

Literally, the Arabic word '*Ṣabr*' means 'to hold' or 'to tie'. In the terminology of the Qur'ān and Sunnah, '*Ṣabr*' is the effort made to control and defend one's slippery self against what is temperamentally displeasing. This '*Ṣabr*' (roughly translated as 'patience' for want of an exact equivalent) takes three forms:

1. **Patience with Duties:** It means that everything commanded by Almighty Allah and His Messenger must be obediently pursued, no matter how burdensome the adherence to them may appear to be. The aim is to keep one's self almost rivetted to carry out injunctions despite hinderances.

2. **Patience against Sins:** It means holding the desiring self back from whatever has been prohibited by Allah and His Messenger, no matter how desirable and appealing it may be.

3. **Patience in Distress:** It means enduring in hardship and forbearing in pain and avoiding excessive anxiety. Such patience requires that all pain and comfort be taken to have come from Allah and from this realization comes the strength to keep one's self under control.

The word, '*Muṣābarah*' is a derivation from *Ṣabr*. It means staying firm and steadfast against the enemy.

The word, '*Murābatāh*' comes from '*Rabṭ*'. Root-wise, it means 'to tie' and it is for this reason that '*Ribāṭ*' and '*Murābatāh*' are taken to mean 'to tie horses' and 'get ready for war'. The Holy Qur'ān has used '*Ribāṭ*' in وَمِنْ رَبَاطِ الْحَيْبِلِ (of trained horses - 8:60) in that very sense. However, in the terminology of the Qur'ān and Ḥadīth, this word has been used in two senses:

1. To secure Islamic frontiers for which it is necessary to be armed with military hardware, conventional or modern, so that the enemy abstains from venturing against Islamic frontiers.

2. To be so observant of and bound by making *Ṣalāh* with *Jamā'ah* that one starts looking forward to making the next *Ṣalāh* soon after having performed one.

Both these are highly acclaimed acts of worship in Islam. Out of their numerous merits, some are being given below:

Ribāṭ: The Guarding of Islamic Frontiers

Staying along the Islamic frontiers to guard the area in battle-ready condition is known as 'Ribāṭ' and 'Murābatah'. It takes two forms. Firstly, there may be no danger of war breaking out, the border is secure and the duty is limited to being vigilant enough to ward off any impending threat. Under such condition, it is quite permissible for those on duty to start living there with their families and earn their living through farming or some such occupation. Under this condition, if the real intention is to guard and defend Islamic borders and living and earning there remains subservient to this intention, this person will get the reward for 'staying in the way of Allah' (رِبَاطٌ فِي سَبِيلِ اللَّهِ), even if he never fights. But, anyone whose real intention is not to guard and defend Islamic frontiers but would simply be there to eke out a living - even if he gets the chance of guarding the borders casually - this person will not be considered as 'one who stays in the way of Allah'. The other eventuality may be that the border is threatened by possible enemy attack. Under such condition, keeping women and children close by is not correct; only those who can fight against the enemy should live there. (Qurtubī)

There are countless merits in both these cases. In the Ṣaḥīḥ of al-Bukhārī, it has been reported from Sayyidnā Sahl ibn Sa'd Sā'adī that the Holy Prophet صلى الله عليه وسلم said: Ribāṭ for a day in the way of Allah is better than whatever there is in the whole world. In the Ṣaḥīḥ of Muslim, it has been reported from Sayyidnā Salmān that the Holy Prophet صلى الله عليه وسلم said: Ribāṭ for a day and night is better than fasting for a whole month and standing in prayers for the entire night. Should one die in that state, the daily reward for his act of staying in the way of Allah will continue to reach him for ever. His sustenance will keep coming from Almighty Allah and he will stay protected against the Satan.

Abū Dawūd reports from Fuḍālah ibn 'Ubayd that the Holy Prophet

صلى الله عليه وسلم said: The roster of deeds credited to the person who dies ends with his death except in the case of a *Murābiṭ* (one who stays in the way of Allah) whose roster of good deeds goes on multiplying right through to the Day of Judgment and he remains covered against (the fear of punishment) on account of the scrutiny of deeds in his grave.

These narrations indicate that the act of staying in the way of Allah (*Ribāṭ*) is superior even to every charity the benefit of which keeps going on and on (*Ṣadaqah Jāriyah*). This is because the reward for charity the benefits of which continue lasts only upto the time people keep benefiting from the endowment of house, land, book or library. Once this benefit stops reaching people, the incumbent reward also stops. But, the reward of the person who stays in the way of Allah is not going to stop until the Day of Judgment. The reason is that Muslims as a community can continue doing what is good only when they are well-protected against enemy attacks. Thus, the act of a person who stays on to defend Islamic frontiers becomes the cause of good deeds performed by all Muslim in a peaceful setting. Therefore, the reward of such *Ribāṭ fi sabīlillah* (staying in the way of Allah) will continue until the Day of Judgment. In addition to that, the reward for whatever other good deeds he used to do during his life in the world will continue without his having to actually do them. This is as it appears in ibn Mājah in an authentic narration from Sayyidnā Abū Hurairah where he reports that the Holy Prophet ﷺ said:

من مات مرابطاً في سبيل الله أجرى عليه أجر عمله الصالح الذي كان يعمله وأجرى عليه رزقه وأمن من الفتان وبعثه الله يوم القيمة آمناً من الفزع (تفسير القرطبي)

One who dies in a state of *Ribāṭ* in the way of Allah, the reward of whatever good he used to do in his mortal life will continue and so will his sustenance and he will stay protected against Satan and Allah will raise him on the Day of *Qiyāmah* free from fear. (Tafsīr al-Qurṭubī)

The merits mentioned in this narration are subject to the condition that the person meets his death while staying on the border to guard Islamic frontiers. But, there are other reports which indicate that his

post-death reward will still continue even if he were to return alive back to his family.

Sayyidnā Ubayy ibn Ka'b narrates that the Holy Prophet ﷺ said: The reward for sincerely guarding the weak border area of Muslims for one day, other than those of Ramaḍān, is superior to the reward for continuous fasting and nightly worship for one hundred years. *Ribāt* for one day in Ramaḍān is superior to fasting and nightly worship for one thousand years (the narrator has expressed some doubt about the later). Then, he said: If Allah sends him back to his family in good health, no sin will be recorded in his name for a thousand years while good deeds will continue to be entered in his roster and the reward for his act of having stayed at the border to defend Islamic frontiers will keep coming to him until the Day of Judgment (Qurtubī).

Offering *Ṣalāh* with *Jamā'ah* and waiting for the next is also 'staying in the way of Allah'

Sayyidnā Abū Salamān ibn 'Abdur-Raḥmān narrates that the Holy Prophet صلى الله عليه وسلم said: I tell you something because of which Almighty Allah would forgive your sins and raise your spiritual status. These are: Making *Wuḍū* precisely and perfectly despite chilly weather or pain or wound because of which the washing of body parts that must be washed while making *wuḍū* may appear to be hard to do; and going to the *Masjid* time and again more than often; and waiting to make the next *Ṣalāh* following the one already made. Then, he said: **ذِكْرُ الرِّبَاطِ** : For you, this is the *Ribāt* (staying to guard Islamic frontiers in the way of Allah).

After having reported this *ḥadīth*, Imām al-Qurtubī has said that in the light of this *ḥadīth* it can be hoped that a person who adheres to the practice of waiting between two prayers with congregation will receive the reward which has been mentioned in a *ḥadīth* for *Ribāt* in the way of Allah.

Special Note:

In this verse, Muslims have been instructed to remain patient which is possible any time under all conditions. Relevant details have

appeared earlier. The second instruction given is to be more patient than others which is to be demonstrated while fighting disbelievers. The third instruction relates to a situation when an armed conflict with disbelievers is likely and there is the danger that fighting may erupt anytime. Finally comes the instruction to observe *Taqwā* (fear of Allah) which is the essence of everything one does and on which depends the Divine acceptance of what has been done. This set of instructions is the sum of almost all injunctions of the Shari'ah. May Almighty Allah give all of us the best of ability to act in accordance with these instructions.

**The Commentary on
Sūrah 'Āl-'Imrān ends here.**

Sūrah Al-Nisā'

Verses 1 - 2

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ
مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً ۚ وَاتَّقُوا اللَّهَ
الَّذِي تَسَاءَلُونَ بِهِ وَالْأَرْحَامَ ۗ إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا ﴿١﴾
وَاتُوا الْيَتَامَىٰ أَمْوَالَهُمْ وَلَا تَتَبَدَّلُوا الْخَبِيثَ بِالطَّيِّبِ وَلَا
تَأْكُلُوا أَمْوَالَهُمُ إِلَىٰ أَمْوَالِكُمْ ۗ إِنَّهُ كَانَ حُوبًا كَبِيرًا ﴿٢﴾

With the name of Allah, The All-Merciful, the Very-Merciful.

O men, fear your Lord who created you from a single soul, and from it created its match, and spread from the two, many men and women. And fear Allah in whose name you ask each other (for your rights), and surely, Allah is watchful over you. [1] And give the orphans their property, and do not substitute what is bad for what is good, and do not eat up their property alongwith your own. It is, surely, a great sin. [2]

Sequence

The last verse of Sūrah 'Al-'Imrān was concluded with an exhortation to *Taqwā*, the fear of Allah. The present Sūrah begins with *Taqwā* in the mode of command. The previous Sūrah mentioned some battles, described the manner of treating antagonists, condemned misappropriation in battle spoils and took up several other matters. In the earlier part of the present Sūrah, there are injunctions about rights related to one's own people which must be fulfilled while living and inter-acting with them, such as, the rights of orphans, relatives and wives (known as *Huqūqul-'Ibād*: the rights of the servants of Allah). But, there are some rights which are justiciable, that is, their fulfillment can be enforced through law, like common transactions of buying and selling. The rights involved in lease, tenancy and wages can be

settled through mutual agreements and arbitration; should a party fall short in fulfilling settled rights, these can be legally retrieved and enforced. But, the fulfillment of the rights of those in one's own charge - children, parents, husband and wife, and orphans - and the rights of other relatives which fall on each other - all depend upon civilized behaviour, respect, loving and caring, and above all on that genuinely heart-felt desire to do what is good for them. These are behaviour patterns which cannot be weighed on a scale of things. That they be determined fully and perfectly through mutual agreements is also much too difficult. Therefore, there is just no other method of their fulfillment except having the fear of Allah and the fear of what would happen in the life to come. This is known as *Taqwā* and the truth of the matter is that this power of *Taqwā* is more effective than the combined powers of government and law. Hence, the Sūrah opens with the command of *Taqwā* when it says: يَا أَيُّهَا النَّاسُ اتَّقُوا رَبَّكُمُ (O men, fear your Lord).

The word, '*ittaqū*' translated here as 'fear' means 'fear acting against your Lord' which perhaps is the reason why the Holy Prophet صلى الله عليه وسلم used to recite this verse as part of his address while solemnizing a marriage. Therefore, reciting it in the *Khuṭbah* of *Nikāḥ* is a perennial revival of the Sunnah. Here, the form of address in the verse is worth attention. It says: يَا أَيُّهَا النَّاسُ (O men) which includes all human beings, men or women, and whether they are present at the time of the revelation of the Qur'ān or shall continue to be born right through to the Day of Doom. Then, alongwith the command of '*ittaqū*' (fear) the word used is '*Rabb*' (Lord) which has been selected out of the most fair names of Allah. This is to point out that the fear of Allah so enjoined has a justification and wisdom of its own. The Being totally responsible for man's nurture the manifestations of Whose Lord-worthiness he witnesses every moment of his life, certainly deserves all the awe one is capable of. The very thought that anyone could rise in antagonism and defiance against Allah is terribly dangerous.

Immediately after, the text brings into focus the most exalted majesty of the Lord by saying that He created human beings, all of them, in His wisdom and mercy. Here it was quite possible to create and cause to be present, whatever it was to be, in more than one way.

But, He chose to have one way and one form, a very particular one, when he created all human beings from the one and only human being, that is, Sayyidnā Ādam عليه السلام, and thus it was that He tied all of them in a strong bond of brotherhood. So, it is not only the fear of Allah and the fear of *Ākhirah* (Hereafter) which demand man's allegiance to the Lord of all creation, but this bond of brotherhood between human beings also requires that rights of humanity - of mutual sympathy, well-being and collective good - be fully discharged. And between man and man, let there be no one high or low in race or caste, in colour or language, and that all such distinctions be never made the criterion of good or bad, nobility or meanness. Therefore, it was said:

الَّذِي خَلَقَكُمْ مِنْ نَفْسٍ وَاحِدَةٍ وَخَلَقَ مِنْهَا زَوْجَهَا وَبَثَّ مِنْهُمَا رِجَالًا كَثِيرًا وَنِسَاءً meaning 'who has created you from a single soul (that is, Sayyidnā Ādam عليه السلام who is the father of all human beings), and from it created its match (that is, his wife, Ḥawwā' (Eve), and spread from the two, many men and women (in the world)'.
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In short, this verse serves as an introduction to injunctions which are going to appear in this Sūrah. The purpose here is to dissuade human beings from becoming the usurpers of Divine rights, while at the same time, by telling them that they all are the children of the same father, the wonderful humane dimension of love, mutual sympathy and concern was given as the working hypothesis of common living, so that the mutual rights of relatives, orphans and married couples could be fulfilled right from the heart at the very grass-root level.

