
LAW OF SUCCESSION AND INHERITANCE

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ON

MUSLIM LAW OF INHERITANCE

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SYNOPSIS OF THE PAPER:

- 1. INTRODUCTION**
- 2. CONCEPT OF MUSLIM LAW**
- 3. GENERAL PRINCIPLES OF LAW OF
SUCCESSION AND INHERITANCE**
- 4. SUNNI LAW OF INHERITANCE**
- 5. SHIYA LAW OF INHERITANCE**
- 6. DIFFERENCES BETWEEN SUNNI LAW OF
INHERITANCE AND SHIYA LAW OF
INHERITANCE**
- 7. CONCLUSION**
- 8. REFERENCES**

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1. Introduction:

F.S.Tyabji observes;

"The muslim law of inheritance has always been admired for its completeness as well as the success with which it has achieved the ambitious scheme of providing not merely for the selection of a single individual or homogenous group of individuals, on whom the estate of the deceased should devolve by universal succession, but for adjusting the competitive claims of all the nearest relations".

The Muslim law of succession has been derived from the rules of succession to be found in the Quran, or in the traditions, as well as from such sunna (hadith) i.e., the practice adopted by Prophet Mohammed. It is a field of Islamic jurisprudence that deals with inheritance, a topic i.e., prominently dealt with in the Quran. It is often called MIRATH and its branch of Islamic law is technically known as ilm al-fara id.

The Quran introduced a number of different rights and restrictions on matters of inheritance, including what were at that time general improvements to the treatment of women and family life. The Quran introduced additional heirs that were not entitled inheritance in Islamic times, mentioning 9 relatives specifically of which 6 were female and 3 were male. In general the Quran improved the status of women by identifying their share of inheritance in clear terms.

Inheritance is considered as an integral part of Shariah Law. Muslims inherit from one another as stated in the Quran. Hence there is a legal share for relatives of the descendant in his estate and property the major rules of inheritance are detailed in ***Quran, Hadith and Fiqh***.

The muslim law of inheritance in major explained in Sura Baqrah (Sura No.2) in Quran. The law of inheritance makes the desires of deceased alive by

way of succession to his properties as per the rules enshrined in Quran, Hadith and fiqh.

The preamble of Indian Constitution has the word “secular”, and articles 25 to 28 implying that the state will not discriminate, patronize or meddle in the profession of any religion. Article 25 says “all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion subject to public order, morality and health. Hence being the secular state the people are at liberty to practice their religion and also to follow their personal laws in matters of succession and inheritance. Thus the Hindu governed under the Hindu Succession Act, the Muslims governed under the Mohammadan Law of inheritance and Succession, the Christians governed under the Indian Succession Act.

It is to be noted that the provisions of the Indian Succession Act prevail so far the claim to the property is concerned even if they come in conflict with Mohammedan Law.

2. Concept of Muslim Law:

A muslim is one who believes in the mission of Mohammad as prophet, one who says that there is one God (Allah), and that Mohammad is his prophet. Infact Islam depends on belief. A man can be Mohammedan even by profession or by conversion. A person born as a Mohammedan continues to be Mohammedan unless renounces Islam. The 5 duties of Muslim are Kalma, Namaz, Jakarth, Roja and Haj. The Muslim legal system defers from other modern systems, in the sense that it purports to have its sole source of divine will communicated, on its final form through a single human channel.

The Muslim law or Islamic is based on religion like Hindus. In Govind Doyal Vs Inayathulla reported in (1885) 7 ILR 775, 781 it was observed, that “it is to be remembered that Hindu and Mohammadan law are so intimately connected with religion that they cannot readily be dissevered from it”.

3. General Principles of Law of Succession and Inheritance:

Succession is a process by which a person becomes entitled to the interest of a deceased person. The law of succession is regulated by the personal law of the deceased.

Before discussing about the general principles of law of succession and inheritance, we have to know the definitions of some words viz.,

1. Agnates; an agnate is a relation who is related to the deceased, wholly through males.
2. Cognates; a cognate is a relation who is related to the deceased through one or more females.
3. Descendants; the offspring of the deceased up to any degree of descent.
4. Ascendants; ascendants means the ancestors in ascent.
5. Collaterals; the descendants in parallel lines from a common ancestor or ancestors.
6. Full blood; the persons who born to one mother and father.
7. Uterine blood; the persons who born to same mother but through different husbands of that mother.
8. Consanguinity; the relation of persons descended from a common ancestor.
9. True grandfather; a male ascendant however distant between whom and deceased no female intervenes.
10. False grandfather; a male ascendant however distant between whom and deceased a female intervenes.
11. True grandmother; a female ascendant having no female false grandfather intervenes.
12. False grandmother; a female ascendant having a false grandfather intervenes.
13. Heir; who is entitled to inherit the property of the intestate.
14. Substituted heirs; those who are distant substitutes the original heirs.
15. Intestate; who dies without making a will.
16. Sharers; who are entitled to specified shares of inheritance in the property of the deceased.
17. Residuaries; those who are entitled to the residue of property of the deceased left after the specified shares of the sharers.

18. Distant kindred; the blood relations of the deceased who are neither sharers nor residuaries.
19. Per capita; number of individuals takes the property in equal shares, there are called as taking per capita.
20. Per stripes; number of individuals taking the property according to stalks or branches and not according to the number of individuals called as per stripes.

