
THE LAWS OF INHERITANCE IN ISLAM

Usman Saifi, Faculty of Law, University of Lucknow

Mohd Alim, Faculty of Law, University of Lucknow

ABSTRACT

The laws of inheritance under Muslim Law have been discussed in this article with the purpose of creating awareness among students of Legal realm as well as Muslims regarding inheritance. The purview of this article is mainly concerned with the Sunni law of Inheritance. This article traces the Quranic Sources and Hadith which are enumerated for the law of inheritance as well as the general rules, primary rules of distribution, rules of exclusion, and other special cases that of an illegitimate child, relating to missing person and hermaphrodite. The salient feature of Islamic law of inheritance is that shares are fixed among Quranic heirs irrespective of the quantity of the property of the deceased.

Keywords: Inheritance, Islam, Muslim, Quran, Hadith, Hermaphrodite, Share.

The Laws of Inheritance in Islam

The origin of the Inheritance can be traced from Anglo-Norman French *enheritance* 'being admitted as heir', from old French *enheriter* "make heir, appoint as heir."¹ Inheritance is basically the transfer of status to the living person from the deceased with respect to the specific estate/property objects.² Generally, the laws of succession are divided into two broad categories: testamentary and intestate. Majority of modern system of succession are based upon testamentary devolution of estate, however a Muslim cannot will more than 1/3 of his estate. 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.³

Inheritance in Islamic world seems to be a smoother task when compared to Hindu law of Inheritance in which there is community of Interest and Unity of Possession among the members of Hindu Undivided family. Although the term "inheritance" is not specifically defined in the Holy Quran, Muslim jurists have given it several definitions. An exhaustive definition of Inheritance has been given by Coulson which states, inheritance is the distribution of estate of the deceased's person among the heirs after the payment of funeral expenses, debts and valid bequest.⁴ Another definition was propounded by Sir Abdul Rahim that inheritance is the transfer of the rights and obligations from the deceased person to his/her heirs.⁵ The law of inheritance can be broadly defined as the transfer of all of the deceased person's possessions, including any transferable rights, to their legitimate heirs. Irrespective of their specific faith, generally in Muslim societies, inheritance rules concerning an individual's property upon death are derived from religious sources.⁶ 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

¹Douglas Harper, 'Inheritance', *Online Etymology Dictionary* (Etymonline, 5 May 2025) <https://www.etymonline.com/word/inheritance> accessed 5 May 2025.

² PC Lloyd and JDM Derrett, 'Yoruba Inheritance and Succession' in JDM Derrett (ed), *Studies in the Laws of Succession in Nigeria* (Oxford University Press 1965) 35.

³ Hamid Khan, *The Islamic Law of Inheritance* (Oxford University Press 2007) 25–65.

⁴ NJ Coulson, *Succession in the Muslim Family* (Cambridge University Press 1971) 40–204.

⁵ Sir Abdur Rahim, *The Principles of Muhammadan Jurisprudence* (Pakistan Law Publishing Company 2000) 346.

⁶ Siraj Sait and Hilary Lim, *Land, Law and Islam: Property and Human Rights in the Muslim World* (Zed Books 2006) 107.

fight.

2. To establish a system based upon justice and avoid concentration of wealth in a single entity.⁷

Owing to the intricate concepts contained in many religious texts, Muslim cultures, on the other hand, have developed extensive inheritance laws that permit the orderly transfer of wealth. The foundation of this systemization is jurisprudential techniques. 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.⁸

Islamic inheritance law often defines inheritance as the heirs' entry into the deceased person's estate as well as their successor to any rights that may be transferred. These rights that are being transferred include debts, property rights, and the right to be compensated on the deceased person's behalf. Due to the Divine teachings, the law of inheritance is therefore a fundamental component of Islam and must be followed by Muslims. According to the teachings of the Qur'an, Muslims inherit from one another in accordance with the share that is given in the Holy Qur'an for the heirs of the deceased in all of his or her assets. The majority of inheritance laws are explicated in the Holy Qur'an, Fiqh, and Hadiths of the Prophet Muhammad (PBUH). 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

⁷ *Inheritance Law* (Learndeen.com, 5 May 2025) http://learndeen.com/docs/research/InheritanceLaw_0_4.pdf accessed 5 May 2025.