Towards the end of verse 1, the exhortation to fear Allah has been beamed at man from yet another angle. Is'nt it that man demands his rights from others in the name of Allah and exacts what he wants from them? It means that one who expects others to fear Allah should do that himself as well. The last word, *wal-arḥām*, is there to warn that any shortcoming in taking good care of near relations, whether from the side of one's father or mother, should be avoided.

The second verse emphasizes the rights of orphaned children and establishes rules to protect their property.

The commentary which follows takes up the last two aspects of near relations and orphans in some detail.

Commentary

Treating Near Relations Well:

The word, '*al-arḥām*' in verse 1 is the plural of *raḥim*. *Raḥim* is womb. The womb of the mother is the home of the child until born. Since this womb is the source of blood relationship, the act of maintaining relations in that line is called *ṣilatur-raḥim* in Arabic (literally, umbilical link or bond or relationship). The converse of it, that is, showing carelessness and indifference towards natural linkage based on blood relationship is identified as *qat'-al-raḥim* (literally, umbilical delinkage, meaning cutting off relationship with one's kin).

The noble *aḥādīth* have laid great emphasis on bonds of kinship. The Holy Prophet صلى الله عليه وسلم has said:

من أحب أن يبسط له في رزقه وينسأ له في أثره فليصل رحمه

Whoever likes to have his livelihood made plentiful and his age extended for him should maintain good relations with his near of kin. (Mishkāt, p. 419)

This *ḥadīth* tells us about two benefits that issue forth from treating near relations well. The merit of the Hereafter vouchsafed, this fair treatment of one's kin has its benefits in this life as well, that is, it removes straightenings from his livelihood and blesses his age with more good years.

Sayyidnā 'Abdullāh ibn Salām رضى الله عنه says: When the Holy Prophet صلى الله عليه وسلم came to Madīnah al-Tayyibah and I presented myself before him, the very first words from him which fell into my ears were:

يا ايها الناس افشوا السلام واطعموا الطعام وصلوا الارحام، وصلوا بالليل والناس ينام، تدخلوا الجنة بسلام

O men, make a practice of greeting each other with *salām*, and feed people (for the pleasure of Allah), and treat near relations well, and pray by night while people sleep - you will enter Paradise in peace. (Mishkāt, p. 108)

In another *ḥadīth*, it has been reported that *Ummul-Mu'minīn* (the Mother of the Faithful) Sayyidah Maymūna رضى الله عنها had freed her bond woman. When she told the Holy Prophet صلى الله عليه وسلم about it, he said:

لواعطيها احوالك كان اعظم لاجرك

Had you given her to your maternal uncle, your reward would have been greater. (Mishkāt, p. 171)

Although, Islam motivates people to free slaves and rates it as one of the finest acts of merit, yet the status of treating relatives fairly has been given more importance. There is another narration on the same subject in which the Holy Prophet صلى الله عليه وسلم has been reported to have said:

الصدقة على المسكين صدقة وهي على ذى الرحم ثنتان صدقة وصلة

Charity to the needy is just charity, while to a near relative it becomes two fold: charity and kinship. (Mishkāt, p. 171)

Hence, a simple change in the end-use of charity yields two types of merits.

As opposed to this there is the attitude of cold-shouldering or severing of blood relationships. How stern are the warnings given in *hadīth* reports against this can be imagined from the following two *aḥadīth*:

The Holy Prophet صلى الله عليه وسلم said:

(١) لا يدخل الجنة قاطعٌ

1. A breaker of (blood) relationships shall not enter Paradise. (Mishkāt, p. 419)

(٢) لا تنزل الرحمة على قوم فيه قاطع رحم

2. Mercy shall not descend upon a people among whom there is a breaker of (blood) relationships. (Mishkāt, p. 420)

The statement in the last sentence of this verse: إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَؤُوفًا (and surely, Allah is watchful over you) motivates human hearts to fulfil rights as and when they are due because Divine watchfulness implies awareness of whatever there is in human hearts - intentions, scruples, motives - everything. Doing things half-heartedly, formally, or for fear of possible embarrassment, without any genuine desire to serve, shall remain acts unacceptable to Allah. Incidentally, from here we find out why Allah should be feared - because He is watchful over everyone, always. As pointed out elsewhere too, this is typical of the

usual style of the Holy Qur'ān when it does not introduce laws in sheer cold print like the laws of the governments of this world, but puts them forth in the manner of education, training and affection by not restricting itself to the word of law alone, but by combining it with the grooming of minds and hearts as well.

The Rights of the Orphans and the Protection of Their Property:

The first verse stressed upon the care and concern for kinship in an absolute sense. Then came the general emphasis on the fulfillment of rights that issue forth from it. Now, the second verse carries the command to protect the properties of the orphans, as well as the prohibition of any misappropriation therein because the guardian of an orphaned child is usually one of his relatives. Therefore, this too has a bearing on the fulfillment of the rights of kinship.

The word, '*al-yatāmā*' in the first sentence of verse 2: **وَأْتُوا الْيَتَامَىٰ أَمْوَالَهُمْ** (And give the orphans their property), is the plural of *al-yatīm* (the orphan). Literally, it means the lone or the unique. Therefore, a pearl that resides in its shell all alone is called *Ad-Durr al-Yatīm* (literally, 'the orphan-pearl'). In the terminology of Islamic law, a *yatīm* is a child whose father has died. Incidentally, among animals, a *yatīm* is an offspring whose mother has died (*Qāmūs*). When a child attains maturity, that is, becomes pubert, he is no more referred to as *yatīm* in the terminology of Islamic law as it has been clarified in a *ḥadīth* which says: لا يتم بعد احتلام that is, 'Orphanhood ends with puberty'. (Mishkāt, p. 284)

If orphaned children have property, either gifted to them or received by them through someone's inheritance, then, the responsibility of protecting this property, as well as the orphan himself, falls on the shoulders of the person who is the guardian of the orphan. It does not matter whether the guardian of the orphan was appointed by the father of the orphan himself before his death, or by the government. It is part of the guardian's duty that he should certainly cover all costs incurred on the necessary maintenance of the orphan from what he owns, but he should not give what the orphan owns into his possession before he has reached the age of maturity because he, being an immature minor, may lose it somewhere. So, the statement: 'give

the orphans their property', in this verse, has been clarified a little later in verse 5 where it has been said that the property of the orphans should be given to them after it is certain that they have become mature and do have the ability to distinguish between what is good for them and what is not.

Therefore, the meaning of 'give the orphans their property' in this verse should be taken in the sense of protecting their property so that it could be given to them at its appropriate time. Furthermore, there is a clear hint in this sentence towards the extent to which the guardian of the orphan is responsible for his welfare. It is being said here that his responsibility is not limited to just that he himself refrains from eating up or squandering the property of the orphan, but it is also an integral part of his duties that he should do everything possible to protect, guard and conserve the property in the best of state, capable of being handed over to him when mature.

The second sentence: *وَلَا تَتَّبِعُوا الْفَيْسَبَ بِالطَّيِّبِ* prohibits the substitution of bad things for the good ones. There were people who would let the number of things owned by the orphan stay unaltered, but would take something good from there and substitute it with something bad they themselves had. For example, swapping a lean goat for a healthy one, a bad coin for a good one, and things like that. Since, this too is a breach of trust in respect of the property of the orphan, and in the event that someone driven by his naughty self comes up with the excuse that he has not 'taken' what belonged to the orphan, he has rather 'exchanged' it. So, the Holy Qur'ān has forbidden it explicitly. Now, this forbiddance not only covers the substitution of one's bad things for the orphan's good things, but it also covers any attempt by the guardian to enter into any deal with some other person which results in a loss for the orphaned child.

The third sentence: *وَلَا تَأْكُلُوا أَمْوَالَهُمْ إِلَىٰ أَمْوَالِكُمْ* (and do not eat up their property alongwith your own) obviously aims to forbid the eating up of the orphan's property through impermissible methods whether it is consumed from the jointly-held property of the guardian and the orphan, or that it is held separately and consumed from there. But, the general practice is that the guardian would hold what belongs to the orphan with his own personal holdings, would himself consume

out of there and let the orphan do the same. Since no separate accounting is involved here, even a religiously observing Muslim may fall into thinking that there was no sin in doing so. It was for this particular reason that the prohibition of consuming what belongs to the orphan by pooling it with one's own was mentioned here and warning was given to either keep the property of the orphan absolutely separate and spend from it separately so that there remains no danger of any excess; or should one elect to have a joint-expense system, then, the accounts maintained should be so clear that one can be sure of not having spent anything belonging to the orphan on his own person or in his interest. A detailed explanation of this has already appeared in *وَاللَّهُ يَعْلَمُ الْفُسُوقَ مِنَ الْمَصْرُوحِ* (2:220) - Section 27 of Sūrah al-Baqarah, Volume 1 of this commentary.

The style of expression here gives a hint that those who misappropriate the property of orphans are generally the people who have properties of their own as well. So, it is by implication that such people have been reproached for stooping down to eat up the property of the orphans unlawfully while they have their own lawful belongings at hand - a shameful act indeed.

It will be noted that verse (2) mentions the prohibition of "eating" the property of the orphan because "eating" is one of the major end-uses of what one possesses. But, in common usage, every act of using up, consuming and exhausting is referred to as "eating up" - whether this be by 'using' or by 'eating'. The expression, "*lā ta'kulū*" (do not eat up) in the Holy Qur'ān carries this very sense of the usage, included in which are all sorts of impermissible uses. Therefore, spending anything from the property of the orphan unlawfully by any means whatsoever is absolutely *ḥarām* (forbidden).

The verse ends with the admonition, *إِنَّهُ كَانَ حُوبًا كَبِيرًا* (It is, surely, a great sin.) Here, the word '*ḥūb*', as said by Sayyidnā ibn 'Abbās, comes from the Ethiopian language. It means: 'major sin'. It is used in Arabic for the same meaning. The sense is that any unlawful appropriation or use of the orphan's property, be it because of lack of supervision or substitution of something bad for something good or because of consuming the orphan's assets as mixed up with one's own, is a great sin after all.

The stern warning to those who eat up the property of an orphan appears later towards the end of this section (4:10).

Verse 3

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ
مِنَ النِّسَاءِ مَشْنَىٰ وَثَلَاثَ وَرُبْعًا فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً
أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ ۚ ذَٰلِكَ أَدْنَىٰ أَلَّا تَعُولُوا ﴿٣﴾

And if your fear that you will not do justice to the orphan, then, marry the women you like, in twos, in threes and in fours. But, if you fear that you will not maintain equity, then (keep to) one woman, or a bond-woman you own. It will be closer to your not doing injustice. [3]

Sequence

In the previous verse, guardians were warned against pilferage or misappropriation in the property of orphans. The present verse is an extension of the basic command from another angle. Here they are warned against any attempt to marry orphaned girls under their guardianship hoping to get away by fixing a dower of their choice and claiming their properties as additional benefit.

So, the Holy Qur'ān has very clearly declared that every excuse, device or strategem set up to usurp the property of the orphan is impermissible. It is the duty of the guardians that they should protect the rights of the orphans honestly.

Commentary

Orphaned girls: Violation of their rights and its prevention:

During *Jāhiliyyah* guardians holding orphaned girls under their charge used to pick up the ones who had good looks or owned properties of value and marry them or arranged to have them married to their sons. They would fix the dower of their choice, usually the lowest, and maintained them in whatever manner they elected for they were the very guardians and caretakers for them. Their fathers were not there to take care of their rights who would have certainly given them in marriage to a suitable person after full deliberation on all aspects a daughter faces in married life and would have made sure that they

remain happy and well-covered.

There is a narration in Ṣaḥīḥ al-Bukhārī from Sayyidah 'Ā'ishah رضى الله عنها which reports that an incident of this nature came to pass during the blessed time of the Holy Prophet صلى الله عليه وسلم. There was someone who had an orphaned girl under his guardianship. He had a fruit-farm in which this girl held a share. This man married the orphaned girl and, rather than give her dower and things from his pocket, took her very share in the farm in his possession. Thereupon, the following verse was revealed:

وَإِنْ خِفْتُمْ أَلَّا تُقْسِطُوا فِي الْيَتَامَىٰ فَانكِحُوا مَا طَابَ لَكُمْ مِنَ النِّسَاءِ

And if you fear that you will not do justice to the orphans,
then marry the women you like...