Property which can heritable:

All movable and immovable properties of the deceased subject to deletion of

- i. Funeral expenses
- ii. Expenses of obtaining probate and administration from the court
- iii. Wages for personal services to the deceased within 3 months of his death
- iv. Debts
- v. Legacies (will with a limit for 1/3rd of the property)

There is no difference of property through ancestors and self acquired property. The property whatever succeeded by inheritance and self acquired is a absolute property of the deceased.

When succession open:

In Muslim law of succession and inheritance, the inheritance for the first time open on the death of the person. Before his death nobody can claim any right in the property on the basis of his being heir apparent or heir presumptive. A right by birth is unknown to Muslim law.

Applicability of certain rules:

1. The rule of representation applicable to decide who are entitle to inherit, the quantum or the share of any given person under his entitlement to herit.
2. As per the rule of exclusion though a person is entitled to inherit but excluded from succession due to committing homicide of the deceased, illegitimacy, slavery, estoppels in succession and doctrine of exclusion (huza).

3. The rule of primogeniture is a rule which gives a preferential claim over the estate of the deceased to the eldest son among the other. This rule of primogeniture have no recognizance in Sunni Mohammadan Law but it is recognized in shias up to the extent of wearing apparel, Quran, ring, sword, arms, the mantle and horse.
4. The rule of vested inheritance applies immediately on the death of the propositus (deceased) to his successors.
5. The rule of spes successionis have no application in Mohammadan law.
6. As per doctrine of increase (Aul), when specified shares are allotted to sharers, sometimes it may be found that the some of shares may be excess of the unity. In such a case adjustment of shares has to be made by reducing them so as to bring them to unity. So the doctrine of Aul are increase is applied and the share of each heir is proportionally reduced. The doctrine of increase (Aul) is applied by reducing the fractional shares to be common denominator, hence the denominator is increased and the shares are proportionately reduced.
7. As per doctrine of return (Radd) when after allotting the specified shares to the sharers and there are residuaries, then the surplus is not given to the distant kindered but according to the doctrine of Radd (return) the surplus is returned to the sharers is more than one in proportion to their respective shares. But if there is only one sharer then the whole of the residue will return to him or her. when there are no residuaries heirs would get the share by the rule of return. There is an exemption to this rule when only husband or wife the sharers available, thereby the share allotted to them remains with them, remaining will be given to the distant kindered. This has been changed by the judgment of Hon'ble Oudh Court in Abdul Hamed Khan Vs Pearemirza reported in AIR 1935 Oudh 78.
8. The theory of propinquity i.e., nearness in blood fully recognized in Shias but partially by the sunnis.
9. There is no jointness and joint family concept in Mohammedan Law.

Heirs and successors:

There are 2 types of heirs who succeed the estate of deceased Mohammedan.

- i. Heirs affiliated by marriage, blood or consanguinity among them,
 - a. Sharers
 - b. Residuaries
 - c. Distant kindered
- ii. Successors not affiliated either by marriage or blood

Among them,

 - a. Acknowledged kinsman
 - b. Universal legatee
 - c. State by escheat.

Disqualified heirs:

- i. Apostate
- ii. Murderer
- iii. Illegitimate children
- iv. Child of a women divorced by lian
- v. Step relation
- vi. Child less widow
- vii. Disqualifications provided by some law or custom

Heirs entitled to inherit as residuaries:

- i. Son
- ii. Daughter
- iii. Son's son HLS
- iv. Son's daughter HLS
- v. Father
- vi. True grandfather, HHS
- vii. Full brother
- viii. Full sister
- ix. Consanguine brother

- x. Consanguine sister
- xi. Full brother's son
- xii. Consanguine brother's son's son
- xiii. Full brother's son's son
- xiv. Consanguine brother's son's son
- xv. Full paternal uncle
- xvi. Consanguine paternal uncle
- xvii. Full paternal uncle's son
- xviii. Consanguine paternal uncle's son
- xix. Full paternal uncle's son's son
- xx. Consanguine paternal uncle's son's son
- xxi. Descendants of full parental uncle's son's son's son
- xxii. Descendants of consanguine paternal uncle's son's son's son
- xxiii. Descendants of remote true grandfather HHS

4. SUNNI LAW OF INHERITANCE

It is pertinent to mention the translation of relevant verses of Chapter-4 **"Surah Al-Nisa (The Women)"** of Part-4 of the Holy Quran revealed by the Allah on his beloved Prophet about **more than 1430 years ago** from now:

Verse-7:- "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."

Verse-8:- "But if at the time of division, other relatives or orphans or poor are present, feed them out of the (property), and speak to them words of kindness and justice."

Verse-11:- "Allah (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-thirds(2/3) of the inheritance

if only one (daughter), her share is half; for parents, a sixth share of the inheritance to each, if the deceased left children;

if (the deceased left) no children, and the parents are the (only) heirs, the mother has a third;

if the deceased left brothers(or sister), the mother has a sixth. (The distribution in all cases is) after payment of legacies and debts.

You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All- Knowing, All-Wise."

