



Six Circumstances That Prevent Grandson from Having Inheritance

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I. INTRODUCTION

Muslims largely ignorant of Shari'ah, demand pertaining to inheritance, direct the distribution of their estates in accordance with the unfettered freedom or in terms of certain restrictions of western *kuffar* law. Having opted ignorantly for some western matrimonial property system, Muslims are precluded from drawing up Islamic wills. Others again, simply do not care of the dire consequences awaiting them in the *akhirah*, hence they bequeath their estates as directed by their whimsical desires.

Inheritance is a right which is confirmed for the heirs without the directive of the *murith* (testator) and without the volition and acceptance of the heirs.

The heirs assume ownership of their shares simultaneously with the death of the *murith*. Regardless of the pleasure or displeasure of the testator or of his heirs, the later become the owners of their respective Shari'ah shares. Even if a heir voices his dissociation from his share of the inheritance, he/she remains the owner of his/her respective share. If a man for some reasons says that; he does not want to be the heir of his *murith*, his wish is of no significance. His wish would not cancel his right of inheritance. He automatically became the owner of his share whether he accept or reject it. This paper however, pointed out some conditions or circumstances which prevent or denied a grandson i.e. son's son from having inheritance.

II. MEANING OF INHERITANCE

In Islamic jurisprudence there are two words used for the law of succession they are: *Al-Mirath* and *Al-Fara'idh*. The later is more frequency used by the Muslim Jurists than the former.¹

Al-Mirath is derived from the verb '*waratha*' which means to inherit anything. Another literal meaning of the word *mirath* is that, it connotes the handing over of a thing from one person to another.²

And the word *fara'idh* is plural *Al-Faridha* which literally means a 'freed share'.³

In the legal terminology it is the knowledge about some rules of Shari'ah which guides us who will inherit and who will not and what shares will go to the heirs from the property of the deceased.

III. LEGAL HEIRS

The following are the legal heirs according to the Islamic law of succession. The male heirs are:

1. Son
2. Son of son (how low so ever)
3. Father
4. Grandfather (father of father how high so ever)
5. Full brother (germane brother)
6. Half brother (consanguine brother)
7. Uterine brother
8. Son of full brother (h.l.s)
9. Son of half brother (h.l.s)
10. Full paternal uncle
11. Half paternal uncle
12. Son of full paternal uncle (h.l.s)
13. Son of half paternal uncle (h.l.s)
14. Husband
15. Male emancipator (who freed his slave)

The female heirs are:-

1. Daughter
2. Daughter of son (how low so ever)
3. Mother
4. Grandmother (mother of father)
5. Grandmother (mother of mother)
6. Full sister (germane sister)
7. Full sister (consanguine sister)
8. Uterine sister
9. Wife
10. Female emancipator (who freed her slave).⁵

The above mentioned are legal heirs pointed out by the Qur'an and *Sunnah* of the Prophet Muhammad (S.A.W). Though son's son (i.e. grandson) is one of the legal heirs but there are some conditions in which he can be deprived.

These conditions are as follows:-

1. When two daughters, mother and father are alive.
2. When two daughters, grandmother and grandfather are alive.
3. When two daughters, grandfather and mother are alive.
4. When two daughters, grandmother and father are alive.
5. When two daughters, husband and mother are alive.
6. When husband, mother, father and one daughter are alive.

The detailed explanations of these cases are as follows:

When Two Daughters, Mother And Father Are Alive

In this case, two daughters are entitled to two-third (2/3) due to the absence of the male counterparts, while the mother is entitled to one-sixth (1/6) due to the presence of two daughter, while finally, father will take one-sixth (1/6) due to the presence of two daughters alive.⁶ In this case, nothing is going to remain. The grandson will end up inheriting nothing from the estate of the deceased. Already the base is six (6) two daughters carries four (4) mother carries one (1) the same as father.

When Two Daughters, Grand Mother and Grand Father are Alive

In this case also the base is six (6), two daughters are entitled to two-third (2/3) which is four out of six (6), grandmother is entitled to take one-six (1/6) which is equals to one out of six, the same thing applied to the grand father.⁷ In this case, the grandson end up inheriting nothing from the estate of the deceased. The heirs have finished the whole estate of the deceased.

When Two Daughters, Grand Father and Mother are Alive

In this case also the based is six (6), two daughters are to take two-third (2/3) out of the deceased estate which is four (4) out six (6), grandfather is also to take one-six (1/6) which is equal to one out of six (6). Finally the mother will also take one-six (1/6) out of the estate of the deceased.⁸ Just like the previous cases, the grandson i.e. son's son will also inherit nothing out of the estate left by the deceased. This is because the estate has been shared among the heirs, so therefore, no room or space has been left for the grandson i.e. son's son.