⁸ Eliana Carranza, 'Islamic Inheritance Law, Son Preference and Fertility Behaviour of Muslim Couples in Indonesia' (2012) 6.

the relatives according to Islamic law.⁹

Assuming that the first three issues have been handled, we will limit our discussion to the fourth and final issue at this point. Identifying the deceased person's legal heirs who are eligible to inherit from him or her is our first task. Once that is resolved, we must ascertain how much of the deceased person's estate will go to each of these heirs.

Sources of Inheritance in Quran and Hadith

There are approximately half a dozen of verses in Quran that becomes the legal basis for the Principles of Inheritance. The principles regarding inheritance can be traced in chapter 4 (Surah Nisa, literally meaning the Women). Verses number 7, 8, 9 and 33 enlist the commands from Allah SWT and are moral in nature. On the other hand, verse number 11, 12 and 176 enlist the Quranic heirs and their shares and legal in nature.

Similarly, the provisions for Inheritance can also be traced in Hadith, Sahih Bukhari, The Law of Inheritance (Al- Faraid), from hadith number 716-762 (Book 80, Volume 8). For the purpose of this paper, the translation of each verse has been taken from the 'Sahih International' from the Quranic Arabic Corpus website.¹⁰

Holy Quran Mentions:

نَصِيبًا¹¹ لِلرَّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ
مَّغْرُوضًا^٧

Which is translated as “For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much - an obligatory share.”¹² [An-Nisa 4:7]

وَإِذَا حَضَرَ الْقِسْمَةَ أُولُو الْقُرْبَىٰ وَالْيَتَامَىٰ وَالْمَسْكِينُ فَأَرْزُقُوهُمْ مِنْهُ وَقُولُوا لَهُمْ قَوْلًا مَعْرُوفًا¹³

“And when [other] relatives and orphans and the needy are present at the [time of] division,

⁹ Muhammad Zubair, *The Laws of Inheritance in Islam* (Text Road Publication 2014) 85.

¹⁰ Qur'anic Arabic Corpus, *English Translation*, <https://corpus.quran.com/translation> accessed 5 May 2025.

¹¹ Surah An-Nisa, Verse 7.

¹² “Surah An-Nisa (The Women)”, *English* (IslamOnline) <https://quran.islamonline.net/translate-en-4> accessed 5 May 2025.

¹³ Surah An-Nisa, Verse 8.

then provide for them [something] out of the estate and speak to them words of appropriate kindness.”¹⁴ [An-Nisa 4:8]

وَلْيَخْشَ الَّذِينَ لَوْ تَرَكَوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعَافًا خَافُوا عَلَيْهِمْ فَلْيَتَّقُوا اللَّهَ وَلْيَقُولُوا قَوْلًا سَدِيدًا¹⁵

“And let those [executors and guardians] fear [injustice] as if they [themselves] had left weak offspring behind and feared for them. So let them fear Allah and speak words of appropriate justice.”¹⁶ [An-Nisa 4:9]

وَلِكُلِّ جَعَلْنَا مَوْلَىٰ مِمَّا تَرَكَ الْوَالِدَانِ وَالْأَقْرَبُونَ¹⁷ وَلِلَّذِينَ عَقَدْتُمْ أَيْمَانُكُمْ فَأَتَوْهُم بِمَا تَصَدَّقْتُمْ¹⁸ إِنَّ اللَّهَ كَانَ عَلَىٰ كُلِّ شَيْءٍ شَهِيدًا¹⁹

1733

“And for all, we have made heirs 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.”¹⁸ [An-Nisa 4:33]

If we go through the legal provisions regarding inheritance, we can clearly see that verse 11 of Surah Nisa (chapter 4) talks about the legal shares of 'Children and Parents'. Verse number 12 of the same chapter deals with the legal shares of 'Widow' and 'Widower' as well as that of 'Brother and Sister' and finally verse number 176 of chapter 4 of Al-Quran express a special ruling when a person passes away without ascendants and descendants (defined as Kalalah in Arabic).

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ¹⁹ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ²⁰ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ²¹ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ²² فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِلْمِائَةِ الثُّلُثُ²³ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْمِائَةِ السُّدُسُ²⁴ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ²⁵ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا فَرِيضَةً مِنَ اللَّهِ²⁶ إِنَّ اللَّهَ كَانَ عَلِيمًا حَكِيمًا²⁷

“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of

¹⁴ Supra note 12.

