

The sharing of the gift among children

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

In the name of Allaah, the Most Merciful, the Bestower of Mercy

Question: We hope that our Shaykh Aboo `Abd Al-Mu`iz – May Allaah protect him and make people benefit from his knowledge – will have the goodness to answer the following question: a man agreed (when he was alive) with his children whether they are males or females to allot his land among them, so, should this allotment be according to the rulings of inheritance, or according to the equal gift for everyone? Benefit us by what Allaah benefited you with, and may Allaah reward you with good.

Answer: All praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon whom Allaah sent as a mercy to the Worlds, upon his Family, his Companions and his Brothers till the Day of Resurrection.

The equality of grant between males and females, which is required by the Sharee'ah and by which there will be justice, is to give to the male a portion equal to that of two females, according to the division of inheritance. This is the view of `Ataa', Shurayh, Ishaq Ibn Muhammad and Muhammad Ibn Al-Hassan Ash-Shaybaanee; it is also the view of the Hanbalees and that of Ibn Taymeeyah رحمه الله. Ash-Shaafi'ee, Maalik, Ibn Al-Mubaarak, Aboo Yoosuf, Adh-Dhaahiriya (the literalists) and others contradicted this view and considered that equality as regards the gift is to give the female the same as the male, as it is a gift in the lifetime, like expenditure or clothing. They also use as an argument the literal meaning of the order mentioned in the hadeeth reported by An-Nu'maan Ibn Basheer رضي الله عنهما, which is the order of being equitable in giving the gift; the Prophet صلى الله عليه وسلم told An-Nu'maan Ibn Basheer رضي الله عنهما: **“Would you be pleased that they should be equally dutiful to you”** he replied in the affirmative. Upon this, the Prophet صلى الله عليه وسلم said, **“Then, do not (do such an act of donating to some children to the exclusion of the others)”**¹. The son and the daughter are equal as regards deserving their dutifulness, so it will be the same for the gift. They also take as an argument the hadeeth of Ibn `Abbaas رضي الله عنهما, he said: the Prophet صلى الله عليه وسلم said, **“Be equitable in whatever you give to your children, for if I had to prefer some over the others, I would have preferred women”**², and because the Prophet صلى الله عليه وسلم did not inquire about the children of Basheer Ibn Sa`d if they are males or females. “The

¹ Reported by Muslim, chapter of “Gifts”, concerning the undesirability to give preference to some of one’s children over others in gifts.

² Reported by Al-Baihaqee (hadeeth 12357), Ibn `Adiyy in “Al-Kaamil” (2/178) and Al-Khateeb in “Taareekh Baghdaad” (11/108), it is judged weak by Al-Albaanee in “Silsilat Al-Ahaadeeth Ad-Dha’eefa” (1/347) and “Irwa’ Al-Ghaleel” (6/67).

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fact of not asking for details when there is possibility for it, has the aspect of generality in a speech”, as it is stated in the jurisprudential fundamentals’ rules.

The answer is that Allaah’s عَزَّ وَجَلَّ division of inheritance between children is to give the male, a portion equal to that of two females. The preference of males in inheritance is due to their extra need for it, as the Mahr³ and the expenditures on the wife and children are incumbent upon the male, and the woman has the right for all these. The grant has also this signification, whether currently or afterward, but not as regards clothing and expenditure. If the gift is during the father’s life, it is one of the two cases of gifts, so it should not be different from the other which is the case after death; and the priority is for Allaah’s عَزَّ وَجَلَّ division and to submit the gift to Allaah’s obligatory shares of inheritance. As for the hadeeth of An-Nu'maan, there is no proof that indicates the state of his children, and maybe the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ knew that he had only male children. If we suppose, that the fact of not asking for details has a general aspect, taking it as an argument for the equality between males and females as regards the gift is not worth being a good argument, since the meaning of equality concerns the gift as a gift not its form. For this reason, the equality mentioned in the hadeeth of An-Nu'maan should be interpreted in the context of the allotment according to Allaah’s عَزَّ وَجَلَّ Book which is the form of gift. As regards the hadeeth of Ibn `Abbaas رَضِيَ اللهُ عَنْهُمَا, we cannot take the second part as an argument as it is weak, and it is the part in which there is the argument. There is in the chain of narrators Sa'eed Ibn Yoosuf who is judged as weak unanimously. Ibn `Adiy mentioned in his book “Al-Kaamil” that this hadeeth is the most denied of the hadeeths reported by Sa'eed Ibn Yoosuf. However, though Al- Haafidh Ibn Hajar considered its chain of narrators as Hassan (good), he judged Ibn Yoosuf as weak in his book “At-Taqreeb”. Moreover, Al-Albaanee commentated on this: “Thus, we know that the saying of Ibn Hajar in (Al-Fath) “Its chain of narrators is Hassan (good)” is not true”. He added also: “I found then that this hadeeth is narrated by Aboo Muhammad Al-Jauhari in “Al-Fawaa'id Al-Muntaqaat” and Ibn `Assaakir from Al-Awza'ee who said: “Yahya Ibn Abee Katheer told me, the Prophet صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ said...”, and he mentioned the hadeeth. This is in fact a Mu`dhal⁴ chain of narration. Besides, this hadeeth, as narrated by Al-Awza'ee, is the reference, since Al-Awza'ee is trustworthy and reliable; so the contradiction of Sa'eed Ibn Yoosuf to him is a proof that this hadeeth is weak and feeble”⁵.

It is therefore, obligatory to be just towards ones children with respect to giving them a grant according to their shares of inheritance. This was the case in the period of the Best Generations. `Ataa' said, “They did not share but according to the Book of Allaah عَزَّ وَجَلَّ” and this goes for all of them. This is a proof that they used to give to the male the equivalent of the portion of two females. It is reported that Shurayh told a man who shared money among his children: “Share according to what is prescribed in the Book of Allaah عَزَّ وَجَلَّ”.

³ Mahr: the bridal-money given to the wife.

⁴ A Mu`dhal hadeeth is: a hadeeth in which two successive narrators miss.

⁵ Silsilat Al-Ahaadeeth Ad-Dha'eefa” (1/347) and “Irwaa' Al-Ghaleel” (6/67).

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The perfect knowledge belongs to Allaah سبحانه وتعالى. Our last prayer is all praise is due to Allaah, the Lord of the Worlds. Peace and blessing be upon our Prophet, his Family, his Companions and his Brothers till the Day of Resurrection.

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