

# Islamic Law of Inheritance

*Rules and Calculations*

Muhammad Ekramul Haque

# **Islamic Law of Inheritance**

*Rules and Calculations*

**First edition**

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## **Author's Note**

I am grateful to the Almighty Allah for giving me the opportunity to write a book on Islamic law of inheritance. I hope that this book will be useful for learning Islamic law of inheritance in a lucid way.

Islamic law of inheritance, which has been termed by a Hadith as a half of the knowledge, is generally considered to be a difficult area of law. Since my student life in Dhaka University, I have seen that many students are afraid of this particular area of law. This has not been changed even during my teaching life. When I got the opportunity to teach this at the university level (I taught the course first in the external programme of the University of London), I tried my best to teach this in a simplified way. I am happy that most of my students of Islamic law could learn to solve the problems of inheritance. They used to tell me that they did not face that much difficulty in understanding this difficult part of law due to my teaching of the course in a lucid manner. I highly enjoyed the pleasure of my students which appeared on their faces after they could solve problems of inheritance. It is the pressure of my students, indeed, which ultimately compelled me to write a book on Islamic law of inheritance.

This book is basically a compilation of my class lectures delivered in different universities. It includes some innovative ideas and examples that arose in my mind during delivering lectures in the classroom. The first draft of this book was of 400 pages, as I wanted to publish a complete book on Islamic law on inheritance. But, later I found it to be a gigantic work to finish, which would take much time and effort. Then I have changed my mind and decided for now to publish a short book consisting of the basic rules of



inheritance and the methodologies of calculations. I have deliberately omitted different theoretical discussions in this edition in order to make the book an easy guide for the beginners. However, still I have the plan to write a complete book on this part of law in future.

This is the publication of the first draft of this book, where still there is much room for improvement. Of course, I do not claim it to be error free. I will gladly accept with gratitude any suggestion/comment made regarding this book by the readers. I wish to make the next edition of this book a better one on the basis of the feedback coming from the readers of this book.

I express my gratitude to London College of Legal Studies (LCLS) for publishing this work. I am grateful to my friend Barrister Tanveer Parvez who read the very first draft of this book and gave me some important suggestions. My mother and my eldest brother always actively encouraged me to write and publish this work. My wife, being a layman to law, also got much interest in the calculations of inheritance, and inspired me to complete the work. I am thankful to my son Zaid, who happily allowed me to work in my laptop for a longer time by sacrificing his will to play 'toy theatre' on the internet in my laptop.

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## **CHAPTER 1**

### **INTRODUCTION**

#### **1. Meaning of Law of Inheritance:**

Law of inheritance in Islamic law is known as '*ilm ul-faraid*'. The Arabic term '*ilm ul-faraid*' literally means 'knowledge or study of injunctions (concerning inheritance). This term is used to mean 'law of inheritance', an important branch of knowledge. It provides an elaborate methodology composed of a set of rules to calculate and distribute the property of a deceased person among the heirs so that everyone receives a just share in the property. In describing the meaning of '*ilm ul-faraid*' Coulson said:

*Fard* is the root Arabic term for a duty imposed by divine command, but the word is also used both in the singular and in one of its plural forms, *faraid*, specifically to denote the shares of inheritance allotted to various relatives by the Qur'an; so that the phrase *ilm ul-faraid*, or *science of the faraid*, which is commonly



used to describe the system of inheritance as a whole, epitomises the notion of religious obligation'.<sup>1</sup>

In Islam, to acquire this knowledge is a 'communal obligation':<sup>2</sup> it is obligatory that at least one person in every community has to be an expert on this law. Zaid Bin Thabit was certified by the Prophet (PBUH) as the most knowledgeable person on Islamic Law of Inheritance among the Muslims of that time.<sup>3</sup>

## **2. Importance of the law of inheritance:**

Law of inheritance in Islam bears great significance as it deals with distribution of property after one's death. It has been streamlined by the Almighty Allah in His Holy Book 'Al-Qur'an' and has been supplemented by the Sunnah of the Prophet Muhammad (PBUH). The significance of this particular branch of law can be discussed from different perspectives.

### **2.1. Social perspective:**

Islamic law of inheritance prevents concentration of property. It opens the door for many to get the property. Unlike many other legal systems, one cannot dispose of his entire property in whatever way he likes by way of testament. Thus, succession is a check on the capricious use of testamentary power; otherwise entire property could be disposed of by making an arbitrary bequeath. However, one can dispose of his entire property by way of gift during his lifetime; but

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<sup>1</sup> Coulson, N.J., *Succession in the Muslim Family Law*, Cambridge University Press, 1971, p.3.

