INHERITANCE: RULES & PRACTICES

Significance of Wealth-distribution:

A country, however affluent and rich it might be, can never achieve prosperity and bliss if its wealth distribution system is not based on fair and just principles. Several nations in the modern world could still be cited as the places where the wealth overflows but the majority of their populace is victim of hunger, poverty, disease, due to the wealth - distribution system being very defective and disturbingly unequal.

Islamic economy has always been based on the principle of fair and just distribution of wealth among all the sections and classes of the land, with its resources not being concentrated only in few hands:

What God has bestowed on His Apostle (and taken away) from the people of the townships, belongs to God, to His Apostle and to kindred and orphans, The needy and the wayfarer; In order that it may not (merely) make a circuit between the wealthy among you. So take what the Apostle assigns to you, and deny yourselves that which he withholds from you. And fear God; for God is strict in punishment.

(Quran, LIX:7)

To ensure its principle gets translated on the ground Islam has various provisions:

1. Compulsory imposition of Zakat on the surplus wealth,
2. Limiting the right to leave a will,

3. Distribution of the property of the deceased among the next of his kin,

4. Financing the needy, and the poor's needs through state exchequer etc.

These measures ensure, on the one hand, rotation of wealth and strengthens, on the other, the individual ownership which certainly motivates man to apply his capabilities more and more towards increased production. The whole system which denies the usury-transaction and arranges interest-free loan, is neither capitalism nor communism, but a path between them, discarding their evil effects and accommodating their useful aspects.¹

Islamic law of Inheritance:

The Prophet (S.A.W.) says: "It is better to leave behind next of kin with riches enough than to leave them poor so as to turn beggars."²

Rules of property distribution are equally meaningful for both the dead and the alive. The Prophet (S.A.W.) has encouraged to learn these rules:

¹ Hamidullah, Ahd-e-Nabawi Main Nizam-e-Hukmrani, vol. 1, p. 142
² Al-Bukhari, Kitab-al-Salat.
"Learn the rules of inheritance and teach others; they are half of the knowledge."\(^3\)

Inheritance occupies a very crucial place in the wealth distribution. No, or unjust, property distribution marks the beginning of discrimination in the society. Tasg and Irwing Fischer agree with Kyanon who says that unequal property inheritance is a great cause for the unequal treatment of the people.\(^4\) Tasg writes that inheritance has a far-reaching impact, it is this very provision the application of which abridges the gap between the rich and the poor.\(^5\)

Inheritance, land-property and lease (\textit{ijarah}) are the three main sources through which man possesses huge fortunes without any extra labour or endeavor. They need to regulated to ensure equitable division of wealth.\(^6\)

**Acknowledgement by Non-Muslim Scholars:**

Mr. Ramsay begins his work Muhammadan law with the remark that Islamic law of inheritance is based on the most reasonable and perfectly rational principles, the study of which is equally useful for all, jurists, students, scholars and also philosophers.\(^7\)

\(^3\) Al-Bukhari-Kitab al-Salat
\(^4\) S.J. David, \textit{Economics of Inheritance}, p. 83.
\(^7\) Ramsay, \textit{Mohammadan Law}, p.1.
Pre-Islamic Arab System of Inheritance:

In old Arab tradition daughters had no share in the fortune left behind by their deceased father, the widow was not only deprived of her portion in her late husband’s property but was also treated as a property to be divided among the claimants, orphans also lost their right to either their elder brothers or in their absence to uncles, because inheritance was meant only for those who were capable of fighting war against the enemy. Likewise, the adopted son was considered like real one and was entitled to get all left behind by the adopted father.