When Two Daughters, Grand Mother and Father are Alive

In this case also just like the previous ones the base is six (6), two daughters are take two third (2/3) which is equals to four (4) out of six (6) of the total estate of the deceased. Then grandmother is entitled to one-sixth (1/6) which is equals to one out of the estate of the deceased. Finally, father will also take one-sixth (1/6) same as the grandmother.⁹ Here also the son's son ends with zero i.e. nothing from the estate of the deceased. The whole estate left has been distributed among the heirs; no room or space has been left for the grandson.

When Two Daughters, Husband and Mother are Alive

In this case, two daughters are entailed to two-third (2/3), husband is entailed to one –fourth (1/4). Finally mother will take one-sixth (1/6). So our base in this case is twelve (12), if two daughters carry 2/3 which is eight (8) out of twelve, then one-fourth (1/4) will go to husband which is equals to three (3). Then mother carries one-sixth (6) out of (12) twelve which is equals to two (2). In this case, the number of shares allotted to the heirs is more than the base so therefore, we have to increase the base from twelve (12) to thirteen (13).¹⁰ This is what we called '*awl*' in Islamic law of succession; however, twelve (12) is one of the *awl* numbers. In

this case the mother could not get her own share unless *awl* has been done talk less of the grandson. So therefore, the grandson has nothing to inherit in this regard.

When Husband, Mother, Father and One Daughter are Alive

In this case, the base is twelve (12), the husband is entitled to one-fourth (1/4) out of twelve (12) which is there (3), the mother is entailed to one-sixth (1/6) out of twelve (12) which is equals to two (2) the father is also entailed to one-sixth (1/6) out of (12) twelve which is equals to two (2) also. Then finally, one daughter is entitled to one-two (1/2) out of twelve (12) which is equals to six (6).¹¹

Also the total share, just like in the previous case allotted to the heirs is more than the base. So therefore, the base has to be increased from twelve (12) to thirteen (13). This is what we called *awl* in Islamic law of succession. Here also the grandson will take nothing out of the estate of the deceased.

Authority of The Above Mentioned Heirs

1. The authority of the entitlement of two daughters.

There are two different opinions concerning the evidence of the entitlement of two daughters: Majority of the scholars are of the view that, the two daughters are entitled to two-third 2/3 of the inheritance. This is based on the verse of the Glories Qur'an:

Allah instructs you concerning your children (i.e. their portions of inheritance); for the male, what is equal to the share of two females, but if there are (only) daughters two or more, for them is two-third of one's estate.¹²

While Ibn Abbas (R.A) is of the view that two sisters and one sister are all entitled to half (1/2). According to him, the word or phrase that appeared in the above mentioned verse '*Fauqa*' meaning 'above' in English, since the word appeared after two, so therefore, three and above are entitled to two-third (2/3) not two daughters as other scholars viewed it. Here the research is of the opinion of the majority scholars due to the saying of the Prophet Muhammad (S.A.W) concerning the estate of Sa'ad bn Rabiah:

Give two-third (2/3) to the daughters and one-eight (1/8) to their mother and the remainder is for you.¹³

2. The authority of the one-sixth (1/6) in respect of father & mother is the saying of Almighty Allah:

And for one's parents to each one of them is one-sixth (1/6) of his estate if he left children.¹⁴

3. The authority for the entitlement of half (1/2) in respect of daughter is the saying of Allah:

And if here is only one, for her is half.¹⁵

4. The authority for the entitlement of one-fourth (1/4) for husband is the saying of Allah:

And for you is half of what your wives leave if they have no child, but if they have a child.

For you is one-fourth (1/4) of what they leave.¹⁶

The authority of the entitlement of grandmother in respect of one-sixth (1/6): Abubakar (R.A) gave her one sixth (1/6) he confirmed from Mughirah bn Shu'uba and Muhammad bn Maslamah that, the Prophet (S.A.W) gave her one sixth.¹⁷

The authority for the entitlement of one-sixth (1/6) in respect of grandfather:

It is reported by Imran bn Husain (R.A) that, a man came to the Noblest Prophet (S.A.W) and said: the son of my son (i.e. s/son) died, what is my entitlement from his property? Then He replied one-sixth (1/6) is for you.¹⁸

IV. CONCLUSION

This research work clearly shows that, grandson is equivalent to the son in the matters of inheritance except in six cases where a grandson cannot stand in place of a son. These cases have been pointed out in this research paper. However, the paper indicated the authorities for the entitlement of the shares stated in the cases.

END NOTES

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