Verse-12:- "In what your wives leave, your (husbands') share is half, if they leave no child, but if they leave a child, you get a fourth, after payment of legacies and debts.

In what you (husbands) leave, their (wives') share is a fourth, if you leave no child, but if you leave a child, they (wives) get one eighth, after payment of legacies and debts.

If the man or woman, 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 (they are) (brother or sister) more than two, they share in a third, after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-Knowing, Most Forbearing."

Verse-13:- "Those are limits set by Allah; those who obey Allah and His Apostle (Prophet) will be admitted to Gardens with rivers flowing beneath (heavens), to abide therein (forever) and that will be supreme achievement."

Verse-14:- "But those who disobey Allah and His Apostle and transgress His limits will be admitted to a Fire, to abide therein, and they shall have a humiliating punishment."

Verse-33:- "To (benefit) every one, we have appointed shares and heirs to properties left by parents and relatives. To those also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things."

Verse-176:- "They ask you (Holy Prophet) for a legal decision. Say: Allah 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 (sister) 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 the twice the share of the female. Thus does Allah make clear to you (His Law), lest you err. And Allah has knowledge of all things."

The Prophet 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 male relative of the deceased." (As narrated by Ibn Abbas, reported in Sahih-al-Bukhari, vol.8, translated by M.M.Khan No.724)

After revelation of the above Quranic verses, a great reform took place in the law of inheritance completely amending the pre-Islamic customary law. But the Sharers of pre-Islamic customary law were not completely ignored. Many of them became Residuaries. Thus the following persons would inherit the property of a deceased Mohammedan.

- (1) The ascendants (parents and certain other ascendants) were allowed to inherit along with the descendants. (For example, if a deceased left a son and a father, both would inherit.)
- (2) Females and cognates were also recognized as heirs. (For example, sisters, daughters, son's daughters, daughter's sons were also recognized as heirs)
- (3) Relations by affinity were entitled to inherit. (For example, the husband and wife can inherit to each other's property)
- (4) The newly created heirs (known as Sharers) such as females, cognates, relations by affinity inherited specified shares along with those heirs who were recognized under pre-Islamic customary law of inheritance. After giving specified shares to the statutory sharers, the residue was given to those customary heirs known as Residuaries. (For example, if a Mohammedan died leaving behind a widow and four sons, the specified share of widow (being a statutory sharer) is $\frac{1}{8}$ and she would get $\frac{1}{8}$ and the remaining $\frac{7}{8}$ th share would be divided among the four sons equally, and each son as customary heir (Residuary) would get $\frac{7}{32}$.)

The book written by Sir Dinshaw Fardunji Mulla (Mulla) on Principles of Mahomedan Law still holds the field. One such book is "Mulla Principles of Mahomedan Law" , revised by Professor Iqbal Ali Khan, Dean and Chairman, Department of Law, Aligarh Muslim University, printed by Lexis Nexis (updated 20th Edition), which was earlier revised by Hon'ble Justice Hidayathulla, the then Chief Justice of India.

The following principles have been taken from the said book:-

Principle No.61:- *Classes of heirs: There are three classes of heirs, namely, (1) **Sharers**, (2) **Residuaries**, and (3) **Distant Kindred**:*

(1) "**Sharers**" are those who are **entitled** to a **prescribed share** of the inheritance;

(2) "**Residuaries**" are those who take **no prescribed share**, but succeed to the **residue** after the claims of the sharers are satisfied;

(3) "**Distant Kindred**" are all those relations by blood who are **neither Sharers nor Residuaries**.

Principle No.63:- **Sharers:** After payment of funeral expenses, debts, and legacies, the first step in the distribution of the estate of a deceased Mahomedan is to ascertain which of the surviving relations belong to the **class of Sharers**, and which again of these are entitled to a share of the inheritance, and, after this is done, to proceed to assign the respective shares to such of the Sharers as are, under the circumstances of the case, entitled to succeed to a share. Vide table 66A – **List of Sharers and their prescribed shares:** **Father** (he gets 1/6 when there is a child or child of a son how low so ever of the deceased; when there is no child or child of a son how low so ever of the deceased, he inherits as a Residuary); **True Grandfather** (he gets 1/6 when there is a child or child of a son how low so ever and no father or nearer true grandfather left by the deceased; when there is no child, child of a son how low so ever and no father or nearer true grandfather left by the deceased, he inherits as a Residuary.); **Husband** (he gets ¼ when there is a child or child of a son how low so ever; he gets ½ when no child or child of a son how low so ever); **Wife** (she gets 1/8 when there is a child or child of a son how low so ever; she gets ¼ when there is no child or child of a son how low so ever; if the deceased has more than one wife, maximum four wives at a time, they altogether get 1/8 or ¼ as the case may be); **Mother** (she gets 1/6 when there is a child or child of a son how low so ever, or when there are two or more brothers or sisters or even one brother and one sister, whether full, consanguine or uterine; she gets 1/3 when no child or child or