¹⁵ Surah An-Nisa, Verse 9.

¹⁶ Supra note 12.

¹⁷ Surah An-Nisa, Verse 33.

¹⁸ Supra note 12.

¹⁹ Surah An-Nisa, Verse 11.

his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.”²⁰ [An-Nisa 4:11]

The above-mentioned verse talks about the shares of the Children and Parents allotted by Allah in the Quran.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدٍ وَصِيَّةٍ يُوَصِّينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَنَّ مِنْ بَعْدٍ وَصِيَّةٍ تُوَصُّونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورِثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَىٰ بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ خَلِيمٌ^{١٢٢١}

“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing.”²² [An-Nisa 4:12]

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ إِنْ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ إِنْ كَانَتَا أُتْنَتَيْنِ فَلَهُمَا النِّسْلَانِ مِمَّا تَرَكَ وَإِنْ كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَتَيْنِ^{١٢٢٢} يُبَيِّنُ اللَّهُ لَكُمْ أَنْ تَضِلُّوا وَاللَّهُ بِكُلِّ شَيْءٍ عَلِيمٌ^{١٢٢٣}

“They request from you a [legal] ruling. Say, " Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]." If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters [or more], they will have two-thirds of what he left. If there are both

²⁰ Supra note 12.

²¹ Surah An-Nisa, Verse 12.

²² Supra note 12.

²³ Surah An-Nisa, Verse 176.

brothers and sisters, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah is Knowing of all things.”²⁴ [An-Nisa 4:176]

We will discuss the lawful Heirs scheme of shares in subsequent section in this article as construed from the Quranic provisions. Furthermore, there are several Hadith which defines some rulings, rules of exclusion from inheritance and limitation to wassiyah in favour of legal heirs.

Sources in Hadith

There are numerous Hadith regarding the law of Inheritance enumerated in the Sahih Muslim, Sahih Bukhari and Jami ‘at Tirmidhi.

Ibn Sa'd reported his father as saying: Allah's Apostle (may peace be upon him) visited me during my illness. I said: I am willing away the whole of my property. He said: No. I said: Then half? He said: No. I said: Should I will away one-third? He said: Yes, and even one-third is enough.²⁵

There is also a court ruling regarding limitation to bequest that was held in ***Ghulam Mohammad v. Ghulam Hussain (1932) 34 BOM LR 510*** that a bequest in favour of an heir is not valid unless other heirs consent to the bequest after the death of the testator.

There is another hadith regarding inheritance of a non-Muslim from the property of Muslim stated in Sahih Bukhari, volume 8, Book 80, Hadith Number 756, i.e. The Prophet said “A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.” With references to that of a murderer, there is another hadith which depicts the exclusion of a killer from inheritance.

Abu Hurairah narrated that the Prophet (S.A.W) said: “*The murderer will not inherit.*”²⁶

General Rules

1. Muslim Law of Inheritance does not differentiate between the Real and Personal

²⁴ Surah An-Nisa, Verse 12.

²⁵ Sahih Muslim, Book 13, Kitab al-Wasiya, Hadith 3996.

²⁶ Jami ‘at-Tirmidhi, vol 4, book 3, hadith 2109.

nor between the acquired and Ancestral property.

2. No superior right is conferred by primogeniture. Every son, regardless of number, receives an equal inheritance.
3. Verse 11 and 176 of Chapter 4 of Al-Quran confers that the share of Daughter is half the share of a son, whenever they inherit together.
4. A will that benefits one son or heir cannot be implemented without the approval of the other sons or heirs and to the detriment of them.
5. Prior to the distribution of an inheritance, debts must be settled. Bequests may be made, but they cannot be greater than one-third of the testator's estate.
6. Inheritance is excluded in the cases of slavery, homicide, religious and allegiance difference.
7. However, for individuals who practice the Muslim faith, switching allegiances does not bar them from inheritance.
8. Inheritance occurs simultaneously to many persons having different relations in accordance with their respective shares to the estate of deceased person. Inheritance may partly ascend lineally and partly descend lineally at the same time.²⁷
9. If a person died before his father, his son shall not inherit in the same manner as the person, if he had been living and the property will revert to the paternal Uncle.
10. The general rule is that sons take all the property after the legal sharers are satisfied, unless there are daughters, in which case each daughter takes a share equal to half of what is taken by each son. Sons, son's sons, and their lineal descendants, to whatever extent, have no specific share assigned to them. For example, in families with a father, mother, husband, wife, and daughters, there is little left over for the sons' share; in families without daughters or legal sharers, the sons inherit the entire estate.

