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وَلَا تَكُونُوا مِنَ الْمُشْرِكِينَ ﴿١٦﴾ مِنَ الَّذِينَ فَرَقُوا دِينَهُمْ وَكَانُوا شِعَابًا كُلِّ حِزْبٍ بِمَا لَدَيْهِمْ فَرِحُونَ ﴿١٧﴾

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Quran - Inheritance And Testament

Testament.

1. It is enjoined upon every Muslim to make a testament as regards his bequest before he dies. The last will ought to cover the entire property and all persons to whom he wants to give something without any distinction of heir or non-heir: (2: 180) "It has been enjoined upon you that when you approach death and you are leaving behind your personal property, make a testament according to law for your parents and others close to you. This has been enjoined upon Muttaqeen as a duty from Allah. (The distribution of left-over property shall take place after the provisions of the 'will' have been fulfilled (4: 11)."

Note that this verse starts with the words "you are commanded" and ends with the words "that it has been made incumbent upon those who guard the Divine Law". Moreover the 'will' shall be for the entire property. The verse also clarifies that the 'will' can also be made for parents and near relatives and also for non-relatives; whom the testator considers nearer to himself.

2. The Quran has given so much importance to the making of will that even (minute) details for it have been prescribed. The following verses of Surah Al-Maaidah (5th Chapter of the Quran) invite pondering: (5: 106-108) "O you who believe! When death approaches any of you, take witnesses amongst yourselves while making testament; two just men of your own (brethren); or others from outside, if you are journeying through the land and your own men are not available and the chance of death befalls you.

Afterwards when witnesses are needed, your judges shall detain them (in the mosque) after prayers (because mosques are your court-rooms). If you doubt their truth, let them both swear by Allah: we wish not to take in this any worldly gains, even if the beneficiary be our near relative; we shall not hide evidence before Allah; if we do, we shall become censurable.

If after the witnesses have been recorded, it is found that they have deviated from the truth, two witnesses from among those against whom the witness has been given should come forward and upon an oath in the name of Allah, state that their statement is truer than the previous witnesses and that they shall not deviate a bit from the truth and if they do, they shall be liable to censure.

In Divine Law witness over witness is allowed, so as to make certain that they speak the truth. By so doing, the first two witnesses shall fear that in case they give false evidence, the other two witnesses

shall prove it to be wrong and thus they shall become guilty of the perjury and this shall also bring them shame in society.

It is necessary for you to remain conscious of the Divine Laws and do not forget that, deviating from the course set out by Divine Laws and treading upon some other course, it shall not lead you to the goal.

It has been strongly emphasised that the witnesses shall not make a change in the contents of the testament: (2: 181) "If any one changes the content of the will after hearing it, such people shall be guilty in the eyes of law and they ought to know that Allah Almighty hears and knows everything."

It is further stated that: (2: 182) "But if any one fears partiality or wrongdoing on the part of the testator, and thinks that he is inclined towards someone unjustly, he should advise the testator to do the right thing and bring about compromise between (the parties concerned) so as to protect

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those whose rights are being encroached. There is no wrong in doing so. To make a room for it in the Divine Law is clemency (Rahmat) from Allah."

But it is obvious that this shall only be an attempt for making compromise, otherwise the final word shall be that of the testator.

3. In the case of a widow, in addition to her share in the bequest, it is necessary that providing of maintenance for a year be included in the will: (2:240) "Those of you who die leaving widows behind should bequeath that their widows be provided a year's maintenance and not turned out of their houses. But if the widows leave (the residence) and make some other lawful arrangements for themselves, there is no blame on you for what they do. Remember that the Divine Law is very powerful, yet it is based on wisdom."

Inheritance.

The injunctions for inheritance are given collectively in two verses of Surah 'An-Nisa' (4th Chapter of the Quran). It seems proper to begin with both the verses quoted together and then describe their details afterwards: (4:11-12) The law of inheritance is made clear in the light of these verses. In it the offspring is given the first place; and for it, Allah Almighty has ordained:

1. "As regards your children's (inheritance), to each boy a share equal to that of two girls, i.e. one girl = $\frac{1}{3}$ and one boy = $\frac{2}{3}$; [that is because a male is responsible for the maintenance of the family, not the female]. In the verse the words used are (4:34) i.e. male or female. It means, where Allah Almighty Himself has not fixed up the portions and both males and females are included among the heirs, this very principle shall be applicable, i.e. man's share being twice that of a woman.

2. If the girls are two or more than two, the portion of all of them together shall be $\frac{2}{3}$; if it is one girl, the portion shall be half. It means that if there are no boys and the heirs are only girls, their portions shall be divided as above.

3. For parents, one-sixth share ($\frac{1}{6}$) of the inheritance to each, in case the deceased left children as well. If no children are left and the parents are the only heirs, the mother's share shall be $\frac{1}{3}$ and the father's share shall be $\frac{2}{3}$. If the deceased left brothers and sisters, the mother's share is $\frac{1}{6}$ (Read it in combination with item 5).

Remember that this distribution in all cases shall take place after the fulfillment of the will and the payment of debts against the deceased. If the will does not cover the entire property of the deceased or the deceased has not left a will, the distribution of the left-over property shall be according to what has been stated above. This is because you do not know whoever from among your parents or offspring is closer to you in matter of being beneficial to you, therefore Allah Almighty Himself (Who knows all) has fixed their shares. It means that although the deceased had the knowledge as to whoever was more deserving (the reason, leaving a testament was made incumbent); but since he could not leave a will or his will does not cover the entire property, Allah, instead of leaving the matter to you, has Himself determined the shares.