<sup>2</sup> 'fard kifayah'

<sup>3</sup> According to a saheeh Hadith that has been recorded by *Nasai*, *Tirmithi* and others.

that is, in fact, restricted by inherent inclination of human being towards property. It is obvious that no one generally prefers to dispose of his entire property during his lifetime, because, there is no certainty regarding the quantity of property he may require actually for himself during his lifetime. Property of a deceased person cannot be distributed solely according to his 'Will'. Rather, the property will be distributed according to the scheme of law which includes both inheritance and 'will', if any. Thus, no one, man or woman, can be deprived of such property arbitrarily by the testamentary power. The law of inheritance thus serves social purpose.

Human beings generally have an inherent tendency towards acquiring property. Settling the complex issues of distribution of property through the wisdom of the Almighty Allah undoubtedly minimizes conflicts of interests among the heirs of a deceased person, and thus this branch of knowledge serves great social purpose. Islam does not encourage spending one's entire property even for religious purposes. This is evident from the following Hadith where the Prophet (PBUH) prohibited to spend the entire amount for the religious cause and ordered the substantive part to be reserved for one's descendants. , and The Prophetic Hadith, reported on the authority of Sa'd bin Abi Waqqas says<sup>4</sup>:

"I was taken very ill during the year of the conquest of Mecca and felt that I was about to die. The Prophet visited me and I asked: "O Messenger of Allah I own a good deal of property and I have no heir except my daughter. May I make a will, leaving all my property for religious and charitable property?" He (the Prophet) replied: "No." I again asked may I do so in respect of 2/3 of my property?

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<sup>4</sup> Bukhari.

He replied "No." I asked: "may I do so with one half of it?" He replied; "No." I again asked: "May I do so with 1/3 of it?" The Prophet replied: "Make a will disposing of one third in that manner because one third is quite enough of the wealth that you possess. Verily if you die and leave your heirs rich is better than leaving them poor and begging. Verily the money that you spend for the pleasure of Allah will be rewarded, even a morsel that you lifted up to your wife's mouth."

Thus, Islamic law of inheritance serves social purpose. Another remarkable attitude of Islamic law is evident in this Hadith which considered daughters as heirs like sons, which is opposed to the backward concept of male dominated traditional society that identified sons as the sole representative heirs to the exclusion of daughters.

## **2.2. Legal perspective:**

Law of inheritance has great legal importance, which deals with an important mode of transmission of property. It forms a significant part of law of property. Regarding many issues, the Holy Qur'an laid down the policies instead of laws in strict sense. But in the matters relating to inheritance, the Qur'an itself strictly formulated many laws. Thus, this particular branch of Islamic law got additional significance as many of its rules have been directly established by the 'Muhkamat' or 'clear verses' of the Holy Qur'an.

Law of inheritance has great practical utility in many land related disputes and litigations. The knowledge of this law becomes essential to decide many cases, especially, cases related to immovable property. Among all legal systems, secular or religious, Islamic law of inheritance provides the most detailed system of inheritance. This unique feature of Islamic law has particularly attracted the jurists worldwide.



### 2.3. Religious perspective

Sharia is the genus of which law is the species. Among different types of such law, inheritance law has been given special significance by the direct Qur'anic verses and Hadith. Fundamental principles of law of inheritance have been enumerated in the Holy Qur'an, where, the Almighty Allah also resolutely ordered to observe such principles strictly—whether a share so determined seems to be more or less.

<b>General instruction by the Qur'anic Text.</b>
'There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large—a legal share. (Nisa : 7)
<b>Other Qur'anic Texts emphasizing the significance of the Texts relating to inheritance.</b>
'An ordained share'. (Nisa:7)
'Allah instructs you concerning (the inheritance of) your children'. (Nisa:11)
'(These fixed shares are) an ordainment imposed by Allah'. (Nisa:11)
'This is a commandment from Allah'. (Nisa:12)
'Thus does Allah make clear to you (His Laws) lest you go astray. Allah is All-Knower of all things.' (Nisa:176)
'These are the limits (set by) Allah (or ordainments as regards laws of inheritance)'. (Nisa:13)
And whosoever disobeys Allah and His messenger (Muhammad sm), and transgresses His limits, he will cast him into the Fire, to abide therein; and he shall have a disgraceful torment. (Nisa:14)

Religiously speaking, it is obligatory to have at least one person in a community, who will be conversant in



this law. There are many Hadith that described the enormous significance of this law. Even, this single branch of law has been termed by a Hadith as one half of the whole knowledge. Generally speaking, Qur'an has not laid laws in strict sense in many respects, yet it contains basic laws regarding inheritance in clear terms. Thus, it appears that the Holy Qur'an has given special importance to this particular branch of Islamic law.

