

# International Journal of Literacy and Education

E-ISSN: 2789-1615  
P-ISSN: 2789-1607  
Impact Factor: 5.69  
IJLE 2022; 2(2): 46-54  
Received: 11-06-2022  
Accepted: 16-07-2022

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## Gradation in the provisions of inheritance between the Meccan and the civil eras

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### Abstract

The science of obligatory duties is a great science related to the rights of people among themselves, and in it is the strengthening of bonds of love and affection between people. For the sake of sciences, the knowledge of the obligatory duties is considered dangerous, the highest in rank, and the greatest in reward, and because of its importance, God Almighty has taken over the estimation of the obligatory duties himself. Third: God Almighty took over the division of inheritances himself and did not leave them to any of his creation, because no matter how human beings want to achieve justice, they will not reach or reach it in the fullest manner, and they will not be able to come up with such things. Justice, because they are ignorant of the matter of fathers and sons and do not know which of them is closest to them. The issue of gradualism in rulings has taken a wide space in the minds of scholars, because of its important impact on the nation, in which it facilitates, relieves embarrassment and relieves people. As for what is due by lineage, they did not inherit the young or the female, rather they inherited the one who fought and took the booty. As for the reason by which they inherit, it is two things: one is the oath and the contract, and the other is adoption. Then Islam came and they left for a while as they were, then it was abrogated.

**Keywords:** Inheritance, Meccan, civil, embarrassment, inheritance, generosity, Gradation

### Introduction

Praise be to God, who created man and his generosity and favor over many of those who created a preference and taught him what he did not know, who says in his dear book **نَحْنُ نَحْنُ**: **نَحْنُ نَحْنُ** And prayers and peace be upon our master Muhammad, his family, companions, followers and those who followed them from among the jurists and scholars who supported the religion, and exerted themselves in deriving rulings and clarifying what is permissible and what is forbidden. Science; Because the Prophet, may God's prayers and peace be upon him, made it clear in the authentic narrations that the first of the sciences to disappear and disappear is the science of inheritance, or the knowledge of the ordinances, and the people of the Pre-Islamic era were unjust in their rulings, so they oppressed women and children, they were not bequeathed except to the one who could bring the spoils, - meaning: The fighter - and he is an adult man, so they do not inherit women, nor boys, so the Shariah came to explain the inheritance of the fetus in its mother's womb. These and other reasons were the impetus for writing in this science. As for the reason for choosing this topic ((gradualization in the provisions of inheritance)), what happens from goals that all start with a simple matter and progress until you reach the desired goal. In obedience and worship, we see that gradualism to enter into obedience is a legal matter, so the Messenger of God, may God bless him and grant him peace, taught us how to teach our children to pray when they are seven years old, and to strike it when they are ten years old, and his statement, may God's prayers and peace be upon him, is that this religion is solid, so we have to go into it gently And other evidences on the year of gradualism are many. My methodology in the research includes three sections, which are as follows: The first topic: the reality of gradualism according to scholars, and includes the following demands, the first requirement: the definition of gradation linguistically and idiomatically, and the second requirement: the evidence for the legality of gradualism Transferability and rationality, the third requirement, the reasons for gradualism and the wisdom of it, the second topic: the reality of inheritance and includes the following demands. The first requirement: the definition of inheritance linguistically and idiomatically. The second requirement: evidence of the legitimacy of inheritance, the third requirement: the reasons for inheritance. The third topic: the status of the distribution of inheritance in the Meccan and civil covenants and the balance between them, and includes the following demands.

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inheritance <sup>[41]</sup>.

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A statement of the ruling on the inheritance of the brothers to the father and the mother or to the father. The meaning is that if a person dies without a son and has a sister, then she has half of what he left while he inherits her: I mean, if the sister dies, all her inheritance goes to the brother, if she does not have a son, and if he has a son, then nothing goes to the brother, and if her son is a female, then the brother has no preference over the imposition of daughters. Two, they get two thirds of what he left, he wants two and more, and he who dies and has sisters, they have two thirds, and if they are brothers, men and women, then the male is like the luck of the two females between God for you to go astray, and the verse indicates the inheritance of kalalah <sup>[43]</sup>.

