasons by the second 'Abbasid caliph, al-Mansur, in the middle of the second century of hijrah. First a short description of that system in practice:

Mr. Justice Ameer Ali (who, it is necessary to mention, was a Mu'tazilite, and not a Shi'ah, as he himself has repeatedly said in his book, Mahommedan Law) says that in Arabia, prior to Islam, the inheritance "was governed by the rule of agnacy." It means that only the relatives connected with the deceased "through males" were recognized as entitled to take a share in his inheritance. But neither women nor persons connected to the deceased through them had any right of succession.

"Thus it was that whilst adopted sons and even slaves had rights, the children of daughters and sisters had no place in the customary rules which regulated succession." (Ameer Ali, Mahommedan Law, vol.2, p. 11).

Now a background of the 'Abbasid dynasty:

The 'Abbasids were descendants of al-'Abbas, an agnate uncle of the Prophet. The descendants of Fatimah ('a) were also descendants of 'Ali ('a), son of Abu Talib who was a consanguine uncle of the Prophet.

Before coming to power, the family of 'Abbas, like other Hashimites, generally followed the madhhab of the Ahlu 'l-Bayt ('a). As an example, we may refer to several traditions narrated in coming pages from both Shi'i and Sunni chains, from Ibn 'Abbas, in which he has strongly denounced the system of al-'awl, innovated by 'Umar.

When the Hashimites were planning to overthrow the Umayyad dynasty, the 'Abbasids had joined hands with the Hasanid branch of the Fatimids, although al-Imam Ja'far as-Sadiq ('a) had remained aloof from all these activities. It was agreed among the 'Abbasids and the Hasanids that on achieving success they would install Muhammad an-Nafsu 'z-Zakiyyah (The Pure Soul) as caliph. (He was a son of 'Abdullah ibn al-Hasan [al-Muthanna II] ibn [al-Imam] al-Hasan ('a). Among those who did bay'ah (to give allegiance) to him, were Abu 'l-'Abbas as-Saffah and al-Mansur. The slogan "rida'u ali Muhammad (to please the progeny of Muhammad) proved a success. People gathered behind their agents thinking that they wanted to remove the tyrant dynasty of the Umayyads and install a descendant of the Prophet (S) in their place. When the Umayyads, were overthrown in 132 AH, it was not Muhammad an-Nafsu 'z-Zakiyyah who was put on the throne, but the 'Abbasid, Abu 'l-'Abbas as-Saffah, who was succeeded four years later by his brother, al-Mansur.

"They [the 'Abbasids] made the affection of the people for the children of Fatima the means for their own elevation, and when they had attained the desired end they rewarded the Fatimides with bitter persecution." (Ameer Ali, The Spirit of Islam, p.304)

When conflict started between Muhammad an-Nafsu 'z-Zakiyyah and al-Mansur, the latter left no stone unturned to prove the legitimacy of his claim. Among other devices (which this is not the place to mention) he revived the system of agnacy.

Mr. Justice Ameer Ali writes:

"When the Abbasides (sic.) succeeded in overthrowing the 'Ommeyyades (sic.) they found it necessary to legitimize their title to the Caliphate, for the eyes of the Moslem (sic.) world were still turned to the descendants the Prophet as the rightful heirs to his temporal and spiritual heritage — and in effecting this they found their chief support in the doctrine of agnacy. They claimed that as descendants of the Prophet's uncle, 'Abbas, they were his 'agnates' and as such had a better title than the descendants of his daughter Fatima. And this was the keystone of the fabric built up by the ablest monarch of the House of 'Abbas, Mansur, the real founder of the Sunni Church (sic.)." (Mahommedan Law, vol.2, pp.11-12).

He further says:

"The rule of agnacy has thus remained, chiefly from dynastic reasons, a part of the Sunni system. In early times it was as strongly enforced as under the old Romans. If a person died without leaving any 'agnatic' relation but a daughter's or sister's child, his property did not go to the latter but escheated to [i.e., was taken over by] the Caliph. In 896 AC the Caliph M'utazid b'illah (sic.) abolished this cruel rule; and laid down that in the absence of sharers and 'agnates' ('Asabah), the 'uterine relations' should succeed. And this has remained the law ever since." (ibid., p.12)

Even then, according to him, the uterine relations are placed in the last category, and it is only in the absence of sharers, agnates and even the emancipator that they receive any share in the inheritance. (ibid. p.68)

This was in short the origin of at-ta'sib (agnacy) in Islam. It is necessary to point out two things before ending this note:

First: As Ameer Ali has pointed out (and we have mentioned above) the "descendants of Fatimah were also descendants of 'Ali, who, as son of Abu Talib, was an agnate relative of the Prophet."

In fact, 'Ali ('a) was nearer than al-'Abbas to the Prophet (S), because Abu Talib ('a) was a consanguine uncle of the Prophet, and not merely an agnate like al-'Abbas.

Second: This whole argument was in fact fallacious and deceptive. In the heat of their political polemics neither Muhammad

an-Nafsu 'z-Zakiyyah nor al-Mansur paused to think that Imamate was not an inheritance. It was based on appointment by Allah which is announced through the Prophet or the preceding Imam. an-Nafsu 'z-Zakiyyah had based his claim on a falsity and al-Mansur replied him with a greater falsehood. (tr.)

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SHARES

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