a son how low so ever, and not more than one brother or sister, if any, but if there is also a wife or husband and the father, then only $\frac{1}{3}$ of what remains after deducting the wife's or husband's share); **True Grandmother** (maternal true grandmother will get $\frac{1}{6}$ when no mother, and no nearer true grandmother either paternal or maternal, paternal true grandmother will get $\frac{1}{6}$ when no mother, no father, no nearer true grandmother either paternal or maternal, and no intermediate true grandfather; if there be more than one true grandmother, they together get only $\frac{1}{6}$); **Daughter** (if single she gets $\frac{1}{2}$, if more than one they get $\frac{2}{3}$ when no son; when there is a son she or they inherit as Residuaries and the son gets twice their share); **Son's Daughters** how low so ever (if single she gets $\frac{1}{2}$, if more than one they get $\frac{2}{3}$ when there is no son, daughter, higher son's son, higher son's daughter or equal son's son; when there is only one daughter or higher son's daughter but no son, higher son's son or equal son's son, the daughter or higher son's daughter will get $\frac{1}{2}$ and the Son's Daughter how low soever, whether one or more, will take $\frac{1}{6}$, but with equal son's son she becomes a residuary); **Son's Daughter** (if single she gets $\frac{1}{2}$, if more than one, they get $\frac{2}{3}$ when there is no son, daughter of son's son; when there is only one daughter and there is no son or son's son, Son's Daughter, whether one or more, will take $\frac{1}{6}$, but with the son's son she becomes residuary); **Son's Son's Daughter** (if single she gets $\frac{1}{2}$, if more than one they get $\frac{2}{3}$ when there is no son, daughter, son's son, son's daughter or son's son's son; when there is only one daughter or son's daughter and there is no son, son's son, son's son's son, the Son's Son's Daughter, whether one or more, will take $\frac{1}{6}$, but with son's son's son she becomes residuary); **Uterine Brother of Uterine Sister** (if single he or she gets $\frac{1}{6}$, if more than one they get $\frac{1}{3}$ when there is no child, child of a son how low so ever, father, true grandfather); **Full Sister** (if single she gets $\frac{1}{2}$, if more than one they get $\frac{2}{3}$ when there is no child, child of a son how low so ever, father, true grandfather, or full brother; but with the full brother she becomes a residuary); **Consanguine Sister** (if single she gets $\frac{1}{2}$, if more than one they get $\frac{2}{3}$ when there is no child, child of a son how low so ever, father, true grandfather, full brother, full sister or consanguine brother; but if there is only one full sister and she succeeds as sharer, the Consanguine Sister, whether one or more, will take $\frac{1}{6}$, provided she is not otherwise excluded from inheritance; also with the consanguine brother she becomes residuary.)

Principle No.65:- Residuaries: *If there are **no Sharers**, or if there are sharers, but there is a **residue left** after satisfying their claims, the **whole inheritance or the residue**, as the case may be, devolves upon Residuaries in the order set forth in the annexed table 74A. That is to say,*

- I. **Descendants:** 1) son, 2) son's son;*
- II. **Ascendants:** father, true grandfather,*
- III. **Descendants of Father:** full brother, full sister, consanguine brothers, consanguine sister, full brother's son, consanguine brother's son, full brother's son's son, consanguine brother's son's son;*
- IV. **Descendants of True Grandfather how high soever:** full paternal uncle, consanguine paternal uncle, full paternal uncle's son, consanguine paternal uncle's son, full paternal uncle's son's son, consanguine paternal uncle's son's son, male descendants of more remote true grandfathers.*

Principle No.67:- Distant Kindred: *(1) If there be **no Sharers 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**.*

Principle No.68:- Four Classes *(of Distant Kindred): (1) Distant Kindred are divided into four classes, namely, (1) **descendants of the deceased other than sharers and residuaries**, (2) **ascendants of the deceased other than sharers and residuaries**, (3) **descendants of parents other than sharers and residuaries**, and (4) **descendants of ascendants how high so ever other than residuaries**. The **descendants of the deceased** succeed **in priority** to the **ascendants**, the **ascendants of the deceased** in **priority** to the **descendants of the parents**, and the **descendants of the parents** in **preference** to the **descendants of ascendants**.*

(2) The following is a list of Distant Kindred comprised in each of the four classes:-

I. Descendants of the deceased:-

- 1. Daughter's children and their descendants.*
- 2. Children of son's daughters how low soever and their descendants.*

II. Ascendants of the deceased:-

- 1. False grandfathers how high soever.*
- 2. False grandmothers how high soever.*

III. Descendants of parents:-

1. Full brothers' daughters and their descendants.
2. Consanguine brothers' daughters and their descendants.
3. Uterine brothers' children and their descendants.
4. Daughters of full brothers' sons how low so ever and their descendants.
5. Daughters of consanguine brothers' sons how low so ever and their descendants.
6. Sisters' (full, consanguine, or uterine) children and their descendants.

IV. Descendants of immediate grandparents(true or false):-

1. Full paternal uncles' daughters and their descendants.
2. Consanguine paternal uncles' daughters and their descendants.
3. Uterine paternal uncles and their children and their descendants.
4. Daughters of full paternal uncles' son how low so ever and their descendants.
5. Daughters of consanguine paternal uncles' son how low so ever and their descendants.
6. Paternal aunts (full, consanguine, or uterine) and their children and their descendants.
7. Maternal uncles and aunts and their children and their descendants.
8. Descendants of remoter ancestors how high so ever (true or false).

