

Summary

- Importance of Divine laws.
- Difference between *waiyyat* & *irth*.
- Importance of Divine laws of *Irth*.
- Classification of heirs. (*Nasab* & *Sabab*)
- The Qur’anic *Farā’id*.
- The Qur’anic verses on the *Farā’id*.
- Combination of Heirs’ Shares.
 - Combined shares equal to 100%
 - Combined shares fall short of 100%
 - Combined shares go over 100%

1

Objection to Islamic Laws

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ
مِثْلُ حَظِّ الْأُنثَىٰ

Allah enjoins you concerning your children:
the male shall have the equal of
the portion of the two females. 4:11

This choice of words and the composition of this small statement was a strong message. In words of ‘Allamah Tabataba’i, it was “chosen to point to nullification of the system prevalent in the pre-Islamic era whereby women were not given any share in inheritance.

2

“This expression takes the females’ 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...

“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...” (*Al-Mizān*, vol. 8, p. 5-6.)

3

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4

Difference in Shares Men vs Women

- Ibn Abil 'Awja' (who was known as "atheist") asked al-Ahwal, "Why does the poor and weak woman takes one share while the man takes two shares?"
- Al-Ahwal says that some of us asked this question to Imam Ja'far as-Sadiq (a) and replied:

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4

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5

Difference in Shares of Men vs Women 2

- "Verily a woman is not required to do jihad or pay for the maintenance [of herself or her children] nor is she responsible for any liability. All these are duties of the man. And therefore, the woman has been given one share and the man has been given two shares."
- = its not an issue of gender; it has to do with the financial responsibility.

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5

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6

Difference in Shares of Men vs Women 3

- Muhammad bin Sanan had sent some questions to Imam 'Ali ar-Riza (a). In response to one question, the Imam replied:
- "The reason for giving women half of what is given to the men in inheritance is that when a woman marries, she takes [the *mahr*] and the man has to give and therefore it has been increased for the men.

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6

Difference in Shares of Men vs Women 4

- “And another reason in giving to the male double of what is given to the female is because the woman is a responsibility of the man if she needs and it is upon him to maintain her and provide for her while it is not for the woman to maintain him and she cannot be responsible for his provision if he needs. Therefore it has been increased for the men.

7

Difference in Shares of Men vs Women 5

- “And that is [the meaning] of Almighty Allah’s words: *The men are maintainers of the women based on what has given more to one over the other and because of what they spend from their wealth.* [4:34]”

8

Difference in Shares of Men vs Women 6

- Abu Hashim al-Ja’fari narrates: al-Fahfaki asked Imam al-’Askari (a): “Why does the poor & weak woman take one share while the man takes two shares?”
- Imam Hasan al-’Askari replied: “The woman does not have the duty of jihad or pay for the maintenance [of herself or her children] nor is she responsible for any liability. All these are duties of the men.”

9

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10

Difference in Shares of Men vs Women 7

- Abu Hashim al-Ja'fari says: "I thought in my own mind that I have been told that Ibn Abil 'Awja' asked Imam Ja'far as-Sadiq (a) the same question and he gave the same answer as this one."
- Abu Hashim is the narrator of this conversation between al-Fahfaki and Imam Hasan al-'Askari was a close companion of the Imam and from descendants of 'Abdullah bin Ja'far.

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10

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11

Difference in Shares of Men vs Women 8

- The Imam looked at him and said: "Yes this is the question of Ibn Abil 'Awja' and the answer to that is same. If the question is same, what flows from the last one is same as what flows from the first one. The first one and the last one of us are same in knowledge and authority; of course, the Allah's Messenger & Amirul Mu'mineen have their honour."

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11

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12

A Point of Reflection

- Whatever a woman owns through gift, inheritance, earnings is her own property and the husband does not have right in it.
- A wife is still entitled to provision and maintenance even if she owns wealth and has regular earnings.
- A wife cannot be forced to contribute to the family expenses.

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12

The Intricate Wordings of the Qur'an

لِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا
السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

...his parents, each of them

shall have the sixth from what he has left
if he has a child... 4:11

- The word "مِمَّا" is "مِنْ مَا". And *min* can be translated two ways:
- "...the sixth of what he has left..."
- "...the sixth from what he has left..."

13

The Intricate Wordings of the Qur'an 2

لِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ

...his parents, each of them shall have the sixth from what he
has left if he has a child... 4:11

- The *min* من is used in meaning of partiality: i.e., "from a part of it," not from the whole.
- Here the word "min" refers to the fact that the parents will inherit one-sixth, not from the entire estate of the deceased child, but from a portion of it. Otherwise, there was no need for "min". It could have easily been said as: السُّدُسُ مَا تَرَكَ.
- Implication: e.g., the oldest son is entitled to *al-habwah* – some personal effects of the father: clothing, ring, sword, and the Qur'an.

14

A child or brother's impact on shares of the 1st Group

	No child or brother	Child or brother
• Husband <i>or</i>	50%	25%
• Wife	25%	12.50%
• Father	?	16.66%
• Mother	33.33%	16.66%

15

A child's impact..

1. What if the child is a step-child to the surviving wife?
2. What if the child is not yet born? Does it impact the wife's share?
3. Does the child not yet born have a share in inheritance?
4. What if other heirs don't want to wait till birth of the child?

16

Revision**Combination of Heirs' Shares**

1. All inherit bil fard.
2. All inherit bil qarābah.
3. Some inherit bil fard and some by bil qarābah.

The first category can be of three kinds:

1. Either the shares are equal to 100%.
2. Or the shares are more than 100%.
3. Or the shares are less than 100%.

17

Combination of Heirs' Shares (2)

The first category can be of three kinds:

1. Either the shares are equal to 100%.

- | | | |
|-----------------|-----|---------|
| a) Father: | 1/6 | 16.667% |
| b) Mother: | 1/6 | 16.667% |
| c) 2 Daughters: | 2/3 | 66.666% |

18

Revision**Combination of Heirs' Shares (2)****2. Or the shares are more than 100%.**

- a) Husband: $\frac{1}{4}$ 25%
 b) Father: $\frac{1}{6}$ 16.66%
 c) Mother: $\frac{1}{6}$ 16.66%
 d) 1 Daughter: $\frac{1}{2}$ 50.00%
 = 108.32%
- ✓ daughter will bear the loss: 41.68%

19

Revision**Combination of Heirs' Shares (2)****3. Or the shares are less than 100%.**

- a) A daughter only: $\frac{1}{2}$ 50%
What happens to remaining 1/2?

= the remaining 50% also goes to her
 as bil qarābah (or bir-radd, i.e., it is
 returned to her).

20
