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## Muslim Law of Inheritance: Hanafi School

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*The law of inheritance followed by Muslims is based on two main laws of succession: the Shia Law of Succession and the Sunni Law of succession. The Pre-Islamic Customary law of Succession has been extended by the amendments made by the Prophet and the Holy Quran. The Sunnis follow the Hanafi Law of succession which blends the two principles in a harmonious manner. According to this law of succession, the heirs are classified into three broad categories- the Quranic Heirs, the Agnatic or Residuary Heirs, and the Uterine heirs. It also signifies four Subsidiary Classes. The Doctrine of 'Aul' or 'Radd' may be applied in case the total of the fractional shares is not unity.*

**Keywords:** *sunni, shares, heir, agnates, residue, descendants, ascendants.*

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### INTRODUCTION

India is a diverse country. There are different rules and regulations governing different issues. However, certain affairs require distinct laws to respect the needs and interests of disparate groups of society. The Law of Succession is one such example that falls under the category of personal laws. We have the Hindu Succession Act, the Indian Succession Act, and also the Parsi Succession Act. The rules of inheritance concerned with Muslims are governed by two laws of succession - the Shia Law of Succession and the Hanafi Law of Succession. Both these

laws are recognized under the common law of India and find recognition under the Muslim Personal Law (Shariat) Application act, 1937.<sup>1</sup> These laws have been derived from Sharia and found their sources in the Holy Quran, the Ijams, the Sunnas, and the Qiyas.<sup>2</sup> There is no concept of 'Joint property' or 'Private property' under Muslim law and the heir can only claim the property after the death of the ancestor. After attaining the age of majority, a girl and her brother have similar rights to hold property and dispose of it off, as they desire.<sup>3</sup> The Quran says "From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property is small or large- a determinate share".

### INTESTATE SUCCESSION UNDER MUSLIM LAW

When the property is distributed as per the will of the deceased, it is called Testamentary Succession. However, when the inheritance of the property is done following the rules laid down under Muslim Law, it is termed as Intestate succession. On critically examining the fundamentals of the law, it is found that the Islamic Law of Inheritance is fabricated on the foundation of the pre-Islamic customary law of succession, and subsequently, the reforms introduced by the Prophet and the Holy Quran. This opposition of the two principles led to a divergence in the views of the Shias and Sunnis regarding the rules governing succession. In India, the Sunni law is steered by the Hanafi, since most of the Sunnis are Hanafis.

### IMPORTANT TERMS ASSOCIATED WITH THE LAW

- **Heir:** An individual who inherits the assets of another after his loss of life is called an heir.
- **Agnate:** An individual who is associated with the deceased as a descendant from the identical male relation. For eg., sons, son's sons, son's son's son, son's daughter, son's son's daughter, father's father, and father's mother.

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<sup>1</sup> Sree Kumar, 'Succession Under Hanafi Law' (*Lawyers Club India*, 10 October 2008) <<https://www.lawyersclubindia.com/articles/-8220-SUCCESSION-UNDER-HANAFI-LAW-8221--424.asp?msclkid=a9f0ca45bd8c11ec9902dea3ed6a6303>> accessed 15 April 2022

<sup>2</sup> *Ibid*

<sup>3</sup> Jafri Begum, *Muslim Society in India* (1<sup>st</sup> Edition, Kanishka Publishers 2002) 23-24

- **Cognate:** An individual associated with the deceased as a descendant from a female relation. For eg., daughter's son, daughter's daughter, father's mother's father.
- **Collaterals:** Collaterals are descendants in parallel lines from the common ancestor. They can be agnates or cognates. For eg.,
  - **Agnate Collaterals** - consanguine brothers and sisters, paternal uncles and aunts.
  - **Cognate Collaterals** - uterine brothers and sisters, maternal uncles and aunts.
- True Grandfather: A male ascendant among whom and the departed no female intervenes. For eg., father's father, father's father's father.
- True Grandmother: A female ascendant among whom and the departed no male intervenes. For eg., father's mother, mother's mother.
- False Grandfather: A male ascendant between among and the departed female intervenes. For eg., mother's father, father's mother's father.
- False Grandmother: A female ascendant among whom and the departed a false grandfather intervenes. For eg., the mother's father's mother.
- Son's son how low soever: Lineal male descendants are referred to as son's son how low soever. For eg., son's son, son's son's son.
- Son's daughter how low soever: These are the daughters of lineal male descendants. For eg., son's daughter, son's son's daughter.<sup>4</sup>