4. Now we come to the relations through marriage:

i). In what your wives leave, your share is one-half in case she leaves no children; the share of the husband is $\frac{1}{4}$ after the processing of the will and the payment of debt against the deceased.

ii) In the bequest of a husband the share of the wife is $\frac{1}{4}$, if he has no children, but if he has children, the share of the wife is $\frac{1}{8}$ after the processing of the will and payment of debt against the deceased.

5. (See in continuation of item {3} above. If the deceased has no children {known as 'kalaalah'} but he has parents, brothers and sisters too, then:

i) If there is one brother or one sister, each one of them shall receive $\frac{1}{6}$.

ii) If the number of brothers and sisters is more than one, then together they shall be entitled to $\frac{1}{3}$.

iii) The share of father and mother has been described in item (3).

This shall also be after the processing of will and the payment of debts.

6. If the deceased has neither children nor parents but has only brothers and sisters, the distribution of shares shall be according to verse (4:177) which shall be described later on.

In the light of these injunctions, the following principles of distribution are tabulated:

i) From the bequest of the deceased, first of all his debts ought to be paid and the rest shall be distributed according to his will. Details regarding the will have already been described. There is however, one more (verse) related to it: (4:33) "To every one of the beneficiaries We have appointed shares in the bequest left by parents and relatives; these are not restricted to family lineage only; the in-laws are also included in them; give them their due shares. For Allah Almighty is a Witness to all things, including their details."

In this category (relations through marriage), husband and wife come first, because their mutual relationship is through matrimony and not by lineage; then come those with whom a contract was made to pay something. Apparently this contract shall be through a will.

ii) If the deceased left no will or something has been left after the processing of the will, the distribution of this surplus property shall be according to verses (4:11-12).

It is more practicable that the distribution of those shares which have been fixed by the Quran, ought to take place first and others shall follow later on.

If a surplus is still left after the distribution has taken place according to the above laws, it shall be transferred to the Islamic Government as is the case with those who die without leaving heirs.

The verse in which the word "Qalaalah" occurs, who leave neither parents, nor offsprings, is as follows: (4:176) (In the beginning of this Surah in which the laws of inheritance were described and in which the word 'kalaalah' was mentioned (those who die issueless) such a deceased kalaalah was mentioned: who had left parents, brothers and sisters (4:12). "O Rasool! You are being asked to give further details. Tell them that Allah Almighty ordains:

If a person dies leaving no parents or children as heirs, the distribution of his property (wealth) shall be as follows:

- o If the deceased is a male and has only one sister, her portion shall be half of his bequest;
- o If there are two sisters (or more), their (combined) share shall be 2/3 (also see 4/11 for share in case of more than two sisters);
- o If both the inheritors are brothers and sisters, the entire left-over property shall be theirs. The principle of "share of two females equal to share of one male" shall apply (4/11);
- o If the deceased is a woman, the heir of her left-over property shall be her brother.

[This distribution shall take place after the payment of debts and the processing of will (4/12)].

"Thus does Allah Almighty make clear to you (His laws) lest you err, and Allah's knowledge encompasses everything."

It is clear from the aforesaid verses that KALAALAH (issueless deceased) can be of two kinds: (i) those who leave parents (ii) and those who do not leave parents.

If at the time of distribution of the bequest there are such people who have no share in the left-over property, but deserve help, the court can allow them something for their relief: (4:8) "If at the time of division of the bequest, other relatives, or orphans or the poor are present (who have no share in it) pay them also a little out of this (property); but make it clear to them that according to law they are not entitled to anything and what has been given to them is by way of comforting them."

Those who distribute the left-over property, must exercise utmost care: (4:9) "Let those (disposing of an estate) do it correctly according to law and they should keep in mind that if they themselves leave behind helpless orphans, they would never have liked that they be dealt unjustly. Thus they should always keep before them the Divine Law and in such affairs speak words clear and sure."

These are the limits laid down by Allah Almighty with which an Islamic State shall frame its by-laws remaining within these hints. "Limits" means the framework within which an Islamic State is legally authorised to make by-laws. These limits are immutable but the by-laws framed within these limits shall be changeable according to the exigencies of the changing times.

That which is ordained by Allah Almighty is immutable whereas that which is man-made is changeable.

The inheritance of an orphaned grandson.

As regards inheritance, one important point ought to be kept in mind: we use the word "Waalid" for father only and the word Wald for sons and daughters, but in the Arabic language (and according to the Holy Quran), the word "Wald" includes father, grandfather and all others above (in the line of ascent). Similarly the word "Waalid" includes, sons, grandsons and great-grandchildren, all of them in the line of descent. Keeping in view these meanings of the above words, the distribution of the left-over property can be explained by the following example:

Zaid -> Umar -> Rashid

Here Umar is the son of Zaid and Rashid is the son of Umar. Thus Rashid is the grandson of Zaid. On the death of Zaid his son Umar shall get a share from the left-over property. But if Umar died before Zaid, Rashid shall get the share left-over by Zaid, because he is now the son of Zaid. It means that an orphaned grandson shall get his share from the grandfather. According to the Holy Quran, he cannot be deprived of inheritance.

Similarly on the death of Rashid, his father Umar shall get his share from the left-over property. But if Umar died earlier, Zaid will get the share from the property left over by Rashid (instead of Umar) because he is his father now. The same principle shall apply to grandmother, mother's father, mother's mother, daughter's son and daughter's daughter.

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