²⁷ See William Hay MacNaghten, *Principles of Mohammadan Law* (Good Press 2022) para 8.

11. Parents, Children, and Spouses will always get their shares in all cases irrespective of number or degree of other heirs.
12. Brothers typically receive twice as much as sisters. The exception is when brothers and sisters are uterine.
13. Legal sharers who are not residuary heirs have a fixed amount, whereas those who are both sharers and residuaries must be adjusted based on each circumstance. For instance, husband and wife are sharers only and will inherit in all cases, but in cases of brothers and sisters, father and grandfather portion vary according to each case.²⁸

Heirs in Islam: Sunni Law

Under the Sunni law, the heirs are divided into two broad categories:

- (a) Principal Classes or Related Heirs and
- (b) Subsidiary Classes or Unrelated Heirs

Following class of persons are the heirs who are entitled to the estate of a deceased Muslim:

A. The Principal Classes

1. Sharers or Qur'anic heirs
2. Residuaries or Agnatic heirs
3. Distant Kindred or Cognatic heirs

B. Subsidiary Classes

1. Successor by Contract
2. Acknowledge Kinsman
3. Universal Legatee, and

²⁸ See William Hay MacNaghten, *Principles of Mohammadan Law* (Good Press 2022) original footnote 1.

4. The State

It is evident from above that Principal classes are limited to blood relatives, except for the surviving spouse of the dead. Initially, the property will be dispersed among eligible shareholders. Their shares are fixed. Once After the property is dispersed among sharers, any remaining surplus is referred to as the "residue" goes to the next category, i.e. "residuaries." In the absence of residuary, the property moves to the third group, which includes cognates. If any heirs in the first two categories are present, the property does not pass to the third group of distant kindred. In the absence of residuaries, if one of the spouses (widow or widower) is present, the spouse will take their fixed part as a sharer, while the distant kindred will receive the rest of the property.

Sharers or Quranic Heirs (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.

1. Affiliated by Marriage or Affinity (Zowjeeat)

1. Husband
2. Wife

2. Affiliated by Blood or Consanguinity (Nasab)

1. Father
2. True Grandfather (how high so ever)
3. Mother
4. True Grandmother
5. Daughter Son's Daughter (how low so ever)
6. Full Sister

7. Consanguine Sister
8. Uterine Brother, and
9. Uterine Sister

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.²⁹ Heirs by blood comprises of ascendants, Descendants and collaterals. Out of 12 heirs only four heirs are males and the remaining eight are females.³⁰

Lawful Heirs Scheme of Share

Interpreting the verse 11, 12 and 176 of Surah An-Nisa of Quran, a detailed table enlisting the share of each primary heir has been formulated hereby.

²⁹ 'Law of Inheritance' (Research Education Edu, 6 April 2012) <http://research-education-edu.blogspot.com/2012/04/law-of-inheritance.html> accessed 6 May 2025.

³⁰ *Saira Bai v S S Joshi* AIR 1960 MP 262.

HEIRS		SHARE
1 HUSBAND		
If there is no (a) child or (b) child of son how low so ever (h.Ls.)		1/2
If there is (a) child or (b) Child of son h.Ls.		1/4
2 WIFE		
If there is no (a) child or (b) child of son how low so ever (h.Ls.)		1/4
If there is (a) child or (b) Child of son h.Ls.		1/8
If more than one wife, 1/4 or 1/8 shared equally, as the case may be.		
3 FATHER		
If there is no (a) child or (b) child of son how low so ever (h.Ls.)		Residuary
If there is (a) child or (b) Child of son h.Ls.		1/6
4 TRUE GRANDFATHER		
In case if there is no father, child/grandchild survives		Residuary
if son or grandson of the deceased person survives		1/6
In case if the father of the deceased person survives		NIL
If mother of the deceased person survives		NIL
5 MOTHER		
In absence of (a) child, or (b) child of a son h.Ls.		1/3 1/3
In absence of (c) two full sister, or (d) two full brothers, or (e) one brother plus one sister whether full, consanguine or uterine.		
In presence of above mentioned relations		1/6
6 TRUE GRANDMOTHER		
In presence of (a) mother, or (b) father or (c) a nearer maternal or paternal grandmother		NIL
(Maternal grandmother) In presence of (a) mother, or (b) a nearer maternal or paternal grandmother		NIL
If not Excluded		1/6
Two or More grandmother jointly gets		1/6
7 DAUGHTER		
In case of single (sole) daughter		1/2
If there are 2 or more daughter (the daughters portion is shared equally among them), then		2/3
In presence of son (shares 1 portion for every 2 portion given to brother)		Residuary
8 SON'S DAUGHTER		
Only in absence of (a) two or more daughters, or (b) son, or (c) higher Son's son, or		
(d) two or more higher son's daughter, if single		1/2
if more than one		2/3