### Sunnah

The honorable Sunnah of the Prophet came to explain and detail what the Noble Qur'an has beautifully illustrated, and legitimizes provisions for which there is no text. On the authority of Sufyan bin Uyaynah, on the authority of Abdullah bin Muhammad bin Aqeel, on the authority of Jaber (He said: The wife of Saad bin Al-Rabee' came and said: "Oh, Messenger of God, these are the two daughters of Saad bin Al-Rabee'. Their father was killed with you on Sunday as a martyr." God will decide on that." So the verse of inheritance was revealed, so the Messenger of God sent to their uncle and said: "Give my two-thirds daughter sad two-thirds, and their mother the eighth, and what remains is yours." <sup>[44]</sup>. The two daughters, Ibn Abbas, may God Almighty be pleased with them, said their ruling is the rule of one, that is, not the rule of the group, because the Almighty made two thirds of what is above them, and the rest said their ruling is the rule of what is above them, because He is the Exalted, as He explained that the share of the male is like the share of the two females if he has a female, which is the two thirds, required that If they imposed two thirds, then when it was illusion that the share would be increased by increasing the number, he rejected that delusion by saying (If they are women above two), and this is supported by the fact that when one girl deserves one third of her brother, then it is more likely that she deserves it with a sister with her like, because the girl has the womb of the two sisters, and it was imposed. They have two thirds by saying (they have two thirds of what he left) <sup>[45]</sup> 2. On the authority of Abu Qais, I heard Hazeel bin Sharhabeel, who said he was asked Abu Musa on the authority of a daughter and a daughter, a son and a sister, and he said: The daughter has the half, and the sister the half, and Ibn Masoud came, so he will follow me. Ibn Masoud was asked, and he was told what my father said, and he said: I have gone astray, if I am not one of the guided, I judge her according to what the Prophet (may God bless him and grant him peace) decreed The Prophet, peace and blessings be upon him, said: "The daughter has the half, and the daughter of the son of the sixth has the completion of the two-thirds, and what is left is for the sister." So we came to Abu Musa and told him what Ibn Masoud had said, so he said: Do not ask me as long as this news is among you <sup>[46]</sup>. On the authority of Abu Hurairah (may God be pleased with him) on the authority of the Prophet (peace be upon him) he said: "Whoever leaves

money, it is for his heirs" <sup>[47]</sup>. 4. It came in the honorable hadith on the authority of Saad bin Abi Waqqas (\*): He said: The Prophet (peace be upon him) came to take me back while I was in Mecca, and he hates to die in the land from which he emigrated. He said: "May God have mercy on Ibn Afra." I said: O Messenger of God, He recommended all of my money? He said: "No." I said: A half. He said: "No." I said: A third, he said: "A third, and a third is a lot..." <sup>[48]</sup>. The Prophet (peace and blessings of God be upon him) that bequests are limited to one-third of the deceased's wealth, for his release (peace and blessings of God be upon him) for the happiness of the bequest with one-third in this hadith, and the scholars are unanimous in saying it and differed in the amount that it is desirable to bequeath the dead, except that the best is for those who have heirs To shorten his will to one-third, whether rich or poor, because when the Messenger of God (peace and blessings of God be upon him) said to Saad: "One-third is plenty," he followed that up by saying: Saad has only one daughter, as mentioned in this hadith, so this indicates that leaving money to the heirs is better than giving in charity with it, and that spending on family is one of the righteous deeds <sup>[49]</sup>.

