

# **Notes of Lectures on Fiqh by Maulana Sadiq Hasan Lecture # 4 (Friday 9 March 2001)**

## **SOME POINTS ON LAWS OF INHERITANCE**

✽ A property left by a dead Muslim must be spent according to the following order:

1. Debt (Qarz) payment of the deceased person
2. Acting on his/her Will (Wasiyat) for one third of his/her property
3. Distribution to Heirs according to fiqh after accounting for 1 and 2 above

✽ A Muslim, during his life time, can distribute/donate his property in whatever valid ways he wishes. But if he has not done so and he has left some property, then it must be distributed according to Islamic laws of inheritance in the above order.

✽ Debt (Qarz) payment is of two types:

- (a) Personal Debts eg loan from friends, Mehr not paid to wife etc
- (b) Religious Debts eg Khums, Zakat, Fitra, Kaffara during Hajj

✽ Payment for offering Qaza salat or sawm after death is not considered religious debt and can not be deducted from deceased person's property. However, the person can make a Will for payment for offering qaza salat, sawm from his one third property.

✽ For personal debt, if there was a period of loan payment agreed between the two persons and one person dies even before the expiry of term, then the loan must be paid immediately.

## **RULES OF PERMISSION (IZN)**

✽ Islam is extremely cautious about social rights of individuals and the use of properties belonging to others. In Islam one can not use anything belonging to the other without the permission of the owner. This applies even between husband and wife, parents and children, and between any two Muslims.

✽ The wali (guardian) of a na-baligh child has the power to use the property of na-baligh child without his permission. In sharia, the wali of a na-baligh child is only father or grandfather (not mother). For example, a mother can not give a gift belonging to her na-baligh son or daughter to another son or daughter or anyone else without wali's permission.

✽ According to Surah Noor in Quran, there are certain relatives (father, mother, brother, sister, maternal and paternal uncle, maternal and paternal aunt), in whose house you can eat food without their permission. Apart from this, no one is allowed to

eat food without owner's permission. There are differences in fatwas regarding husband and wife eating each other's food without permission.

✳️ What is meaning of **Permission** (Izn) ?

In fiqh, permission depends upon two things: Yaqeen (100% sure) and Itminan (96-99% satisfaction). If you have yaqeen or itminan that the person will be agreeable if you use his/her property, then according to fiqh, PERMISSION is automatically assumed, even if you may not know that person, and you do not need an explicit permission. For example wife can use husband's things if she has yaqeen or itminan of his permission, and vice versa. Similarly, a wife can go out of his house without husband's explicit permission if she has yaqeen or itminan of his permission.

✳️ If you give some item belonging to a person to a third person, then you must have yaqeen; only itminan is not enough.

✳️ There are certain things, in which verbal or written permission must be obtained. Examples are Nikah, Talaq, paying Khums on someone's behalf (because Niyyat is wajib for khums), making some one wali (guardian) of his property.

### **IJTIHAD & TAQLEED**

✳️ Mujtahid, Faqih and Hakim-e-Shar'a are synonymous words, representing the highest religious authority among shia scholars with the capability of doing ijthad (jurisprudence). Mujtahid literally means one who tries. Faqih literally means one who understands Fiqh.

✳️ A Mujtahid or Faqih or Hakim-e-Shar'a has four specific powers:

1. Iftah (to give fatwa ie to tell about wajib or haram things)
2. Qizawat (to act as judge)
3. Wilayat (to govern over people & to collect khums)
4. Kharaj (to take taxes)

✳️ Marja is that Mujtahid whom you follow (do taqleed).

✳️ For getting fatwa on any issue and for payment of khums, you must follow your own Marja.

✳️ For all other matters (eg settlement of disputes, judgement, permission for Sadqa etc), you can go to any Mujtahid (even if that Mujtahid is of lower status than the other Mujtahid).

✳️ Payment of Khums: Sehme Imam portion must be paid to your Marja or his authorised wakil. Sehme Sadat portion should also go to your Marja but some Mujtahids (such as Ayatullah Khui and Ayatullah Seestani) allow their followers to pay Sehme Sadat directly to poor shia sadat too if they wish. But according to Ayatullah Khumaini and Ayatullah Khamenei, sehme sadat must also be paid to your Marja.