

# Lesson 2

- **General Things**

## Islamic Laws of Inheritance

**Dr. Assaina Beary**

# Overview - things to be learnt

1. Pre-Islamic inheritance
2. Islamic Inheritance-events leading to revelations of Quran
3. Comparative –with other religions
4. Components
5. Eligibility
6. Conditions
7. Obligations
8. Loss of right to inheritance
9. Heirs
10. Order of inheritance
11. Special rules-Awl, Radd,
12. Exclusions
13. Work up of a case
14. Waseeyah
15. Special cases

# Pre Islamic Arabia

- Before Islam only **those who fight in battles** were entitled for shares. ie;only male relatives were heirs to the property
- Quranic revelation changed this and **8 females** were included as **Fixed heirs.**

- PreIslamic Arabia, adopted children were given inheritance rights and they were called by their adopted father's name.
- Zaid b Haris was called Prophet's son.
- **Islam rejected** this by following Quranic verses.

# Adoption - Surah Al Ahzab

مَا جَعَلَ اللَّهُ لِرَجُلٍ مِنْ قَلْبَيْنِ فِي جَوْفِهِ وَمَا جَعَلَ أَزْوَاجَكُمْ اللَّائِي تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتِكُمْ وَمَا جَعَلَ  
أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ذَلِكَ قَوْلُكُمْ بِأَفْوَاهِكُمْ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ﴿4﴾

4. God has not made any man two hearts, nor He made your wives whom you divorce by zihar, your mothers., **nor has He made your adopted sons your sons. Such is only your speech by your mouth.** But God tells you the truth, He shows the right way.

ادْعُوهُمْ لِآبَائِهِمْ هُوَ أَقْسَطُ عِنْدَ اللَّهِ فَإِنْ لَمْ تَعْلَمُوا آبَاءَهُمْ فَاِخْوَانُكُمْ فِي الدِّينِ وَمَوَالِيكُمْ وَلَيْسَ عَلَيْكُمْ  
جُنَاحٌ فِيمَا أَخْطَأْتُمْ بِهِ وَلَكِنْ مَا تَعَمَّدَتْ قُلُوبُكُمْ وَكَانَ اللَّهُ غَفُورًا رَحِيمًا ﴿5﴾

5. **Call them by their father's name.** That is just in the sight of God, but if you know not their father's names then call them brothers in faith or your moulas. But there is no blame on you if you make a mistake therein. What counts is the intention of your hearts. God is oft Returning Most merciful

# Adoption - Surah Al Ahzab

﴿40﴾ مَا كَانَ مُحَمَّدٌ أَبَا أَحَدٍ مِّن رِّجَالِكُمْ وَلَكِن رَّسُولَ اللَّهِ وَخَاتَمَ النَّبِيِّينَ وَكَانَ اللَّهُ بِكُلِّ شَيْءٍ عَلِيمًا

*40. Muhammed is not the father of any of your men but he is the apostle of God....*

# Oath Taking

- Before revelation of Quran Arabs were taking oaths among friends regarding inheritance.
- **Islam rejected** this but allowed property sharing during the life of a person.
- After the death of a person property has to be distributed among relatives and not to be given to others except by way of Waseeyat not exceeding 1/3



النَّبِيِّ أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنفُسِهِمْ وَأَزْوَاجُهُ أُمَّهَاتُهُمْ وَأُولُو الْأَرْحَامِ بَعْضُهُمْ أَوْلَىٰ بِبَعْضٍ فِي كِتَابِ اللَّهِ  
مِنَ الْمُؤْمِنِينَ وَالْمُهَاجِرِينَ إِلَّا أَنْ تَفْعَلُوا إِلَىٰ أَوْلِيَائِكُمْ مَعْرُوفًا كَانَ ذَلِكَ فِي الْكِتَابِ مَسْطُورًا

**Al Ahzab 6:** ....Blood relations among each other have close personal ties, in the decree of God than the brother hood of Muhajirs and believers. Nevertheless do ye what is just to your closest friends, such is the writing in the decree of God

# Oath taking – Surah al Nisaa -33

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدَتْ أَيْمَانُكُمْ فَآتُوهُمْ نَصِيبَهُمْ إِنَّ اللَّهَ كَانَ  
عَلَى كُلِّ شَيْءٍ شَهِيدًا

**Sura al nisa 33:** To every one We have appointed shares and heirs to property left by parents and relatives. To those also to whom your right hand was pledged give them due portion for truly God is witness to all things.

# Circumstances of Revelation

## Saad b. Rabia's case

Jabir bin Abdullah reports

Saad b. Rabia's wife with her 2 Daughters reaches prophet's place and complains that Saad "s property (after his death becoming shaheed in Uhud) has been taken by his brother . Nobody was willing to marry Saad's daughters without property.

Prophet told her to wait as Allah has not given any knowledge regarding this. During this time prophet started getting Wahy and recited the ayah from Sura A-Nnisa.