Islam appeared on the stage of the world as the bearer of peace and justice; it presented an entirely new scheme of wealth distribution particularly through inheritance, replacing muscle power with blood or social relationship as the basis, and ensuring no children, female or male, minor or adult, to be deprived of their rightful share in the deceased's property. Islam also included, for the first time in the history of religion, woman into the list of rightful inheritors. It was also the first time that Islam empowered woman to own a property and also to leave a will for one third - of it to anyone Adopted relations were excluded from the list of inheritors. The Quran declares:

*From what is left by parents And those nearest related
There is a share for men And a share for women,
Whether the property be small Or large, a determinate share.*

*(Quran, IV 4)*
The history has it that following the above revelation some people felt uncomfortable over the idea of getting their properties distributed among minors and women who were both considered incapable of horse-riding and military art.⁸

Progress of Islamic law:

Now, an effort will be made to trace the stages through which Islamic law of inheritance reached the point of perfection. When emigrants from Makkah and other parts of Arabia reached and settled in Madinah, the Prophet (S.A.W.) established the relation of brotherhood between Muhajirun and Ansar, who could then inherit each other's property.⁹ This practice had been derived from this Ayah:

*Those who believed, And adopted exile, And fought for the Faith, with their property And their persons, In the cause of God, as well as those who gave (them) asylum and aid, these are (all) friends and protectors, one of another. As to those who believed but came not into exile, Ye owe no duty of protection to them until they come into exile; but if they seek your aid in religion, It is your duty to help them, except against a people with whom ye have a treaty of mutual alliance, And (remember) God seeth all that ye do.*

(Quran, VIII:10)

Then came another stage where male children were entitled to inherit the property of their parents. As regards the share of female children and parents people were allowed to leave a will which was to be implemented. Abdullah b. Abbas says: "In early Islamic period children were entitled to inherit and parents received their share

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⁸ Al-Taban, Tafsir, vol IV, p 171
⁹ Bukhari, Kitab-al-Faraeydh; also Al-Baydawi, Tafsir, Vol 1, p 324
according to the will left behind by the deceased. This ruling was based on this Quranic directive:

It is prescribed, when death approaches any of you, if he leaves any goods, that he makes a bequest to parents and next to kin, according to reasonable usage, This is due from the God-fearing.

(Quran, II:2)

Following the two major battles, Badr and Uhud, in which many Sahabah were martyred, the question of how to distribute the deceased's property assumed prominence because those killed in the war had not left any will. The widow of Aws b. Thabit complained to the Prophet (S.A.W.) that she and her minor daughters got nothing from her husband's property as the male claimants had already distributed it among themselves.

Likewise Jabir b. Abdullah, who had fallen seriously ill, requested the Prophet (S.A.W.) to guide him about how to divide his property. The Prophet (S.A.W.) received in response to these queries the verses dealing with the share of inheritance.

Details of the law of Inheritance:

Who will get how much is being described at length as follows:

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10 Al-Bukhan, Kitab al-Wasiyyah
11 Abu Daud, Kitab al-Faraidh, Al-Tarmidhi, Jami Kitab al-Faraidh, Ibn Majah, Sunan, Kitab al-Faraidh
12 Al-Bukhari, Kitab al-Faraidh
Children (Sons & Daughters):

Sons will get double the share of the daughter. If the claimant is only one daughter, she will receive half of the total property. In case the deceased has left behind only daughters more than one, they will get their equal share out of the two third of the total property. The Quran explains:

**God (thus) directs you as regards your children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, Their share is two-third of the inheritance; If only one, her share is a half; For, parents, a sixth share of the inheritance to each, If the deceased left children; If no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) The mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-knowledge, All-wise.**

*(Quran, IV:11)*

Parents:

Each of them will get one sixth of the property left, if the deceased left behind him sons and grand sons, but in a situation where there is no son or grand son the mother will inherit one third and the rest will go to the father:
God (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-third of the inheritance; If only one, her share is a half; For, parents, a sixth share of the inheritance to each, If the deceased left children; If no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers (or sisters) The mother has a sixth. (The distribution in all cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained. By God; and God is All-knowledge, All-wise.

(Quran, IV: 11)

**Husband:**

Husband will get half of the property left behind by his wife, if there are no children or grand children of the deceased. He will get only one fourth if his wife left behind children and grand children.

