

The Laws of Inheritance in Islam

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ABSTRACT

The laws of inheritance in Islam have been discussed in this article with the object of enhancing the awareness among the Muslims regarding inheritance. The scope of the research article is mainly concerned with the Sunni law of inheritance. Whenever a Muslim male/female dies then it becomes the responsibility of their close relatives to make sure that the estate/property of the deceased left is distributed among the legal heirs according to Islamic Law enunciated in the Holy Qur'an and Sunnah. Here particular focus is on the rights and responsibilities as defined by the Shariah law regarding inheritance. The wealth and property we have in this life as a human being is a trust from Allah Almighty and it is our responsibility to use it for His sake extends beyond our death, for on the day of Judgement we will surely be asked about our money and how we spent it.

KEY WORDS: Inheritance, Islam, Muslim, Shariah, Heirs, Share.

INTRODUCTION

Inheritance is basically the transfer of status to the living person from the deceased with respect to the specific estate/property objects (P. C. Lloyd) [1]. Generally the laws of succession are divided into two groups: testamentary and intestate. Majority of the modern systems of succession are based on the individual's freedom to decide the future of devolution his estate upon his death. These are known as testamentary systems of succession. The case in which there is compulsory imposition of succession rules by requiring that on the death of a person his property be transmitted in a foreseeable way to those entitled to it is known as the intestate succession system [2].

Inheritance particularly in the Islamic world is one of the commonest ways of acquiring land or access to land. There is no specific definition of the word inheritance in the Holy Quran but has been defined by the Muslim jurists in different ways. Sir Abdur Rahim's definition of inheritance is that it is the transfer to the heir of the deceased's rights and obligations. According to Coulson it is the distribution of assets/estate of the deceased that remain after the satisfaction of his funeral expenses, debts, and valid bequest. In general, the law of inheritance may be described as the transfer of all the assets of the deceased person to the legal heirs along with any transferable rights as well. The rights which can be transferred comprises of such rights as property, debts and other rights from which the legal heirs can receive compensation on behalf of the deceased person [3]. Irrespective of their specific faith, generally in Muslim societies, inheritance rules concerning an individual's property upon death are derived from religious sources [4]. The principles of inheritance in Qur'an and Hadith cater a wide range of beneficiaries and outline how to divide the estate among the heirs under various scenarios after the death of a person. It deals with two main issues:

1. To provide a system for the distribution of property among heirs, in order to avoid fight.
2. To establish a system based upon justice and avoid concentration of wealth in a single entity [5].

Due to the complexity of the principles found in various religious sources, the Muslim societies on the other hand have elaborated inheritance rules which allow the distribution of wealth in a systematic fashion. This systemization is based on jurisprudential methods.

Therefore, the rules of inheritance differ between the Sunni and Shiite schools of law and across Muslim countries. However, Qur'an principles in respect of the designated heirs, their respective shares and order of priority are the common basic denominator [6].

The Meaning of Inheritance:

Inheritance is basically the transfer of the deceased person property to the living person along with any other transferable rights. Inheritance has a different meaning in Islam. There is no particular definition of the word Inheritance in Qur'an but various scholars have defined it in their own ways. According to Sir Abdur Rahim inheritance is the transfer of the rights and obligations from the deceased person to his/her heirs [7].

Coulson's definition of inheritance is the distribution of estate of the deceased's person among the heirs after the payment of funeral expenses, debts and valid bequest [8]. In Islam, the rules of inheritance are

generally described as both an entrance of the heirs into the possession of the estate of the dead person, and a succession to any transferable rights of the dead person. These rights which are transferring comprises of property rights and other such rights as debts and to receive compensation on behalf of the dead person [7].

Therefore, law of Inheritance is an essential element of Islam and its application in Muslims is mandatory due to the Devine teachings. As per Qur'anic teachings, the Muslims inherit from one another as per described share mentioned in the Holy Qur'an for the heirs of the decedent in his/her all assets. Majority of the rules relating to inheritance are explained in the Holy Qur'an, Hadith of the Holy Prophet (P.B.U.M.) and Fiqh.