## PRINCIPLES OF PRE-ISLAMIC CUSTOMARY LAW OF SUCCESSION

- The law of succession in the Pre- Islamic Arabia was based on the substructure of preferring male agnates over females. The nearer male agnates were entitled to succession excluding the agnates lesser in degree.
- Females and cognates were denied the inheritance of the property.
- The order of preference usually had ascendants over the top, followed by descendants and then the collaterals.
- Only blood relations were entitled to inherit, excluding the relations by affinity.
- The share was divided equally among the make agnates of equal degree.<sup>5</sup>

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<sup>4</sup> Sree Kumar (n 1)

## PRINCIPLES OF SUCCESSION REFORMED BY ISLAMIC LAW

- Certain females and cognates were recognized as heirs.
- Kinship relationships created as a result of marriage were entitled to succession.
- The descendants were permitted to inherit the property along with the ascendants.
- After distributing specified shares among the heirs mentioned in the Pre-Islamic Customary principles of succession and the newly created heirs (Sharers), the residue was designated to the customary heirs known as the Residuary.<sup>6</sup>

In *Murtaza Hussain Khan v Mohammad Ali Khan*,<sup>7</sup> the Privy Council observed that the Quran introduced numerous amendments to the then existing laws of succession. While the Sunnis alter the rules in a specified manner according to the Quran and the Prophet, the Shias on the other hand extrapolate the principles and fuse them with the pre-existing Customary Laws altogether leading to a new set of rules.<sup>8</sup>

## GENERAL RULES OF MUSLIM LAWS OF SUCCESSION

**PROPERTY:** Movable and immovable property is not distinguished under the Muslim law of inheritance. Being a member of the family does not guarantee heirship.

**DOCTRINE OF REPRESENTATION:** This doctrine is not recognized under Muslim law. However, it may be used in a limited way to deduce the amount of share of any given legatee. According to Sunni law, there is no provision for an apparent heir to pass his succession to his heir. Whereas, under Shia law, certain cases may allow it.<sup>9</sup> The division among the heirs under Sunni law is per capita and not per stripe. Although, this doctrine may be applied to the succession of cognates.

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<sup>5</sup> Asaf Ali Asghar Fyzee, *Outlines of Muhammadan Law* (3<sup>rd</sup> Ed, Oxford University Press 1948) 382

<sup>6</sup> Sarkar & Santosh Kumar, 'Gender justice in succession laws in India: Succession Under Muslim Law, Chapter 3' (*Shodhganga*) <[https://shodhganga.inflibnet.ac.in/bitstream/10603/137137/8/08\\_chapter\\_03.pdf](https://shodhganga.inflibnet.ac.in/bitstream/10603/137137/8/08_chapter_03.pdf)> accessed 15 April 2022

<sup>7</sup> *Murtaza Hussain Khan v Mohammad Ali Khan* (1916) 18 BOMLR 884

<sup>8</sup> Sarkar & Santosh Kumar (n 6)

<sup>9</sup> Sir Dinshaw Fardunji Mulla, *Principles of Mahomedan Law* (19<sup>th</sup> edition, Lexis Nexis 2017) 37

**NEARER AND REMOTE HEIR:** A heir nearer in blood relation excludes the remote heir. Since there is a difference in the classification of heirs, the two schools have divergent views in this respect.

**SUCCESSION TO A MURDERED DECEASED:** Any person who causes the death of the deceased, either intentionally or by accident, is not entitled to succession. Any act of the heir which is formidable by the law and leads to the death of the other person, forfeitures his right of inheritance to the latter.<sup>10</sup>

**POSITION OF AN ILLEGITIMATE CHILD:** An illegitimate child does not have a right to claim any share in the putative father's property. The child may have inheritance rights between the mother and her associates.

**ESCHEAT:** A case where the person may die without leaving any sharer or residuary leaves the property with the state. The State has the right to inherit such property.