if son's daughter is together with one daughter	1/6
If Son's daughter is together with son's son	Residuary
9 FULL SISTER	
If single	1/2
If more than one	2/3
If full sister is together with full brother	Residuary
In the presence of (a) child, or (b) child of son h.l.s., or (c) father, or (d) Father's Father	Excluded
10 CONSANGUINE SISTER	
In the presence of (a) child, or (b) child of son h.l.s., or (c) father, or (d) Father's Father, or (e) two full sisters, or (f) one full brother	Excluded
In absence of above mentioned, if single	1/2
If more than one, jointly gets	2/3
In presence of one full sister	1/6
In presence of consanguine brother	Residuary
11 UTERINE BROTHER	
In the presence of (a) child, or (b) child of son h.l.s., or (c) father, or (d) Father's Father,	Excluded
If one uterine brother	1/6
Two or more uterine brothers shares equally	1/3
12 UTERINE SISTER	
In the presence of (a) child, or (b) child of son h.l.s., or (c) father, or (d) Father's Father,	Excluded
If one uterine sister	1/6
Two or more uterine sisters shares equally	1/3

The table above demonstrates that Islamic inheritance law is straightforward and easily understandable. There is no need to apply the doctrine of 'Aul or Rad' in it except in the circumstances where distribution does not satisfy all the sharers without a fraction. In Islam, a man inherits twice as much as a woman due to the male's obligation to support the family financially, while the female has the freedom to use her riches as she deems fit. 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.³¹

³¹ Prof Muhammad Zubair, *The Laws of Inheritance in Islam* (Text Road Publication 2014) 87; Seyyed Hossein Nasr, *The Heart of Islam: Enduring Values for Humanity* (Harper Collins 2004) 192.

Residuaries or Agnatic Heirs

The Residuaries or Agnatic heirs were the principal heirs before Islam; they continue to remain the principal heirs in Sunni law. Their premier position is, in Islam, always subject to the claims of near relations mentioned as the Koranic heirs. First, they are satisfied by giving them their Koranic shares. Residuaries are the relations whose rights were also recognized by tribal laws in Saudi Arabia before Islam.³² Residuaries take entire residue in the order of priority.

A list of Residuaries along with general rules of inheritance is mentioned hereby:

1. SON: When there is no daughter, the son takes the entire residue, but if the daughter present, the son gets double the share of the daughter.
2. SON'S SON: In such cases, nearer son's son excludes the remoter, two or more sons' sons inherit equally and Son's daughter together with son's son becomes Residuary but the son's son gets double the share of Son's daughter.
3. DAUGHTER: She becomes a residuary when there co-exists a son of the deceased. does not inherit as a Sharer.
4. SON'S DAUGHTER (how low so ever): She becomes a residuary when there co-exists son's son (how low so ever), or in other words an equal son's son or a lower son's son provided that she does not inherit as a Sharer.
5. FATHER: As a Residuary, the father gets the entire residue.
6. TRUE GRANDFATHER: A true grandfather also takes the entire residue but a nearer true grandfather excludes the remoter.
7. FULL BROTHER: If there is no full sister, the full brother inherits the entire residue, but if there is full sister, the full brother inherits with her but his share is double the share of a sister.
8. FULL SISTER: In the absence of full brother and other Residuaries enumerated in the preceding line, the full sister is treated as Residuary provided there is daughter, or son's

³² Mulla: *Principles of Mohammadan Law* (20th edn, LexisNexis) ch VII, 20 of 79.

daughter how low so ever or one daughter and a son's daughter how low so ever.

