266636 - Is it fair that both wives share the one-eighth portion equally when one has children and the other doesn't?

the question

husband died, belonged to fiqah jafria, He left two wives behind.

One wife belongs to fiqah jafria and has two children adaughter and a son. The other wife belongs to fiqah hanfia and has no children.

My question to you is about the inheritance. The two children wil get their share and their mother wil get 1/8th which she has to share with other wife who wil finaly get just 1/16 of the share while she has no children and she has nobody to take care of. Is that normal and fair. Please answer.

Detailed answer

Praise be to Allah.

If a man dies leaving two wives, a son and two daughters, his inheritance is divided as follows: The two wives share one-eighth together, based on the saying of Allah (interpretation of the meaning): {But if you leave a child, then for them is an eighth of what you leave} [An-Nisa' 4:12].

The remainder goes to his children, with the male receiving the share of two females, based on the saying of Allah(interpretation of the meaning): {Allah instructs you concerning your children: for the male, what is equal to the share of two females} [An-Nisa' 4:11].

The two wives share the eighth, regardless of whether one has children and the other doesn't. Justice in wives' inheritance means that each wife is equal to the other, with no preference between them - no difference between the beautiful and ugly, noble and lowly, rich and poor, or between one who has children and one who doesn't. This is from the Justice and Wisdom of Allah, as He Himself has undertaken the division of inheritance, specifying the wife's share when there

are inheriting descendants, and explaining the wives' shared portion in this share, thus He Said: {then for them is an eighth"}.

Allah, the Exalted, Said (interpretation of the meaning): {And the word of your Lord has been fulfilled in truth and in justice. None can alter His words, and He is the Hearing, the Knowing} [Al-An`am 6:115]. And Allah, the Exalted, Said (interpretation of the meaning): {Indeed, Allah orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded} [An-Nahl 16:90].

What remains of the faith of a believer in the Lord of the Worlds if a faith untainted by doubt, and certainty unmixed with uncertainty in Allah's complete and absolute Justice, in His Judgment and Command, in His Decree and Predestination, and that He is the All-Knowing, the All-Wise, glory be to Him is not established in his heart?! Mu`adh ibn Jabal (may Allah be pleased with him) would never sit in a gathering of Dhikr without saying: "Allah is the Just Judge; the doubters are ruined!" (Narrated by Abu Dawud, 4611; classed as authentic by Al-Albani)

It's as if the questioner suggests that the wife with children should receive more because she will take care of her children?! It is said: Her children will have their share of the inheritance. In this case, she is not obligated to spend on them from her money. Instead, she spends on them from their own money.

As for the husband being Ja`fari and the wife being Sunni, this situation has a clear ruling. As long as the husband died while married to this Sunni woman, and they both believed in the validity of this marriage, and no judge ruled to annul it or separate them, then all related rulings remain valid. This includes the waiting period (`Iddah), lineage (Nasab), and inheritance. These rights are established by this marriage just as they would be in a completely valid marriage.

Shaykh Al-Islam Ibn Taymiyyah (may Allah have mercy on him) said: "The establishment of lineage does not require the validity of marriage itself. Rather, the child belongs to the marriage bed, as the Prophet (peace and blessings of Allah be upon him) said: "The child belongs to the marriage bed, and for the adulterer is the stone." (Related by Al-Bukhari and Muslim).

If someone divorces his wife three times and has relations with her, believing the divorce did not occur - whether due to his ignorance, or following a mistaken mufti's fatwa, or for other reasons - then the child's lineage is attached to him, and they inherit from each other by consensus. Similarly, if someone marries a woman in an invalid marriage - whether its invalidity is unanimously agreed upon or disputed - or has relations with her believing her to be his lawful wife, then his child's lineage is attached to him, and they inherit from each other by consensus of the Muslims. This is what the Rightly Guided Caliphs ruled, and the scholars of Muslims agreed upon it."

This applies to what is unanimously agreed upon as invalid, so what of that which is disputed? (*Majmu` Al-Fatawa*, 34/14) Please see: (*Fatawa Ar-Ramli*, 2/244)

And Allah knows best.