Class I of Distant Kindred:

Principle No.69: - Rules of Exclusion: The first class of distant kindred comprises such of the descendants of the deceased as are neither Sharers nor Residuaries. The order of succession in this class is to be determined by applying the following rules in order.

Rule (1): **The nearer in degree excludes the more remote.**

Rule (2): **Among claimants in the same degree of relationship, the children of Sharers and Residuaries are preferred to those of distant kindred.**

Principle No.70: - Order of Succession: The rules set forth in principle 69 lead to the following order of section among distant kindred of the first class.

- (1) Daughter's children's
- (2) Son's Daughter's children's
- (3) Daughter's grandchildren
- (4) Son's Son's Daughter's children's

(5) Daughter's great grandchildren and son's daughter's grandchildren

(6) Other descendants of the deceased in like order.

Of the above groups, each in turn must be exhausted before any member of the next group can succeed.

Principle No.71:- Allotment of Shares: After ascertaining which of the descendants of the deceased are entitled to succeed, the next step is to distribute the estate among them. The distribution in this class is governed by the following rules.

Rule (1) If the intermediate ancestors do not differ in their sexes, the estate is to be divided among the claimants per capita according to the rule of double share of the male.

Rule (2) If the intermediate ancestors differ in their sexes, the estate is to be distributed according to the following rules: (a) The simplest case is where there are only two claimants, the one claiming through one line of ancestors, and the other claiming another line. In such a case, the rule is to stop at the first line of descent in which the sexes of the intermediate ancestors differ, and to assign the male ancestor a portion double that of the female ancestor. The share of a male ancestor will descend to claimant who claims through him, and the share of the female ancestor will descend to the claimant who claims through her, irrespective of the sexes of the claimants.

(b) The next case is, where there are three or more claimants, each claiming through a different line of ancestors. Here again, the rule is to stop at the first line in which the sexes of the intermediate ancestors differ, and to assign to each male ancestor a portion double that of each female ancestor. But in this case the individual share of each ancestor does not descend to his or her descendants as in the preceding case, but all the collective share of all the male ancestors is to be divided among all the descendants claiming through them, and the collective share of all the female ancestors is to be divided among their descendants, according to the rule, as between claimants in the same group, of a double portion to the male.

Class II of Distant Kindred:

Principle No.72:- Order of Succession: (1) If there be no distant kindred of the first class, the whole estate will devolve upon the mother's father as being the nearest relation among distant kindred of the second class(see rule 1 below).

(2) If there be no mother's father, the estate will devolve upon such of the false ancestors in the third degree as are connected with the deceased through sharers, namely, the father's mother's father and the mother's mother's father, and these two, the former, as belonging to the paternal side will take 2/3, and the latter as belonging to the maternal side will take 1/3 (see rules 2 and 3 below).

(3) If there be none of these, the estate will devolve upon the remaining false ancestors in the third degree, namely, the mother's father's father and mother's father's mother. And as these two belong to the same (maternal) side, and as the sexes also of the intermediate ancestors are the same, the former, being a male, will take 2/3 and the latter being a female, will take 1/3 according to the principle No.71, Rule 1.

Rule 1. The nearest in degree excludes the more remote.

Rule 2. Among the claimants in the same degree, those connected with the deceased through Sharers are preferred to those connected through Distant Kindred.

Rule 3. If there are claimants on the paternal side as well as claimants on the maternal side, assign 2/3 to the paternal side and 1/3 to the maternal side. Then divide the portion assigned to the paternal side among the ancestors of the father, and the portion assigned to the maternal side among the ancestors of the mother, in each case according to the rules contained in principle No.71.

Class III of Distant Kindred:

Principle No.73:- Rules of Exclusion: If there be no distant kindred of the first or second class, the estate devolves upon the distant kindred of the third class. This class comprises such of the descendants of the brothers and sisters as are neither Sharers nor Residuaries. The order of succession in this class is to be determined by applying the following three rules in order.

Rule 1. The nearer in degree excludes the more remote.

Rule 2. Among claimants in the same degree of relationship, the children of the residuaries are preferred to those of distant kindred.

Rule 3. Among claimants in the same degree of relationship, and not excluded by reason of rule 2 above, the descendants of full brothers exclude those of consanguine brothers and sisters.

But the descendants of full sisters do not exclude the descendant consanguine brothers or sisters, and the latter take the residue, if there be any, after allotting shares to the descendants of the full sisters and of uterine brothers and sisters.

The descendants of uterine brothers and sisters are not excluded by descendants either of full or consanguine brothers or sisters, but they inherit with them.

Principle No.74: - **Order of Succession**: The above rules lead to the following order of succession among distant kindred of the third class.

1. *Full brother's daughter, full sister's children and children of uterine brothers and sisters*
2. *Full sister's children, children of uterine brothers and sisters, consanguine brother's daughters, and consanguine sister's children, the consanguine group taking the residue(if any)*
3. *Consanguine brother's daughter, consanguine sister's children, and children of uterine brothers and sisters*
4. *Full brothers' sons' daughters (children of Residuaries)*
5. *Consanguine brothers' sons' daughters (children of Residuaries)*
6. *Full brothers' daughters' children, full sisters' grandchildren, and grandchildren of uterine brothers and sisters.*
7. *Full sisters' grandchildren, grandchildren of uterine brothers and sisters, consanguine brothers' daughters' children and consanguine sisters' grandchildren, the consanguine group taking the residue(if any)*
8. *Consanguine brothers' daughters' children, consanguine sisters' grandchildren, the grandchildren of uterine brothers and sisters.*
9. *Remoter descendants of brothers and sister in like order.*

Of the above group, each in turn must be exhausted before any member of the next group can succeed.