Whenever a person (Muslim) dies then the following main duties need to be performed. Which are:

1. Funeral and burial expense payment.
2. Debts payment.
3. Testamentary will's execution of the deceased person (which may not be more than one third of the property of the deceased person).
4. Distribution of the remainder of estate and property of the deceased person among the relatives according to Islamic law [9].

Here we will confine ourselves to the fourth and last issue by assuming that the first three issues have been resolved. Our first task is to determine the legal heirs of the dead person who can inherit from him/her and after solving that matter then the quantum of the share of these heirs which they will receive as inheritance from the dead person.

The importance of inheritance in Islam is evident from the holy verses of Qur'an which immediately follows those holy verses and gives particular details about inheritance shares, "These are hududes (limitations) (set by) Allah (S.W.T.), and whoever obeys Allah (S.W.T.) and His Prophet (P.B.U.H.) will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success [10].

Holy Qur'an says:

لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ
الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا ﴿٧﴾

“4:7 There is men's share and women's share from parents which they left and near relatives to those, whether, the assets they left be smaller or larger in size - a legal share“ [An-Nisa 4:7][5].

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ
وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا ﴿٨﴾

“4:8 And at the time of division of the property give the relatives, the orphans and the poor (AlMasakin) their share and to speak with them in a kind manner and justice.”

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعْفًا
خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا ﴿٩﴾

“4:9 And let there be fear in the minds of those (executors and guardians) as they would have for their own, if they had left weak offspring behind. So let them fear from Allah and speak the right words.”

وَلِكُلِّ جَعَلْنَا مَوَالِي مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَالَّذِينَ عَقَدَتْ
أَيْمَانُكُمْ فَآتُوهُمْ نَصِيبَهُمْ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا ﴿٣٣﴾

“4:33 and we have made heirs for all, to what is left by parents and relatives. And to those whom your oaths have bound [to you] – give them their share. Indeed Allah is ever, over all things, a Witness” [5].

With relates to the inheritance, the Prophet (P.B.U.H.) said:

Ibn 'Abbas narrated that the Holy Prophet (P.B.U.H.) said, "Give the Fara'id to those who are legally entitled to it according to Holy Qur'an. Then if there is any property left, it should be transferred to the close male relative of the dead person." [Sahih al-Bukhari][11].

The Holy Prophet (Peace Be Upon Him) said about the will/bequest:

Abdullah bin Umar narrated that Allah's Messenger said, "It is not permissible for any Muslim who has something to will to stay for two nights without having his last will and testament written and kept ready with him" [Sahih al-Bukhari][12].

Heirs (Legitimate) in Islam:

Islam has divided legitimate heirs into three categories; the first one is Primary category, the second one is known as Secondary category and the third one is Substitute Heir's category.

The Primary category comprises of parents, spouses and children. The Secondary heir's category is the agnate brothers, uterine brothers and sisters. The third category which is Substitute includes agnate grandsons, agnate grand-daughters and agnate grandfathers and grandmothers. The legal share which they receive is different from one another and from one class of heirs to another one [3].

As mentioned above the Primary category of heirs include spouses, parents and children.

The Substitute class take the share of those heirs which they substitute in their absence as Primary heirs.

The Secondary category of heirs is not entitled to specific shares rather they receive those shares which are left over to them after the satisfaction of specified heirs. They also get those shares which are voluntarily given to them by the primary class of heirs. The Holy Qur'an strongly recommends that the primary category of heirs be kind to secondary heirs [3].

Primary Heirs-Level: I (Obligatory/Immediate)/Ashab-ul-Furud:

The meaning of Primary category of Heirs or Ashab-ul-Furud is "possessors of obligatory share". This category comprises of members of family having confirmed shares which are clearly stated by the Holy Quran. Therefore, these are known as Obligatory shares or Qur'anic heirs, which is exclusively mentioned in Surah Al-Nisa (verses 4:11-4:12) of the Holy Qur'an.