**APOSTASY:** A person who converts from Islam to any other religion (apostate) cannot claim any right over the deceased's property under pure Islamic law. However, in India, Section 3<sup>11</sup> of the Caste Disabilities Removal Act, 1850, allows such a person to take over the share.<sup>12</sup>

## HANAFI LAW

In India, the majority of the Muslims are Hanafis, which was founded by the great Imam Abu Hanifa. Under, the Hanafi Law of inheritance, the customary laws, and the Islamic laws are blended in such a way that customary heirs are not deprived of their partake, rather a portion of the share is distributed among the Quranic Heirs. The male agnates are still preferred, the only difference is that the rights of female agnates are recognized.

Any law of succession deals with two broad questions:

- Who are the heirs of the deceased?

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<sup>10</sup> Sarkar & Santosh Kumar (n 6)

<sup>11</sup> Caste Disabilities Removal Act, 1850, s 3

<sup>12</sup> *Ibid*

➤ To what share the heirs are entitled?

Under the Hanafi School, the heirs are classified into seven categories- 3 Primary and 4 Subsidiary classes<sup>13</sup>:

PRIMARY CLASSES<sup>14</sup>

- Quranic heirs *dhawul-furud*(Sharers)
- Agnatic heirs *asabat*(Residuaries)
- Uterine Heirs *dhawul-arham* (Distant Kindred)

SUBSIDIARY CLASSES<sup>15</sup>

- The Successor by contract
- The Acknowledged kinsman
- The Sole Legatee
- The State, by Escheat

The first step after paying the funeral expenses, debts, and legacies of the deceased, is to divide the share among the sharers. The next step includes the distribution of the leftover share between the residuary. In case there are no sharers, the whole of the property goes to the residuary. Further, the distant kindred gets a share only if there are no sharers or residuary. The rights of inheritance go to the subsidiary classes if no heirs belong to the primary classes.<sup>16</sup>

A Successor by contract is an heir who entered into a contract with the deceased in contemplation of payment in lieu of any interest or fine. An acknowledged kinsman is any person of unknown descendant whom the deceased acknowledged to be a kinsman. In the absence of the three primary classes and the above two subsidiary classes mentioned, the

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<sup>13</sup> Asaf Ali Asghar Fyzee (n 5) 397

<sup>14</sup> *Ibid*, 388

<sup>15</sup> *Ibid*

<sup>16</sup> Sarkar & Santosh Kumar (n 6)

inheritance goes to the Universal Legatee. The property is escheated to the government in a case where the above two classes are absent and the deceased has not prepared any will.<sup>17</sup>

## **QURANIC HEIRS**

These are the heirs whose share of inheritance has been specified by the Quran. There are 12 Quranic heirs.

**HUSBAND:** A surviving husband inherits the property of her wife after her death. He inherits  $\frac{1}{4}$  of her estate, and  $\frac{1}{2}$  if there is child or child of son how low soever.

**WIFE:** A living wife gets  $\frac{1}{4}$  of her deceased husband's property in a case where there is no child. She is entitled to  $\frac{1}{8}$  of the property in case the husband has left any child. In the case of more than one wife, the share is to be divided equally amongst them. Husband and wife are never excluded from inheriting the share but inherit together with the nearest heir by consanguinity, the husband taking  $\frac{1}{4}$  in case there is a lineal descendant or  $\frac{1}{2}$  in case there is no such descendant, and the wife taking  $\frac{1}{8}$  if there is a lineal descendant or  $\frac{1}{4}$  if there is no such descendant.<sup>18</sup>

**FATHER:** A father inherits  $\frac{1}{6}$  of the estate in case the deceased has left any child or son's or grandson's child.

**MOTHER:** A mother is entitled to  $\frac{1}{6}$  of the share when there is a child or son's child how low soever, or brothers or sisters who may be consanguine or uterine. She receives  $\frac{1}{3}$  of the share in case there is no child or brothers or sisters, or when there is a husband/ wife and the father present as a sharer.

**MATERNAL GRANDMOTHER:** The maternal grandmother receives  $\frac{1}{6}$  of the share when the mother of the deceased is absent.

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<sup>17</sup> Asaf Ali Asghar Fyzee (n 5) 320

<sup>18</sup> Sir Dinshaw Fardunji Mulla (n 9) 112

**PATERNAL GRANDMOTHER:** The paternal grandmother is entitled to  $\frac{1}{6}$  of the share only if the father and the mother of the deceased are absent.

