

INTRODUCTION

Praise be to Allāh (ﷻ), the Lord of the Worlds. Blessings and peace be upon His Messenger Muḥammad, his family, his companions, and those who follow his guidance until the Day of Judgement.

Just as it is incumbent on every Muslim to acquire knowledge, it is also the duty of every Muslim to impart this knowledge to others. It is in obedience to this command that I have ventured to write this book on an important aspect of Islāmic law which affects all Muslims.

The disinclination of the contemporary Muslim community in general to exercise their intellectual prowess in the pursuit of religious knowledge must certainly be one of the root causes of the degeneration of the Muslims in this modern age. This is in sharp contrast to the early Muslims whose strong *Imān* (faith) and profound zeal for religious knowledge helped them to attain the highest pinnacle of glory and honour. Religious knowledge is essential for every Muslim as it helps in the spiritual development of man, acts as a safeguard against evil temptations and allows Muslims to stand up to defend their religion.

Many Muslims living in the West have unknowingly accepted many of its laws and customs which are not in accordance with Islām. The laws of succession fall into this category even though the Islāmic law regarding this matter can be legitimately accommodated and practically implemented within many existing western legislation systems by way of a valid will. Islāmic law, it appears, has been relegated to a subsidiary and subordinate role in

the so called modern lifestyle.

Muslims everywhere should realise that profession of faith is not enough, it is necessary that the Muslims not only accept Islām as their religion but also as their way of life. Laws and customs in whichever country or whatever society that conflict or contradict the way ordained by the Almighty are unacceptable to all those wishing to follow the divine law. Some individuals feel that in this modern day and age of science and technology Islām is outmoded. However, when Allāh (ﷻ) perfected the religion that He chose for mankind, the laws that He decreed are eternally valid for the whole of humanity regardless of time or place.

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَمْتَمْتُ عَلَيْكُمْ نِعْمَتِي لَكُمْ الْإِسْلَامَ دِينًا﴾

"This day, have I perfected your religion for you, completed My favour upon you, and have chosen for you Islām as your religion." (Qur'ān 5:3)

The laws of succession are no exception. The inescapable significance and importance of this aspect of Islāmic law is self-evident from the *Āyatān* immediately following those *Āyāt* giving details of the laws of inheritance, Allāh (ﷻ) promises divine reward for those abiding by His commandments and divine punishment for those who do not.

﴿تِلْكَ حُدُودُ اللَّهِ وَمَنْ يُطِيعِ اللَّهَ وَرَسُولَهُ يُدْخِلْهُ جَنَّاتٍ تَجْرِي مِنْ تَحْتِهَا الْأَنْهَارُ خَالِدِينَ فِيهَا ذَلِكَ الْفَوْزُ الْعَظِيمُ ﴿١٣﴾ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ وَيَتَعَدَّ حُدُودَهُ يُدْخِلْهُ نَارًا كَالَّذِي فِيهَا وَلَهُ عَذَابٌ مُهِينٌ ﴿١٤﴾﴾

"These are limits (set by) Allāh (or ordainments as regards laws of inheritance), and whosoever obeys Allāh

and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be the great success. And whosoever disobeys Allāh and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment." (Qur'an 4:13-14)

Allāh (ﷻ) has given guidance to man in all aspects of life including the distribution of inheritance so that each eligible person gets his or her share. Only Allāh (ﷻ) with His infinite Knowledge and Wisdom knows what is best for man. Man with his limited knowledge and wisdom may not understand all the laws of Allāh (ﷻ) but he must obey them all absolutely and unconditionally. Allāh (ﷻ) says in the Qur'an:

﴿وَمَا كَانَ لَكُمْ أَنْ يَقُولُوا إِذَا قَضَىٰ اللَّهُ وَرَسُولُهُ أَمْرًا أَنْ يَكُونَ لَهُمُ الْخِيَرَةُ مِنْ أَمْرِهِمْ وَمَنْ يَعْصِ اللَّهَ وَرَسُولَهُ فَقَدْ ضَلَّ ضَلًّا مُبِينًا ﴿٣٦﴾﴾

"It is not for a believer, man or woman, when Allāh and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allāh and His Messenger, has indeed strayed into a plain error." (Qur'an 33:36)

The divine justness and equitability of the Islāmic laws of inheritance was correctly appreciated and eloquently portrayed by Sir William Hay MacNaghten who commented, "In these provisions we find ample attention paid to the interests of all those whom nature places in the first rank of our affections; and indeed it is difficult to conceive any system containing rules more strictly just and equitable."^[1]

[1] MacNaughten, W.H., *Principles and Precedents of Moohummudan Law*. Preliminary remarks. p. iv.