In what your wives leave, Your share is a half, If they leave no child. But if they leave a child, Ye get a fourth; after payment of legacies and debts. In what ye leaves, Their share is a fourth, If ye leave no child; But if ye leave a child, They get an eighth; after payment of legacies and debts. If the man or women whose inheritance is in question, has left neither ascendants nor descendants, But has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; After payment of legacies and debts; so that no loss is caused (to any one). Thus it is ordained by God; And God is All-knowing, Most Forbearing.

(Quran, IV:12)

**Wife:**

If the husband has left behind children & grand children, the widow will receive one eighth, but if he died heirless, she will receive one fourth of the entire fortune.
The Heir to the Kalalah:

Kalalah is the one who is issueless and whose father is also not alive. Abbas defines the word: "One who has neither children nor father."

If Kalalah is survived by a brother or a sister, each of them is entitled to inherit one sixth of the property.

(Quran, IV: 12)

If brothers or sisters are more than one, they will share one third of the total property.

(Quran, IV: 12)

In response to queries raised by the people, the Quran further explained the matter relating to the Kalalah - inheritance:

They ask thee for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance; If (such a deceased was) a woman, who left no child, her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female, thus doth God make clear to you (His law), lest ye err. And God hath knowledge of all things.

(Quran, IV: 176)

It seems quite pertinent to have a brief look at the codification of the law of inheritance by fuqaha in the light of the relevant Quranic Ayat, Ahadith and the decisions passed by the four pious Caliphs.
1. Expenses for the deceased's funeral-related preparations are to be borne from his property left behind. But the expenditure should be neither too much nor too little.

2. If the deceased left behind him any kind of debt, it is to be first paid out of his remaining wealth. His widow's dower is also to be paid from the same source first.

3. After the debt-payment one third of the remaining asset will be distributed according to the deceased's will, before the lawful inheritors take their share.

4. If the deceased is survived by none, the balance property will be claimed by the government to include it into Bayt al-Mal.

The Nearest of Kin:

Islamic law of inheritance is based on a principle of Al-Aqrab Fal-Aqrab i.e. the nearest of kin. It means that the nearest relative to the deceased will get preference in the share of the property. For example, if father and grand father are both alive, former will be preferred to the latter; like wise in the presence of both sons and grand sons, the former will have precedence over the latter.
On the basis of this principle scholars of Hanafi School of jurisprudence have divided the inheritors into three categories.\(^{13}\)

**Dhawi al-Furudh:**
They are next of kin whose shares have been specified in the Quran.

**Asabat:**
Relatives whose shares have not been fixed in the Quran. What is left after the distribution of the property among *Dhawi al-Furudh* according to their allotted share goes to *asabat* who include the son, who is actually the major claimant to the inheritance, because the Quran does not specify the amount of his portion. In his presence *Dhawi al-Furudh* get either very little or sometimes nothing.

**Dhawi al-Arham:**
It refers to the relative through any female - relative of the deceased. For example, son of the deceased’s daughter i.e. maternal grand son; that of the deceased’s sister i.e. nephew; mother of the deceased’s mother i.e. the grand mother. In the absence of the

\(^{13}\) Imam al-Shafi’i and Imam Malik B Anas have referred to only two groups of inheritors *Asabah* and *Dhawi al-Furudh* The Quran has not categorically mentioned the share of *Dhawi al-Arham*, hence *Dhawi al-Arham* remain, as Al-Shafii and Malik conclude, deprived of any share, leading to the left property inclusion into the public exchequer. Until the time of Al-Mu’tazid billah neither *Dhawi al-Arham* nor any kin, through women received any share. If there were *Asabat*, the entire property was registered as that of the government. Al-Mu’tazid having overturned the ruled issued a decree that in the absence of *Dhawi al-Furudh* and *Asabat* the wealth of the deceased be disturbed among *Dhawi al-Arham*. See Syed Amir Ali, *Usul Shar’Muhammad*, p 2, also Al-Taban, *Al-Tanakh*, vol III, p-215
inheritors of the first two categories this group inherit the deceased’s property.

**Deprivation of Inheritance:**

The following factors lead to the deprivation of the inheritance.

