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INHERITANCE UNDER MUSLIM LAW

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ABSTRACT

According to the general rule of inheritance, an individual's inheritance only becomes available upon their death. No one, even an heir, can assert any claim to the property. According to Islamic law, a child born into a Muslim family is entitled to a birthright not be entitled to the property just because he was born into the specified family. In actuality, none of these people become a legitimate heir and as a result, they have no rights up to the ancestor's passing. An heir becomes a legitimate successor and is thus entitled to a portion of the property if he survives even after the death of the ancestor. But if the presumed heirs pass away before their ancestor, then there will be an inheritance or stake in the property. According to the doctrine of representation, if an ancestor passes away during their lifetime but their heirs continue to live, then those heirs are entitled to a portion of the property since they will now be representing their immediate generation. The Roman, English, and Hindu laws of inheritance all acknowledge the concept of representation. Nonetheless, the Muslim Law of inheritance does not include this theological depiction.

KEYWORDS: Inheritance, Ancestor, Depiction, Birthright, Successor, Property

INTRODUCTION

The term "intellectual property" describes the conveyance of assets from a deceased individual to a living relative. Muslims have several personal rules that regulate the devolution of inheritance. These laws are derived from primary canonical sources such the Sunnah, the Ijma, the Qiyas, and the Holy Quran, as well as pre-Islamic customary succession laws. It is common knowledge that Two types of succession exist: testamentary succession, in which a will was made before to the death of the decedent and not testamentary (when the decedent passes away intestate, that is, without leaving a will). In Islamic law, testamentary lineage is regulated by distinct Shariat regulations for the Sunni and Shia factions. The Quran and Hadith are the sources of the distinctive mechanism used in Muslim inheritance laws to divide successors into "sharers" and "residuary" categories.¹

¹ John Esposito, Islam the Straight Path. (Oxford University Press, 2016
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MUSLIM LEGAL CONCEPTION OF INHERITANCE

The Prophet's enumeration of Islamic or Quranic teachings is the foundation of the concept of inheritance. Islamic jurisprudence does not acknowledge co-tenancy, and the successors are tenants-with-common, meaning they are only eligible to inherit the shared portions of the property. The court noted in the 1989 case of *Abdul Raheem v. Land Acquisition Officer*² that the joint family arrangement is not followed or recognised by Muslims when it comes to inheritance and that the title, interest, and privileges of a Muslim in his estate pass away upon his death and become the property of others. But not every kid born into a family is assured inheritance; that is, inheritance is not at all a birthright according to Islamic law. An apparent heir must live after the deceased in order to inherit. As long as the unborn child is born alive, it can also inherit while still inside its mother's womb. The kid's vested portion of property is forfeited in the event of a stillbirth, as the child will be regarded as if it never existed. Both male and female heirs are entitled to inherit property under Islamic law. Within the heir class, cognates or near female heirs are acknowledged. However, in the Islamic system, women will be better off financially thanks to mehr and their husbands' support, whereas men only have inheritance, which helps them fulfil their obligation to support their wives and children. As a result, women only receive the percentage of shares that their male counterparts were given make up half.³

However, in a married relationship, each spouse has an equal claim to inheritance from the other. A widow is also covered by the inheritance plan. If a widow is childless, she receives 1/4 of her deceased husband's property; if she is a grandmother or has children, she receives 1/8 of his estate. In contrast, a widow would not be entitled to inherit if she married a Muslim man when he was ill and that marriage was not consummated as a result of the marriage's circumstances. However, her ability to inherit remains unrestricted until she remarries if her spouse filed for divorce before she passed away from illness. By designating them as the first-in-line heirs or immediate inherit, Islamic laws likewise grant precedence to the deceased's ascendants over their descendants in the inheritance arrangement. Two categories of successors are recognised in the Islamic inheritance system: the residuaries, also known as conventional heirs, and the Sharers, or Quranic heirs. The traditional tribal norms of succession were modified by the Quran to conform to Islamic doctrine. The creation of the class of "sharers,"

² 1999(4)KARLJ372

³ Margaret S. Crocco, Nadia Pervez and Meredith Katz, "At the Crossroads of the World: Women of the Middle East," *The Social Studies* 100, no. 3 (2009): 108.