9. CONSANGUINE BROTHER: A consanguine brother inherits together with consanguine sister but the share of consanguine brother is double the share of consanguine sister.
10. CONSANGUINE SISTER: In the absence of consanguine brother and any of the Residuaries given above, the consanguine sister is treated as Residuary and takes the residue provided there is daughter, or son's daughter how low so ever or one daughter and a son's daughter how low so ever.
11. FULL BROTHER'S SONS
12. CONSANGUINE BROTHER'S SON
13. FULL BROTHER'S SON'S SON
14. CONSANGUINE BROTHER'S SON'S SON
15. FULL PATERNAL UNCLE
16. CONSANGUINE PATERNAL UNCLE
17. FULL PATERNAL UNCLE'S SON
18. CONSANGUINE PATERNAL UNCLE'S SON
19. FULL PATERNAL UNCLE'S SON'S SON
20. CONSANGUINE PATERNAL UNCLE'S SON'S SON

Residuaries or Agnatic Heirs

Four females and two males, who are otherwise primary Quranic heirs or sharers are shifted to Class II (residuary) in certain circumstances.

These six are:

- a. Daughter,
- b. Son's daughter (how low so ever),
- c. Full sister,
- d. Consanguine Sister,
- e. Father and
- f. True grandfather (how low so ever).

All of them are Quranic heirs but certain circumstances force them to inherit as residuaries.³³

The rules allow males who are residuary (as sons) to inherit from the residue. Allowing females to inherit their regular share (as described above) will result in little or no residual for males. If there is no son, the daughter inherits as a Quranic heir; otherwise, she inherits as a residuary. This is a significant change. In some cases, the father and true grandfather can succeed as both Quranic heirs and residuaries. They are the only relatives who can inherit as both a 'Sharer' and a 'Residuary'. The remaining four females will inherit as Quranic heirs or residuaries.

Distant Kindred

The third category of heirs is known as distant kindred. This includes all cognates of the dead, excluding sharers. Heirs entitled to inherit as distant kindred include the deceased's descendants, ascendants, and collateral.

1. If there be no shares or Residuaries, the inheritance is divided amongst Distant Kindred.
2. If the only sharer be a husband or wife, and there be no relation belonging to the class of Residuaries, the husband or wife will take his or her full share, and the remainder of the estate will be divided among Distant Kindred.³⁴

The distant kindred comprise of four classes:

³³ *University of Lucknow*, "E-Content, Faculty of Law" (Online Study Material, University of Lucknow, 31 March 2024) <https://www.lkouniv.ac.in/en/article/e-content-faculty-of-law> accessed 7 May 2024.

³⁴ *Mulla: Principles of Mohammadan Law* (20th edn, LexisNexis) ch VII, 42 of 79.

Class I: Descendants of the propositus other than Sharers and Residuaries. In this class, following relations are included.

- i. Daughter's children and their descendants.
- ii. Children of son's daughter how low so ever and their descendants.

Class II: Ascendants of the parents of propositus other than Sharers and Residuaries. This class comprises of:

- i. False grandfather how high so ever.
- ii. False grandmother how high so ever.

Class III: Descendants of the parents of propositus other than Sharers and Residuaries. This class of distant kindreds consists of:

- i. Full brother's daughter and her descendants.
- ii. Consanguine brother's daughter and her descendants.
- iii. Uterine brother's children and their descendants
- iv. Daughters of full brother's sons how low so ever and their descendants
- v. Daughters of consanguine brother's son how low so ever and their descendants.
- vi. Sister's (full, consanguine or uterine) children and their descendants.

Class IV: Descendants of ascendants how low so ever other than Residuaries. This class includes descendants of immediate grandparents (true or false) and the descendant of remoter ancestors how high so ever (true or false). The immediate grandparents are:

- i. Full paternal uncles' daughter and their descendants.
- ii. Consanguine paternal uncle's daughters and their descendants.
- iii. Uterine paternal uncles and their children and their descendants.

- iv. Daughters of full paternal uncle's sons how low so ever and their descendants.
- v. Daughters of consanguine paternal uncle's sons how low so ever and their descendants.
- vi. Paternal aunts (full, consanguine or uterine) and their children and descendants.
- vii. Maternal uncles and aunts and their children and their descendants.

