

# Ruling on Inheritance of a Missing Person

## Darulifta Ahlesunnat

(Dawateislami)

### Question

What do the Scholars of Islam and the Muftis of the Shari'ah say regarding this issue that my name is \_\_\_\_\_, and my husband's name is \_\_\_\_\_. My husband was addicted to hashish etc. He used to leave home, then he would eventually return. However, since 2009 he has been missing without any information about his whereabouts or whether he is alive or deceased. My husband was born on 01-01-1958 which corresponds to 10 Jumada al-Ukhra 1377 AH, making him 66 years old according to the Islamic calendar. Both of his parents passed away during his lifetime, and he does not have any sons. Among his heirs are his wife, three daughters, two brothers and two sisters. My husband owns a house in his inheritance. How will this house be divided?

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

الْجَوَابُ بِعَوْنِ الْمَلِكِ الْوَهَّابِ اللَّهُمَّ هِدَايَةَ الْحَقِّ وَالصَّوَابِ

If a person goes missing and it is uncertain whether he is alive or dead, then his status regarding his property is considered as if he is alive, and his property will not be inherited. Instead, the property will be preserved. If he returns by the age of 70 years, his property will be returned to him. However, if it is still unknown whether he is alive or dead when he turns 70, the matter should be presented to the Qazi-i-Shehr (city Islamic Judge). In the absence of a judge, if the city Mufti makes a ruling declaring his death, then whatever possessions he has at that time will be distributed among the individuals who are alive at the time of his presumed death. Those who have passed away before his presumed death, will not inherit his property. Therefore, in the case asked, the inheritance rulings do not currently apply to your husband's property. Once your husband reaches the age of seventy years, if it is still unknown whether he is alive or dead, the matter should be presented to the city's Mufti or a senior Islamic scholar who can act as a substitute for a judge. If the Mufti or the substitute judge issues a ruling declaring his death, then the heirs who are alive at that time will receive a distribution of the property according to their respective shares.

In Durar al-Hukkam, an explanation of Ghurar al-Ahkam, it is mentioned:

«غائب لم يدر أثره» أي في أي موضع هو «ولم يسع خبره» أي هو أمر ميت «حي في حق نفسه» بالاستصحاب «ولا يقسم ماله قبل أن يعرف حاله» لأن ظاهر حاله الحياة والقسمة بعد المات -- «وبعد» أي بعد موت أقرانه «يحكم بموته في» حق «ماله يوم تمت البدء» --  
ويقسم ماله بين من يرثه الآن ولا يرثه وارث مات قبل البدء»

It is mentioned in Bahar-e-Shariat: "If a person is missing and there is no information about his life or death, he is considered alive in terms of his own wealth, and his wealth cannot be divided among the heirs, but for the wealth of others, he will be considered as dead, i.e. he will not inherit from anyone. The property of the missing person will be kept safe, until the

ruling about his death is issued and its duration according to the opinion of the author of Fath al-Qadir is, after seventy years of the missing person's age have passed, then the judge will pass the order of his death. At that point his wealth will be divided among the heirs who are present at the time of the death order. The wealth of the missing person will be kept safe until the ruling of his death is issued and it will be distributed among the heirs who are alive at that time.”

Sadr al-Sharia Badr al-Tariqa Mufti Muhammad Amjad Ali Azami رَحْمَةُ اللَّهِ عَلَيْهِ responds to a similar question: "A person who is absent in such a way that he cannot be traced is referred to as a missing person. In such cases, the person's wealth should be preserved until his death is confirmed or the Qazi (Islamic Judge) issues a ruling of death. The timing of when the judge orders the death may vary according to the opinions of different Islamic scholars. But the view adopted by Imam Ibn Humam is that his age should reach seventy years. It is mentioned in Radd al-Muhtar from Fath al-Qadeer:

”واختار ابن همام سبعين لقوله عليه الصلوة والسلام اعمار امتي ما بين الستين الى السبعين فكانت المنتهى غالباً“

And since the said woman's age is about seventy years, therefore, if it is proved that the age of seventy years has passed, then the ruling of death can be issued. However, this is the task of the Islamic Judge and since there is no Islamic Judge in India, the responsibility falls on the most senior Islamic Scholar of the city, as in this scenario he can be the substitute of a Judge. The matter should be presented to him, and if he issues a ruling of death, then in this case, the deceased's wealth should be divided equally between the two heirs according to the conditions of Shariah.

وَاللَّهُ أَعْلَمُ عَزَّوَجَلَّ وَرَسُولُهُ أَعْلَمُ صَلَّى اللَّهُ تَعَالَى عَلَيْهِ وَآلِهِ وَسَلَّمَ

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**Ref No:** FAJ-7046

**Date:** 5th Ramadan ul Mubarak, 1443 A.H. (April 7, 2022)



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