It means that if you apprehend that after marrying a girl under your guardianship, you cannot do justice to her, then, instead of marrying her, you should marry other women of your choice.

The Marriage of Minors

The word, '*yatāmā*' in this verse means orphaned girls. In the terminology of the Shari'ah, a '*yatīm*' is a boy or girl who has not yet attained the age of puberty. So, this verse proves that the guardian of an orphaned girl does have the right to give her in marriage while she is a minor and has not attained the age of puberty, but on condition that this decision is based on wisdom and the future welfare of the girl. This is to avoid unfair practices common in some communities where a grown up girl is married to a child without any regard for the difference in their ages or without any investigation into the living conditions or character of the boy.

The orphaned girls who have attained the age of puberty are, no doubt, entitled to choose their husbands freely on the basis of their majority. Nevertheless, girls (in traditionally Islamic societies) tend to be modest and shy and usually would not come out strong or freely express their opinions in matters relating to their marriage in spite of being major and having the right to choose. As a result, they are likely to accept what their guardians do for them in good faith. If so, it is the bounden duty of guardians that they too should stay clear from taking any step that may violate the rights of orphaned girls.

In short, this verse lays down the injunction that total vigilance should be observed to make sure that the marital rights of orphaned girls are not violated in any manner whatsoever. However, the responsibility of enforcing this injunction has not been directly placed on the shoulders of the government as is usual with laws promulgated by governments. Instead of that, people themselves have been commanded to fear Allah and do what is right. That is, should they apprehend injustice in marrying orphaned girls, they must cast off the idea and marry elsewhere from a wide range of choices available.

Added to this Divine motivation to abide by prescribed law is the responsibility placed on its enforcing agencies in the government. It is their duty to oversee that there occurs no such violation of rights in the society. If it does, they must use the force of law to ensure that these rights are fulfilled as due.

Polygamy and its currency before Islam

That one man could have more than one wife was something considered permissible in all religions of the world even before the advent of Islām. The custom prevailed in Arabia, India, Iran, Egypt, Babylon and among peoples elsewhere. Its natural validity cannot be denied even to this day. The Europeans of the present age tried to break away from the practice of their predecessors and made multiplicity of marriage impermissible. It resulted in the multiplicity of concubines and girl-friends retained out of wedlock. It was the validity of the natural that there has been a consistent opinion bank in the West (though not so effective) which recognizes the efficacy of plurality of marriage. Davenport, the well-known Christian writer has deduced from the Bible that plurality of wives is not only favourable but is a source of blessing from God. Others such as Father Nixon, John Milton and Isac Taylor have supported this view strongly. Similarly, Vedic teachings permit unlimited number of wives, even in tens and thirtens and twenty sevens, at one time. Shri Krishna, a highly respected deity among Hindus, had hundreds of wives.

The truth of the matter is that a religion or law which aims to establish an infra-structure of chastity and modesty and considers the eradication of adultery as necessary has no way out except that it permits plurality of wives. Apart from being a preventive measure

against adultery, it serves as a remedial approach to the problem of comparatively larger female population in some areas as compared to that of men. If such permission was not granted, mistresses and prostitutes will proliferate. This is why nations which do not permit plurality of wives must live in rampant adultery (calling it 'free sex' hardly changes the reality). Even in our own time, if we look at the state of nations in Europe and America, we will see that they look down on what they call polygamy and put a ban on plurality of wives, but they permit a man to practice adultery with as many women as he can get under the cover of 'friendship', (and unlimited are the euphemisms invented to give it other names, such as, 'relationship', 'affair', 'consenting adults', 'union', 'partner' to get around the ban). Saying no to marriage and yes to adultery is certainly very strange!

To be short, we can say that the custom of taking a large number of wives was prevailing before Islam without any imposition of limits. The history of nations and beliefs shows that no religion or law had drawn a line in this matter, neither the Jews and Christians, nor the Hindus and Aryans or the Zoarastrians.

During the early period of Islam, this custom continued without being limited. As a result, people initially took too many wives to satisfy their greed. Later on they could not do justice to all of them and these wives of theirs lived like prisoners bound in the chains of marriage. Under such conditions, the idea of an equitable treatment of wives was practically non-existent. It was all a matter of personal choice or whim which could make the darling of the day a history of tomorrow. The concern for standing rights was a far cry.

It was the Holy Qur'ān which stopped this great injustice prevailing in the human society at large. It restricted the plurality or multiplicity of wives by declaring that keeping more than four women under the bond of marriage was forbidden (*ḥarām*). In addition to that, stern warning was given against any contravention of the Divine command which emphatically demanded that equality in fulfilling the rights of women taken into the bond of marriage at the same time must be maintained faithfully. The words of the verse are:

فَأَنكِحُوا مَا كَتَبَ لَكُمْ مِنَ النِّسَاءِ مَشْنَىٰ رُوَيْتِكَ وَرُبْعٍ

The expression مَا كُنَّ : 'mā ṭāba' in this verse, as explained by Ḥasan al-Baṣrī, Ibn Jubair and Ibn Mālīk, may the mercy of Allāh be upon them, means مَا كُنَّ : 'mā ḥalla', that is, women who are lawful for you.

There are others who, taking the literal meaning of 'mā ṭāba', have explained it to mean, 'whom you like'. But, there is no contradiction here. It could simply mean, 'women you like out of your natural inclination and that they be lawful for you in terms of the Sharī'ah as well.'

On the one hand, permission has been given in this verse that more than one wife can be conjoined in marriage in twos, threes or fours; while, on the other, after having taken the number to four, restriction was placed that more than four women cannot be taken in marriage at one given time.

This particular restriction of the Holy Qur'ān was made much more clear by a ruling given by the Holy Prophet صلى الله عليه وسلم. It has been reported that, soon after the revelation of this verse a person by the name of Ghailān ibn Aslamah al-Thaqafī embraced Islam. At that time, he had ten wives who had also embraced Islam. Pursuant to the Qur'ānic injunction, the Holy Prophet صلى الله عليه وسلم asked him to select and retain four and release the rest by giving them divorce. Ghailān ibn Aslamah al-Thaqafī obeyed the command, retained four women and severed his marital link with the rest (Mishkāṭ, p. 274, with reference to al-Tirmidhī and Ibn Mājah). Citing another incident appearing as a complement of this very narration in the Musnad of Imām Aḥmad will not really be out of place as it also relates to the rights of women.

According to this report, Ghailān ibn Aslamah had retained four women in accordance with the rule of Sharī'ah, but during the Caliphate of Sayyidnā 'Umar رضى الله عنه he divorced them as well and distributed all his assets among his sons. When Sayyidnā 'Umar found this out, he summoned him and said: "You have done this to deprive these women from your inheritance which is a gross injustice. So, revoke the divorce you have given to them right now and take your assets back from your sons, and if you do not do this, then, beware of a severe punishment."

Qais ibn al-Ḥarīth al-Asadī رضى الله عنه says: 'When I embraced Islam,

I had eight wives. I mentioned this to the Holy Prophet صلى الله عليه وسلم. He said: "Keep four of them and divorce the rest." (Abū Dawūd, p. 304)

According to a report in Musnad al-Imām al-Shāfi'ī, when Sayyidna Nawfal ibn Mu'āwiyah ad-Daylamī رضى الله عنه embraced Islam, he had five women in his *nikāh*. The Holy Prophet صلى الله عليه وسلم asked him too to divorce one woman. This incident appears in Mishkāṭ as well (p. 274) with reference to Sharḥ al-Sunnah. In short, the blessed practice of the Holy Prophet صلى الله عليه وسلم and his noble Companions very clearly illustrates the meaning of this verse, that is, conjoining more than four women in the bond of marriage is *ḥarām* (forbidden).

The Noble Wives of the Holy Prophet صلى الله عليه وسلم

The class of his person and the excellences of his virtues make the Holy Prophet صلى الله عليه وسلم mercy and blessing personified. The main purpose of his life in this mortal world was to spread the call of Islam, purify people and teach the Qur'an. He, by his word and deed, made the teachings of Islam radiate all over the world. His unique style shows that he practiced what he taught. As such, there is no department of human life which can claim not to need the guidance of a prophet. So, right from the establishment of congregational prayer to maintaining good relations with wives, upbringing of children, even to the purificatory aspects of the human call of nature, there exists a roster of verbal and practical instructions left by him in the books of *Hadīth*. They tell us in great details the things he did inside the walls of his home, how he related to his wives and how he answered questions posed by women who visited his home for this purpose. Such questions can be counted in hundreds, questions that highlight the intermediacy of his blessed wives through whom the Muslim *ummah* received necessary guidance. Any other setting for this purpose would have been hard to bring about. So, this crucial religious need, the need for education, teaching and propagation made it all the more imperative that the Holy Prophet صلى الله عليه وسلم marry the wives he did. Think of Sayyidah 'Ā'ishah رضى الله عنها. There are some two thousand and ten narrations reported from her. They cover a wide range of subjects which includes the explanation of the injunctions of the Holy Qur'an, religious questions and their answers, morals and manners and the *Sīrah* of the Prophet of Islam. The narrations reported from Sayyidah

Umm Salmah رضى الله عنها reach upto three hundred and seventy eight. All these are readily available in books of *Hadīth*. In A'l-mul-Muwaqqi'in (v.1, p.9), Hāfīz Ibn al-Qaiyyim has said: If the *fatāwā* (religious rulings) of Sayyidah Umm Salmah رضى الله عنها which she gave after the demise of the Holy Prophet صلى الله عليه وسلم were to be collected it could become a treatise on its own.

The high rank Sayyidah 'Ā'ishah رضى الله عنها has in the narration and knowledge of *Hadīth* and in jurisprudence and rulings is far too well-known to repeat here. Her disciples alone come to around two hundred. She was the beacon light of religious knowledge for an uninterrupted period of forty eight long years after the demise of the Holy Prophet صلى الله عليه وسلم and was highly effective in carrying his mission forward.

These brief remarks about two blessed wives of the Holy Prophet صلى الله عليه وسلم have been given here just to serve as an example, otherwise there are many more *hadīth* narrations originating from others as well. Obviously, the benefits of such religious teaching and preaching came through the good offices of these sacred ladies.

That the Prophet of Islam had the most exalted of objectives in sight, that he came in the golden line of great prophets, and that, as such, he saw the whole world as a unit and thought about correcting all human relationships individually, collectively and in families and in nations are spiritual ideals the modern man, the desire-driven robot of today, is simply incapable of conceptualizing. The most a he or she can do is to think of everybody else on his or her own personal analogy. This chronic malady in the intellectual makeup of the atheists and orientalist of West has taken them to feeling comfortable in perversity, the end-product of which is their mal-assessment of the otherwise unchallengable character of the Holy Prophet صلى الله عليه وسلم. According to their limits of 'civilized' thinking, his many marriages were simply an expression of his sexual desires (God forbid). To say the least, it can be said that anyone sane and just can never interpret his marriages to have issued forth from that source only if he were to even glance at his life and character.

Right before the eyes of the Quraysh tribe of Makkah, he led a blame-free life in a way that he, when twenty five, married an aged

widow with children (whose two earlier husbands had died) and went on living with her for the next twenty five years. It was also during this period that he used to leave home, sometimes for as long as a month, and stay in seclusion at the Cave of Hirā devoting his time to the remembrance of his Lord. All his marriages came after his blessed age was beyond fifty. The first fifty years of his life, specially his younger years and his youth, were all too visible to the people of Makkah. Nobody, not even an enemy, ever found an occasion to point an accusing finger at him about anything that could put his pristine piety and purity in doubt. His enemies tried whatever arrows they had in their quiver. They accused him of being a magician, a sorcerer, a poet, madman, liar, fabricator. But, they never dared say anything, not one word, about his innocent life, about whatever could refer to any crookedness of extra-marital sex or passion.

Under these conditions, would it not be worth exploring as to why someone who had spent fifty years of his life in such righteousness and piety and in such peaceful abstinence from the good things of life, would be compelled to marry more than once? What was the urge? Anyone with the least fund of justice in him would not see any other reason behind this plurality of such marriages as being stated here. Now, let us go a little farther. Let us look at the very reality of these marriages as to how they came to pass.