The total number of Primary heirs is twelve, nine of which are mentioned in the Holy Qur'an while Fuqaha have added the remaining three by using the method of Qiyas [13].

The Primary heirs which are classified as Level:1 are:-

1. SPOUSES (Husband and Wives (maximum four)). 2. PARENTS (Father and Mother). 3. CHILDREN (Sons and Daughters). 4. GRAND-CHILDREN (Son's SON/Son's DAUGHTER only) (only applicable when the SON is already dead and has offspring) [14].

SECONDARY Category of Heirs/ AL-ASABAT - Level II:

The Prophet (Peace Be Upon Him) said: Fara'id should be given to those persons having a legal right over that. If there is still anything left then it should be given to the nearest male relative of the dead person" [Bukhari Sharif].

The secondary category of heirs is classified as Level II which are:

1. Grand-parents (Paternal and Maternal Grandparents),
2. Brothers &/or Sisters (In absence of Son & Father only),
3. Uncles &/or Aunts (In absence of the Grandparents only),
4. Nephews &/or Nieces (In absence of the Brothers & Sisters only)[3].

SUBSTITUTE Heirs - Level III:

These heirs (Substitute) are classified as Level III which are:

1. Agnate grandsons,
2. The Agnate grand-daughters, &
3. The Agnate Grandparents (agnate grandfathers & grandmothers).

By examining the relevant Verses of The Holy Qur'an and the precedent established by the Holy Prophet (P.B.U.H) and His Companions, Islamic scholar were able to develop a system that ultimately created a hierarchy of heirs which accommodated those individuals and entities not mentioned in the Holy Qur'an.

Therefore, majority of the Muslim scholars are agree that a person has a right to inherit from the deceased person if he/she is related to him/her by way of (a) Marriage (Nikah), (b) True-kinship, or (c) Guardianship[15].

Lawful Heirs Scheme of Shares:

The law of inheritance describing the entitlement of specified legal heirs to a share (s) of the net assets of the dead person as specified in the Qur'an are very clear and straightforward, but the calculation of their particular shares may be quite difficult which depends on their configuration of the respective Heirs surviving the dead person.

The following Table gives an overview of the inheritance rules of Islam for the distribution of assets of the deceased person among the legal heirs and provides a guide line for simple cases [16].

HEIRS	
HUSBAND	
In case where there is no child/grandchild surviving the dead person	1/2
In case if there is a surviving child/grandchild of deceased person	1/4
WIFE	
Suppose there is no child/grandchild surviving the deceased person	1/4
Suppose if there is a surviving child/grandchild of deceased person	1/8
SON	
In case where there is no daughter of the deceased person	Residuary
In presence of a daughter (he (son) shares with his sister, but he is entitled to 2 shares for every share given to her)	Residuary
DAUGHTER	
In case where she is single (sole) daughter	1/2
If there are 2 or more daughters (the daughters portion is shared equally among them), then	2/3
But if there is a son (then she shares with her brother, but is entitled to 1 share for every 2 shares given to him (brother))	Residuary
FATHER	
In case if there is a child/grandchild surviving the deceased person	1/6
But if there is no child/grandchild surviving the deceased person	Residuary
MOTHER	
	1/6
Paternal Grandmother (her portion is shared with maternal grandmother)	1/6
If Mother or Father of the deceased person survives	Nil
PATERNAL GRANDFATHER	
In case if there is no father, child/grandchild of the deceased survives	Residuary
If son or grandson of the deceased person survives	1/6
In case if father of the deceased person survives	Nil
Maternal Grandmother (her portion is shared with paternal grandmother)	1/6
If Mother of the deceased person survives	Nil
BROTHER	
In case if the father, son/grandson of the deceased person survives	Nil
If there is no father, son/grandchild of the deceased person survives	Residuary
SISTER	
In case if father, son/grandson of the deceased person survives	Nil
In case if she is sole sister	1/2
If there are 2 or more sisters (they share equally)	2/3
If Brother of the deceased person survives (they share 2:1 with Brother)	Residuary

