Can a Father Loan his Pre-Pubescent child's Gold?

Darulifta Ahlesunnat (Dawateislami)

Question

What do the noble scholars and jurists of Islamic law say about the following: A pre-pubescent (non-baligh) child owns some gold which is kept with his father's. Can the father spend this gold for his own needs with the intention of returning the same amount of gold to the child after he becomes baligh?

Answer

As long as the father of this pre-pubescent does not face any such need that there is no other alternative than spending that gold, such as if a father need money for food and water and he currently doesn't have any money with him, until then, he is not permitted by Sharī'aĥ to spend that gold for his own personal needs, even if he has the intention to return that same amount of gold after the child becomes baligh.

The details are mentioned below:

Taking the child's gold with the intention of returning its 'Misl' (equivalent) is a transaction of debt which is purely harmful [ضربحض]. The principle of Sharī'aĥ is that even the guardian cannot do such transactions which are purely harmful for a non-baligh child. It is stated in Al-Durr Al-Mukhtar:

It is stated in Radd Al-Muhtar:

كذالاتصحى غيره كأبيه ووصيه والقاضي للضرر، قلت: ومواضع الضرورة مستثناة عن قواعد الشرع (Al-Durr Al-Mukhtar Ma'a Radd Al-Muhtar, Vol. 6, p. 173, Publ. Egypt)
The Zahir Al-Riwayah and Asah (most accurate) position is that even a father cannot give the child's wealth as a loan to someone else, nor can he take it as debt for himself. Regarding giving it as a loan, it is stated in Al-Mabsoot Lil-Sarakhsi:

والاولٰى ان يختار رجلا حراعاقلا بالغاقد حج، عالمابطريق الحج وافعاله، ليقع حجه على اكمل الوجوه (Al-Mabsoot Lil-Sarakhsi, Vol. 1, p. 103, Publ. Dar Al-Ma'rifah, Beirut) It is stated in Al-Bahr Al-Ra'iq regarding taking the wealth as debt:

(Al-Bahr Al-Ra'iq, Vol. 8, p. 528, Publ. Dar Al-Kutub Al-'Islami)

The father is like the 'Wasi' (guardian) and not the 'Qadi' (judge). Clarifying this, it is stated in Qurrah 'Ain Al-Akhyar Li-Takmilah Radd Al-Muhtar:

(Qurrah 'Ain Al-Akhyar Li-Takmilah Radd Al-Muhtar, Vol. 7, p. 297, Publ. Dar Al-Fikr, Beirut)

It is further stated in Majma' Al-Damanaat:

فلوأخذالوصى مال اليتيم قرضاً لنفسه لا يجوزويكون ديناً عليه ، وعن محمد وليس للوصى أن يستقرض مال اليتيم في قول ابي حنيفة رحمه الله

(Majma' Al-Damanaat, p. 39, Publ. Dar Al-Kutub Al-Islami) It is stated in Bahar-E-Shari'at:

Translation: A father and 'Wasi' (guardian) do not have the right to give the non-baligh child's wealth as a loan. (Bahar-e-Shari'at, Vol. 2, Sect. 12, p. 908, Publ. Maktaba-Tul-Madinah, Karachi)

But if there is a need or necessity, the father can take the child's wealth as a loan, as the situation at the time of need has been excluded in the text of Radd Al-Muhtar mentioned above. Shams Al-A'immah Sarakhsi writes in his Al-Mabsoot:

وعندناليس له في مال ولده ملك ولاحق ملك فهو ضامن له إذا أتلفه ، وإن ثبت له شرعاحق التناول منه بالمعروف عند الحاجة فذلك لا ينفى الضمان عند عدم الحاجة كالمرأة فإن لها أن تنفق من مال زوجها بالمعروف فإن أتلفت شيئا من ماله بدون الحاجة كانت ضامنة فالأب كذلك

(Al-Mabsoot Lil-Sarakhsi, Vol. 30, p. 143, Publ. Dar Al-Ma'rifah, Beirut) The Imam of Ahl-Us-Sunnah رحمه الله writes in Fatawa Razawiyyah:

أقول: يعنى بحالت فقر بلاقيمت اور بحالتِ احتياج حاضر مثلًا سفر مين بهون اور مال گهر مين بوعده قيمت تصرف كرسكتے مين - - - جامع احكام

الصغار پھر حموى اشباہ اور تا تارخانيہ پھر روالمحارميں ہے: اذااحتاج الاب الى مال ولده فان كانافى المصرواحتاج لفقره اكل بغير شيئ وان كان فى المفازة واحتاج اليه لانعدام الطعام معه فله الاكل بالقيمة

جامع الفصولين فوائدامام ظهير الدين سے ہے: لو كان الاب في فلاة وله مال فاحتاج الى طعام ولده اكله بقيمة لقوله صلى الله تعالى عليه وسلم الاب احق بمال ولده اذا احتاج اليه بالمعروف والمعروف ان يتناوله بغير شيئ لوفقيرا والافبقيمته

Translation: I say: In the state of poverty, they can spend the wealth without paying its price, and in the situation of need, such as when they are traveling and the wealth is at home, they can use it with the promise of paying its price... It is stated in Jami' Ahkam Al-Sighar, Hamwi Ashbah, Tatarkhaniyah, then Radd Al-Muhtar:

(اذااحتاج الابالي مال ولده فان كانافي المصرواحتاج لفقره اكل بغير شئ وان كان في المفازة واحتاج اليه لانعدام الطعام معه فله الاكل بالقيمة) Translation: When the father needs the child's wealth, if they are in a city and the father needs it due to poverty, he can spend it without paying the price. But if he is in a desert without any food and he needs that wealth for the food, he can spend it if he pays the price. It is stated in Jami' Al-Fusoolain Fawa'id Imam Zaheer-Uddin:

(لوكان الاب في فلاة وله مال فاحتاج الى طعام ولده اكله بقيمة لقوله صلى الله تعالى عليه وسلم الاب احق بمال ولده اذا احتاج اليه بالمعروف والمعروف ان يتناوله بغير شيئ لوفقير او الا فبقيمته)

(Fatawa Razawiyyah, Vol. 2, p. 508, Publ. Raza Foundation, Lahore)

وَاللَّهُ أَعْلَمُ عَزَّ وَجَلَّ وَرَسُولُه أَعْلَم صَلَّى اللهُ تَعَالَى عَلَيْهِ وَاللهِ وَسَلَّم

(Allah Almighty knows best and His Messenger صَلِّى اللهُ عَلَيْهِ وَالْهِ وَسَلَّم knows best.)

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