From age twenty five to the blessed age of fifty, Sayyidah Khadījah رضي الله عنها lived with him as the only wife. When she died, the marriage with Sayyidah Saudah and Sayyidah 'Ā'ishah رضي الله عنها was solemnized. But, it was Sayyidah Saudah who came to live with him while Sayyidah 'Ā'ishah رضي الله عنها continued to live with her father in view of her minority. It was after some years (in year 2 of the Hijrah) that Sayyidah 'Ā'ishah came to live with him at Madīnah Munawwarah. This is the time when he was in his fifty fourth year. At this age he had two wives. What is known as plurality of marriages starts from this point. After one year, his marriage with Sayyidah Ḥafṣah took place. After some months, Sayyidah Zainab bint Khuzaymah رضي الله عنها came into his *nikāh* but died only eighteen months later. According to one report she lived only three months as his wife. Then, he was married to Sayyidah Umm Salmah رضي الله عنها in 4 A.H. and to Sayyidah

Zainab bint Jaḥsh رضى الله عنها in 5 A.H. This is the time when he was fifty eight. At this fairly advanced age, he had four wives, although he could have had four wives immediately after the Qur'ānic permission given to Muslims that they could, if need be, keep four wives. But, he never did this. Later, he married Sayyidah Juwayriyyah رضى الله عنها in 6 A.H., Sayyidah Umm Ḥabībah رضى الله عنها in 7 A.H., Sayyidah Ṣafīyyah رضى الله عنها in 7 A.H. and Sayyidah Maymūnah رضى الله عنها later on in the same year.

To sum up, we see that he lived with only one wife upto the age of fifty four years. In other words, he lived for twenty five years with Sayyidah Khadījah and four to five years with Sayyidah Saudah. After that, when he was fifty eight, he had four wives, the rest of the blessed wives came to live with him within a period of 2-3 years.

It is worth mentioning here that, out of all the wives he had, there was only one who was married to him as a virgin, that is, the Mother of the Faithful, Sayyidah 'Ā'ishah al-Ṣiddīqah رضى الله عنها . Other than her, all wives, may Allah sanctify their honour, were widows (with the exception of lady Zainab bint Jaḥsh) - some of them were the ones who were already married twice and their husbands had died. This plurality, incidentally, came to pass in his later years.

Let us not forget that his noble Companions, both men and women who had seen him in the state of Islam, loved him dearly. They would have laid down their lives at his command. If he was so inclined to do, he would have married none but virgin wives. In fact, there was nothing to stop him from keeping a wife for one or two months and then take new ones in their place. But, he never did this.

There is yet another fact which needs to be mentioned here. Our master, Sayyidnā Muḥammad al-Muṣṭafā صلى الله عليه وسلم was a true prophet of Allah and a prophet is no man of the mundane. He never follows his desires. What he does, he does with the leave and will of Allah. Once his prophethood is accepted, all objections stand eliminated. But, should there be one who not only refuses to accept a prophet as a prophet but goes a step farther and accuses that he allowed himself to take many wives to seek sexual gratification, then, such a person will be told: If this was so, why would the noble prophet proclaim the restriction against himself in matters relating to

plurality of marriages, something which finds mention in the verse لا يحل لك النساء من بعد (It is not lawful for you to take (more) wives after this - 33:52). That he proclaimed this restriction against his own self, openly and conclusively proved that whatever he did, he did with the leave and will of his Lord. As pointed out earlier, the educational benefits because of this plurality of marriages that reached the Muslim community, as well as the very injunctions of Islam, are really so many and so detailed that they can just not be taken up here even at their briefest. Those who study books of *Aḥādīth* would realize the truth of this statement. However, we do present here brief notes to serve as indicators.

The Holy Prophet صلى الله عليه وسلم had married Sayyidah Umm Salmah رضى الله عنها after her husband, Sayyidnā Abū Salmah had died. When she came to live with him in his house alongwith her children from her previous husband, the Holy Prophet صلى الله عليه وسلم took care of her children and brought them up with love and concern. Thus he demonstrated through his conduct the way of loving and caring one must follow when bringing up step children. Of his blessed wives, she was the only one who came with her children. If none of his wives was like her, this aspect of the upbringing of step children would have remained practically undemonstrated and the vast community of Muslims would have remained deprived of any guidance in this matter. Her son, 'Umar ibn Abī Salmah رضى الله عنه says: I was brought up in the lap of the Messenger of Allah صلى الله عليه وسلم. Once, while eating with him, I was dunking my hand everywhere in the bowl. He said: سم الله وكل بيمينك وكل مما يليك (Say the name of Allah and eat with your right hand and eat from what is in front of you) - (Bukhārī, Muslim, from *Mishkāt*, p. 363).

Sayyidah Juwayriyyah رضى الله عنها came as a prisoner of *Jihād*. Like other prisoners, she too became one of the distributed and found herself in the share of Thābit ibn Qays or his cousin. But, she succeeded in making a deal with her master. The deal was that she would give him a certain amount of money against which he will release her. After making this arrangement, she came to the Holy Prophet صلى الله عليه وسلم and sought financial assistance from him. He said: 'Shall I not tell you something much better than this? That I pay

on your behalf and marry you?' She agreed with pleasure. Thereupon, he paid the amount due on her behalf and married her. This resulted in something unusually benign. Hundreds of Sayyidah Juwayriyyah's people had by that time passed into the ownership of the noble Companions because all of them had come as prisoners. When the Companions found out that the Holy Prophet صلى الله عليه وسلم had married her, all of them released their respective slaves out of deference to the Holy Prophet صلى الله عليه وسلم. Just imagine how elegant the propriety of their behaviour was, how genuine, how sublime. It was in view of their emotional realization that all these people have now become connected with the family of the Holy Prophet صلى الله عليه وسلم in bonds of inlawship, that they simply could not have the audacity to keep them as slaves. So, they set all of them free. Sayyidah 'Ā'ishah رضى الله عنها says about this incident:

فلقد اعتق بتزويجه أياها مائة أهل بيت من بنى المصطلق فما أعلم امرأة
اعظم بركة على قومها منها

Because of his marriage with Juwayriyah, one hundred families from Banū al-Mustaliq became free. I know no other woman who proved to be greater in blessing for her people.

Sayyidah Umm Ḥabībah رضى الله عنها had become a Muslim in Makkah during the early days of Islam alongwith her husband. Later on, both husband and wife migrated to Ethiopia as members of a caravan of several men and women. After reaching there, her husband became a Christian and it so happened that a few days later, he died. The Holy Prophet ﷺ proposed to her through the good offices of Najāshī (Negus, Emperor of Ethiopia) which she accepted and it was in Ethiopia that the same Najāshī gave her in marriage to the Holy Prophet صلى الله عليه وسلم. It is interesting to note that Sayyidah Umm Ḥabībah رضى الله عنها was the daughter of Sayyidnā Abū Sufyān رضى الله عنه. He was, at that time, the leader of the group which regarded hostility to Islam as its main objective in life. They were always on the look-out for excuses to hurt Muslims and torture the Prophet of God. If they ever got the chance they would have not hesitated for a moment to eliminate him once and for all. When he found out about this marriage, he uttered the following words involuntarily: هو الفحل لا يجده انفه literally: 'He is a man of valour. His nose cannot be cut off'. The sense

was that the Holy Prophet ﷺ is a man of honour. It is not easy to disgrace him. Here we are doing our best to disgrace him and there we see, right under our noses, that our daughter has become his wife.'

In short, this marriage proved to be a weapon of psychological warfare. The ambitions of the leader of the *kāfirs* against Muslims were watered down. That this marriage brought in its wake political gain for Islam and Muslims can hardly be denied in terms of the importance and need for it. This gain is certainly something God's farsighted and wise Messenger had, in all likelihood, in sight.

Apart from the present summary view, those who have deeper access to the *Sīrah* would find many more elements of wisdom in his plurality of marriages. The treatise entitled, *Kathratul-Azwāj-li-Ṣāhibil-Mi'raj* by my venerated master, Maulānā Ashraf 'Alī Thānavī, is useful.

The details we have provided here are there to remove the golden trap laid out by atheists and orientalists. Though unfortunate, yet the truth is that this trap sucks in a lot of educated but ignorant Muslims. They go into the spider's web and do not return because they do not know the *sīrah* of the noble prophet and the history of Islam directly from their authentic sources. Their knowledge of everything Islamic comes from (anti-Islam) books written by the so-called orientalists.

Only one wife where injustice is likely

Let us now see what the Qur'an says after allowing upto four wives. It says:

فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً أَوْ مَا مَلَكَتْ أَيْمَانُكُمْ

But, if you fear that you will not maintain equity, then, (keep to) one woman, or a bondwoman you own - 4:3.

From here we find out that having more than one wife is permissible and appropriate only on condition that equality can be maintained among all wives as required under the Shari'ah of Islam, and that the rights of all can be duly fulfilled. If one does not have the capability to discharge his obligations in this manner, the rule is to keep to only one wife. As stated earlier, the injustice of multiple marriages during *Jāhiliyyah* without any considerations of rights of wives had made a mockery of this field of human relationship. So, the

Qur'ānic command was: If you are unable to do perfect justice between wives, then restrict yourself to no more than one, or make do with a bondswoman you may own. At this point, please keep in mind that the Qur'ānic expression *مَا مَلَكَتْ أَيْمَانُكُمْ* which means 'a bondswoman one may have', has very special conditions under which such possession becomes possible, conditions which generally do not just exist these days. Therefore, the act of starting to live with someone out of wedlock, just by declaring that she was a 'bondswoman' owned by the person involved, as something allowed by the Shari'ah of Islam, is *non sequitor* and patently *ḥarām* (unlawful). Any more details about it would simply be out of place here.

The outcome (to be seen as a whole) is that the Qur'an has permitted having four wives in marriage which means that marriages entered into within this limit will be correct and permissible. But, under such a contingency, that of having more than one wife, it will be obligatory (*wājib*) to maintain justice and equality between them. Doing otherwise is a grave sin. So, anyone who thinks of having more than one wife should first think about all those factors and conditions around him and, more importantly, look into himself, introspect, weigh, deliberate and figure out realistically whether or not he has the ability, or the capability or quality to treat all of them equally and justly without causing the least infringement of their rights. If strong likelihood exists that one will not be able to come up to the standard and most probably will fail to maintain such justice and equality, then, having the audacity to go ahead and step into the bonds of more than one marriage is really a thoughtless plunge into a grave sin. One must stay away from doing something like this and, human condition being what it is, living with only one wife should be considered quite sufficient.

Speaking legally, if a person marries more than four women in a single offer and acceptance, the marriage shall be void *ab initio* because nobody has the right to have more than four wives. As far as marriages within the limit of four are concerned, they shall be deemed as valid marriages all right, but any shortcoming in treating wives equally and justly will be an act of grave sin. In addition to that, any infringement of a wife's rights can be challenged in an Islamic Court and the aggrieved wife can receive redress from there.

The Holy Prophet صلى الله عليه وسلم has laid great emphasis on maintaining full equality and justice between all wives and he has given stern warnings against those who do otherwise. Above all, he has demonstrated the desirable ideal through his own conduct, reaching the outer limits of treating his wives equally even in matters in which equality is not mandatory.

In a *ḥadīth*, the Holy Prophet صلى الله عليه وسلم has said: 'Anyone who has two wives and he cannot fulfill their rights equally and justly, shall be raised on the Day of Doom in a condition that one of his shoulders will be drooping down.' (Mishkāt, p. 278)

We should, however, keep in mind that this equality of treatment is necessary in things which are within the control of man. For example, the coverage of personal expenses and parity in overnight stays. As for things out of man's control, such as the natural inclination of his heart which might tilt towards one of them, there is no accountability there for this is not a matter of choice. However, the binding condition is that this tilt should not affect matters which are within man's control. Our noble prophet, may Allah bless him for ever and ever, treated his venerated wives with full equality in everything within his control, yet he pleaded with his Lord:

اللَّهُمَّ هَذَا قَسْمِي فِيمَا أَمْلِكُ فَلَا تَلْمِزْنِي فِيمَا تَمْلِكُ وَلَا أَمْلِكُ

O Allah, this is my 'equalization' in what I control. So, do not hold me accountable in matters You control and I do not.

Obviously, something even an infallible Messenger of God is not able to do, how can someone else claim to have the ability to do it? Therefore, in another verse of the Holy Qur'ān, this 'matter out of man's control' has been mentioned in the following words:

وَلَنْ تَسْتَطِيعُوا أَنْ تَعْدِلُوا بَيْنَ النِّسَاءِ

And you shall be unable to maintain perfect equality between the women - 4:129.

Here, it has been made clear that love and the tilt of the heart are something out of man's control. It is beyond man's power to achieve perfect equality of treatment in what comes from the territory of the heart. But, even this involuntary conduct has not been left totally

unchecked and unbalanced. In order to correct it, it was said: **لَا تَمِيلُوا كُلَّ الْمَيْلِ** (So, do not tilt, the full tilt). It means: If you love one of your wives more than the other, there is nothing you can do about it. But, total indifference and heedlessness towards the other wife is not permissible even under this situation. The justice and equality mentioned in the sentence **فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا فَوَاحِدَةً** (If you fear that you will not maintain equity, then {keep to} one woman) refers to the same justice in matters of choice and volition, any discrepancy in which is a great sin. So much so, that a person who sees the danger of his getting involved with this sin has been instructed not to marry more than one woman.