Principle No.75: - **Allotment of shares**: After ascertaining which of the descendants of brothers and sisters are entitled to succeed, the next step is to distribute the estate among them, and this is to be done by applying the following rules in order:

Rule (1) – First, divide the estate among the roots, that is to say, among the brothers and sisters (as if they were living) and in so doing treat each brother who has two or more claimants descended from him as so many brothers, and each sister who has two or more claimants descended from her as so many sisters. If there is a residue left after assigning their shares to the roots but there are no Residuaries among the roots (i.e., neither a full nor consanguine brother), apply the doctrine

of return as described in principle No.66. The hypothetical claimants being brothers and sisters, no case of increase is possible at all (Principle No.64).

Rule (2) – After determining the hypothetical shares of the roots, the next step is to assign shares to the uterine groups. If there be only one claimant in that group, assign $1/6$ to him, that being the hypothetical share of his parents. But if there be two or more claimants in that group, whether descended from a single uterine brother, or a single uterine sister, or two or more uterine brothers or sisters, assign $1/3$ to them, that being the hypothetical share of their parent or parents, and divide it equally among them without distinction of sex.

Rule (3) – Lastly, divide the hypothetical shares of the full and consanguine brothers and sisters among their respective descendants as among distant kindred of the first class(see principle No.71).

Class IV of Distant Kindred:

Principle No.76:- Order of Succession: (1) If there are no distant kindred of the first, second, or third class, the estate will devolve upon distant kindred of the fourth class in the order given below.

(a) paternal and maternal uncles and aunts of the deceased, other than his full and consanguine paternal uncles who are Residuaries

(b) the descendants how low so ever of all the paternal and maternal uncles and aunts of the deceased, other than sons how low so ever of his full and consanguine paternal uncles (they being Residuaries), the nearer excluding the more remote.

(c) paternal and maternal uncles and aunts of the parents, other than the full and consanguine paternal uncles of the father who are Residuaries.

(d) the descendants how low so ever of all the paternal and maternal uncles and aunts of the parents, other than sons how low so ever of the full and consanguine paternal uncles of the father (they being Residuaries), the near excluding the more remote.

(e) paternal and maternal uncles and aunts of the grandparents, other than the full and consanguine paternal uncles of father's father who are Residuaries.

(f) The descendants how low so ever of all the paternal and maternal uncles and aunts of the grandparents, other than sons how low so ever of the full and consanguine paternal uncles of the father's father(they being Residuaries), the nearer excluding the more remote.

(g) Remoter uncles and aunts and their descendants in like manner and order.

(2) Of the groups each in turn must be exhausted before any member of the next group can succeed.

Principle No.77: - **Uncles and Aunts**: To distribute the estate among the uncles and aunts of the deceased, proceed as follows:

(1) *First, assign $\frac{2}{3}$ to the paternal side, i.e., to paternal uncles and aunts, even if there be only one such, and $\frac{1}{3}$ to the maternal side, i.e., to maternal uncles and aunts, even if there be only one such.*

(2) *Next, divide the portion assigned to the paternal side, i.e., $\frac{2}{3}$ of the estate among (a) full paternal aunts in equal shares; failing them, among (b) consanguine paternal aunts in equal shares; and failing them, among (c) uterine paternal uncles and aunts, according to the rule of double share to the male.*

(3) *Lastly, divide the portion assigned to the maternal side, i.e., $\frac{1}{3}$ of the estate among (a) full maternal uncles and aunts; failing them among (b) consanguine maternal uncles and aunts; and failing them, among (c) uterine maternal uncles and aunts; according to the rule, in each case, of the double share to the male.*

(4) *If there be no uncle or aunt on the paternal side, the maternal side will take the whole. Similarly, if there be no uncle or aunt on the maternal side, the paternal side will take the whole.*

Principle No.78:- **Descendants of Uncles and Aunts**: If there are no uncles or aunts of the deceased, the estate will devolve upon the descendants of uncles and aunts, other than sons how low soever of full paternal uncles and consanguine paternal uncles who are Residuaries. To distribute the estate among these relations, proceed as follows:

(1) *First, assign $\frac{2}{3}$ to the paternal side, i.e., to descendants of paternal uncles and aunts, even if there be only one such, and $\frac{1}{3}$ to the maternal side, i.e., to descendants of maternal uncles and aunts, even if there be only one such.*

(2) *Next, divide the portion assigned to the paternal side, i.e., $\frac{2}{3}$ of the estate, among --- (a) full paternal uncles' daughters; failing them, among (b) full paternal aunts' children, failing them, among (c) consanguine paternal uncles' daughters; failing them, among (d) consanguine paternal aunts' children; and failing them, among (e) children of uterine paternal uncles and jaunts, the division among the members of each of the five groups above to be made as among distant kindred of the first class (see principle No.71).*

(3) Lastly, divide the portions assigned to the maternal side, i.e., 1/3 of the estate, among --- (a) children of full maternal uncles and aunts; failing them, among (b) children of consanguine maternal uncles and aunts; failing them, among (c) children of uterine maternal uncles and aunts, the division among the members of each of the three groups above to be made as among Distant Kindred of the first class(see principle No.71)

(4) If there be no children of paternal uncles and aunts, the children of maternal uncles and aunts will take the whole. Similarly, if there be no children of maternal uncles and aunts, the children of paternal uncles and aunts will take the whole.

