Islamic Law of Inheritance

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Inheritance in ISLAM
Types of Laws in Islam

- Criminal laws: theft, murder, slander…
- Civil laws: regulates relations between people and state
- Business laws: buying, selling, hiring, Riba (interest)…
- Family Laws: marriage, divorce, inheritance
- International laws: warfare, treaties, places of peace, places of war, slavery…
- Ritual laws (rules): how should I pray, do pilgrimage?
Divine Decree for Inheritance

Surah-e-Nisa : Verse 11
Divine Decree for Inheritance

- Allah instruct you concerning your children's (inheritence); a male receive a share equal to that of two females. But if they (the children) are women, and are more then (or equal to) two, their share is two thirds of that which he (the deceased) had left. And if there is only one woman, her share is half (of the estate). And for his parents, each one's share is a sixth of that which he left if he had children. But if he had no children, and the parents inherits from him, the mother's share is one third. And if he had siblings, the mother share is one sixth. (These distribution should be done) after the payment of any bequeathals that he may have made or debts (that he may have had). Your parents and offspring-- you do not know which among them are nearest to you in benifit. (These share are) an ordainment imposed by Allah. Indeed Allah is knowing and wise.

**Surah-e-Nisa : Verse 11**
Surah-e-Nisa : Verse 12

Divine Decree for Inheritance
You receive one half of that which your wives leave if they have no child. If they have a child, you receive one forth of what they leave — after payment of any bequeathals that they had made of debts (that they had). And they receive one fourth of that which you leave if you have no child. If you have a child, they receive one eighth of what you leave — after payment of any bequeathals that you had made of debts (that they had).

If the man or woman whose inheritance is in question has neither ascendants nor descendants, but has a maternal brother or sister, each one of them to receives a sixth; and if they were more then two, they share a third — after payment of any bequeathals that had been made of debts (that are owed), and that are not intended to cause harm (to the legal inheritors). This is a commandment from Allah, and Allah is ever knowing and Tolerant.

Surah-e-Nisa : Verse 12
When a Muslim dies there are four duties which need to be performed. These are:

- Payment of funeral expenses.
- Payment of his/her debts.
- Execution of his/her will.
- Distribution of remaining estate amongst the heirs according to Sharia.
Inheritance in Pre-Islamic Arabia

• In old customary system only the male agnates (asaba) were entitled to inherit. (Rejected by Law Giver ﷺ)

• Females were not entitled for any type of inheritance (Rejected by Law Giver ﷺ)

• Amongst the male agnates there were rules of priority, which determined which of the surviving male agnates were entitled to inherit. *It is likely that this rule of priority is continued in Islam. In Islam son takes priority over the father who in turn takes priority over the brothers who in turn take priority over the paternal uncles.*)
The Pre-Islamic Practice according to Sunnis and Shias

• The Sunni Islamic law of inheritance is therefore, an amalgamation of the Quranic law superimposed upon the old customary law to form a complete and cohesive system. The rights of the asaba were recognized by the Prophet Muhammad (SAW) himself. Abdullah ibn Abbas (RA) reported that the Prophet Muhammad (SAW) said, "Give the Faraid (the shares of the inheritance that are prescribed in the Quran) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased." (Sahih al-Bukhari)

• The Shia jurists on the contrary took the view that since the old agnatic customary system had not been endorsed by the Quran it must be rejected and completely replaced by the new Quranic law.
Obligatory Sharer (Ashab al-Faraid)

• Women in this context refers to daughters. The Quran gives the daughter a specific share. In legal terminology the daughter is referred to as a Quranic heir or sharer (ashab al-faraid). The Quran mentions nine such obligatory sharers as we shall see later. Muslims jurists have added a further three by the juristic method of qiyas (analogy). So in Islamic jurisprudence there are a total of twelve relations who inherit as sharers.
Safeguard to the Interest of Women

• "Allah commands you regarding your children. For the male a share equivalent to that of two females." [Quran 4:11]

• This first principle which the Quran lays down refers to males and females of equal degree and class.

• This means that a son inherits a share equivalent to that of two daughters, a full (germane) brother inherits twice as much as a full sister,

• Similarly a son’s son inherits twice as much as a son’s daughter and so on.

• This principle is however, not universally applicable as we shall see later in verse 4:12, the descendants of the mother notably the uterine brother and uterine sister inherit equally as do their descendants.
• "If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]

• If there are any sons the share of the daughter(s) is no longer fixed because the share of the daughter is determined by the principle that a son inherits twice as much as a daughter. In the absence of any daughters this rule is applicable to agnatic granddaughters (son's daughters). The agnatic granddaughter has been made a Quranic heir (sharer) by Muslim jurists by analogy.
• "If (there are) women (daughters) more than two, then for them two thirds of the inheritance; and if there is only one then it is half." [Quran 4:11]

✓ If there is only a single daughter or agnatic granddaughter her share is a fixed one-half.

✓ If there are two or more daughters or agnatic granddaughters then their share is two-thirds.

✓ Two or more daughters will totally exclude any granddaughters.