**Assassination:**

If a person is killed by his inheritor either deliberately or by mistake the assassin is deprived of the inheritance. The wisdom behind this ruling is none kills one's relative out of greed of the victim’s property.

**Difference of Faith:**

If the deceased and the inheritor hail not from the same faith, Islamic law of inheritance does not apply to this situation.

As per the Quranic ruling a Muslim can marry a woman from *Ahl al-Kitab* (Jews and Christians) but the Jewish or Christian widow of a Muslim will not get any share in her husband’s wealth, except what the deceased has wished through a will. Muslim husband too has been denied any share in his dead wife's (Jew or Christian) property. Ulama have consensus over the ruling that Muslim and non-Muslim cannot inherit each other's wealth.\(^\text{14}\)

\(^{14}\) Al-Bukhari, *Kitab al-Faraiydh.*
Difference of Nationality (*Darayn*):

If the deceased's inheritor has settled in *Dar al-harb* or a non-Muslim county, he will be denied the right to inherit from the deceased's property who was, at the time of his death, a citizen of *Dar al-Islam*, a Muslim nation. It is very close to the most modern international law; its wisdom is to ensure that the flow of wealth is not from a Islamic land to a non-Islamic region. This law is not applicable to the immigrants who enter another country for visit or trade purposes. In the beginning after the Hijrah from Makkah to Madinah, the law was promulgated that those who preferred to live behind in Makkah were denied the share in the property of their relatives who died in Madinah.

**The Will:**

In his life-time ever one is empowered to spend and distribute his property on his own accord.\(^\text{15}\) And also, as the Quran explicitly states, on the eve of his death he can dictate a will concerning the distribution of his property and the will is to be concretely respected. But the Prophet (S.A.W.), as the sole interpreter of the Quran, has limited the amount of the will to only one third of the total property, and also clarified that the rightful shares would not be governed by any provision of the will.\(^\text{16}\)

On what basis the size of the will is limited to only one-third of the wealth?

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\(^{15}\) *Al-Hidayah*, vol. IV, Kitab al-Wasayat, p. 337.

"Sa'd b. Abi Waqqas, a senior companion, reports that the Prophet (S.A.W.) came to visit me as I was sick in the year of his last Hajj. I told the Prophet that my condition is taking day by day a turn for the worse. I have enough wealth but except my only daughter I have no other inheritors. Should I donate two-third of my property for some charitable cause." The Prophet said, "No." I enquired, "what about half of it?" He replied, "No." I said, "what about one - third?" The Prophet answered: "yes, you can donate one - third, but this is still too much. It is better for you to leave your inheritors affluent than to deprive them of your fortune causing them to stretch their hands before public for the sake of livelihood."\textsuperscript{17}

In the light of the above - quoted Hadith, fuqaha are unanimous over one - third portion as the maximum limit for will, which stands null and void if this limit is flouted.\textsuperscript{18} None is allowed to transfer through will his property but only upto one - third of it. Abdullah b. Abbas who was the Prophet's cousin and is considered among the authorities on the law of inheritance is on record: "I wish the people had gone down to the point of one - fourth in the will, since the Prophet (S.A.W.) had referred to one - third as still much."\textsuperscript{19}

Through the provision of will, Islamic law of inheritance has been a bit relaxed, reducing its rigidity. When a person knows that one of his relatives or next of kin will get deprived due to the particular nature of the law, he can and should leave a will specifying the otherwise-affected relative's share in his wealth. To elucidate the point further, Zaid has two sons but one of them dies prior to Zaid's death, leaving behind some Children. According to the law Zaid's grand-children will get nothing in Zaid's wealth which will all be grabbed by the only surviving son. Zaid, in this situation could be encouraged to specify some share for his late son's children, in his will.

**Will for non-Muslims:**

As has been stated above, Muslims and non-Muslims cannot inherit from each other; but they can leave a will for each other. The author of famous fiqh treatise, Al-Hidayah says: "It is allowed for a non-Muslim to leave a will for a Muslim and vice-versa." he presents two main arguments:

1) The Quran encourages Muslims to treat their non-Muslim compatriots generously:

"Those who did not fight against you in the cause of al-Din, and also did not drive you out of your homes, Allah does not prevent you from doing good to them and meting out justice to them. Verily, Allah loves those doing Justice."