(5) If there be no children either of paternal uncles or aunts or of maternal uncles or aunts, the estate will be divided among their grandchildren on the same principle, failing grandchildren, it will be divided among remoter descendants, the nearer in degree excluding the more remote.

Principle No.79:- Other Distant Kindred of the IV Class: If there are no descendants of uncles and aunts, the estate will devolve upon other distant kindred of the fourth class in the order of succession given in principle No.76 above, the distribution among higher uncles and aunts being governed by the rules stated in 77, and that among their descendants by those stated in principle No.78.

Successors Unrelated in Blood:-

Principle No.80:- Successor by contract: In default of Sharers, Residuaries and Distant Kindred, the inheritance devolves upon the successor by contract i.e., a person who derives a right of succession under a contract with the deceased in consideration of an undertaking given by him to pay any fine or ransom to which the deceased may become liable. (This right was taken away by Slavery Act, 1843).

PrincipleNo.81: Acknowledged Kinsman: Next in succession is the acknowledged kinsman, that is, a person of unknown descent in whose favour the deceased has made an acknowledgement of kinship, not through himself, but through another. (For example, the kinship of a person must be acknowledged to the deceased by his father or his grandfather stating that such person is the brother of the deceased.)

Principle No.82:- Universal Legatee: The next successor is the universal legatee, that is, a person to whom the deceased has left the whole of his property by Will.

Principle No.83:- Escheat: On failure of the all the heirs and successors above specified, the property of a deceased Sunni Mohammedan escheats to the Government.

Miscellaneous:-

Principle No.84:- Step Children: Step Children do not inherit from their step parents, nor do the step parents inherit from their step children.

Principle No.85:- Bastard: An illegitimate child is considered to be the child of mother only, and as such it inherits from its mother and its relations, and they inherit from such child. But it has been held that an illegitimate son cannot inherit from the legitimate son of the same mother.

Principle 86:- Missing Persons: When the question is whether a Mohammedan 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 on the person who affirms it. (Originally under Hanafi Law, a missing person is to be regarded as alive till the lapse of ninety years from the date of his birth. But the Full Bench of Allahabad High Court in Mazhar Ali Vs Budh Singh (1884) 7 All. 297 held that it is only a rule of evidence and not one of succession and it must therefore be taken as superseded by the provisions of the Indian Evidence Act.)

I am taking a liberty to extract the important tables furnished by the Hon'ble Judicial Academy with regard to the Sunni Law of Inheritance, giving a good information on hand to face any kind of situation during our day to day duties and to solve the said problems in order to extend the justice for the needy.

5. SHIA LAW OF INHERITANCE

Shia Law of Inheritance is dealt with under the Principles from 87 to 114 of Mulla on Principles of Mohammedan Law. The basis for Shia Law is Sharaya-ul- Islam. There are certain differences between Sunni Law of Inheritance and Shia Law of Inheritance, namely, there are only two kinds of successors to the estate of deceased Shia Mohammeden i.e., Sharers and Residuaries, but there is no kind of Distant Kindred. A widow without children would not get any share in the lands of her husband, but she gets her one-fourth share in value of trees and buildings standing thereon, and the movable properties including debts. Shias follow per stripes, but not per capita in succession. The doctrine of "increase" is unknown to them. An illegitimate child does not inherit from anybody including the mother, nor does anybody inherit from that child. (In India majority of Muslims are Sunni. Therefore, the law of Shia is not being dealt with in detail due to constraint of time. Further, if a reader goes through the above mentioned principles from 87 to 114, he or she would get a clear idea about the clear difference between Sunni Law and Shia Law.)

In order to know basic difference between Sunni and Shia Law it is appropriate to give the differences prima facie for having a knowledge in shia Law of Inheritance when compared with the Sunni Law of inheritance.

6. Difference between Sunni Law of Inheritance and Shia Law of Inheritance

<u>Sunni Law (Hanafi Law)</u>	<u>Shia Law</u>
1. Classes of Heirs: a. Sharers b. Residuaries c. Distant kindered d. Sharers exclude residuaries; residuaries exclude distant kindered	1. Classes of Heirs: a. Only sharers and residuaries b. Sharers and residuaries are together divided into 3 classes in a particular order of preference
2. Sharers and their sharers: a. There are 12 sharers b. Husband (wife) sharers are reduced only by child or child of a son (HLS) c. Father; i. May succeed both as sharer and as residuary at one time.	2. Sharers and their sharers: a. There are 9 sharers b. Husband (wife) their shares or reduced by all lineal descendants whether son's or through daughter's c. Father; i. Only as sharer or as residuary