**PATERNAL GRANDFATHER:** The paternal grandfather or the great grandfather is entitled to  $\frac{1}{6}$  of the share only if the father of the deceased is absent. The maternal grandfather is not a Quranic sharer.

**DAUGHTERS:** The daughter of the deceased is a Quranic heir only in the case of the absence of any son. She is entitled to  $\frac{1}{2}$  of the share, and in case there are two or more daughters, they are entitled to a share of  $\frac{2}{3}$ , which they divide equally among themselves.

**SON'S DAUGHTER:** The daughter of a pre-deceased son will be a Quranic heir, in case the child of the deceased is absent. She is entitled to  $\frac{1}{2}$  of the share, and  $\frac{2}{3}$  of the share goes to two or more granddaughters which are divided equally among them.

**FULL SISTERS:** A single full sister is entitled to  $\frac{1}{2}$  of the share when the deceased has no child or son's or grandson's child, father, or grandfather.  $\frac{2}{3}$  share goes to two or more full sisters which they divide equally among themselves.

**CONSANGUINE SISTERS:** She receives  $\frac{1}{2}$  share when there is no full sister and excluder. She gets  $\frac{1}{6}$  of the share if there is one full sister and no share if there is one or more than one full sister.

**UTERINE SISTER OR UTERINE BROTHER:** One uterine sister or brother gets  $\frac{1}{6}$  share provided the deceased does not have any child or son's child how low soever, or there is no father or grandfather. If there are two or more such brothers or sisters, they collectively inherit  $\frac{2}{3}$  and divide equally.<sup>19</sup>

## **AGNATIC HEIRS**

Agnatic heirs are associated with the deceased through males. The residue left after allotting the share to Quranic heirs is distributed among the agnatic heirs. In a case where a deceased

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<sup>19</sup> Sarkar & Santosh Kumar (n 6)

has no Quranic heirs, the estate goes to the agnatic heirs or residuary. There are three types of residuary.<sup>20</sup>

- Residuary in their own rights (all-male residuary)
- Residuary in right of another
- Residuary with others

Descendants have an upper hand in succession over ascendants. Further, the ascendants are preferred over collaterals. Therefore, based on the order of succession, these can be classified as-

### **AGNATIC DESCENDANTS<sup>21</sup>**

SON: He takes double the portion of a daughter's share. In case the deceased has no daughter, he takes the entire residue.

SON'S SON HOW LOW SOEVER: Nearer relations exclude the remoter ones. In case a son's daughter is present, he gets double of her portion.

### **AGNATIC ASCENDANTS<sup>22</sup>**

FATHER: He inherits the entire estate as a residuary.

TRUE GRANDFATHER: He takes the entire estate as a residuary.

### **AGNATIC COLLATERALS<sup>23</sup>**

- *COLLATERALS DESCENDANTS OF FATHER*

FULL BROTHER: He inherits the entire residue in the absence of her sister. However, when a full sister is present, he takes double the partake.

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<sup>20</sup> Asaf Ali Asghar Fyzee (n 5) 73-77

<sup>21</sup> *Ibid*, 137-138

<sup>22</sup> *Ibid*, 138

<sup>23</sup> *Ibid*, 138-140

**FULL SISTER:** When there is an absence of full brother or the aforementioned residuary, she takes the residue, if any, if there are any daughters, or son's daughters, or daughters how low soever.

**CONSANGUINE BROTHER:** He inherits a double portion in the case of a consanguine sister.

**CONSANGUINE SISTER:** When the deceased has no full brother or aforementioned residuary, the entire residue goes to her, if any, if there is a daughter or a daughter how low soever or a son's daughter.

**FULL BROTHER'S SON'S SON:** In the case of default of the above residuary, he takes the entire residue.

**CONSANGUINE BROTHER'S SON:** He takes the entire residue in the absence of the above residuary.

**FULL BROTHER'S SON'S SON:** He takes the entire residue in case the deceased had none of the above-mentioned residuary.

**CONSANGUINE BROTHER'S SON'S SON:** He takes the whole residue in case of the absence of the above regularizes.

- *COLLATERALS DESCENDANTS OF TRUE GRANDFATHER*

Full paternal uncles, consanguine paternal uncles, consanguine paternal uncle's son, full paternal uncle's son's son, consanguine paternal uncle's son, and consanguine paternal uncle's son's son receive entire residue in case of default.