It is clear from the above table that the Islamic law of inheritance is very much clear and simple that every Muslim can assess it. There is no question of 'aul or rad' in it. All aspects of it are unambiguous and clear. Even both the Bedouin and scholars can distribute their legacies with equal ease. The logic behind the rules of inheritance in Islam is that a man inherit double as compared to a woman must be considered in view of the male's duty to help the family economically whereas the female can do with her wealth as she wishes. The well known Holy Qur'anic verse says that the women protection and maintenance is the responsibility of men (4:34) must be considered in the financial and social context, not taken to understand that the man controls the whole life of female [17].

THE RULES OF EXCLUSION FROM INHERITANCE:

There are certain exceptions in the Islamic law of inheritance which debar a person from succeeding to the estate of the praepositus, despite of the fact that he may stand to the deceased person in relation of an inheriting kinsman. These rules of inheritance are called the legal causes of exclusion [2]. The reasons which exclude a Muslim from inheritance are four in number, which are:

1. Homicide (al-Qatl): The Holy Prophet (P.B.U.H) said that a killer cannot inherit from a victim (dead) [18]. Therefore, all Muslim scholars have unanimous agreement that a murderer cannot inherit from the victim. But there are certain qualifications to this particular rule of inheritance if murdering is justified or in self-

defence or war or unintentional etc. The four Sunni Madhabs have slight differences over the details of some form of killings.

- A. Hanafi Fiqh bars the killer from inheritance except with the following qualifications:
1. Killing justified by Shariah.
 2. In self-defense killing.
 3. Lawful killing.
 4. Act of a minor/mad man.
 5. Direct killing by minor/lunatic.
 6. Indirect killing.
- B. Shafii School of thought bars the killer from inheritance including minor/lunatic as well.
- C. According to Maliki Fiqh the killer is barred from inheritance including minor/lunatic killer except if (1). Killing justified by Shariah; (2). In self-defense killing; (3) killing in retaliation; (4) killing without intention.
- D. According to Hanbali Fiqh a killing which can be punished (Qisas as well) bars a person to inherit except if such: (1). Murder justified by Shariah; (2). In self-defence killing/war; (3) Death in retaliation.
2. Religious Differences (Inheritance by a Muslim from Non-Muslim and from Muslim by a Non-Muslim): The Holy Prophet (P.B.U.H.) Said that "A person believing in Islam cannot inherit from a Non-Muslim, neither a Non-Muslim can inherit from a believer of Islam" [Bukhari, Muslim, Muwatta, Tirmidhi, Abu Dawud and Ibn Majah].
3. Slavery & Inheritance: All Muslim Scholars are agreed on this issue that a slave cannot inherit from his/her master neither a master can inherit from a slave.
4. Differences in Citizenship: A person residing in Dar-ul-Kufr can't inherit from a person of Dar-ul-Islam. But, Muslim jurists of present time consider this application only to those persons who do not believe in Islam [5].

SPECIAL CASES IN THE ISLAMIC LAW OF INHERITANCE:

There are some special circumstances which are creating problems for the application of the law of inheritance; in order to tackle such difficult situations Muslim jurists have evolved principles for its solution. Such problems primarily occur due to the happening of an event, the occurrence of which raises difficult issues/problems for the law of inheritance. In certain situation, the very status of a particular person can also lead to a problem/issue for its resolution under the law of inheritance. Such cases are discussed under the following categories:

A. Illegitimate Child:

1. The Holy Prophet (P.B.U.H.) said that "If a person commits zina (fornication) whether with a free/slave woman, the offspring is the product of zina, such child can't inherit from them neither anyone of them can inherit from such a child" [19].
2. An illegitimate offspring can't receive inheritance from their father; neither can his /her father receive inheritance from such a person.

