

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

INHERITANCE – IMPORTANT POINTS TO CONSIDER

The importance of following the Islamic Law of Inheritance can be appreciated by the fact that Allah ﷻ Himself explains the share allotment in great detail. Other laws were left for Nabi ﷺ to elaborate on. Yes, we learn greater detail from the *Ahaadeeth*, the application of the Sahabah and consensus of the jurists from the time of the Sahabah to the time of the Tab'ut Tabi'een (students of the Sahabah's students). -May Allah ﷻ be pleased with them all-

The Jurists then separated the codification of these laws from the major portion of Islamic Laws which gave birth to the specialized branch of learning called *al Faraaidh* or *al Meerath*.

The Aayaat dealing with this are found in the beginning and end of *Surah an Nisaa'*. At the end of the verses of inheritance, Allaah ﷻ states, "These are the limits of Allaah ﷻ. Whoever obeys Allaah and His messenger, He will admit him to gardens, underneath which rivers flow dwelling therein forever. That is the greatest triumph. And whoso disobeys Allaah and His messenger and transgresses His bounds, He will admit him into the Fire dwelling therein forever, and for him is a humiliating chastisement." (verse 14)

Nabi ﷺ has specifically given instructions to have a will written. He ﷺ said, "The Muslim man has no right to spend two nights, if he has something for which will should be made, without having a written will with him." (Bukhari) There are great virtues if one's wealth is properly distributed, and great harm if not distributed properly. One great harm is that no barakah (blessings) remain in the wealth, due to which a person is continuously unsettled and unhappy.

Rasulullaah ﷺ said, "A man may do the deeds of the people of goodness for seventy years, then when he makes his will, he is unjust in his will, so he ends (his life) with evil deeds and enters Hell. And a man may do the people of evil for seventy years, then he is just in his will, so he ends (his life) with good deeds and enters Jannah." Abu Hurairah said: "Recite, if you wish, "He then recited the above mentioned verse (verse 14 of Surah Nisaa)." (Ibn Majah)

Rasulullaah ﷺ said, "Whoever dies leaving a will, he dies on the right path and the Sunnah, and he dies with piety and witness, and he dies forgiven." (Ibn Majah)

It goes without saying that the attention directed to these laws, and all the laws are important, instinctively burdens us with the responsibility of creating an awareness amongst our people. Hence, the following directives:

1. The Shares of our family members upon our demise has already been set out by Islam. This includes details regarding the shares of the parents, wife, children and in some cases the grandparents, siblings and uncles. Many people do not realize that their parents also inherit. For those husbands who want to give their estranged spouses difficulty by not giving them a divorce, the downside is that if the husband dies, she will inherit from his estate and vice versa. Estranged children also inherit from their father's estate and vice versa.
2. When a person passes away there are four rights attached to his estate, the order of which is:
 - a. His burial expenses hold priority. His shroud will not be too expensive nor too cheap.

- b. Then his debts will be taken care of. A person's soul does not rest until his debts are paid off.
 - c. His bequest in the form of *fidyah* for missed salaahs, missed fasts, Hajj to be performed on his behalf whether it be his compulsory Hajj or a *nafal* (optional) Hajj should be carried out. Bequests may include bequeathing an amount of money or other to a certain person, an institute or to dig a well etc. It can also be in the form of allowing someone to use an item or property for a specified amount of time or until the beneficiary dies. All this will only be implemented as a right of the deceased up to a third of the estate after the debts are paid off. Anything above a third is subject to the approval of the heirs.
 - d. Then the remainder after the above will be distributed according to the directives of the Qur'an, Hadith and consensus of the Jurists.
3. The *fidyah* for each salaah and each fast is the value of *sadaqatul fitr* as at the day that the *fidyah* is given out. *Fidyah* should be given for missing the *witr* as well, making it six daily salaahs.
 4. Bequeathing for an heir is subject to the approval of the other heirs. Approval means approval after the donor has passed away.
 5. In the South African context, it is compulsory to have a Will. The reason is that if a person dies intestate (without leaving a Will), the South African intestate estate laws will apply and these laws are not in conformity with Islamic Law. From an Islamic perspective, a Will does not necessarily have to be written. A person can tell someone his bequest. It does not even have to be witnessed, but if it is challenged by anyone, it may be rejected; therefore it is best to have it witnessed.
 6. A person's children can be executors of his estate. The executor does not have to be a person who is not an heir. A daughter can also be an executor of an estate.
 7. Ownership of items in the house should be clearly defined between the husband and wife. Is the fridge the husband's or the wife's or does it belong to both of them? If after learning this, the couple say, "Okay, it is both of ours," it is not good enough. There is a procedure to pass ownership and share ownership. We need to learn this.
 8. Those fathers who deprive their daughters of their rightful share in his business should beware. Those brothers who take control of the estate after their father has passed away and dillydally in distributing the estate should beware. Those who put their sisters in a compromising situation like "do you want your share" should think. They are putting her in a situation of "losing relationship with her brother" or "losing her unstable share." Unstable, because she may not receive her share anyway.
 9. Those heirs who have an authoritative and autonomous hold over the estate, business etc. of a deceased person should be educated that once a person passes away, his heirs become immediate shareholders of everything that he owns right to the last needle. Their ownership does not begin when their shares are handed over to them. They have already become owners. Distribution only needs to be effected. If anything is withheld, it is viewed as usurping in the light of Shari'ah.

10. When gifting to your children in your lifetime, you should give them equal, male and female alike.