(Website-lexscriptamagazine.com) ⁴ (lexscriptamagazine@gmail.com)

or "Quranic heirs," which resulted in the acceptance of heirs that the conventional succession laws had previously barred, is the main change to customary law. As a result, in the event that Muslim man "M" passes away and leaves behind his wife "W" and his sons "S1" and "S2," W, as the sharer, will seize 1/8 (one-eighth) of the land, with the S1 and S2 residues will receive the remaining 7/8 (seven-eighths). However, the Sunni and Shia Muslim sects use Quranic concepts differently, resulting in the inheritance laws of Shias and Sunnis are slightly different from one another.

SUNNI INHERITANCE LAW

The Hanafi school of thought and the Hanafi school of law rule the Sunni community in India. In order to avoid depriving the customary heirs of their share, the Hanafi rules only provide a portion of the inheritance to the Quranic heirs, so attempting to establish a more harmonious relationship between the Quranic and customary laws. It is significant to remember that the favouritism of agnates towards cognate successors persisted in the newly formed class of heirs, notwithstanding the inclusion of females. In other words, the Quranic class acknowledges that, like their male counterparts, female agnates have the right to inherit a portion.

There are two situations in which the conventional heirs and the heirs of the Quran have different inheritance positions:

The customary heir receives the remainder of the estate after the Quranic heir, if the Quranic heir was nearer the departed than the traditional heir. The customary heir receives twice as much as the part awarded to the Quranic heir in cases where the two heirs are equally close. Though agnates receive precedence in inheritance over cognates, cognates like uterine brothers and sisters are included in the succession, thus agnates are not entirely cut off. Sharers or residuaries are the deceased's heirs under Hanafi law, and under the estate is distributed to additional family members of the departed who are classified as "distant kindred" in the event that neither of these types of heirs is present. If there is no heir or if a disability prevents a distant relative the estate is given to the state upon inheritance through escheat, which means that if a Muslim passes away without leaving any property behind, it becomes state property.⁴

⁴ Natana J. DeLong-Bas, Islam: A living faith. (Anselm Academic, 2018)

Additionally, the Sunni law provides for the per capita distribution of estates, which divides the deceased's inheritance equally among their heirs. As a result, the number of heirs determines how many shares a person receives.

SHIA INHERITANCE LAW

The broad guidelines of Ithna-Ashari law serve as the foundation for Shia inheritance law. In contrast to the rigid interpretation adhered to the Sunni law, the Quranic precepts are construed extremely broadly here. Shia laws result in a highly significant divergence in the concepts and guidelines of succession, giving them an essentially autonomous system of succession. Shia law divides property among heirs according to the strip to which each one belongs, a practice known as per strip distribution. In terms of inheritance, males over females or agnates over cognates are not given preference in Shia law. However, there is one exception to a husband and wife's rights: the deceased's estate passes to the equally based on blood ties, with females in each class only being permitted to take half of the male portion. Because the collaterals, ascendants, and descendants all inherit alongside one another there is no hierarchy about who gets the estate first. As a result, two types of relations serve as the foundation for the Shias' entitlement to inheritance:

- Nasab: consanguinity or kinship ties;
- Sabab: heirs by affinity, by marriage, or particular cause.

THE MUSLIM LEGAL PRINCIPLE OF SPES SUCCESSIONIS

One significant property transfer regulation is the spes successionis doctrine. The Latin maxim "expectation of succession" is known as "spes successionis." It denotes the expectation that an individual who appears to be another person's heir would inherit that person's estate upon their passing. According to the rule, a person does not automatically acquire an interest in property just because they are likely to inherit it when someone else passes away. Therefore, a person's "expectation" or "chance" to inherit a property does not grant them any legal ownership rights. It is forbidden for a Spes Successionis to be transferred in Section 6(a) of the Transfer of Property Act, 1882 applies to Indian law.⁵ The Muslim law of inheritance, however, does not recognise the spes successionis rule. As a result, giving up the opportunity of succession is seen to occur with the transfer of spes successionis. The possibility of an apparent A Muslim heir who inherits property cannot be the topic of a legal release or transfer.