#### **2.4. Comments of the jurists about Islamic Law of Inheritance:**

It has already been mentioned that Islamic law of Inheritance is the most detailed law of succession among all legal systems in the world. Many jurists have appreciated the excellence of this well calculated system of inheritance. Some of those comments are quoted below:

**Tyabji:** The Muslim law of inheritance has always been admired for its completeness as well as the success with which it has achieved the ambitious aim 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.<sup>5</sup>

**William Jones:** I am strongly disposed to believe that no possible question could occur on the Muhammedan law of succession which might not be rapidly and correctly answered.<sup>6</sup>

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<sup>5</sup> Tyabji, Faiz Badruddin, *Muslim Law: The Personal Law of Muslims in India and Pakistan*, 4<sup>th</sup> ed 1968, Tripathi Pvt. Ltd., Bombay, p.800.

<sup>6</sup> Ibid., p. 801.

**Anderson:** There is no aspect of the (Muslim) Law in which the logical and technical excellencies of the Islamic system are more advantageously displayed than in the law of inheritance.<sup>7</sup>

**Fitzgerald:** To Moslems the *sharia law* of inheritance is ideally perfect: founded on the sure rock of divine revelation and worked out in the utmost detail by that mental ingenuity which God gave man for the purpose of understanding revelation. The logical strength of the system is beyond question.<sup>8</sup>

**Macnaghten:** In these provisions we find ample attention paid to the interests of all those whom nature places in the first rank of our affection; and indeed it is difficult to conceive any system containing rules more strictly just and equitable. The obvious principle of perfecting the nearer kindred to claimants whose relation to the deceased is not so proximate, seems to have been adopted as the invariable standard for fixing the portion; and the rules for the succession of several heirs and the order of preference assigned to the different degrees of consanguinity seems to be exactly what would be most consonant to the general inclination of mankind.<sup>9</sup>

**Justice Mahmood:** I may observe that the law of inheritance was founded by the Prophet (SAW) upon republican principles at a time when the modern democratic conception of equality and division of property

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<sup>7</sup> Anderson, J. N. D., *Islamic Law in the Modern World*, 1959 reprint in 1975, Greenwood Press, Westport Connecticut, p. 60.

<sup>8</sup> Fitzgerald, Seymour Vesey, *Muhammadan Law: An Abridgment According to its various Schools*, 1931, Oxford University Press, London, p. 120.

<sup>9</sup> Macnaghten, W. H., *Principles and Precedents of Mohammadan Law*, p.1.

was unknown even in the most advanced countries of Europe.<sup>10</sup>

**Coulson N. J.:** Juristically, the law of succession is a solid technical achievement, and Muslim scholarship takes a justifiable pride in the mathematical precision with which the rights of the various heirs, in any given situation, can be calculated.<sup>11</sup>

## **2. Inheritance in pre-Islamic Arab and Islam**

### **2.1. Existing customary laws in Arab society:**

Following are the main features of law of inheritance that prevailed in the Arab society before the advent of Islam:

- i. Nearest male agnate got the entire property to the exclusion of all relatives.
- ii. Ascendants including the parents themselves were totally excluded by the son.
- iii. Female relatives including the daughters did not have any proprietary right by way of inheritance.
- iv. Wife did not have any right whatsoever in the property of her deceased husband.
- v. Cognates were also totally excluded.

### **2.2. Improvements made by Islam**

Islamic law introduced some outstanding and fundamental changes that recognized, *inter alia*, the dignity of women, respect to the ascendants and marital relationship. Islam allocated a portion of property to each of the above relations. However,

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<sup>10</sup> In *Govinda Dayal V. Inayatullah*, 1885, 7 All, pp.782-783.

<sup>11</sup> Coulson, *Supra* note 1, p. 3.



Islamic law has not abolished altogether the existing law of that society in the matters regarding inheritance. The major Islamic improvements over the existing customary Arab laws were as follows:

- i. A new group of sharers was created, which included female heirs with males.
- ii. Female's right to inheritance was generally recognized.
- iii. Widow was made an heir who will never be excluded.
- iv. Daughter was also been made an heir who will never be excluded.
- v. The rights of the parents were guaranteed.
- vi. Cognates were also granted the right to inherit in the absence of sharers and agnates.
- vii. Infants are no more disqualified to get the property by way of inheritance.

### **3. Features of Islamic Law of inheritance**

The following features have been highlighted by Muhammad M. Abdul Fattah<sup>12</sup>:

1. Islam has ordained that the property of the deceased person is to be possessed—after his death—by the members of his family, and this reflects Islam's respect to the ownership of individuals.