Prophet then called Saad's brother and commanded him to give  $\frac{2}{3}$  to 2 Daughters and  $\frac{1}{8}$  to Wife and the rest for him to take.

The first division of property in Islam is this incident.

# Comparisons with other

Most of the religions of the world distribute the property in the following manner

- 1. Testamentary succession.** Based on will
- 2. Intestate succession.** If there is no will written

# Comparisons with other

**Salient features in other religions** are

- Ascendants like father and mother excluded
- Female relatives excluded
- Spouse given full right of inheritance
- Only agnates inherit
- Primogeniture- eldest son preferred over others
- Difference between ancestral and personal property

# Comparison with other

**Most important difference** is

- In other religions **Testamentary succession is of primary importance.** Governed by laws of government and man made rules which keep changing
- But in Islam **Intestate succession is of primary importance.** Governed by Divine revelations of Quran and Sunnah and are fixed & permanent.

# Right of females

Many argue that in Islam there is no proper representation for females and females get only a portion of the share. But actually the opposite is true.

1. A **ladies protection & expenditure is by males** S,F,Br
2. A **lady need not pay anybodies expenses**, but a male is commanded
3. **Financial burden on man** in Islam is much more.
4. In **marriage a man has to bear the expenses** and he has to pay the mehr. But woman does not spend but gets mehr in addition.

# Components

**3** things should be there

1. The propositus or **the deceased**, one who died
2. One who inherits or **Heir**
3. **Property**



The propositus or the deceased, one who died Death of a person

- a) **Witnessed** by others
- b) **Officially declared dead** if missing

# Heir - Eligibility

1. **Marriage:** Should be legal as per sharia. In talaq inheritance is valid till 2 talaqs.
2. **Blood relations**
3. **Freeing of a slave**

3. Property should be **free of obligations**

Before the property goes to the inheritors the following obligations must be fulfilled from the property

1. **Other's wealth/property-unpaid price, mortgage, rented property** all to be settled
2. **Funeral expences**
3. **Debts** – see next
4. **Waseeyat - not exceeding 1/3** of the balance after above except if inheritors agree.

1. Towards **Allah - unpaid** zakath, kaffarat, Nudr
2. Towards **humans**

All agree that debts to humans should be settled. But that of Allah there is difference of opinion among scholars.

Ali bin Abutalib said You people recite this verse After the fulfillment of the legacy or debt. But Allah's Messenger (s.a.s.) decided that a debt should be discharged before a legacy.

From Amr bin Al-as The Prophet (s.a.s) said *A believer's soul remains in suspense until all his debts are paid off.*

Abu Hurraira reported whenever a dead man in debt was brought to Prophet (s.a.s.) he would ask has he left anything to repay his debts. If there was something to pay his debts he would offer funeral prayer otherwise he would ask others present there to offer the prayer

- **Debts to Allah:** If it is mentioned in the will it becomes obligatory.  
If not then there is difference of opinion.
- **Hanafi** and **Maliki** feel that **debts to Allah** the inheritors **need not pay**.
- But **Shafei** and **Hanbali** are of the opinion that **it should be paid**.



But **Shafei** and **Hanbali** are of the opinion that **it should be paid**. Basis for this is hadeeth reported by Ibn Abbas. A woman from the tribe of Juhainah came to the prophet and said “ *My mother had vowed to perform Hajj but she died before that. May I perform Hajj on her behalf ?*. The prophet said *Perform Hajj on her behalf. Had there been a debt on your mother would you have paid it or not? So pay Allah’s debt as He has more right to be paid.* ”

## 1. Death of a person

- a) Witnessed by others
- b) Officially declared dead if missing

## 2. Heir should be alive-present in person,

- a) if missing till declaration of death,
- b) child in the womb

## 3. Establishment of the relation

# Loss of Right to Inherit

For the following reasons a persons loses the right to inherit

1. **Slavery**
2. **Killing of a person-intentional**, unintentional, by mistake, indirectly
3. Citizens of 2 ideologically different **enemy nations**
4. **Different religion**
5. **Riddah** = leaving Islam equals death
6. **Ignorance of time of death**
7. Not knowing the **correct identity** of the heir.

رَبَّنَا تَقَبَّلْ مِنَّا إِنَّكَ أَنْتَ السَّمِيعُ الْعَلِيمُ

وَتُبَّ عَلَيْنَا إِنَّكَ أَنْتَ التَّوَّابُ الرَّحِيمُ

اللهم اغفر لنا، يا أرحم الراحمين

رَبَّنَا آتِنَا فِي الدُّنْيَا حَسَنَةً وَفِي الْآخِرَةِ حَسَنَةً وَقِنَا عَذَابَ النَّارِ

رَبَّنَا ظَلَمْنَا أَنفُسَنَا وَإِن لَّمْ تَغْفِرْ لَنَا وَتَرْحَمْنَا لَنَكُونَنَّ مِنَ الْخَاسِرِينَ

اللهم صلِّ وسلِّم وبارك على عبدك ورسولك محمد سيد الأولين

والآخرين، وعلى آله وصحبه أجمعين