⁵ Abdullah Ali Al-Jazi. "The Ethical Concepts in the Islamic Education Book for Sixth Grade Basic (Comparative Study)." World Journal of Education 8, no. 3 (2018): 131.
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It was decided in *Shehammal v. Hasan Khani Rawther and Ors.*⁶ that a family arrangement does not necessarily need to take the doctrine of *spes successionis* into account. One of the presumed heirs in this instance to inherit a portion of the plaintiff's estate was the respondent. However, the respondent and his father signed a deed giving up the respondent's ownership rights pertaining to the property in return for money before the respondent had received his portion. The Apex Court had to rule on whether a Mohammedan may, even before obtaining the property, give up his right to inherit through a family agreement. It was decided that in situations when inherited rights are given up over consideration or in family arrangements, the doctrine of *spes successionis* might be disregarded.⁷

CLASS OF INHERITORS IN ISLAMIC LAW

Sharers and residuary classes of heirs make up both the Shia and Sunni inheritance structures. The two, however, differ in terms of organisation, hierarchy, and share allocation.

Class of heirs in the Law of Hanafi

The following classes comprise a deceased Muslim's heirs:

1. Sharers
2. Residuaries
3. Distant kindred relations

There are twelve of the deceased's relatives listed as sharers, and they are classified as class I heirs.

1. Wife (Widow):

She receives 1/8 (one-eighth) of the share if she is a parent, and 1/4 if not. She can never be left out.

2. Husband:

In the event that the spouse (widower) is childless, his share amount rises to 1/2 (one-half). He is entitled to 1/8 (one-eighth) of the shares. He can never be left out.

⁶ (2011) 9 SCC 223, para 36.

⁷ Muhammad Faizul Haque et al., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study." *International Journal of Islamic Business & Management* 4, no. 1 (2020): 15.

3. Daughter:

The only daughter is entitled to half of the shares. In the event of many individuals, they jointly take home two thirds of the shares. She turns becomes a residuary when she has a son. She can never be left out.

4. Daughter of the Son:

1/2 (one-half) of the shares; if there are two or more, 2/3 (two-thirds) of the shares. If there is just one daughter, one-fourth (1/4) of the share is reduced, and if there is one higher son's daughter, it is decreased to 1/8 (one-eighth). She turns into a residuary when a son's son is present as well may be disregarded under some circumstances.

5. Full Sister:

A full sister receives 1/2 (one-half) of the shares; if there are two or more, they receive 2/3 (two-thirds) of the shares collectively. She turns into a residuary when her brother is present. may be disregarded under some circumstances.

6. Consanguine Sister:

If there are two or more, the consanguine sister receives 1/2 (one-half) of the shares and 2/3 (two-thirds) of the total. Her portion decreases to 1/6 (one-sixth) in the presence of a complete brother, and she turns becoming a residuary when there is a consanguineous brother may be disregarded under some circumstances.

7. Uterine Sister:

The uterine sister receives 1/3 (one-third) of the share if there are two or more, and 1/6 (one-sixth) of the share if there is only one. may be disregarded under some circumstances.

8. Uterine Brother:

1/3 (one-third) shared if two are together, and 1/6 (one-sixth) share if one is alone.

9. Mother:

Mother: always included, receives one-sixth of the shares. If she has a sibling or no children of her own, her becomes 1/3 (one-third) of the share. If the deceased's spouse is still alive, she will receive 1/3 (one-third) of the shares remaining after reducing their shares.

10. Father:

He receives one-sixth of the shares and is never left out. He becomes a residuary in the event that neither a child nor a son's kid.

11. True Grandmother:

A true grandma is entitled to one-sixth of a share. She may be excluded in some circumstances.

12. True Grandfather:

A true grandfather is entitled to one-sixth of a share. He is not included except in specific cases. He becomes a residuary if there isn't a child or a child of his own.

Heirs of Class II

The class II heirs are made up of the general and Quranic residuaries. Members who were initially sharers but became residuaries because of specific circumstances or the existence of a higher degree heir are known as Quranic residuaries.

Five Quranic residuaries exist:

- i. Because the deceased's son exists, the daughter becomes a koranic residue.
- ii. Because there is a lower degree male agnatic heir or a son's son, the daughter of the father becomes a residuary.
- iii. The daughter of a son's son becomes a residuary when an agnatic male heir of lesser rank or a son's son's son exists.
- iv. Complete sister: when a complete brother is present, she becomes a residuary.
- v. Consanguine sister: she turns into a residue because of the consanguineous brother's presence

Three categories can be used to group the residues:

- i. The parents, grandparents, and other family members who directly either come before or after the deceased are known as the ascendants.
- ii. The descendants, or those who are descended directly from the deceased through biology, such as children, grandkids, and so forth.
- iii. The collaterals are those who are not the deceased's biological relatives but rather his or her descendants through a parallel lineage. For instance, consanguineous sisters, brothers, and uncles; paternal aunts. maternal uncles, aunts, etc.

