178463 - He gave more to the males than to the females then he died

the question

My maternal uncle was very feeble because of old age and sickness. He was well off, but he was under the influence of one of his sons, who advised him to sell a house for approximately 800 million Iraqi dinars. The son received that money and he gave each of his four sisters 15 million dinars, and each of his brothers 90 million dinars so that they could each buy a house. But when the sisters objected, he took back what he had given them, saying that he would buy houses and register them in the father's name. Then he did not do that whilst the brothers bought houses with the money that he had given them, which was 90 million for each. After a short while the father died. What is the Islamic ruling on this division, as this brother wants to give each sister 15 million that he had taken back from them, and divide the rest of the father's estate in accordance with sharee'ah?.

Detailed answer

Praise be to Allah.

If a man has given his children a gift other than what he is obliged to spend on their maintenance, he has to treat them fairly because of the report narrated by al-Bukhaari (2587) and Muslim (1623) from an-Nu'maan ibn Basheer, who said: My father gave me some of his wealth and my mother, 'Amrah bint Rawaahah, said: I will not approve until you ask the Messenger of Allaah (blessings and peace of Allah be upon him) to bear witness. So my father went to the Prophet (blessings and peace of Allah be upon him) to ask him to bear witness to my gift. The Messenger of Allaah (blessings and peace of Allah be upon him) said to him: "Have you done this for all your children?" He said: No. He said: "Fear Allaah and treat your children fairly." My father came back and took back the gift.

According to another report in Muslim (1623) The Messenger of Allaah (blessings and peace of Allah be upon him) said: "O Basheer, do you have any other children?" He said: Yes. He said:

“Have you given to all of them like you have given to this one?” He said: No. He said: “Then do not ask me to bear witness for I will not bear witness to injustice.”

Ibn Qudaamah (may Allah have mercy on him) said: A man must be fair in giving gifts to his children, and not single out one of them or do anything to indicate that he prefers one of them over another. If he singles out one of them for giving, or he shows that he prefer one over another, then he is sinning, and he must treat them all fairly by means of one of two things, either taking back what he gave to some in exclusion of others, or giving to the others. Tawoos said: That is not permissible, not even if you show preference to one by giving him a burned loaf of bread (that you do not give to the others). This was also the view of Ibn al-Mubaarak, and something similar was narrated from Mujaahid, and ‘Urwah. End quote from al-Mughni (5/387).

If the children are both male and female, then treating them fairly means giving each male the share of two females, because this is the division that Allah has approved for His slaves in terms of inheritance. This is the view of the Hanbalis.

However the majority are of the view that males and females should be given equal shares when giving gifts.

Ibn Qudaamah (may Allah have mercy on him) said: Once this is proven, the fair giving that is recommended is to share among them in accordance with the way in which Allah has ordained inheritance to be shared out. So each male should be given the share of two females. This is the view of ‘Ata’, Shurayh, Ishaaq and Muhammad ibn al-Hasan. Shurayh said to a man who shared out his wealth among his children: Refer to the division of the estate as mentioned in the Book of Allah and share it out accordingly. ‘Ata’ said: They (the salaf) did not share out wealth but in accordance with the Book of Allah, may He be exalted.

Abu Haneefah, Maalik, ash-Shaafa‘i and Ibn al-Mubaarak said: The female is to be given the same as the male, because the Prophet (blessings and peace of Allah be upon him) said to Basheer ibn Sa‘d: “Treat them fairly (equally)” and he explained that by saying: “Would you like them all to honour you equally?” He said: “Yes.” He said: “Then treat them fairly (equally).” And the daughter

is like the son in terms of the duty to honour the parents, and the same applies to giving gifts to her. It was narrated that Ibn ‘Abbaas said: The Messenger of Allah (blessings and peace of Allah be upon him) said: “Treat your children fairly (equally) in giving gifts; and if I were to have given precedence to anyone, I would have given precedence to women over men.” Narrated by Sa‘eed in his Sunan. And because it is a gift given during one’s lifetime, so male and female are to be treated equally, as is the case with regard to spending on maintenance and clothing.

But we say: Allah, may He be exalted, has explained how wealth is to be divided among them and He has given the male a share equal to that of two females. So it should be divided in accordance with the way in which it is to be divided after death, i.e., inheritance.

This is confirmed by the fact that a gift given to children is like hastening to pass on wealth before one’s death, and is similar to what happens after death. Therefore it should be divided in accordance with the way in which it is to be divided after death. This is like when one pays zakaah before it becomes due: it is to be paid in the same manner as it would be paid after it becomes due. Moreover the male is in greater need of wealth than the female because when they get married, the dowry, maintenance and maintenance of the children are the responsibility of the male, and the female is benefitting from all that; hence giving precedence to the male is more appropriate because his need is greater. Allah, may He be exalted, has ordained the manner in which the estate is to be divided and He has given precedence to the male for the reasons referred to above. The same reason is applicable to gifts given during a person’s lifetime.

End quote from al-Mughni, 5/389

If the father gave more to some than they were entitled to during his lifetime, then he died, the children should correct this division and establish justice. They should complete the daughters’ shares so that the daughters will have half of what the males have. Then whatever is left over of the estate should be shared out after that.

Based on that, the sons mentioned have to give each of their sisters 45 million riyals before dividing the estate. If they do not do that, they will be sinning, acting unjustly and consuming

wealth unlawfully.

And Allah knows best.