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<sup>12</sup> Simplified Islamic Jurisprudence based on the Qur'an and the Sunnah, compiled and translated by: Muhammad M. Abdul Fattah, Dar Al-Manarah, Egypt, vol. 2, pp.1120-1121.



2. Islam has defined for every inheritor a certain share, thus blocking all ways to disputation with which animosities among relatives appear and mercy disappears.
3. The share of the female is half of the male because he alone is legally responsible to maintain the whole family.
4. The marital relationship has been attached to the kinship relationship as a sign of sanctification of the relation between spouses and bringing out the aspect of fidelity and devotion.

Islamic law of inheritance recognized women's right to property of the deceased, though strictly speaking, they do not have a legal obligation to maintain the family. In the days before Muhammad (PBUH), in the then Arab society, one could dispose of his entire property by way of making a 'will' according to his sweet will. Even most of the legal systems in the world still recognize such an unrestricted power of making will—in exercise of which even a nearest heir could be excluded easily. But a 'will' made in total exclusion of the legal heirs, shall be void altogether under Islamic law of succession. Thus, Islamic law—by way of restricting the power of making 'will' and giving a detailed system of inheritance—has, indeed, ensured justice. Under Islamic law of inheritance, one cannot dispose of his entire property among the strangers, depriving his blood relations by way of making a will. Thus, Islamic law gives priority to the blood relations by securing their rights against arbitrary exercise of the testamentary power. The whole scheme of inheritance under Islamic law has been built on fairness and good conscience.

### ***No distinction between male's property and female's property:***

For the purposes of distribution of property among the heirs, Islamic law of inheritance does not make any distinction between male's property and female's property. Accordingly, the property of a female person will be distributed in the same manner among her heirs like the distribution of property of a male under the same rules. For example, a daughter gets  $\frac{1}{2}$  from her father's property in the absence of any son, and similarly if her mother dies that daughter also gets same  $\frac{1}{2}$  from her mother's property under the similar circumstance.

#### **4. Applicability of Islamic law of succession in Bangladesh:**

Islamic law of succession is applicable in distribution of property of a Muslim deceased in Bangladesh. Section 2 of The Muslim Personal (Shariat) Application Act, 1937 provides that the property of a deceased Muslim will be distributed according to the Sharia law:

Notwithstanding any custom or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of personal law, marriage, dissolution of marriage including talaq, ila, zihar, lian, khula and mubarrat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the

parties are Muslims shall be the Muslim Personal Law (Shariat). (Underlining is of mine).

However, in Bangladesh, in the matters relating to inheritance of Muslims, one statutory law is also applicable along with the Sharia law, which deals with the issue of inheritance of orphaned grandchildren. Section 4 of the Muslim Family Laws Ordinance, 1961, which deals with this issue, has been elaborately discussed in chapter 10 of this book. The Courts in Bangladesh, generally, strictly adhere to '*madhab*' (school of thought) and decide the cases according to the '*madhab*' of the parties.

**CHAPTER 2**  
**GENERAL PRINCIPLES**  
**OF ISLAMIC LAW OF INHERITANCE**

<ol style="list-style-type: none"> <li>1. Administration of estate             <ol style="list-style-type: none"> <li>1.1. Qur'anic injunction and order of distribution</li> <li>1.2. Funeral expenses</li> <li>1.3. Settlements of debts</li> <li>1.4. <i>Wasiyyah</i> or bequests</li> <li>1.5. Inheritance</li> <li>1.6. Devolution of the estate and Case laws</li> </ol> </li> <li>2. Distribution of property             <ol style="list-style-type: none"> <li>2.1. Definition of <i>mirath</i></li> <li>2.2. Essentials of succession</li> <li>2.3. Proportion between male and female</li> </ol> </li> </ol>	<ol style="list-style-type: none"> <li>3. Impediments to succession             <ol style="list-style-type: none"> <li>3.1. Homicide</li> <li>3.2. Illegitimacy</li> <li>3.3. Difference of religion</li> <li>3.4. Difference of country</li> <li>3.5. Slavery</li> </ol> </li> <li>4. Classes of heirs             <ol style="list-style-type: none"> <li>4.1. Sharer</li> <li>4.2. Agnatic heir</li> <li>4.3. Distant kindred</li> <li>4.4. Order of Priority</li> </ol> </li> <li>5. Arithmetical methodology to solve a problem.</li> </ol>
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**1. Administration of estate:**

Administration of estate means the management or disposal of property of any person. How will the property of a Muslim person be managed after his/her death? There are certain specific rules regarding the administration of estate of a deceased person. After death of a person, there may be different claims over the property, for example, debt, inheritance, will etc. There are certain specific guidelines to determine the priority among differing claims. Otherwise, there would have chaos and conflict, especially regarding the order of priority. This management of the property of the deceased is known as the 'administration of estate'. The administration of estate as it exists in other legal systems is an alien and less important concept in Islamic law of inheritance. It may be due to the reason that unlike other legal systems, Islamic law has a complete and elaborate system of intestate succession. N J Coulson has rightly commented:



"The supreme purpose of the Islamic law of succession is material provision for surviving dependants and relatives, for the family group bound to the deceased by the mutual ties and responsibilities which stem from blood relationship. The manner in which this provision is to be made is prescribed by the law in rigid and uncompromising terms. Relatives are marshaled into a strict and comprehensive order of priorities and the amount, or quantum, of their entitlement is meticulously defined. 'Legal heir', in the Islamic context, is a term which is properly applied only to those relatives upon whom property devolves, after the decease of its owner, by operation of law; and it is the rights of the legal heirs which are the keynote of the whole system of succession, for they are fundamentally indefeasible. The power of the deceased to dispose of his property by will is recognized but is restricted to one-third of his net assets. Only where the legal heirs are prepared voluntarily to forgo their rights will testamentary disposition in excess of this limit be operative. Accordingly, the transmission of property by way of testamentary succession, or in accordance with the wishes of the deceased is of secondary importance and the central core of the system of succession is formed by the compulsory rules of inheritance designed for the material benefit of the family group."<sup>1</sup> (*Underlining is of mine*).

Islamic law of succession speaks for distribution of property of the deceased by the state if that has not been already taken place by the parties themselves.<sup>2</sup> At that the modern jurists tried to administer it also in the format of administration of estate. The act of administration of estate is not a violation of Islamic law. It is submitted that, unlike other legal systems in the world, appointment of an administrator is not essential in every case for distribution of property of a

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<sup>1</sup> Coulson, N.J., *Succession in the Muslim Family Law*, Cambridge University Press, 1971, p.

<sup>2</sup> See Tyabji, M., *Muslim Law*, 4<sup>th</sup> ed., chapter Administration.

deceased. No Probate or Letter of Administration is required to dispose of the property in favour of heirs under Islamic Shariah law. However, in wider perspective, in the sense of management of the property, administration of estate is considered to exist in Islamic law. There are Qur'anic guidelines regarding the order of distribution of property, which are in fact about management of the property. Thus, Islamic law accommodated the concept of administration of estate in a somewhat different form than the traditional legal systems.

### **1.1 Qur'anic injunction regarding the order of distribution:**

There is a direct *Qur'anic* verse that lays down the principles of administration of the property of a deceased. It is mentioned at three places<sup>3</sup> of *Sura An-Nisa*, in the Holy *Qur'an*, with a little bit different language containing the same theme that—

“... .. The distribution in all cases is after the payment of legacies and debts.”<sup>4</sup>

Thus, literally speaking, the above Qur'anic verse lays down the following order of distribution:

1. Wasiyah or Will
2. Debts
3. Inheritance

But, in fact, the order is not meant to be so. Because, in interpreting this Qur'anic verse, all the Companions and Jurists agreed on the view that the debts should

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<sup>3</sup> Holy Quran, Sura An-Nisa, once in verse 11 and twice in verse 12.

<sup>4</sup> This English translation of the Qur'anic verse is taken from *Interpretation Of The Meanings Of The Noble Qur'an In The English Language*, By Dr Muhammad Taqi-ud-Din Al-Hilali and Dr Muhammad Muhsin Khan, Part 1, Darussalam Publishers and Distributors, KSA, p. 336.

be settled first, and then the *Wills* would be executed, and last of all inheritance will take place. Their argument is that the Qur'an mentioned *Wills* at first not to mean it to be distributed at first, but to explain the importance of *Wills*. It is generally known to all people that the debts are to be paid; on the other hand, in many cases people might be found to be reluctant in executing *Wills*. It is argued that considering this general reluctance towards *Wills*, it has been mentioned at first in order to denote proper significance to *Wills*. However, this is established clearly by the Holy Qur'an that the discharge of debts and legacies are given obvious priority over the claims of the heirs. The heirs of a deceased person have the right only over the property that remains after the payment of all debts and *Wills*. Certainly, even if nothing remains after payment of debts, the heirs will get nothing. Thus, according to the interpretation of the relevant Qur'anic verse, the property of a deceased person must be administered in the following order:

1. Debts
2. Wasayah or Will
3. Inheritance

### **1.2 Funeral expenses :**

Funeral expenses may be realized from the property of the deceased, but the expenses should be reasonable. There must not have an excess disbursement for this purpose. The property of a deceased is to be spent with due care and diligence maintaining a reasonable standard. However, there are some opinions of the jurists regarding responsibility of the funeral expenses, which are worth mentioning here:<sup>5</sup>

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<sup>5</sup> The following opinions of the jurists are quoted from Abdur Rahman I. Doi, *Shariah The Islamic Law*, Ta Ha Publishers, London, UK, 1997, p.293.