B. Adopted Child:

Islamic law of inheritance does not recognize the concept of adoption, because no line of inheritance under Islam can be established without a blood relationship.

1. Islamic law does not recognise adoption of a child just like his own son; hence such a person is unable to receive anything in inheritance. However a guardian can add him/her in his/her Will (which can't exceed 1/3 of estate of the deceased person);
The Holy Qur'an says about adopted child in the following words:
33:4 ... nor has Allah made your adopted sons your real sons. That is but your saying with your mouths.
2. All related laws continue to be applicable on adopted Children.
 - I. Such children must follow the rules related to Mahram/Non-Mahram, and therefore not allowed to mix with other members of the family.
 - a) However a child adopted at a very young age and have shared milk of mother with others, then such a person can mix with other members of the family of adopted parents; as such person can't marry with their milk-brother/sister under Islamic law.
 - II. Adopted children are allowed to marry with real Children of their adopted parents.
 - III. Adopted children can't receive anything in inheritance under the Islamic law [5].

C. A CHILD IN THE WOMB:

A child in the womb of a mother at the time of his/her father's death can inherit under Islam and a share in the inheritance at the time of distribution has to be reserved for him/her. The presumption of the law is that a child born alive is possessed of the right of inheritance under Islam from the time of conception [8].

Further a child in the womb of a mother might belong to one of the following categories:

- I. Those who totally exclude other heirs under Islamic law of inheritance;
- II. Those who partially exclude other heirs under Islamic law of inheritance;
- III. Those who participate in the inheritance with other heirs under Islamic law of inheritance [20].

D. LAW RELATED TO HERMAPHRODITE:

1. A person whose sexual position is ambiguous and difficult to be declared is known as Khunta Al-Mushkal.

2. The gender of this type of individual is decided upon his/her physical appearance under Islamic law.
 3. The calculation of share for such a person should be both of a man and a woman.
- Hanafi School of thought is of the opinion that Khunta Al-Mushkal is entitled to a smaller share. Majority of the Companions of Holy Prophet (P.B.U.H) are agreed upon this [5].

4. LAW OF INHERITANCE RELATING TO MISSING PERSON:

1. Missing person is defined in Islamic law as an individual whose where-about is unknown and no one is sure that such a person is still alive or not and the word Mafqood is used for him/her.
2. Until his/her confirmation of death by someone, such an individual be considered alive under Islamic law.
3. The share of such an individual is reserved till his/her return. If such an individual is not returning to his/her home and is confirmed by someone that he/she is dead, then the share of such an individual be divided among the heirs as per Islamic law.
4. The time of death of such a person is calculated from the time when he/she disappeared and the legal heirs of such person are ascertained from that date [5].

5. LAW OF INHERITANCE RELATED TO STEP-RELATIONS:

Step-relations under Islamic law have no right of inheritance from each other. There is no tie of consanguinity as mentioned in Shariah between them. Therefore, in Islam a stepson and a stepmother are not heirs to one another [2].

CONCLUSION:

As law of inheritance is an important element of Islam; which is defined as succession and entrance into the rights of the deceased person with respect to his/her property and has mandatory application under the Shariah. When a Muslim dies, then the relatives of the deceased person have a legal share in his property/estate. After the death of a Muslim, four functions needs to be performed by the heirs: 1. Funeral and burial payment; 2. Debt payment, if any; 3. Will execution of the deceased if there is any (not more than 1/3 of the estate). 4. Distribution of the deceased remainder estate/property as per Islamic law.

It can be concluded from the above that Islam is a religion with complete code of conduct and inheritance is one of them and by proper application of the Islamic Law of Inheritance as well as the other Laws of Islam, it is possible for us to make sure peaceful environment in this world and can ensure peace in the life after death.

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