The collaterals are further subdivided into the grandfather's and father's descendants.

- Descendants
 1. Son
 2. Son's son, no matter how humble
- Ascendants
 3. Dad
 4. The real grandfather Collaterals are the father's offspring
 5. Complete sibling

6. Complete sister
7. Sibling consanguineous
8. Sister consanguine
9. Son of the full brother
10. Son of the consanguineous brother
11. A full brother's offspring
12. The son of a consanguineous brother
13. Collaterals: the real grandfather's descendants
13. Completely dad's uncle
14. Uncle Paul is a consanguineous
15. The son of a full paternal uncle
16. The son of a consanguineous paternal uncle

Heirs of Class III

The distant kindred inherit the deceased's estate in the event that neither sharers nor residuaries are present. This class consists of all blood connections, including female agents and male and female cognates, item was left off of the sharers' and residues' list. The distant relatives fall under the categories of collaterals, ascendants, and descendants. There are an infinite quantity of descendants, ascendants, and collaterals, and all degrees of ties are represented.

- Offspring
 1. Despite how low, the daughter's offspring and their progeny
 2. Children of a son's daughter and all subsequent progeny, no matter how small
- Progenitors
 1. Phoney granddad, no matter how high
 2. False grandma, regardless of how high
- Collaterals: parents' descendants
 1. Daughters of a full brother and their offspring
 2. Daughter of a consanguineous brother and her offspring
 3. Offspring of a uterine brother and their lineage
 4. Daughters of consanguineous brothers and their offspring daughters of full
 5. Brothers and their descendants
 6. Offspring (full, consanguineous, or uterine) of sisters
- Collaterals: direct grandparents' descendants (false or true)

1. Daughters of a condescending paternal uncle and his progeny
2. Full paternal uncle's daughters and their progeny
3. Uncles who were paternal in utero, as well as their offspring and descendants
4. Full paternal daughters; uncles' sons and their offspring
5. Daughter of the sons and their descendants of her consanguineous paternal uncle
6. The descendants of the full, consanguine, or uterine paternal aunt, as well as her offspring
7. Maternal uncles, aunts, and the offspring and heirs
 - Descendants, no matter how exalted, of distant ancestors, whether real or imagined.

The inheritance is transferred to the state through escheat in the event that none of the three

HEIR CLASS UNDER SHIA LAW

The successors of Shia Muslims are divided into two groups:

- i. Marital heirs: the husband and wife
- ii. By consanguinity

The husband and wife always inherit with all other kinds of heirs since they are never left out of the Shia heirship arrangement. According to Shia law, the status of remote kindred is not recognised.

Class – I heirs

Not all shareholders are Class I heirs under Shia law.

1. Husband
2. Wife
3. Father
4. Mother
5. Daughter
6. Grandchildren
7. Son
8. distant lineal ancestors

Heirs of Class II

As heirs by consanguinity, class II is made up of three subcategories, a, b, and c, with heir priority descending from a to b.

1. The parents
2. Offspring and subsequent ancestors
3. Grandparents, both real and imagined
4. Siblings and the offspring of them

5. The deceased's paternal uncles and aunts, parents, grandparents, and all gradations of their descendants
6. The deceased's maternal uncles and aunts, as well as their parents, grandparents, and all gradations of descendants

Property belonging to a Muslim who goes away without leaving any heirs is transferred to the state through escheat.

THE RADD AND AUL DOCTRINE

Fractions of the shares are given to the heirs. The theories of return (Radd) and increase (Aul) are used in situations where the fractions are either greater or less than unity, or when they do not add up to unity. Shares among the heirs can be altered by implementing these theories. It is noteworthy that the Sunni rules acknowledge both of these ideas; on the other hand, the Shia community rejects the Aul doctrine.