1. According to Hanafi school, the husband is responsible for a wife's funeral expenses even though he himself is dead and even if the wife is rich.
2. According to Maliki school, where a wife dies leaving her husband, the husband is held responsible for her funeral expenses. If the man dies admittedly after her death, the responsibility will shift to the other surviving relatives who will inherit him.
3. In the Shafi School of thought if the husband is rich, he is responsible for funeral expenses. The husband is likely to become rich by inheriting her too. But if she is rich, the funeral expenses will be paid out of her estate but excluding the share of the husband. If she is not rich, and the husband is not likely to become rich by inheriting her, her funeral expenses will be paid from the little she has left including the share of the husband. If she had left nothing her relatives will bear the expenses. If she has no relatives it will be paid from the public treasury.

### **1.3 Settlement of debts :**

After payment of the funeral expenses, the debts which are due to the people are to be discharged at first. Then the debts due to the Almighty Allah, for example, unpaid *zakat*, are to be paid. However, Imam Malik said that *zakat* will be paid only if such payment was advised by the deceased before his death.<sup>6</sup>

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<sup>6</sup> Doi, *Supra* note 5, p.292.



#### **1.4 Wasiyyah or Wills :**

In dealing with a *will*, first of all, the validity of the *will* is to be determined. The property is to be disbursed according to a valid *will*. There are two conditions for the validity of a *will*: firstly, no will in favor of any heir, and secondly, no *will* for more than one third of the property. However, a *will* made in violation of these conditions will not be treated as void *ab initio*. Because, if the heirs give their consent to any such *will*, then that *will* shall be valid in its entirety. However, if the heirs differ in consenting to the will, then the *will* shall be valid only to the extent of the consented portion.

#### **1.5 Inheritance :**

After payment of funeral expenses, debts and *will*, the remaining property will be distributed among the heirs according to Islamic law of inheritance. After discharging the charges of debts and *will* upon the property, the residue property will be considered as the total property for the purpose of distribution among the heirs. So, if nothing remains after discharging debts, or, debts become higher than the whole property then the heirs will not have any right to get any property in any way and thus in such cases no question of succession arises. Thus, the existence of a property of any amount is one of the pre conditions for succession to arise.

#### **1.6 Devolution of the estate and Case law :**

On the death of a person, the property will be vested upon whom? Will the property be vested in the heirs irrespective of any calculation at all? Or the property will be vested in the creditors, if there is any, and then the residue property will be vested in the heirs. In this regard, there are different opinions of the jurists.

According to Hanafi School, if there is any debt attached to the property of the deceased, then the property will not be vested in the heirs until the debts are paid. As the Qur'an laid down that succession opens after payment of debts and legacies, so the property by way of succession cannot be vested before payment of debts and legacies. Thus, according to the Hanafis, even a deceased person is a legal entity unlike in secular modern laws.<sup>7</sup> Likewise, in Shafi school, though the heirs hold the property immediately after the death of the deceased, they do not become owners till payment of the debts and legacies. In such cases, the heirs become mere managers of the property for the interim period till the payment of debts and legacies.<sup>8</sup> Tanzilur Rahman expressed his view in the following words:

The viewpoint of this writer as well is in the agreement with this view. The intent of the Qur'anic dictate is clearly to put into effect the process of division of shares among the heirs only after the discharge of the debts and execution of the Will of the deceased, if any. The making of distribution of estate among the heirs subsequent to the payment of debts and the execution of Will means that the rights of the creditors are not to be put under jeopardy.

What will happen if a sale takes place by the heirs before payment of debts and legacies? According to Shafi and Shias, 'transfer of the property by the heirs in favor of another, prior to the payment of debts, shall be void.'<sup>9</sup> While 'the Hanafi and Maliki jurists hold such sale to be valid, provided the debts are paid

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<sup>7</sup> For detailed discussion on this matter see Tanzilur Rahman, *A Code of Muslim Personal Law*, Islamic publishers, Karachi, Pakistan, vol.2, 1980, pp.433-438.

<sup>8</sup> *Ibid.*, p.438.

<sup>9</sup> *Ibid.*, p. 442.

off.<sup>10</sup> Thus, if the debts are not paid off ultimately, then according to all, such a sale can be annulled by the creditors. Islamic law, in such a case will not award the protection even to the buyer in good faith who was ignorant of the debts. The reason is jurisprudential: a defective title cannot pass any good title. Here lies the difference between Islamic law and other secular laws which recognize such a sale as valid, if it takes place in good faith and without notice.