(Quran, LX: 8)
2) Non-Muslims after having received protection from Muslims (individually or collectively) deserve equal treatment from humanistic point of view hence the property could be shared even after death, but only through will.\textsuperscript{20}

**Woman's Right to Inherit:**

In the Islamic scheme of inheritance Women, too, get certain shares. daughters, wives, and mothers have all been allotted their portions in the deceased's property. In their absence grand mother, maternal grand mother, grand daughters, and maternal grand daughters are eligible to receive shares in the wealth left behind.

**Waqf ala al-Aulad:**

There is another provision in the Islamic law of inheritance under the title 'Waqf ala al-Aulad' i.e. dedicated to children, which bars the inheritors from disposing of the property, only allowing them to continue dividing among themselves the proceeds and income from the asset.

**Comparison between Islamic and other laws of Inheritance:**

Laws of inheritance vary from nation to nation and from religion to religion, sometimes from one region to another in the same country.

\textsuperscript{20} *Al-Hidayah, Kitab al-Wisayah, vol-IV, P-363*
such as United Kingdom where inheritance laws are different in its two regions, England and Scotland. France which is adjacent to Britain has different laws governing the division of wealth of the deceased. A British national can give away his entire wealth through verbal or written will. In France where the Napoleonic Code is still in force, everyone is required to leave a will detailing the share of his child or children. Former Soviet Union had no law regulating division of wealth since individual or private property had been by law abolished from the land. Countries in the east have all different systems of inheritance. Generally, in European nations the convention of 'right -of-the eldest - child' is in vogue, according to which the first child of the deceased grabs the entire wealth leaving his siblings on their own. This strategy causes the wealth to concentrate in a few hands. It is said that most of the new immigrants settled in places like America, Africa and Australia are the descendents of well-to-do and affluent families, who after having been deprived of their shares in the huge fortune left behind by their deceased parents, had no other option but to work hard and start their life afresh.

This system is very defective, not only because it metes out injustice, and runs counter to the humaneness but also because it

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22 Ibid
serves as a source for wealth concentration, giving rise to inequality in life.

Islamic system, indeed, is very comprehensive which makes the asset reach not only all the children of the deceased but also far and near relatives. It helps banish inequality which has beset Europe and which once invited communism for its elimination. It never allows wealth concentration, which offers unemployment, laziness and a life of indulgence, all fatal to national security.

Hindu law of inheritance, unlike European laws, seeks, to some extent, to remove inequality and appears to be very close to socialism. Hereditary asset and property is considered the entire family's jointly-shared wealth; the income and expenditure are both jointly-borne by all the members of the family; although active and hard-working members bear much more burden of responsibilities than others, all including less efficient and physically-impaired persons in the unit are cared for under the common-proprietorship, reducing the possibility of publicly-funded or government sponsored orphanages or old homes.

Hindu law of inheritance, though, accommodates no less advantageous provisions of wealth distribution, but due to the
common-property notion, production of wealth slows down. On the contrary European laws of inheritance motivate the people to actively participate in the production of wealth but the distribution of wealth is far from satisfactory, brewing various kinds of dissatisfactions, dejections and irritations among the people.

Islamic law of inheritance synthesizes both distribution of property and freedom to produce wealth, assigning to everyone the exclusive right to own what one earns and produces, subject to the system of distribution among the rightful inheritors.

Islamic provisions of inheritance are all essentially different from other laws and systems.  

The underlying principles are so meaningful and delicate that they indicate Allah (S.W.T.) as their source. The first major principle is "who-stands-where" in the hierarchy of relationship with the deceased whose wealth is to be distributed, another provision is related to political economy according to which distribution of wealth among many aspirants is far better than its concentration in one or two hands.

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23 Shibli Nu'mani, Seerat al Nu'man, vol II, p 262