Primary Rules of Distribution

There are various primary rules of distribution of property, the provision regarding distribution mentioned hereby has been clearly defined in the William Hay MacNaghten, *'Principles of Mohammadan Law'* (Good Press, 2022) from paragraph 57 to 69.

1. When there are two claimants, each with a half share and a fourth share, the property must be divided by four. For example, if a husband and daughter are the only ones, the property is divided into four parts, with the husband taking one and the daughter taking the other two. The remaining fourth will revert to the daughter.
2. In cases when two claimants are involved, with one holding a half share and the other an eighth, the property must be divided by eight. For example, if a wife and her daughter split a property, it will be divided into eight parts, with the daughter taking four and the wife taking one. The daughter is entitled to the three extra shares.
3. There cannot be a situation where two claimants are each entitled to a fourth, and the other to an eighth; or where three claimants are each entitled to half, a fourth, and an eighth.
4. In the event that there are two claimants, each has a one-sixth and a one-third share; for example, if a mother and father are the only claimants, the property is divided into six sections, with the mother receiving two and the father receiving one as his legal portion. The father regains ownership of the three excess shares.
5. In the event that there are two claimants, each has a one-sixth and a one-third share; for example, if a mother and father are the only claimants, the property is divided into six sections, with the mother receiving two and the father receiving one as his legal portion.

The father regains ownership of the three excess shares.

6. In cases when there are two claimants, each of them has a one-third portion, and the other two-thirds share. For example, if there are two sisters and a mother, the property is divided into three sections, with the mother taking one and the sisters taking the other two.
7. No situation can arise of three claimants who are each entitled to one-sixth, one-third, and two-thirds of the total.
8. When a father, mother, or two sisters are among the claimants entitled to one-sixth, one-third, or two-thirds of the inheritance left by the childless wife, and the husband receives half of the share, the division must be made by six.
9. In situations when a husband inherits from his child-bearing wife or a woman inherits from her childless husband (the respective shares of these individuals being one-fourth), and additional claimants are entitled to one-sixth, one-third, or two-thirds of the total, the division must be done by twelve.
10. The split must be completed by twenty-four in cases when a wife inherits from her husband and leaves children, with her part being one-eighth and other claimants entitled to one-sixth, one-third, or two-thirds.
11. If the estate should be divided into six shares, but that number is insufficient to satisfy every sharer without a fraction, it may be expanded to seven, eight, nine, or ten shares.
12. If the number twelve is unsuitable, it can be raised to thirteen, fifteen, or seventeen.
13. If the number twenty-four is unsuitable, it can be raised to twenty-seven.
14. Apart from the above-mentioned rules, the property can also be distributed among numerous claimants by using simple fractions and linear equations to calculate the shares.

Rules of Exclusion from Inheritance

There are certain legal causes of exclusion which debar a Muslim from succeeding to the

estate of propositus. These four rules can also be traced on paragraph 6 of earlier stated general rules. The four legal exclusions are:

1. Homicide and Murder (Al-Qatl),
2. Difference of Religion,
3. Slavery,
4. Difference of allegiance

Homicide: We have mentioned above in this article in Sources in Hadith that Prophet SAW said that a killer cannot inherit. Hanafi school bars the killer from inheritance except in the following circumstances.

1. Killing justified by shariah,
2. Self-Defence,
3. Lawful killing,
4. Act of a minor/lunatic,
5. Direct killing by minor/lunatic,
6. Indirect killing.

Religious Differences: The Prophet said “A Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.”³⁵

Slavery and Inheritance: There is common consensus among Muslim scholars that a slave cannot inherit from his/her master and nor a master can inherit from slave.

Difference of Allegiance: The Muslim jurists in present time consider this application only to those persons who do not follow Islam.

³⁵ *Sahih al-Bukhari*, vol 8, book 80, hadith 756.

Law of Inheritance in Special Circumstances

The application of the law of inheritance is being complicated by certain unique circumstances; Muslim jurists have developed principles to address these challenging situations. These issues generally arise because of an incident that takes place and presents challenging issues/problems with inheritance law. In some circumstances, a person's position itself may give rise to a difficulty or issue that needs to be resolved in accordance with inheritance law.