### Third requirement: The reasons for inheritance

Heir is a person who is related to the deceased either by lineage, causation, or loyalty. Loyalty is almost non-existent at the present time because it was abolished by an international law issued by the League of Nations in 1906 AD. Among the causes of compelling inheritance are: First: kinship: closeness in the womb, and it is a term that includes each one between you and him is kinship <sup>[50]</sup>, and kinship: (it is the connection between two women by participating in a near or distant birth) <sup>[51]</sup>, and he inherits by it because of the Almighty's saying: (And those who believed afterwards and emigrated and struggled with you, then those, the first, and the wombs, one of them, are more deserving of each other in the Book of God - God is All-Knowing of all things <sup>[52]</sup>, and it was said: It is the relative relationship between the heir and the bequeathed by birth <sup>[53]</sup>, and it is called true lineage or relative kinship, and it is called The jurists by the womb, which is derived from mercy, and the cause of kinship is the strongest of the causes of inheritance, and its origin is <sup>[54]</sup>. It includes kinship <sup>[55]</sup>: 1. The offshoots are children and grandchildren (the son, the daughter, the son of the son, and the daughter of the son, even if they descend). Assets such as the father and grandfather, even higher. 3. Notes such as brothers and uncles and their sons. 4. Consanguineous relatives, such as the children of daughters, uncles and aunts. Second: Marriage: the marriage that causes inheritance, is the correct marital contract according to jurists <sup>[56]</sup>, and marriage is the strongest social link, and the husband and wife or wives inherit by it, whether consummation occurred or not, and whether it was a contract Marriage upon the death of one of them is in fact or legal, such as the waiting period of a revocable divorce <sup>[57]</sup>, and if the marriage contract is void or corrupt, there is no inheritance in this contract unanimously, even if the death of one of them is after consummation <sup>[58]</sup>. Between them is the loyalty of any kinship <sup>[59]</sup>, loyalty is of two types: (loyalty loyalty, and emancipation loyalty) <sup>[60]</sup>. Loyalty loyalty: to say to him your guardianship and your contract. A hardship caused by the blessing of the freedman upon his slave-girl by freeing him <sup>[62]</sup>.

### 3. Topic: Inheritance in the Meccan and civil covenants and the balance between them

#### Requirement: inheritance in the Meccan era

The dawn of Islam has dawned in the land of the Arabian Peninsula, as the Arabs inherited among themselves on certain foundations and rules that kept pace with their culture that they inherited with the nature of their social and economic life. (May God's prayers and peace be upon him), especially since the system of inheritance is one of the systems that need to be implemented by the authorities of the state, and the Muslims in Makkah were not a state before the migration. The Arabs used to live in the land of the Arabian Peninsula, where the causes of destitution and deprivation were due to the lack of resources, and the abundance of disputes and wars, which constituted from the spoils they obtained money and property as a source of their livelihood and wealth. They are inherited from relatives, except for those who are strong and able to take possession of the booty and defend it, and they are men, and from them the son and then the son of the son precedes them in the inheritance. The inheritance goes to the brother, then his son, and to the uncle, then his son, and so it is passed on to the male relatives. As for the weak relatives, who are women and young children, they were deprived of inheritance, and this was from the Jahiliyyah, a behavior of the utmost cruelty and ignorance, because the weak heirs of women and children were more deserving of money than strong men. [63] Among the customs that the Arabs inherited before Islam and extended to include the Islamic era, including adoption. This was a well-known custom until today, and is legally recognized in most countries of the world. His discovery that the adopted child was a supporter of the one who adopted him, a helper for him in his life, and a defender of him in his war, so he was equal with the crusader son in rights, including inheritance. A contract was concluded between them, and if one of them dies before the other, and he does not leave an heir soon, the inheritance is transferred to the living allies, and he becomes the natural heir to his dead ally. These are the most important customs that the Muslims inherited according to in Makkah Al-Mukarramah, where God, Glory be to Him, the Exalted, left them an obstacle for a period of time to deal with the systems of ignorance until their souls prepared to accept the new legislation [64].