In the leading case of *Jafri Begum V. Amir Muhammad Khan*<sup>11</sup> it was held that the property of a deceased will be vested in the heirs immediately after death of the deceased irrespective of any charge of debt over it. Thus, according to this case, property is vested immediately in the heirs and it will not be suspended till payment of the debts. This view taken in *Jafri Begum* has been criticized for: it has violated the relevant principles of sharia and that it has been pronounced being influenced by English law. Tanzilur Rahman observed:

To sum up, the trend of courts of Indo-Pak sub-continent appears to be that if an heir transfers his share in the estate without payment of debts, his act of alienation shall be valid and the title of a bonafide purchaser shall not be affected. This principle has been adopted without exception whether the debt is more or less than the estate. But if the debt is more than or equal to the estate, the principle appears to be not only against the *sharia'h* but also against the basic norms of justice. This not only violates the Qur'anic directive, but also affects the rights of the creditors. In the light of correct enunciation of Islamic law the division of the estate or its alienation can only be valid after the payment of debts and carrying out of the Will into effect especially when the debts are more than the estate.

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<sup>10</sup> Ibid.

<sup>11</sup> (1885) 7 All. 822.



## **2. Distribution of property:**

Islamic law of succession provides an elaborate and complete system of distribution of property of a deceased person. The basic rules are enumerated in the Holy Qur'an. There are also a few Hadith regarding inheritance. Apart from these two primary sources, certain other rules have been established by Qiyas and Ijma. Before starting to deal with the rules of distribution, following preliminary points need to be discussed.

### **2.1 Definition of mirath:**

*Mirath* means 'inheritance to be divided from the property of the deceased among his successors.'<sup>12</sup> It forms an important part of Islamic law, which has been termed as 'half of the knowledge'. During one's lifetime, one can spend his property according to his own sweet will, as Islamic law recognizes the concept of personal ownership. But a person cannot arbitrarily dispose of his entire property by way of making a 'will'. The power of making a 'will' has been recognized in a restricted form by Islamic law. Major portion of a deceased's property will mandatorily be distributed among the heirs according to the rules of succession. Thus, after death of person, his property will be distributed according to the scheme provided by the Islamic law of inheritance.

### **2.2 Essentials of succession:**

There are three pre conditions for distribution of property according to law of inheritance. In other words, succession opens on fulfillment of three essentials, they are:

- i. **Deceased person:** Before death of a person succession never opens. Thus, if any person distributes his property in any way during his

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<sup>12</sup> Doi, supra note 5, p.271.



lifetime, that can never be termed as distribution according to law of succession. Because, succession opens only after the death of a person. Thus, a 'deceased person' is the primary element to make law of succession operative. However, in case of a missing person, if there is a presumption as to his death<sup>13</sup> or a judicial decree is obtained in this regard, succession may open.

- ii. **Surviving heir:** Survival of any heir, nearer or remote, is the next condition for succession, as the property will be distributed among the heirs. Thus a person, who dies before the death of the propositus, does not acquire any right in the property of the person who dies later.
- iii. **Estate or inheritable property:** This is the heart of succession; because, if there is no property, there will be no succession. The property for the purpose of succession includes every property of the deceased person, movable or immovable including his legal rights that are heritable. Thus a person who does not have any property, succession cannot open in case of his death.

### **2.3 Proportion between male and female**

One of the fundamental principles of Islamic law of succession for distribution of property among the agnatic heirs is that if there are male and female from the same class, then a male will get double of a female's share. Thus, in such cases, the property will be distributed in the proportion: 'male : female = 2 : 1'. The Qur'an says: "To the male, a portion equal to that of two females."<sup>14</sup>

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<sup>13</sup> This is called in Arabic 'mawtan hukmiyyan'.

<sup>14</sup> Qur'an, ch. 4:11.

### **3. Impediments to succession:**

Death of any person does not *per se* treat his relatives as heirs. Rather there are also some other qualifications that must be present in a person to be treated as an heir for the purpose of Islamic law of succession. In other words, there are some disqualifications or barriers that prevent a person to be an heir. Following are the impediments to succession:

#### **Homicide:**

Homicide is a direct bar that prevents a person to be an heir of the person whom he killed. Thus, homicide is not an absolute disqualification for every purpose, as it does not bar him to be an heir of all persons at every time; rather the killer will not be treated as heir only of the person who has been killed by him. The prohibition has been imposed based on a Hadith that says—'A murderer does not inherit'<sup>15</sup>. The public interest requires that the killer be debarred from inheritance since, if he did inherit, killing would accelerate inheritance and lead to universal chaos.<sup>16</sup> Permitting a killer to be the heir of the victim seems to go against the principles of justice, equity and good conscience.