ii. Becomes residuary when there is no son or child of a son (HLS)	ii. Becomes residuary when there is no lineal descendant
3. Mother; share is $\frac{1}{6}^{\text{th}}$ or $\frac{1}{3}^{\text{rd}}$ of residue after deducting share of spouse. Share is reduced by child or child of son (HLS)	3. Mother; share is either $\frac{1}{6}^{\text{th}}$ or $\frac{1}{3}^{\text{rd}}$ Share is reduced by all lineal descendants.
4. Uterine brothers and sisters: they are excluded by child or child of son, father or true grandfather (HLS)	4. Uterine brothers and sisters: excluded by parents and all lineal descendants
5. Full and consanguine sisters: a. Excluded by child, child of son (HLS). Father and true grandfather (HHS). b. They become residuaries with a brother or when there are daughters or son's daughters.	5. Full and consanguine sisters: a. Excluded by parents and all lineal descendants. b. They become residuaries with a brother and also with paternal grandfather (HHS).
6. True grandfather: true grandmother and son's daughters; These are shares	6. True grandfather: true grandmother and son's daughters; These are not shares

7. CONCLUSION

In concluding the topic it is relevant to give the legal position in Mohammedan Law of Inheritance.

1. In Abdul Rashid Vs. Sirajuddin, reported in (1933) 145 Indian Cases 461 = AIR 1933 All. 206, 209, it was held that there is no such thing as a joint Mohammedan family, nor does the law recognize a tenancy in common in a Mohammedan family.

2. In Shahul Hamid Vs. Sulthan, reported in AIR 1947 Mad. 287 and Maimoona Bivi Vs D.A. Khaja Mohinuddin, reported in AIR 1970 Mad. 200, it was held that the Mohammedan Law does not recognize a joint family as a legal entity. In fact, according to the rules of Mohammedan Law of Succession, heir ship does not necessarily go with membership of the family. On the other hand, there are several heirs like, for example, married daughters of a deceased male owner who take an interest in the estate but are not part of the family.

3. **Birth-right not recognized:** The right of an heir apparent or presumptive comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor. (This principle emanated from the cases *Hameeda Vs Budum*, reported in (1872) 17 Weekly Reports 525, *Abdool Vs Goolam*, reported in (1905) 30 Indian Law Reports, Bombay series 304).

4. The High Courts of Allahabad and Travancore-Cochin held that Mohammedan heir may be estopped by his conduct from claiming the inheritance which he agreed to relinquish if the release/ relinquishment is part of a compromise or family settlement and if he has benefited from such transaction. But the High Courts of Madras and Kerala dissented from the said view and held that the view taken by the Allahabad and Travancore-Cochin High Courts is not justified in Mohammedan Law and is also contrary to the provisions of Section 6(a) of Transfer Property Act and Section 23 of the Indian Contract Act. Finally, the Supreme Court in *Gulam Abbas Vs. Haji Kayyam Ali*, reported in AIR 1973 S.C 554 confirmed the view taken by the Allahabad High Court.

5. The creation of a life estate does not seem to be consistent with Mohammedan usage and there ought to be very clear proof so unusual a transaction (*Humeeda Vs Buldun*, (1872) 17 Weekly Reports, 525. For example, if a gift is made with a condition restraint on alienation, such condition is invalid but the gift is valid. Exception to this rule is a condition of reservation of income to the donor or a gift of usufruct to another donee. But in *Nawazish Alikhan Vs. Ali Raza Khan*, reported in AIR 1948 P.C 134, which was a case of Shia Mohammedans, the Privy Council held that a life estate and vested remainder are recognized. The High Courts of Calcutta, Bombay, Nagpur and Travancore held that a gift for a life interest is valid. The Chief Court of Oudh held that a bequest (Will) of a life interest is valid. Although *Nawazish Ali Khan Vs. Ali Raza Khan* was a Shia case, the Privy Council has made observations which are sufficiently ample to cover Sunni Cases. In *Jainabai Vs. Sethna*, reported in (1901) 34 Indian Law Reports, Bombay series 604, *Beaman, J.*, held that an estate for life and vested remainder were known to Shia Law as much as to the Sunni Law.

6. As per the case *Banoo Begum Vs Mir Abed Ali*, reported in (1908) 32 Indian Law Reports, Bombay series 172 Shia Law allowed the creation of a life- estate and a vested remainder.

7. There is no concept of joint family in Mohammedan law. If the family continues as joint, and the properties are acquired in the name of managing member of the family, and it is proved that they are possessed by all the members jointly, the presumption is that they are the properties of the family, and not the separate properties of the member in whose name the properties stand.

If the sons of a deceased Mohammedan retain his assets in business, they will be deemed to stand in a fiduciary relation to the other heirs of the deceased, and are liable to account for the profits made by them in the business.

A minor may be entitled to a benefit in the business, but this will not make him liable on a mortgage executed by him along with his adult brothers in the course of the business carried by him adult brothers. The managers of such a business in a Mohammedan family have no right to impose any liability on the minor members of the family. See D. Raja Ahmed Vs. Pacha Bai, reported in 1969(1) An. W.R 255

8. See Newaness Vs Shaik Mohamad, reported in AIR 1996 S.C 702 regarding share of father and sister and brothers.

8. REFERENCES

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Thanking you,