Quranic Residuaries are certain Quranic heirs who become Residuary under certain circumstances. Though Quranic Heirs are Class 1 heirs, and Residuaries are Class 2 heirs, both are given their shares. A person cannot inherit the share as long as the other person through which he is related to decease is alive. Husband, wife, child, father, and mother are primary heirs, who are always entitled to the share.

## **UTERINE HEIRS**

When there are no sharers or residuary, the share is entitled to the uterine heirs or distant kindred. These are the blood relatives of the deceased who do not have any place among the Class 1 or Class 2 heirs. Female Agnates and Cognates are two classes of distant kindred which have been designated as “uterine relations”<sup>24</sup> by Ameer Ali, and “uterine heirs”<sup>25</sup> by Fyzee.

These are classified into four categories according to the order of succession:<sup>26</sup>

- Descendants of the deceased
- Ascendants of the deceased
- Descendants of parents
- Descendants of immediate grandparents (true or false)

Under Muslim law, inheritance is allotted in parts or fractions. However, when the fraction of the part allotted is either less or more than unity, the partake of the heir is reduced or increased accordingly. The process through which the shares are decreased is called the Doctrine of increase (Aul); whereas the process through which the share is increased is known as the Doctrine of Return (Radd).

## **DOCTRINE OF ‘AUL’ OR INCREASE**

When the arithmetic sum of functional shares allotted to the heir exceeds unity, then the share of each sharer is reduced by making the denominator of the fraction common, and then increasing the denominator in order to make it equal to the sum of numerators.<sup>27</sup>

## ***ILLUSTRATION***

The husband gets  $\frac{1}{2}$  share and two full sisters get  $\frac{2}{3}$  share.

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<sup>24</sup> Ameer Ali, II, 57

<sup>25</sup> Asaf Ali Asghar Fyzee (n 5) 420

<sup>26</sup> Sarkar & Santosh Kumar (n 6)

<sup>27</sup> Sree Kumar (n 1)

The total share is  $7/6$  which exceeds unity.

First of all, make a common denominator. In this case, the common denominator is 6.

Then the denominator is increased to make it equal to the sum of numerators.

$3/6 + 4/7$  changes to  $3/7 + 4/7$  which gives unity.

Since the shares are divided proportionately, the husband will get  $3/7$  shares and the sisters will get  $4/7$  shares collectively.

### **DOCTRINE OF 'RADD' OR RETURN**

If the arithmetic sum of the shares allotted is less than unity, and there is no residuary to claim the share, then the residue reverts back to the sharers in the same proportion of shares. The husband and wife are not permitted to 'Return' in the case of the presence of an heir.<sup>28</sup>

### ***ILLUSTRATION***<sup>29</sup>

The mother gets  $1/6$  share and the daughter gets  $1/2$  share.

The total share is  $2/3$  which is less than unity.

Step 1 includes making the denominator common. In this case, the common denominator is 6.

Step 2 includes decreasing the denominator and making it equal to the numerator.

$1/6 + 3/6$  becomes  $1/4 + 3/4$  which becomes unity.

Since the shares are divided proportionally, the mother will get  $1/4$  share and the daughter will get  $3/4$  share.

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<sup>28</sup> Sree Kumar (n 1)

<sup>29</sup> Asaf Ali Asghar Fyzee (n 5) 81-82

## CONCLUSION

Under Muslim Law, the property can be inherited only after the death of the ancestor. The Sunni Law of succession fuses the Customary Laws of Succession with the amendments introduced by the Quran, to form a new set of rules altogether. This distinguishes the Sunni Law of Succession from the Shia Law of succession based on differences in interpretation of the superimposition of the two principles. Hanafi Law of inheritance classifies the heirs into three major categories in the order of succession namely, the Quranic Heirs, the Agnates or the Residuaries, and the Uterine Heirs. It also introduces four other classes put under the category of subsidiary class. The rules regarding the share of each heir have been laid down clearly under the law. In case of the default of the above-mentioned heirs, the estate is inherited by the state. Consequentially, the Doctrine of 'Aul' or the Doctrine of 'Radd' may be applied in cases where the arithmetic sum of the fractional shares exceeds or recede unity, respectively.