✓ If there is one daughter and agnatic granddaughters, the daughter inherits one-half share and the agnatic granddaughters inherit the remaining one-sixth, making a total of two-thirds. If there are agnatic grandsons amongst the heirs then the principle that the male inherits a portion equivalent to that of two females applies.
• "And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the heirs then for the mother one-third." [Quran 4:11]

• The Arabic word "walad" has been variously translated as child, son, children and offspring by translators. However, there is universal agreement amongst the Sunni Muslim jurists that "walad" here refers to any child or agnatic grandchild (grandchild through son).
"And for his parents for each of them there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the (only) heirs then for the mother one-third." [Quran 4:11]

- If there is a child or agnatic grandchild amongst the heirs then each of the parents inherits one-sixth.
- In the absence of a child or agnatic grandchild the mother inherits one-third.
- The share of the father is not mentioned under these circumstances. The father in fact inherits as a residuary (a residuary heir gets whatever remains of the inheritance after the Quranic sharers have been allocated their shares, residuary heirs are generally male agnates) under these circumstances.
- To these two Quranic heirs, the mother and the father, the maternal grandmother and paternal grandfather have been added by analogy. The maternal grandmother substitutes the mother in the latter's absence.
• "... but if he has brothers (or sisters) then for the mother one-sixth" [Quran 4:11]

• The consensus of opinion is that the word "akhwatun" used in the Quranic text means two or more brothers or sisters of any kind. So that any combination of full, consanguine or uterine brothers and sisters, if two or more will mean that the mother inherits a one-sixth share.
"And for you there is one-half of what your wives leave behind if there is no child, but if they leave a child then for you there is one-fourth of what they leave behind; ... " [Quran 4:12]

- Again according to Islamic law the word "walad" here is interpreted as child or agnatic grandchild.
- The husband, another Quranic heir, inherits one-half in the absence of a child or agnatic grandchild.
- He will inherit one-quarter in the presence of a child or agnatic grandchild.
Before continuing with the translation of verse 4:12 let us consider a situation where a woman dies leaving behind a husband and both parents as the only heirs.

The husband inherits one half of the estate, there is no argument on this point.

However, if we give the mother a one-third share then the father is left with only one-sixth. Should the male (father) not get twice the share of the female (mother) of equal degree and class?
• This problem arose during the caliphate of Umar ibn Khattab (RA). After consultation with the learned companions (RA) the majority opinion was that the father should get twice the share of the mother, that is to say, the principle that the male inherits the share of two females is upheld. The father therefore, inherits one-third and the mother one-sixth
• "And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind; …" [Quran 4:12]

• This statement gives us the ruling on the share of the wife (widow).
• The share of the wife is one-quarter in the absence of a child or agnatic grandchild
• Her share will be one-eighth in the presence of a child or agnatic grandchild.
• Two or more wives share equally in this prescribed share.
"And if a kalala man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]

The interpretation of the second half of verse 4:12 has been a source of controversy, one reason being the meaning of the word "kalala".

This word "kalala" occurs only in two places in the Quran [4:12 and 4:176] and in both occasions regarding inheritance. "Kalala" may mean "one who leaves neither parent nor child" or "all those except the parent and child". It is generally taken to mean the former.
Uterine Siblings

• "And if a kalala man or woman (one who has neither ascendants nor descendants) is inherited from, and he (or she) has a (uterine) brother or (uterine) sister then for each of them (there is) one-sixth. But if they (uterine brothers and sisters) are more than that then they are sharers in one-third (equally)." [Quran 4:12]

Uterine Siblings (Same Mother, Different Fathers)

• It is universally agreed that the siblings referred to in the above verse are uterine siblings (those with the same mother but different fathers).

• The uterine siblings only inherit in the absence of any descendants or ascendants. If there is only one uterine sibling he or she inherits a one-sixth share. If there are two or more uterine siblings they together inherit a one-third share equally.
The heirs mentioned in the Quran (mother, father, husband, widow, daughter, uterine brother, full sister, uterine sister, consanguine sister) together with the three heirs added by juristic method of analogy (paternal grandfather, maternal grandmother and agnatic grandchild) form a group of heirs called Quranic heirs or sharers (ashab al-furud). These heirs when entitled to inherit are given their fixed shares and the remaining estate is inherited by the residuaries (asaba).
Other Residuaries

- Under Islamic law some of the Quranic heirs, namely the father, paternal grandfather, daughter, agnatic granddaughter, full sister, consanguine sister and the mother, can also inherit as residuaries under certain circumstances.
Primery Heirs

• Certain heirs referred to as primary heirs are always entitled to a share of the inheritance, they are never totally excluded. These primary heirs consist of the spouse relict, both parents, the son and the daughter.
All remaining heirs can be totally excluded by the presence of other heirs. There are several rules of exclusion which determine the exclusion of some heirs by the presence of others. In brief the rules of exclusion are as under:

1. A person (e.g. brother) who is related to the deceased through another (i.e. father) is excluded by the presence of the latter,

2. An individual nearer in degree (proximity) to the deceased excludes the one who is remoter within the same class of heirs (son excludes all grandsons),

3. Full blood excludes half-blood through father (so a full brother will exclude a consanguine brother but not a uterine brother).

Note: The majority view is that the full and consanguine brother is not excluded by the paternal grandfather. However, the Hanafi fiqh allows the paternal grandfather to totally exclude the agnatic siblings.
Prevention by Disqualification from Inheritance

• Heirs may also be prevented from inheriting by disqualification.
  1. Difference of religion and
  2. Homicide of the deceased.