1. **In case of an Illegitimate Child:** Amr bin Shu'aib narrated from his father, from his grandfather, that the Messenger of Allah (S.A.W) said: *“Any man who fornicates with a free woman, or a slave woman, then the child born from Zina does not inherit, nor is it inherited from such a child.”*³⁶
2. **In case of an Adopted Child:** Adoption is not recognized under Islamic inheritance law as, in Islam, a line of inheritance cannot be formed apart from a blood link.
 - a. Adopted children are not recognized by Islamic law as being identical to their biological sons; as a result, they are not eligible to inherit anything. Nonetheless, a guardian may include him or her in the Will (which may not exceed one-third of the decedent's inheritance);
 - b. Adopted children are subject to all relevant Islamic laws.

With regarding to adopted children Holy Quran pronounce:

مَا جَعَلَ اللَّهُ لِلرَّجُلِ مِنْ قُلُوبَيْنِ فِي جَوْفِهِ ۖ وَمَا جَعَلَ أَرْوَاجَكُمْ أَلْفَى تُظَاهِرُونَ مِنْهُنَّ أُمَّهَاتَكُمْ ۖ وَمَا جَعَلَ أَدْعِيَاءَكُمْ أَبْنَاءَكُمْ ۚ ذَٰلِكُمْ قَوْلُكُمْ بِأَفْوَاهِكُمْ ۖ وَاللَّهُ يَقُولُ الْحَقَّ وَهُوَ يَهْدِي السَّبِيلَ ٤

Which is translated as, “And he has not made your adopted sons your [true] sons. That is [merely] your saying by your mouths, but Allah says the truth, and He guides to the [right] way.”³⁷

³⁶ Jami ‘at-Tirmidhi, hadith 2113.

³⁷ Al-Qur’an, Surah Al-Ahzab (33:4).

3. Posthumous Children (A child in the womb):

- a. If a man passes away while his wife is still pregnant and he has boys, his share of one son needs to be set aside in case a posthumous son is born.
- b. There is no instant property distribution in cases when a man passes away while his wife is pregnant, leaves him without sons, and there are other relatives who would inherit only if he didn't have children (as would be the case, for example, with a brother or sister).
- c. However, if those other relatives succeed in any way (larger without a child than with one, as would be the case, for example, with a mother), the property will be divided, and the mother will receive a sixth of the share to which she is inevitably entitled. If the child stillborn, her share will be increased to a third.

4. Law Related to Hermaphrodite: If when the sexual position of a person is difficult to determine is termed as 'Khutna Al Mushkal'. Gender is decided upon physical appearance under Islamic law.

- a. The calculation for such a person should be both of a man and a woman.
- b. *Khunta Al-Mushkal* is believed by the Hanafi School of thinking to be entitled to a lesser portion. The majority of the Holy Prophet's (PBUH) companions concur on this.³⁸

5. Law of Inheritance relating to Missing Person: According to Islamic law, a missing person is someone whose whereabouts are unknown and for whom it is uncertain if they are still alive. This person is referred to as a **mafqood**.

According to the view of "Hanafi law", a missing person was assumed to have been dead merely when ninety years from the date of his birth; till at that point the inheritance of his assets did not open. But now this rule has been outdated by Section 111 of the Bhartiya Sakshya Adhiniyam, 1872 which provides:

³⁸ 'Inheritance Law' (Learn Deen, PDF) http://learndeens.com/docs/research/InheritanceLaw_0_4.pdf accessed 5 May 2025.

*“When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.”*³⁹ The time of death of such a person is calculated from the time when he/she disappeared and the legal heirs of such persons are ascertained from that date.

Conclusion

Law of Inheritance is a significant element of each and every religion. Law of Inheritance in Islam is very vast and ensure a complete code of conduct and its application. We have learned a lot regarding general rules, heirs in Islam, Sources of Inheritance and many more. Nevertheless, it is too vast and evolving as per circumstances. We are yet to know a lot about how the assets are distributed and how it has to be calculated in each case. However, it is evident from the above that, Islam encircles principles in totality, of which legacy is one. By using the Islamic Law of Inheritance and other Islamic Laws lawfully, we can ensure peace in the afterlife while also establishing a definitive state of tranquility in the here and now.

³⁹ Section 111, Bhartiya Sakshya Adhiniyam, 2023.