Doctrine of Radd

Following the distribution of shares to shareholders, if any residual shares remain after other residual shares have been taken, they are redistributed among the remaining shares in accordance with their respective shares. In the event that there is no residuary successor, the leftover property is not transferred to distant relatives. The Doctrine of Radd, or return, refers to the sharers' entitlement to receive the remaining shares in the event that there are no residues. As an illustration, a mother and her daughter who share property receive $\frac{1}{2}$ (one-half) and $\frac{1}{6}$ (one-sixth), in that order.⁸ When we sum together these shares, the fraction that results is $\frac{2}{3}$, or two thirds, which is less than unity (1). The residual is therefore the remaining $\frac{1}{3}$ (one-third) portion. Should there be no leftovers heirs, this portion will be redistributed among the shares once more in accordance with the Radd doctrine.⁹

Doctrine of Aul

The extra amount is subtracted from the full or consanguineous sister, or from the daughter or daughters or sisters, If all of the shares awarded to the shareholders exceeds unity (1). A Muslim woman, for instance, would leave behind her husband, father, and two children in the

⁸ Rahman Md Habibur, Abu Talib Mohammad Monawer, and Noor Mohammad Osmani, "Wasiyyah Wajibah in Islamic Estate Planning: An Analysis," *Jurnal Islam Dan Masyarakat Kontemporer* 21, no. 3 (2020): 74.

⁹ Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate*, (New Haven: Yale University Press, 1992)

event of her death. Each of them would receive a portion of $\frac{1}{4}$ (one-fourth), $\frac{1}{6}$ (one-sixth), and $\frac{2}{3}$ (two-thirds), in that order. This comes to $\frac{13}{12}$ (thirteen-by-twelve), which is greater than unity. First, the denominators are raised to the total sum of sharers and made common by applying the Doctrine of Aul. Twelve by Thirteen becomes $\frac{13}{13}$ as a result.¹⁰ Subsequently, the sharers receive new fractions of shares, with the husband, father, and both daughters receiving in that order, $\frac{2}{13}$ (two by thirteen), $\frac{3}{13}$ (three by thirteen), and $\frac{8}{13}$ (eight by thirteen).

MUSLIM LAW'S INHERITANCE PROCEDURE

The Islamic legal system did not include any provisions for managing an estate for the benefit of heirs; rather, it just outlined the procedures for distributing an estate upon death. Thus, the Indian Succession Act, 1925 governs the administration of a deceased person's estate. Under Islamic law, the inheritance process is administered as follows:

1. A Muslim's legal agent after death is designated as his executor or administrator. There can be no non-Muslim executor.
2. The executor gathers the assets, pays off obligations and debts, settles bequests, and divides any remaining assets among the heirs.
3. In cases when the deceased passed away testate (with a will), a probate must be sought in order to realise debts. If the deceased passed away intestate—that is, in the absence of a will, an administration letter must be procured and presented in court.
4. The executor takes over in the capacity of both bare trustee to the heirs for the remaining two-thirds of the shares and active trustee for the bequeathable one-third of the shares after paying the funeral costs and the deceased's debts.
5. The court receives the appended writ of administration or probate along with the written or oral will. The executor's claim is set up to serve as the estate's representative for all purposes once they are granted.
6. The court appoints a new administrator along with an annexed copy of the will in case the executor is unable to attain probate. If the deceased's heir, legatee, or creditor is eligible to receive the letter of administration.

¹⁰ Albert Hourani, *A History of the Arab Peoples* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2002), 121.

7. Anybody with a claim to the deceased person's assets may bring a lawsuit to declare and convey their interest, administer the estate, identify debts and obligations, and distribute debts among heirs according to various rules of descent.

Appointing an executor or administrator is a necessary step in the procedure. However, if a Muslim passes away without designating an executor, the heirs become the legal possessors of the estate. The heirs serve as the deceased person's legal heirs. However, in this instance an Administrator General's Act certificate, or an Indian Succession Act of 1925, succession certificate of must be obtained. It will not be feasible to file a lawsuit against the deceased's debts without these certificates.¹¹

CONCLUSION

For Muslims in India, inheritance is regulated by their individual personal rules, which are grounded in Islamic or Quranic precepts. It provides comprehensive guidelines on inheritance, distribution, and estate administration, so establishing the framework for how inheritance should be passed down within a Muslim household. Muslim personal regulations, however, are extremely inflexible and rarely subject to debate or revision. There have long been worries about things like the unequal property rights for both sexes' heirs, the removal of stepchildren, illicit children, and the non-recognition of adopted offspring, among other things. Additionally, there is a continuous legal and judicial battle to reconcile state legislation with the constitution, which necessitates creating a more all-encompassing legal system that might try to harmonise constitutional and personal laws.

¹¹ John Esposito and Natana J. DeLong-Bas, *Women in Muslim Family Law*, (New York: Syracuse University Press, 2001)