The true genius and peerless efforts of the Muslim jurists who expounded the laws of inheritance in meticulous detail is aptly and succinctly complemented by the comments of Sir William Jones, the original translator of the *Sirājiyyah*, an authoritative Arabic text on the Muslim law of inheritance, who stated, "I am strongly disposed to believe that no possible question could occur on the Muslim law of succession which might not be rapidly and quickly answered."^[1]

Professor Almaric Rumsey, the author of many works on the subject of the Muslim law of inheritance, was not exaggerating when he stated that the Muslim law of inheritance, "comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilised world."^[2]

Acquisition of religious knowledge is a prerequisite prior to successful assimilation thereof into one's daily life. The Islāmic laws of inheritance form a specialised discipline with their foundations firmly rooted in the Qur'an and *Sunnah*. There is diversity amongst the Muslim jurists in the application of this knowledge in situations where no precedence has been set by the Qur'an and *Sunnah* as in the case of the inheritance share of the paternal grandfather. Some authors have spent a great amount of time and energy in highlighting these differences. It must be stressed that the Islāmic laws of inheritance have withstood the test of time because the Muslims believe that these laws are divine. Muslims accept such laws because they are laws revealed by the Almighty for the benefit of mankind and by following the divine law, their reward will be in the Hereafter. Since

[1] Sir William Jones, the English translation of *Al-Sirājiyyah*.

[2] *Moohummudan Law of Inheritance*, Preface iii by Professor Almaric Rumsey.

belief and intention are paramount these differences fade into relative insignificance.

In the interest of consistency and coherence I have used the *Hanafi Fiqh* as the foundation for this work. However, in order to provide the reader with a comprehensive overview of this whole subject I have given examples as well as detailed text of the views of the other three main *Sunni* schools of jurisprudence. This allows the reader to appreciate the flexibility as well as recognise the limits of permissibility allowed within Islāmic law of succession.

Many Islāmic countries have modified the traditional Islāmic law for various reasons such as the law of representation (section 8.5 no.8) and gestation period. Since this book is primarily aimed at Muslims living in non-Islāmic countries I have not ventured to try to cover these modifications and reforms. Recently some Muslim thinkers have tried to reinterpret the Qur'ānic Verses on inheritance, namely Verses 4:11-12 and 4:176, and derived at Islamic inheritance laws which are at variance with the views of the *Ṣahābah* and all other Muslim jurists. If the new interpretation of these modern Muslim thinkers is to be accepted then did the *Ṣahābah* and all the great Muslim jurists of the past unanimously agreed in error on this aspect of Islāmic law? Have we been implementing the Islāmic law of inheritance incorrectly for the past 1400 years or so? Is it possible for the *Ijmā'* (consensus) of the Muslim *Ummah* to be wrong on a legislative matter? Would the Almighty Allāh (ﷻ) allow such a thing to happen?

Once a consensus has been reached by the Muslim scholars/jurists on a particular legal issue succeeding generations of Muslims should accept that consensus of opinion. I have, therefore, confined the scope of this book to *Shari'* law as embodied in the Qur'an and *Sunnah* of the Prophet

Muḥammad (ﷺ), and its exposition by the early Muslim jurists.

The format of the book is such that it is written in clear unambiguous terms with bullet points rather than prose form. This will make it easy for the novice to grasp the essential points. I have used abbreviated notation to specify the blood relationship between the deceased and the potential heir. This removes any ambiguity which may occur by the use of everyday terms to denote relationships. There is a separate section for each of the closely related potential heirs, so that each claimant can read the section relevant to him to determine his or her entitlement to the estate of the deceased.

I have retained certain key original Arabic terms for which there is no suitable English translation or the translation of which is likely to lead to misunderstanding. All such Arabic terms are written in transliteration form and appear in italics in the text, except for proper nouns which generally are not italicised.

I have also included a brief overview of Islāmic law pertaining to subjects which have a direct impact on succession notably, marriage, divorce and the Islāmic will (*Al-Wasiyyah*). The two chapters on these subjects, chapters 47 and 48, are only brief overviews and not exhaustive studies. Although this book has been written for the average educated person with little or no prior knowledge of the subject, its depth and detail will appeal to those wishing to study the subject at a higher level.

Because no human being is immune to making mistakes I would like to make a plea to any individual who finds any mistakes in the text to bring it to my attention or to that of the publishers and to such individuals I would be most

grateful. My e-mail addresses for this purpose are: ahussain1999@doctors.net.uk or ahussain1999@yahoo.co.uk.

I submit this work in the service of Allāh (ﷻ) to the English speaking Muslim brethren hoping that Allāh (ﷻ) will make it beneficial for those seeking knowledge to lead a righteous life.

1. NOTATION SYSTEM USED IN THE BOOK

When writing on a subject such as succession it is necessary to use abbreviations to denote the relationship of the heir to the deceased/propositus. This chapter outlines the system of abbreviation used in this book. All the relationships mentioned in the book are with reference to the deceased unless otherwise specified.

The system used in this book allows very distant relatives to be written in abbreviated form. By inserting the word 'of' between each of the relatives the relationship to the deceased becomes clear and unambiguous. For instance DSSbF would denote the daughter of son of son of full brother of father, this is much clearer than saying the paternal uncle's grandson's daughter which does not give the exact lineage of the claimant.

The difference between the S used for son and the \mathcal{S} used for sister should be noted. The \mathcal{S} used to denote sister is always associated with a small letter, for instance \mathcal{S}_f denotes full sister, \mathcal{S}_u denotes uterine sister and \mathcal{S}_c denotes consanguine sister.

The word consanguine has been used in this book to denote relatives with the same father but different mothers. This has been borrowed from the French who use the word "consanguin" to denote this relationship. The word