A doubt and its answer

Because some people have lost sight of details given above, they have fallen into a strange error. When they compare the verse under discussion, 4:3, and the verse quoted just a little earlier, 4:129, they are confused. They think: Here is this verse from Sūrah al-Nisā' which carries the command: 'If you fear that you will not maintain equity, then (keep to) one woman. Then, there is this second verse which says categorically that justice and equality (among wives) is just not possible. As a result, they doubt, having more than one wife should not be permissible. But, such people should ask themselves: If, through these verses, Allah Almighty aimed at putting a cap over more than one marriage, what need was there to go into all these details? Why would the Qur'an say: **فَانكِحُوا مَا كَتَبَ لَكُمْ مِنَ النِّسَاءِ مَنِّي وَثَلَاثَ وَرُبَاعَ** that is, 'marry women you like, in twos and threes and fours?' And then, what would be the meaning of saying: **فَإِنْ خِفْتُمْ أَلَّا تَعْدِلُوا** that is, 'if you fear that you will not do justice' - for, in this situation, injustice is certain. How can we then explain the element of fear which would become meaningless?

In addition to this, the words and deeds of the Holy Prophet ﷺ and the noble Companions رضى الله عنهم اجمعين and their consistent practice prove the fact that having more than one wife (upto four) was never prevented in Islam. The truth of the matter is what has been stated earlier, that is, the first verse of Sūrah al-Nisā' talks about justice and equality in what man can do by choice while the second verse points out to man's inability to control lack of equal treatment when it comes to love and emotional inclination. Therefore, these two verses have no contradiction, nor does it prove that plurality of marriages is abso-

lutely forbidden.

Towards the end of the verse, it was said: ذَلِكَ أَذْنَىٰ أَلَّا تَعْمُرُوا (It will be closer to your not doing injustice). In this verse, the word أَذْنَىٰ ('adnā') has been derived from دُنُوٌّ (dunuwun) which means nearness and the other word لَّا تَعْمُرُوا (lā ta'ulū) is from مَالَ يَمِيلُ، مَا يَمِيلُ which means inclination or tilt. Here it has been used in the sense of impermissible inclination culminating in injustice and wrong-doing.

It means 'what you have been told in this verse (that is, in absence of being unable to do justice, having only one wife or making do with one's bondwoman) is something which, if you elect to follow it, will help you in staying safe from doing any injustice and the chances of any additional oppression and transgression will be eliminated.

There is a doubt here: When a man has one wife, there will be just no chance of injustice. Why then, it was said, by adding the word, 'adnā' that 'it will be closer to your not doing injustice', instead, the statement should have been something to the effect that it will make you totally safe from this injustice.

The answer is: The addition of the word, 'adnā' (closer) in the text is there to point out to all those people who would not hesitate in inflicting all sorts of injustices on even one wife. So, to block this source of injustice, the absence of more than one wife is not enough. In this situation, however, the likelihood does exist that the danger of injustice will decrease and you will come closer to justice. But, the complete deliverance from injustice and oppression will only be possible when the rights of one wife are totally and fully given and she is treated fairly and generously, forgiving her shortcomings and being patient with her crooked ways.

Verse 4

وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ نِحْلَةً فَإِنْ طِبَّنَ لَكُمْ عَنْ شَيْءٍ مِّنْهُ
نَفْسًا فَكُلُوهُ هَنِيئًا مَّرِيئًا ﴿٤﴾

And give the women their dower in good cheer. Then, if they give up some of it out of their own sweet will, you may have it to your advantage and pleasure. [4]

In the previous verse, the objective was to remove the injustice

done to women through the multiplicity of marriages. This verse takes up a particular right of women and aims to remove the injustice practiced in this matter. This is the right of *mahr* (dower).

Commentary

In pre-Islam Arabia, injustices in the payment of dower took many forms:

1. To begin with, the dower which was the right of the girl being given in marriage, was not given to her. Instead, the dower was taken by the guardians of the girl directly from the husband - rank injustice indeed. To get rid of this practice, the Holy Qur'an said: *وَأْتُوا النِّسَاءَ صَدُقَاتِهِنَّ* (and give the women their dower). This command is addressed to the husbands so that they themselves give their wives their dowers and not give these to others. Also addressed here are the guardians of the girls with the instruction that they should, in case they happen to receive the dower meant for the girls, give it straight to the girls and make sure that they themselves do nothing to put the money in personal use without the permission of the girls.

2. Another injustice related to the attitude of the giver of the dower. If someone had to pay it and realised that there was no way out, he would be very sour and unhappy and do it unwillingly as if he was paying a penalty. This injustice was removed through the use of the word, *نِعْلَةً*: *niḥlah*, since *niḥlah* in Arabic usage means 'giving something cheerfully'.

So, the verse here teaches that the dower of women is their right which must be fulfilled as a matter of obligation. Since, as a rule, all obligatory rights must be discharged cheerfully, so it should be in the case of dower, that is, 'give in good cheer'.

3. Yet another injustice regarding the payment of dower was that many husbands, taking advantage of the powerlessness of the wife, would use pressure and make them forgo and forgive their dower. This act of theirs hardly brought forth real forgiving of the standing right, but they, on their part, went about free of the concern for dower which, according to their thinking, was 'forgiven'.

To eradicate this injustice, it was said in the verse: *فَإِنْ طِبْنَ لَكُمْ عَنْ شَيْءٍ مِنْهُ* . It means: 'if these women give up some of it out of their

own sweet will, you may have it to your advantage and pleasure.'

The point is that exacting forgiveness by pressure or compulsion from an unwilling wife is an exercise in futility. Nothing gets forgiven in this manner. But, should it be that they themselves elect, out of their free choice and will, in its most genuine sense, to forgo or forgive a part of the dower, or return it to you after they had already taken it, then, this is permissible for the husbands, and correct as well.

Surely, these injustices which the Holy Qur'ān aims to remove in this verse prevailed at peak during *Jāhiliyyah*. But, very regretably, some of these practices of pre-Islam days still survive among Muslims. There are tribes and geographical areas where one or the other such injustice is not difficult to find. All Muslims must stay away from being a party to such injustices.

The restriction of "out of their own sweet will" placed in this verse, has a secret of its own. The truth of the matter is that, according to the standard rule of Islamic Shari'ah, even the smallest portion of what belongs to someone is not lawful for someone else unless permitted gladly. The standard rule was set by the Holy Prophet صلى الله عليه وسلم when he said:

أَلَا لَا تَظْلِمُوا، أَلَا لَا يَحِلُّ مَالُ امْرَأٍ إِلَّا بِطَيْبِ نَفْسِ مَنَّهُ (مشكوة شريف ص ٢٥٥)

Beware, do no injustice. Remember, a person's property is not lawful (for the other) unless it be through his sweet will.

(Mishkat, p. 255)

This is a great principle from which many details issue forth.

Even in our own times, there are women who very much doubt that they are going to get their dower. They think asking for it is not going to please anybody, nor the refusal to forgive will make anyone any happier. So, like it or not, they just forget and forgo. This kind of forgiveness is not trustworthy. My respected teacher, Maulānā Ashraf 'Alī Thānavī used to say that the real touchstone of forgiving gladly is to first hand over the amount of the dower in the hands of the wife, as its owner, who may later give it to the husband out of her own sweet will without any pressure. This attitude of giving gladly should also be practiced as the operating principle in the inheritance of sisters and wives. It is not too uncommon that, following the death of the mother

or father, sons take over the whole property and do not give the girls their share. If the usurpers were bothered by moral or religious considerations in some degree, the most they would do is to go and excuse themselves before their sisters. Since they know that they are not going to get their share under this situation anyway, they simply go along and forgive against their will. In addition to this, the share belonging to the surviving wife is not given to her after the death of the father. Particularly, a step mother just does not get hers. All this amounts to open usurping of rights. The only exception is that, should anyone forgive gladly, that forgiveness is possible, and valid.

Ḥadrat Thānavī also pointed out that the text is talking about the willingness of the whole human self and not simply the happiness of the heart which alone is not enough to make someone's property lawful for the other. People who give money in bribes, or interest, do so after a good deal of calculations, and many apparent gains, but this is not giving gladly, and not trustworthy either. If such people were to probe their conscience and come out with the truth, the truth would be that their self would flatly refuse to agree to such giving. This is why good cheer and sweet will have been given the deciding role.

If donations are sought for mosques, religious schools or for any other need, there too it is necessary to see that the giver is doing it freely and gladly. If a donation is given under pressure from anyone having tribal, social or legal authority or influence, without the free choice and will and pleasure of the giver, then, it is not lawful to accept and use this donation. Instead, it would be returned to the giver.

As for the word *صَدَقَاتٍ* : *ṣaduqāt* appearing in the verse, it is the plural form of *ṣaduqah*. The words, *ṣaduqah* and *ṣudāq* signify the dower of women. In *Mirqāt Sharḥ Mishkāt*, Mullā 'Alī Qārī writes: *صَدَقَاتٍ* به يَكْتَنُ يَطْهَرُ بِهِ صَدَقَ مِيلَ الرَّجُلِ إِلَى الرَّأَةِ. It means that dower is referred to as *ṣaduqah* or *ṣudāq* because its root, *ṣadaqa* (صدق) signifies truth. Since dower too shows the true attitude of the husband towards his wife, the congruity was good enough to let dower be called *ṣudāq* or *ṣaduqah*.

The words, *هِنَانًا* : *hanī'an* and *مَرِيَانًا* : *marī'an* appearing at the end of the verse are attributive modifiers. The word, *hanī'an* (from *han'ā* and *hanū'a* and *hanī'ā*) means something received without having to go

through labour and pain. When this refers to food, it means good food which is eaten and digested easily and becomes a healthy part of the human body.

The word, *mar'ān* (from *mara'ā*: to be wholesome) is also used in the same sense and is very close to each other. For this reason, some translators have made one word, in the sense of 'wholesome', stand for both.

Verses 5 - 6

وَلَا تُؤْتُوا السُّفَهَاءَ أَمْوَالَكُمُ الَّتِي جَعَلَ اللَّهُ لَكُمْ قِيَمًا
وَأَرْزُقُوهُمْ فِيهَا وَاكْسُوهُمْ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٥﴾
وَابْتَلُوا الَّتِي تَأْتِي حَتَّى إِذَا بَلَغُوا النِّكَاحَ فَإِنْ آنَسْتُمْ مِنْهُمْ
رُشْدًا فَادْفَعُوا إِلَيْهِمْ أَمْوَالَهُمْ وَلَا تَأْكُلُوهَا إِسْرَافًا وَبِدَارًا أَنْ
يَكْبُرُوا ۚ وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعْفِفْ ۚ وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ
بِالمَعْرُوفِ ۚ فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهَدُوا عَلَيْهِمْ
وَكَفَى بِاللَّهِ حَسِيبًا ﴿٦﴾

And do not give the feeble-minded your property which Allah has made a means of support for you, and do feed them out of it, and clothe them, and speak to them in fair words as due. [5]

And test the orphans until they reach a marriageable age then, if you perceive in them proper understanding, hand over to them their property. And do not consume it extravagantly and hastily lest they should grow up. And whoever is rich he should abstain and whoever is poor he should consume in fairness. So, when you hand over to them their property, have witnesses upon them. And Allah is sufficient for reckoning. [6]

Sequence

The injunction to give orphans their property, and the women, their dower, has appeared in previous verses. This may lead one to think that the property of the orphans and women should under all

conditions, be given to them, even if they cannot handle relevant transactions and are incapable of protecting their property interests. To remove this misunderstanding, it has been said in these verses that properties should not be handed over to the feeble-minded. Instead, they should be watched and tested to determine the age and time when they exhibit the ability to protect their property and the discernment of spending out of it, it is then that their property should be handed over to them.

Commentary

Do protect what you own

These verses affirm the role of property in man's economic effort which gives him the desire to protect it. Then, at the same time, the general weakness shown in the protection of properties has been corrected. There are people who, giving in to natural love, hand over properties to inexperienced minor children and ill-informed women which usually results in the wastage of the property and the quick poverty which follows in its wake.