#### Requirement: inheritance in the civil covenant

Begins when the Prophet (peace and blessings of God be upon him) migrated from Mecca to Medina, as God Almighty legislated a temporary system of inheritance based on shelter and support. Of the immigrants and prefer them over themselves, and share them in their money, and the brother of the Messenger (may God bless him and grant him peace) among them, and Islam has shown through the Qur'anic texts that were revealed in Medina to the Messenger of God (peace be upon him) the role of fraternity in inheritance, the role of kinship and its correct path, and To adopt and the rumors that emerged from it after the adoption of the Noble Messenger (may God bless him and grant him peace) Zaid bin Haritha (may God be pleased with him). These matters are the first reason for the inheritance in Medina, without the inheritance being restricted to men, rather it was made for both men and women, but it was not made clear. Each of the heirs of the

deserving of the inheritance nor their arrangement, then God Almighty explained that in full detail and explained it with a clear statement in the Holy Qur'an [65].

#### The third requirement: balancing the inheritance between the Meccan and civil covenants.

In the civil covenant, Islam balanced its legislation through the revelation of heaven between the two covenants. Islam abolished adoption from its origin and prohibited ascribing a child to someone other than his father. The Almighty said  $\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  [66].

$\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  please I want  $\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  [66] And if adoption is invalidated, then it invalidates all the rulings that resulted from it in the early days of Islam, and the first thing that invalidated that was the adoption of the Messenger of God (may God bless him and grant him peace) to Zaid bin Haritha after she had given him Khadija (may God be pleased with her) and he was called Zaid bin Muhammad, the Almighty said  $\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  [67].

Then God Almighty commanded our master Muhammad (may God's prayers and peace be upon him) to marry Zainab bint Jahsh (may God be pleased with her) after Zaid bin Haritha divorced her, when the Almighty said  $\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  [68].

And as soon as the thorn of Islam was strengthened and Mecca was conquered, and the Arabs entered Islam in droves, there was no more emigration, as the Messenger (peace and blessings of God be upon him) said: ((There is no emigration after the conquest)) [69]. Migration is no longer a cause of inheritance.

When the Almighty said  $\text{أَنْ يَتَّخِذَ مِنْ دُونِ آبَائِهِ الأَوْلَادَ}$  [70].

Also, there is no longer any need for alliance and treaty, for the strength and protection of the Islamic state, and it is no longer a reason for inheritance; to copy it in the generality of the previous verse [73].

answer beard lest why? Why free burial mm Naj we sleep [70].

Also, there is no longer any need for alliance and treaty, for the strength and protection of the Islamic state, and it is no longer a reason for inheritance; to copy it in the generality of the previous verse [73].

#### Conclusion

First: The science of the duties is a great science related to the rights of people among themselves, in which it strengthens the bonds of love and affection between people. Inheritance, and its separation is often known verses, as money and its division are the focus of people's greed, and inheritance is often between men and women, old and young, weak and strong, so that there is no room for opinions and whims. No matter how much they want to achieve justice, they will not attain it or reach it fully, and they will not be able to achieve such justice, because they are ignorant of the matter of parents and children and do not know which of them is closest to them in benefit. Because it has an important impact on the nation, in which it facilitates, relieves embarrassment and eases people. Fifth: Gradual inheritance legislation: The people of the pre-Islamic era inherited two things: lineage and cause. As for what is due by lineage, they did not inherit the young or the female, rather they inherited the one who fought and took the booty. As for the reason by which they inherit, it is two things: one is the oath and the contract, and the other is adoption. Then Islam came and they left for a while as they were, then it was abrogated.

**Margins**

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30. Surah Al-Imran: Verse; p. 180.
31. Surah Al-Hijr: Verse; p. 23.
32. The choice for the chosen explanation; p. 5/92.
33. See: Al-Durrah Al-Bahiya by investigating Al-Rahbiah Investigations with the book Sharh Al-Rahbiah: Imam Muhammad bin Ahmed bin Badr Al-Din, Al-Shafi'i, Sibt Jamal Al-Din Abdullah bin Khalil bin Youssef bin Abdullah, Al-Mardini, and with him Al-Durrah Al-Bahiya book by Al-Rahbiah Investigations: Muhammad Muhyi Al-Din Abdul Hamid. Al-Saada Press - Egypt R;

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