Do not hand over properties to the feeble-minded

The most revered exegete of the Holy Qur'an, Sayyidnā 'Abdullāh ibn 'Abbās رضى الله عنه says: 'The guidance the Holy Qur'an gives in this verse is: Do not, by handing over all your property to feeble-minded children and women, become dependent on them. Since Allah Almighty has made you the guardian and the manager, you should, rather, hold the property in your safe custody and keep spending from it as necessary in order to feed and clothe them. And should they, even then, demand to take possession of the property, explain to them honestly, fairly and reasonably in a way which neither breaks their heart nor causes the property to be wasted. For instance, say something like: 'All this is there for you. Just grow up a little more and you will have it all.'

Based on this *tafsīr* of Sayyidnā 'Abdullāh ibn 'Abbās رضى الله عنه, the sense of the verse covers all women, children and others who are feeble-minded and inexperienced, to whom it is dangerous to hand over properties since it may result in their loss, irrespective of the fact that they may be one's own children, or orphans, or the fact be that the property may belong to such children and orphans themselves, or to

the guardians. The same *tafsīr* has been reported from Sayyidnā Abū Mūsā al-Ash'arī رضى الله عنه and the renowned *mufasssīr*, al-Ṭabarī has also adopted the same view.

The context of the earlier and later verses may, though, lead one to particularize this injunction too with orphaned children, yet, the generality of words remains there as such and which includes all children, orphans and non-orphans. And perhaps, the form of address in '*amwālukum*' (your properties) may have the special wisdom that it is inclusive of the properties of the guardians as well as that of the orphans. The suggestion is that the properties of the orphans, until such time that they become mature and discerning, remain under the guardian's safe custody and responsibility as if these properties, so to say, were like their own. It will be recalled that the fact of the matter - that the properties of the orphans have to be given only to them - has been made very clear in verse 2 : وَأَتُوا الْيَتَامَىٰ أَمْوَالَهُمْ : (And give the orphans their property). After this, there remains no reason for any doubt.

Protecting property is necessary. Wasting it is a sin. A person killed while defending his property is a *shahīd* (martyr). This is similar to being killed in defence of one's life which makes one deserving of the great reward of *shahādah* (martyrdom). The Holy Prophet صلى الله عليه وسلم has said:

مَنْ قَتِلَ دُونَ مَالِهِ فَهُوَ شَهِيدٌ

Whosoever is killed while protecting his property is a *shahīd* (that is, he is counted among Muslim martyrs in terms of Divine reward). (Bukhārī, v.1, p. 337 - Muslim, v.1, p.81)

He has also said:

نِعْمًا بِأَمَالِ الصَّالِحِ لِلرَّجُلِ الصَّالِحِ

For a good man, his good and clean property is the best asset of his life. (Mishkāt, p. 326)

Yet another saying of his is:

لَا بَأْسَ بِالْغِنَىٰ لِمَنِ اتَّقَىٰ اللَّهَ عَزَّ وَجَلَّ

Being rich is not harmful for one who fears Allah, the Mighty, the Exalted. (Mishkāt, p. 491)

The last two *aḥādīth* quoted above tell us that the wealth possessed by a righteous and God-fearing person is not harmful for him because such a person, by virtue of being God-fearing, will abstain from spending it in what is sinful. The anti-wealth teachings of many Muslim saints and mystics apply to none but those who spend their lustily-earned wealth for sinful purposes and thus go on to make it the cause of their punishment in the Hereafter. Also, since man is naturally inclined to abandon, once he is rich, all concerns of moderation in his spendings, as well as the very anxiety to see that he stays safe against other sins - that is why staying away from wealth has been considered desirable. God bless our earlier people; they would earn, more or less, as needed, were grateful to Allah and ended up being happy that they have succeeded in saving their skins from being ultimately 'audited' for the whats and hows and whereas of spending their wealth, if they had it. But, in our time, people do not care much about matters of faith; they are more attracted to material things; they are all too ready to abandon their faith at the slightest provocation, not because there is some discomfort involved. Rather, they would do that lest they go against fragile fashion, or trend, or some borrowed norm of contemporary society. Therefore, it is important that people earn lawfully and conserve their earnings. For such people, the Holy Prophet صلى الله عليه وسلم has said:

كَأَدُّ الْفَقْرِ أَنْ يَكُونَ كُفْرًا

Poverty can take one to the point of being a disbeliever.

(Mishkāt, p. 439)

Sayyidnā Sufyān al-Thawrī رضى الله عنه elaborates this by saying:

كَانَ الْمَالُ فِيمَا مَضَى يَكْرَهُ، فَمَا الْيَوْمَ فَهُوَ تَرَسُ الْمُؤْمِنِ

Previously, owning and keeping wealth was not considered good, but today, this wealth is a shield of the true Muslim.

He has also said:

مَنْ كَانَ فِي يَدِهِ مِنْ هَذِهِ شَيْئًا فَلْيُصَلِّحْهُ، فَإِنَّهُ زَمَانٌ إِنْ أَحْتَجَّ كَانَ أَوَّلَ مَنْ
يَبْذُلُ دِينَهُ

Whoever has any of this (wealth) in his hands should make it serve him well for these are times when, in the event of some

need, one is likely to first 'spend' his faith in order to take care of that need. (i.e. the desire to fulfill one's need has become more important than the obligation to follow one's faith')
(Mishkāt, p.491)

The injunction to test the ability and understanding of minors

Once we know from verse 5 that minors should not be entrusted with properties until such time that their ability to discern and decide stands proved, the injunctions to educate and test such children to determine their ability follow in the next verse (6).

Verse 6: **وَابْتَلُوا الْيَتَامَىٰ حَتَّىٰ إِذَا بَلَغُوا النِّكَاحَ** translated as 'and test the orphans until they reach marriageable age;' means that children, well before they become pubert and marriageable, should be tested through small assignments of buying and selling in order to determine their ability to conduct themselves in transactions on their own. This process of practical experimentation should continue right through upto the age of marriageability, that is, when they become pubert and mature. This is the time of special assessment. Now it should be determined if they have become smart and self-reliant in their affairs. Once this is sensed as 'dependable', it is time to hand over their property to them.

In short, given the nature of children and the factors involved in the growth of reason and intelligence among them, they have been divided in three stages. One: minority (before puberty). Two: After puberty. Three: After self-reliance, and discretion in conducting personal affairs (*Rushd* as opposed to *Safāhah*). During the first stage, the guardians of children have been instructed to educate and train them by providing for them hands-on experience, that is, let them become smarter by conducting small dealings in buying and selling on their own. The expression: **وَابْتَلُوا الْيَتَامَىٰ** (and test the orphans) in this verse means exactly this. It is from here that Imām Abū Ḥanīfah رحمة الله عليه has deduced the ruling that the transactions of buying and selling entered into by minor children with the permission of their guardian are sound, valid and operative.

In accordance with the other injunction, when children become mature, pubert and marriageable, the guardian should check up their state of growth at that stage in terms of experience, intelligence and dealings, and once it becomes clear that they understand their profit

and loss and handle their affairs and dealings in a satisfactory manner, their property should be handed over to them.

The Age of Maturity

Along with the injunction of maturity (*bulūgh*) in this verse, the Holy Qur'ān has also answered the question as to the 'age' when a child would be taken as mature (*bāligh*) by saying: إِذَا بَلَغُوا النِّكَاحَ translated as 'until they reach marriageability'. Here, it has been indicated that real maturity is not tied up with any particular count of years. Rather, it depends on particular indicators and signs experienced by adults entering the threshold of adulthood. When, in terms of these indicators and signs, they would be regarded fit to marry, they would be considered mature, even if their age does not exceed thirteen or fourteen years. But, should it be that such signs of maturity just do not show up in some child, he shall be considered mature in terms of age, a position in which Muslim jurists vary. Some fix eighteen years for boys and seventeen for girls; some others have fixed fifteen years for both. With the *Hanafīyyah*, the *fatwā* is on the position that the boy and the girl shall both be considered mature under the Islamic law after they have completed their fifteenth year. irrespective of whether or not signs of maturity are found.

The Perception of Proper Understanding : How to find it? An Explanation of اَسْتَسْتَمُّ مِنْهُمْ رُشْدًا

The injunction of the Qur'ān is: 'then, if you perceive in them proper understanding, hand over to them their property.' Now, what is the time of this 'proper understanding' (*rushd*)? The Holy Qur'ān has not elaborated on this final limit of time. Therefore, some Muslim jurists leaned towards favouring the view that the properties of children should not be handed over to them until it has been determined that they do have full and proper understanding. Instead, these will stay under the safe custody of the guardian as usual, even if this state of affairs continues for the rest of life.

But, in accordance with the verification of the issue by Imām Abū Ḥanīfah رَحِمَهُ اللهُ , at this point the absence of 'proper understanding' refers to the state affected by childhood. Within ten years after maturity, the effect of childhood is gone. So, there are fifteen years as the age of maturity (*bulūgh*) and ten years as the age of proper under-

standing (*rushd*). Once these 25 years are reached, such proper understanding is most likely to be achieved; something which was not possible due to the barriers of childhood, and later, younger years. Then, it should be noted that the Holy Qur'an uses the word, '*rushdan*' in its indefinite form whereby it is suggesting that full understanding and perfect sense are not absolute conditions. A reasonable measure of understanding is also sufficient for this purpose on the basis of which their properties could be given to them. Therefore, even if perfect understanding has not been achieved despite the long wait of twenty five years, even then, their properties will be handed over to them. As far as perfect understanding and wisdom is concerned, there are people who do not get to achieve these throughout their entire lives. They always remain simple, innocent and rather shy and slow in conducting their practical dealings. They will not be deprived of their properties because of this. However, should there be someone totally insane, he will be governed by a separate rule since such a person always remains in the category of immature children. His property will never be handed over to him until his insanity disappears, even if his entire life were to pass in insanity.

The Prohibition of Undue Spending from the Property of Orphans

As we know, the verse instructs that the property of the orphans should not be handed over to them until a certain degree of understanding and experience is perceived in them. Naturally, for this purpose, one will have to wait for some more time. In that case, it was probable that the guardian of the orphan could commit an excess against the interests of the orphan. So, the verse goes on to say:

وَلَا تَأْكُلُوهُمَ إِسْرَافًا وَبِدَارًا أَنْ يَكْبُرُوا

And do not consume it extravagantly and hastily lest they should grow up.

Here, the guardians of the orphans have been prevented from two things: Firstly, from spending out of their property extravagantly, that is, from spending over and above normal needs; and secondly, from starting to spend out from their property way before the need to do so, as if in a hurry, thinking of the near future when their wards would grow up and their property would have to be given to them and the

guardian's control will be all over.

The orphan's guardian, if needy, can take out some of his expenses from the orphan's property

Does a person, who spends his time and labour in the upbringing of an orphan and is devoted to the protection of his property, have the right to take an honorarium for his services from the property of the orphan? The rule is given towards the later part of the verse when it is said: *وَمَنْ كَانَ غَنِيًّا فَلْيَسْتَعِينْ* (And whoever is rich he should abstain). It means that a person who is need-free as he can take care of his needs through some other means, then, he should not take any payment for his services from the property of the orphan, because this service is an obligation on him. Receiving payment for it is not permissible. Then, it was said: *وَمَنْ كَانَ فَقِيرًا فَلْيَأْكُلْ بِالْمَعْرُوفِ* (and whoever is poor he should consume in fairness). It means that the guardian of an orphan who is poor and needy and has no other source of earning his livelihood, he can consume a reasonable amount from the property of the orphans for his sustenance in a measure that is just about right to cover his basic needs.

Having witnesses while handing over property

The verse concludes with: *فَإِذَا دَفَعْتُمْ إِلَيْهِمْ أَمْوَالَهُمْ فَأَشْهِدُوا عَلَيْهِمْ ، وَكَفَى بِاللَّهِ حَسِيبًا* . It means: 'when you hand over to them their property (after having gone through the period of test and trial), have (some reliable and pious people as) witnesses upon them (so that there is no dispute later). And (remember that) Allah is sufficient for reckoning (for He has a count of everything within His sight).

Payment for services rendered to country, community and *Awqāf*

The contextual extension of the verse yields an important juristic rule and principle. It concerns people who supervise *Awqāf* (religious endowments, trusts and estates) or manage mosques and religious schools or head institutions of Muslim states or hold charge of similar other services rendered for the country and community, services the rendering of which is known in Islamic terminology as *fard 'ala l'kifāyah* (an obligation which, if discharged by some, will absolve others). For these gentlemen too, the superior and more meritorious conduct is - of course, if they have sufficient assets to take care of the

necessary expenses needed to maintain their family - that they should not take anything from these institutions or from the public exchequer of the government. But, should it be that they do not have funds of their own to sustain themselves and they devote their earning time to such service-oriented activities, then, they have the right to take such funds from these institutions in proportion to their need. Please do notice the condition which is: 'in proportion to need'. A lot of people fix an insignificant monthly emolument shown on paper to satisfy legal requirements but they go on spending by various other means on their person and on their family recklessly, much much beyond it. There is just no remedy for this lack of caution except the fear of Allah. The last words of the verse: وَكَفَى بِاللَّهِ حَسِيبًا (and Allah is sufficient for reckoning) invite everyone, masses or classes, to realize that the man who stays untouched by unlawful acquisitions will be the man who fears the final accounting by Allah. وباللہ التوفیق : And the ability to do so comes from Allah.

Verses 7 - 10

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ
 مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ ۗ نَصِيبًا
 مَّفْرُوضًا ﴿٧﴾ وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ
 وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٨﴾
 وَلِيخَشِ الَّذِينَ لَوْتَرَكُوا مِنْ خَلْفِهِمْ ذُرِّيَةً ضَعِيفًا خَافُوا عَلَيْهِمْ
 فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٩﴾ إِنَّ الَّذِينَ يَأْكُلُونَ
 أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا وَسَيَصْلُونَ
 سَعِيرًا ﴿١٠﴾

For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large - a determined share. [7]

And if the kins and the orphans and the needy are present at the time of distribution, give them some of it

and speak to them in fair words. [8]

And those people should be fearful who, if they leave behind some helpless children, would remain anxious for them. So, they should fear Allah and say what is right. [9]

Surely, those who eat up the property of the orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell. [10]

Right from the opening of Sūrah Al-Nisā', the theme of universal human rights, particularly those relating to family life, has been appearing regularly. Verses before those dealt with the rights of orphans. The four verses here also take up particular rights of women and orphans which relate to inheritance.

The first verse (7) refutes the custom of *Jāhiliyyah* under which women were just not allowed to inherit. The verse declares their entitlement to their share as fixed by Islamic law and strictly forbids any attempt to decrease their due right. Since the subject concerned those who had a determined share in inheritance, and it is not uncommon that when such distribution is being made, some persons from among the poor and the orphans do make their appearance on the occasion, therefore the second verse (8) lays down the rule that they should be treated benignly. But, this command is not obligatory; it is, rather, commendatory.

The third and fourth verses (9, 10) also emphasize the importance of injunctions relating to orphans.

Commentary

The right to inherit from parents and other nearest of kin

Before Islam, orphans and women, the weaker links in the human chain, had been victims of all sorts of injustice. To begin with, none of their rights were recognized as such. Even if one of these was conceded, who could wrest it from men and hope to hold it safe? Such power and authority did not exist.

The breakthrough came when Islam championed their cause, legalized their rights and instituted safeguards to see that these stay secure against infringements. All this happened in the background when nations around the world had allowed these two weaker units of

human society to remain deprived of their natural and obligatory rights. Such was the state of the law of inheritance. The pre-Islam Arabs seemed to have lived by the the very principle that the one deserving of inheritance is the one who rides a horse, fights against enemies and collects battle spoils. (Ruḥ al-Ma'ānī, v. 4, p. 21). As quite obvious, women and children could not live by this principle. So, according to their principle of inheritance, only a young and adult boy could become the inheritor. A girl was absolutely out of consideration for this purpose, irrespective of whether she was major or minor. And a boy too, if minor and immature, would not be deserving of inheritance.

There was an incident during the blessed time of the Holy Prophet رضى الله عنه when a Companion, Sayyidnā Aws ibn Thābit رضى الله عليه وسلم died. He left behind two daughters, a minor boy and his wife as the inheritors. But, very much like the old Arab custom, two of his cousins from the father's side came and took the whole property in their possession and just gave nothing to anyone from among the children and wife of their deceased brother. This may have been so because, according to their customary practice, a woman was absolutely out of the pale of inheritors, major or minor. This conveniently ruled out the wife and the two daughters. As far as the boy was concerned, he was a minor and, therefore, he too was excluded from inheriting anything. As a result, the two paternal cousins became the inheritors of the whole property.

Inspite of what happened, the widow of Sayyidnā Aws ibn Thābit رضى الله عنه still wanted that these cousins who had taken possession of the entire property left by her deceased husband might as well marry the two orphaned daughters so that she is relieved of the concern for their marriage. But, as they did not accept this proposal too, she went to the Holy Prophet صلى الله عليه وسلم and narrated to him her sad story and explained the destitution of her children. Since, by that time, the 'verse of inheritance' was yet to be revealed in the Holy Qur'ān, the noble Prophet صلى الله عليه وسلم withheld his response. His heart was at peace; he was confident that this unjust practice will be removed through Divine revelation. Thereupon, the following verse was revealed:

لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا

For men there is a share in what the parents and the nearest of kin have left. And for women there is a share in what the parents and the nearest of kin have left, be it small or large - a determined share.

After that came the second verse of inheritance which contains the details of shares. The second section of this Sūrah comprises these details. So, the Holy Prophet صلى الله عليه وسلم followed the injunctions of the Qur'an, gave the wife the one-eighth of the total inheritance and distributed the rest of the property over the son and the daughters of the deceased in a way that the half of it went to the boy and the remaining half was shared equally by the two girls; and the cousins, since they were not the nearest of kin as compared to children, were excluded. (Ruh al-Ma'ani)

The rule of inheritance

This verse lays down the rule relating to the law of inheritance as a corollary to some of its injunctions, which is: *... in what the parents and the nearest of kin have left.*) The two words, '*al-wālidān*' (the parents) and '*al-aqrabūn*' (the nearest of kin) spell out two basic principles of inheritance. The first one is the bond of birth which exists between children and their father and mother and which has been described through '*al-wālidān*.' The second one is the general kinship which is the sense of the word, '*al-aqrabūn*'. According to the correct interpretation, the word, '*al-aqrabūn*' covers all kinds of family relationships. This may be the mutual bond of birth as in children and their parents; or, it may be of the other kind as in general family relationships; or, these may be relations established through marital connection. The word, '*al-aqrabūn*' covers all, but parents were set apart specially because of their importance. Then, this word has also established another principle of inheritance, that is, the mere fact of kinship is not enough for a claim on inheritance. Rather, it is necessary that the heir is nearest in kinship, for - if the degree of nearness or closeness were not made the standard condition - the inheritance of every deceased person would have to be, of necessity, distributed over the entire human population of this wide world. The reason is simple

to understand because everyone is the offspring of one father and mother, Adam and Eve, peace be on them. Be it close or not so close, there does exist some sort of mutual relationship in everyone. When it comes to distribution of inheritance, it is, to begin with, beyond the realm of possibility. However, speaking academically, if such an arrangement was somehow made, the resulting distribution of property would be something like one insignificant particle for each which will be no good for anyone. So, it was necessary that, given the pivotal position of kinship in the matter of inheritance, the principle should be: If choice has to be made from a collection of different relatives, then, the nearest of kin should be preferred over the farther ones and, in the presence of the nearest, the farthest should not be given a share. However, if there are relatives who are all declared to be the nearest at the same time, even if the nature of nearness in them be different, then, all of them will deserve a share in the inheritance as the father and mother alongwith children, or wife etc., for they all are the nearest, though the nature of nearness differs.

In addition to that, this very word, '*al-aqrabūn*' establishes that the way men are sharers in inheritance, so are women and children, who too cannot be deprived of this right, for kinship of children, parents or any others, is the same in a boy and girl as far as the fact of being related is concerned. A boy is born to his parents and so is a girl, who is born to them. When the right to inherit depends on being related, there is no sense in depriving a small child or a girl.

Another point about the style of the Holy Qur'ān is worth noticing here. Instead of mentioning the entitlement of women in a separate sentence, the Holy Qur'ān could have easily merged it with the entitlement of men in a single sentence, by saying, "For men and women both there is a share...." But the Holy Qur'ān has elected to mention the entitlement of both sexes in two separate independent sentences, even though it seems to be a repetition. This is to emphasize the fact that the right of women in inheritance is quite independent and is as important as the right of men.

Furthermore, this very word, '*al-aqrabūn*' also tells us that the distribution of property left behind is not based on the criterion of need; it is, rather, based on the criterion of nearness in kinship. There-

fore, it is not necessary that the one more needy among the relatives should be the one more deserving of a share in inheritance. On the contrary, the one nearest in kinship to the deceased will be the one more deserving of a share in the inheritance as compared to the farther - even though, the farther may be poorer and more needy. If we set aside the principle of nearness in kinship and use the need or the beneficial effects for some relatives as the criterion, it can neither turn into a rule nor can it take the form of a settled and solid law, because any criterion, other than nearness in kinship, will inevitably be temporary as based on opinion because poverty and need or usefulness are not permanent. Conditions change. Levels change. Under such conditions, there will appear a host of claimants and those responsible for settlement would have a hard time in arriving at decision.

The problem of an orphaned grandson's inheritance

If this Qur'ānic principle is understood clearly, the problem of an orphaned grandson's inheritance - which has been made to look like a disputed issue for no sound reason - resolves itself automatically on the basis of a categorical decision. In other words, if an orphaned grandson is more needy as compared to the son, but, in accordance with the law of '*al-aqrabūn*' (the nearest in kinship), he cannot claim a share in the inheritance because he is not 'the nearest' in the presence of the son, other arrangements have been made to take care of his needs. One such arrangement appears in the next verse.

This religious position has been opposed by none but some of the contemporary, westernized modernists. Other than these, the entire Muslim *Ummah* has been holding the belief, as clarified by the Qur'ān and the Ḥadīth, that the grandson will not inherit in the presence of a son of the deceased, irrespective of whether his father is dead or alive.

The right of inheritance is operative in everything owned by the deceased

The phrase *بِمَا قَلَّ مِنْهُ أَوْ كَثُرَ* (be it small or large) in this verse corrects another custom practiced by some ignorant people where some things or properties were assigned to special inheritors. For example, a horse or some weapon like a sword could only be inherited by young males as a matter of right. Others were deprived of these. The instruction given by the Holy Qur'ān makes it very clear that in everything under the

ownership of the deceased, be it big or small, there is a standing right of all inheritors. It is not permissible for any inheritor to keep anything special for himself before the total inheritance has been formally distributed according to rules.

Fixed shares in inheritance have been determined by Allah

The last phrase *نَصِيبًا مَّفْرُوضًا* (a determined share) in verse 7 is to stress that different shares fixed for different inheritors in the Holy Qur'an have been determined as such by Allah Almighty. Nobody has any right to add or delete or change or transpose any of these by personal opinion or analogical deduction.

Inheritance is a compulsory transfer of ownership

This particular word, *مَّفْرُوضًا* (*mafrūḍan*: determined) throws light on yet another principle, that is, the ownership which passes on to inheritors through the law of inheritance is automatic and compulsory. It does not require the acceptance or consent of the inheritor nor is it necessary that he be satisfied with it. The fact is that, even if he were to make a clear declaration that he will not take his share, still then, he is the owner of his share in the sight of the Shari'ah. But, if he does not want to keep his share, he may, after having become the owner, gift it to somebody or sell it or distribute it, in accordance with the rules of Shari'ah.

A sign of goodwill to other relatives

It is likely that there are some relatives of the deceased who cannot receive a share from his inheritance according to the rules of Shari'ah. At the same time, it is obvious that everyone does not know the details of the system of share distribution. Generally, every relative would like to have some share out of the inheritance. Therefore, relatives who have been excluded under the provisions of the Islamic law of inheritance may feel disappointed at the time of the distribution of inheritance, specially so when they are physically present at that time, and more so when there are some orphans and poor and needy among them. A scenario in which other relatives are walking away with their respective shares while they simply look on is terrible.

Now look at the beauty and delicacy of the Qur'anic arrangement of things. On the one hand, there is the just rule offered by the Qur'an itself - that the nearer in kinship shall exclude the farther. On the

other hand, there is that wonderful concern for the disappointment of 'the excluded farther'. Therefore, a regular verse (8) has been devoted to carry the necessary instruction as to how this situation will be handled:

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْضُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا

It means that distant relatives, orphans and the needy who are to be excluded from having a share in the inheritance and who, nevertheless, show up at the time of its distribution, then, it is the moral obligation of those who get a share in the inheritance that they voluntarily give them some of it, which would become an act of charity for them, and certainly, a modality of reward from Allah. At a time like this, when wealth and property are coming to them, without their having made any effort, simply through the mercy of Allah Almighty - then, their own hearts should beat with the urge to give whatever they can, in the way of Allah, an example of which appears in another verse (Al-An'am: 6:141) cited below:

كُلُوا مِنْ ثَمَرِهِ إِذَا أَثْمَرَ وَآتُوا حَقَّهُ يَوْمَ حَصَادِهِ

That is, eat the fruit of your farm when it bears fruit and on the day of its harvesting give away the due (of the poor and the needy) on it.

In short, the fact that distant kindred, orphans and the needy assemble at the time of the distribution of inheritance should be no cause of irritation. On the contrary one should be grateful to Allah that He has bestowed on him something he did not work for, therefore, it will be good to give away a part from it as a token of gratitude. In fact, one should take it as a God-sent opportunity to let these people have a little from what they have received which would certainly compensate the sense of deprivation faced by these people. Incidentally, this includes and covers the grandson of the deceased who was excluded from the inheritance.

His uncles and paternal aunts should actually be pleased to give him something each from their respective shares.

The statement at the end of the verse (8): وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا (and speak

to them in fair words) gives the guideline in case these people are not satisfied with the manner and quantum of what they get but start demanding a share equal to that of everybody else, then, this demand being unjust and contrary to Shari'ah, there is no way to satisfy it, however, instead of behaving to them in a crude manner which may hurt their feelings, the actual rules of Shari'ah should be explained to them in a polite manner. They can be told that they do not have a share in the inheritance as stipulated by the rule of Islamic law and that which has been given to them has been given to them as a gift. At this point, one should make sure that the gift or donation given to such people does not come out of the total property inherited. Here it is important that the donation should be made by adult inheritors present, from their respective shares. Such gifts from the shares of the minor and the absent are not allowed in Shari'ah.

Fear Allah while distributing inheritance

The third verse (9) addresses Muslims in general exhorting them to make it certain that the inheritance of the deceased reaches his children fully and fairly. They must abstain from any mode of action which may affect the share of the children adversely. The general sense of the verse covers the eventuality when one sees a Muslim making a will or disposing property off in a manner which could cause damage or loss to his children and other inheritors. If so, one must stop him from such bequeathal or such disposal, very much like what the Holy Prophet صلى الله عليه وسلم did when he stopped the blessed Companion, Sayyidnā Sa'd ibn Abī Waqqās رضى الله عنه, from giving the whole, or half, of his property in charity (*Sadaqah*), allowing him to give only one-third of his property as such (Mishkāt, Bāb al-Waṣāyā, p. 265), because, 'If the whole, or half of the property was given in charity, the share of the inheritors would have either been all consumed, or curtailed.

Also included in the general sense of the verse is that guardians of the orphaned children should protect their property and give it to them in full when they become mature. They should take pains to accomplish this mission of trust and never let the least negligence on their part affect their duty; if they wish that others treat their children well after them, without causing them any harm or injustice, then,

they should treat the children of others - the orphans - in the same manner.

Misappropriation of the property of the orphans

The fourth verse (10) carries a severe warning for those who pilfer or dispose off the property of orphans unlawfully. It declares: 'Surely, those who eat up the property of the orphans unjustly, they only eat fire into their bellies, and soon they shall enter a blazing Hell.'

This verse equates the property of the orphan with the fire of Hell. Many commentators have interpreted this metaphorically, that is, eating the property of the orphans unjustly is like stuffing one's stomach with fire - because this is what is going to happen to him ultimately in the Hereafter. But, those with deeper insights and proofs do not support the presence of some figure of speech here. According to them, whatever is eaten up from the property of the orphan unlawfully is, in reality, nothing but fire - even though, it may not look like fire at that time. This is like somebody saying that the match-box in his hand was fire, or the piece of arsenic, a killer. Obviously, handling a match-box does not burn the hand, nor does arsenic kill a man by simple handling, not even by putting it in the mouth. However, a slight friction reveals that somebody who called the match-box a fire was right; and similarly, once the arsenic goes down the throat, we know that the one who called arsenic a killer was true. Common generalizations of the Holy Qur'ān also support the view that whatever deeds, good or evil, man is doing, these very deeds are the trees, the flowers and the fruits of Paradise, or the embers of Hell - even though, their form here is different, but these will come forth on the Day of Doom transformed in their true forms. The Holy Qur'ān says: *وَوَجَدُوا مَا عَمِلُوا حَاضِرًا*: (Kahf - 18:49) that is, on the Day of Doom, they shall find what they did - present! In other words, the punishment and the reward they shall see will be, in reality, the result of their own deeds.

It appears in some narrations that those who devour the orphan's property unjustly will be raised on the Day of Doom in a state that flames of fire will be seen coming out from inside their bellies through their mouths, nostrils, ears and eyes.

And the Holy Prophet صلى الله عليه وسلم said that a set of people will be raised on the Day of Doom with their mouths erupting with fire. His

noble Companions asked as to who these could be. He said: "Have you not read it in the Qur'an? (which says): *إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا* (those who eat up the property of the orphans unjustly)." (Ibn Kathīr, v.1, p. 456)

The gist of the meaning of the verse is that the property of the orphan eaten up unjustly will be, in reality, the fire of Hell, though it may not be sensed as fire at that time. It is for this reason that the Holy Prophet صلى الله عليه وسلم has given very clear instructions to observe most stringent precaution in this matter. Sayyidnā Abū Hurairah رضى الله عنه narrates that the Holy Prophet صلى الله عليه وسلم said: *أَحْسَبُ مَا لَ الصَّغِيرَيْنِ الْمَرْأَةُ وَالْيَتِيمُ* (I warn you to abstain from the property of the two weak ones - the woman and the orphan.) (Ibn Kathīr, v.1, p.456)

A review at this point shows that the entire first section of Sūrah al-Nisā' contains injunctions relating to orphans. They bid protection of the property of the orphans, avoidance of encroaching on their property as one's own and the giving of their due share from the property they have received in inheritance; and they forbid the hasty consumption of the property of the orphans for fear of their growing mature and assuming its control, or the taking of orphaned girls in marriage and lowering their dower, or to usurp their property. In the end the text says that eating up the property of the orphan unjustly is filling of bellies with fire because, after their death, such people will be recompensed by fire filled in their bellies. Mark the use of the word, 'ya'kulūna' and the warning given to those who 'eat up' the property of the orphan. It means that using the property of the orphan in whatever manner it may be - eating, drinking, consuming, utilizing - is totally unlawful, and a sure cause of Divine wrath. The punishment of eating up what belongs to somebody else unjustly and without any right covers all sorts of uses.

When someone dies, the right of every inheritor attaches itself to everything he owns, to each and every part, to everything big or small. It is tragic that the minor children of the deceased become orphans. Mostly, such children face a certain degree of injustice and excess in every home and everyone who assumes control of the property after the death of the father of these children - whether an uncle or elder brother or mother or some guardian or trustee - falls into doing things forbidden in this section. To begin with, they just go on postponing the

distribution of the property for years together, spending a little here and there to feed and clothe these children. After that, they open up and become all too liberal in spending this jointly-held property on religiously unacceptable practices, customs and wasteful heads of expenditure. They would even spend it on their own person and go on to the limit of manipulating legal documents entering the names of their own children in place of the orphans. These are things hardly a home remains unaffected from.

The donations made for orphans in religious schools and orphanages must be spent on them. Not spending these on the orphans is a form of 'eating up' the property of the orphan.

Rulings

1. Inheritance includes everything owned by the deceased, even the clothes on the dead body. People tend to give these out in charity without realizing that they belong to what has been left by the deceased. There are places where copper utensils are given out to the poor well before the total property is formally distributed, although minors and absentees from among the inheritors have rights in all such things. The proper method is to first distribute the property in accordance with whatever shares are to be received by children, wife, parents, sisters and anyone else as stipulated by the Islamic law of inheritance. Once the ownership passes to sharers, it is upto them who can, if they so desire willingly, give away part of it in charity on behalf of the deceased. If the receivers of such shares wish to do that jointly, let them make sure that they are all adults, for the permission of the minor is not valid. As far as inheritors who are absent are concerned, nothing can be taken from their shares without their permission.

2. The sheet spread over the *Janāzah* while carrying the deceased to the graveyard is not part of the required shroud (*Kafn*). It is not permissible to buy it from the proceeds of the property left by the deceased, because that is something held jointly. However, if someone was to cover the cost on his own, that would be permissible. There are places where a prayer-mat is torn out of the cloth purchased for the shroud and is used by the Imām who leads the *janāzah* prayers. The mat is later given to the Imām. This expense is extra to the needed shroud and it is not permissible to buy it from the proceeds of the hith-

erto combined inheritance.

3. In some areas, new utensils are procured for bathing the deceased and which are broken after use. First of all, there is no need to buy new ones for a bath can be given using utensils already in the house; and if, for any reason, they have to be purchased, then, breaking them is not permissible. It not only amounts to wasting of property but also means causing loss to orphans and absent inheritors whose due rights are attached to the total property.

4. Any expenses before the distribution of inheritance, such as entertainment of guests or charity and alms, are totally impermissible. Giving charity and alms in this manner brings no merit or reward for the deceased. In fact, such giving under the notion that it will bring good returns for the departed soul is a far greater sin. The reason is simple. After the death of a person, all his property belongs to the inheritors in proportion to their respective rights in it. Then, there are orphans among them. Giving away things in charity from the combined property which includes the share of the orphan is like stealing from somebody's property and giving it in charity on behalf of the deceased. This is not correct. First distribute the property, then, let the inheritors give in charity from their shares for the good of the deceased, if they so desire.

It is better not to go for charity and alms from the combined inheritance even before the actual distribution, even though it be with the permission of inheritors. This is because the permission of whoever is an orphan among the inheritors is not just valid right from the outset. As for the adult ones, it is not necessary that their 'permission' comes out of their willing heart. It is quite possible that they are left with no option but give their permission lest they are disgraced before others. In other words, they may say yes with a heavy heart just to ward off the sense of shame.

Let us look at an anecdote ascribed to a pious elder, which will further clarify the issue. This pious elder went to visit a sick Muslim. He had hardly sat with the patient for a little while when the latter died. The sage immediately put out the lamp burning there and gave someone the money to buy oil and re-light the lamp with it. When people around asked him for the reason of his doing so, he said that

this lamp was under the ownership of this person until such time that he was alive and it was correct to use that light. Now that the deceased has left this mortal world, his inheritors have the necessary right over everything he owned. So, it is only through the permission of all inheritors that we can use this lamp and since all of them are not present here, this lamp was lighted at a personal cost.

Verse 11

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ فَإِن كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِن كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِن كَانَ لَهُ وَلَدٌ فَإِن لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ آبَاؤُهُ فَلِأُمِّهِ الثُّلُثُ فَإِن كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِن بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ وَالْأَبَاؤُكُمْ وَابْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِّنَ اللَّهِ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا ﴿١١﴾

Allah directs you concerning your children: for a male there is a share equal to that of two females. But, if they be (only) women, more than two, then they get two-third of what one left behind. And if she be one, she gets one-half. And for his parents, for each of them, there is one-sixth of what he left in case he has a child. But, if he has no child and his parents have inherited him, then, his mother gets one-third. And if he has some brothers (or sisters), his mother gets one-sixth, all after (settling) the will he might have made, or debt. Your fathers and your sons - you do not know who, out of them, is closer to you in being beneficial. All this is determined by Allah. Surely, Allah is All-Knowing, All-Wise. [11]

People entitled to inheritance were briefly mentioned in verse 7 of the previous section which also carries details about some kinds of those so entitled. Also given there are their shares under different circumstances. More details in this connection shall be appearing later towards the end of this Sūrah. Remaining shares have been identified

in *aḥādīth*. Muslim jurists have collected and codified all details of the rules of inheritance from the Qur'ān and Ḥadīth, giving it the status of a permanent science which, in Islāmic terminology, is known as *ʿIlmul-Farāʿid* (the Science of the Laws of Inheritance).

The present verse (11) describes shares for children and parents along with some related aspects of inheritance.

INHERITANCE

Preliminary Rights on the Property of the deceased

According to the principles of Islāmic law, the expenses incurred on the shrouding and burial of a Muslim deceased should be the first thing to be paid out of the property left behind by him. This should be done in accordance with Shari'ah avoiding the extremes of extravagance or stinginess. After that, his debts should be paid. If the amount of his debts is just equal to the property left by him, or even more than that, then, there will be no distribution of inheritance and no application of any will. And in case there remains some property after paying debts, or if there are no debts, then, subject to any will made by him which should not be a will of sin, then, this will should be carried out to the extent of one-third of his remaining property. If someone makes a will for his entire property, it will not take effect. Such will shall be considered valid for only one-third of his property. The fact is that making a will for more than one-third of the property is not appropriate; and if it is done with the intention of excluding inheritors, it becomes a sin.

Once the debts are paid and the will has been applied within one-third, the rest of the property should be distributed among the legal heirs, details of which are available in books of *Farāʿid*, the Muslim law of inheritance. Incidentally, if the deceased has made no will, then, following the payment of debts, the whole of the remaining property shall be distributed as inheritance.

The share of children

As it has appeared in the previous section, the distribution of inheritance shall be on the principle of *الاقرب فالأقرب* (the nearest, then, the nearest). Since the children of the deceased and his parents are