*Illustration: Inheritance of husband who killed his wife.*

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
Husband	Excluded	A murderer is not treated as an heir of the victim.
Father	Residue	As asaba.
Mother	1/3	As sharer, because there is no child, son's child or siblings.

<sup>15</sup> Abu Dawud.

<sup>16</sup> Al-Ramli, *Nihayat al-Muhtaj*, v.23, quoted from Coulson, *supra*, 176.

## Illegitimacy

According to Sunni view: an illegitimate child does not have any mutual legal relationship for the purpose of inheritance with his/her putative father, but an illegitimate child will inherit the mother and vice versa. Thus, illegitimacy acts as an impediment for succession in between an illegitimate child and the putative father, though an illegitimate child will inherit from her mother and vice versa. However, according to Shia view, illegitimacy acts as an absolute impediment both with the putative father and the mother.

In the matters relating to inheritance of an illegitimate child, *sharia* law and the law of Evidence that prevails in Bangladesh have been found to be conflicting. The root of the conflict is in the definition of legitimacy of children. Sharia law (Hanafi law) treats the following children as legitimate:

1. Any child born after the expiry of six months after a valid or irregular marriage takes place.
2. Any child born within two years, according to Hanafi, after divorce or death of the husband of the mother of the child if she does not remarry till then.

But, section 112 of the Evidence Act, 1872 presumes the following children as legitimate, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten:

1. Any child born during the continuance of a valid marriage.
2. Any child born within two hundred and eighty days after dissolution of a valid marriage.



Section 112 does not raise any presumption of legitimacy in favor of the child of an irregular marriage as it speaks only about valid marriage. Thus, sharia seems to be more flexible in this regard as that also covers the children of irregular marriage as legitimate. Again, after the dissolution of a valid marriage a child to be legitimate requires to be born within 280 days under the statute, whereas Abu Hanifa extended this period up to two years; here also sharia is more flexible and lenient. A child born after the expiry of 280 days—but within two years—of dissolution of a marriage, is presumed to be legitimate under sharia law; but no such presumption is there in favor of such a child, under section 112 of the evidence Act, 1872.

Thus, an illegitimate child will not inherit his putative father, according to sharia law. But, which law does determine the illegitimacy? The Shariat Application Act has mandated succession of Muslims to be governed by Sharia law. But, if section 112 overrides the provision regarding legitimacy of children under sharia law, then the property is to be distributed following the sharia after determining legitimacy according to the Evidence Act, 1872. Thus, if section 112 overrides the sharia law, then a child born before the expiry of six months of a valid marriage will inherit, as it will be treated as a legitimate child. But, what will happen in the case of a child of an irregular marriage who is treated as legitimate if it is born after the expiry of six months in whose favor there is no presumption of legitimacy under the Evidence Act, 1872? Will he be barred to inherit being considered as an illegitimate child under the Evidence Act, 1872? Or will he inherit being considered as a legitimate child under the Sharia law? Again, what will happen, if a child is born after the expiry of 280 days but within two years of divorce or death of the husband of the mother of the child? As this child will be presumed to



be legitimate according to Hanafi law, whereas in its favor there is no such presumption of legitimacy under the Evidence Act, 1872. If the Evidence Act, 1872 is considered as an overriding law as regards legitimacy of children taking it as a procedural matter, still there will remain confusion. The whole issue of inheritance of an illegitimate child can be treated as a matter of substantive law as well. Because, it is about the existence or non-existence of a right of a person. Such a conflict does not seem to have been settled yet in Bangladesh.

### **Difference of religion**

The prophet (sm) said: 'A Muslim does not inherit from any non-Muslim and vice-versa.'<sup>17</sup> Such a non-Muslim person will also never affect any other heir's share. Thus, a non-Muslim relative will be treated as non-existent for the purposes of law of inheritance.

*Illustration: Inheritance of a person of different religion.*

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
Husband	$\frac{1}{2}$	As sharer, because there is no child or son's child who can be treated as an heir in the eye of Islamic law of inheritance. The non-Muslim child will not affect the share of any heir. So, husband gets the maximum share.
Non-Muslim son	nothing	He is treated here as non-existent for his difference of religion.

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<sup>17</sup> Bukhari and Muslim.

Mother	1/3	As sharer, because there is no child or son's child who can be treated as an heir. Here, non-Muslim child will not affect her for the purpose of inheritance. There are also not two or more siblings present. Thus, the mother gets her maximum share.
Brother	R	As asaba, since there is no son or son's son or father of grandfather, and the non-Muslim son will not affect him in any way.

### **Difference of country**

Coulson summed up this impediment in the following words—

Difference of domicile or national allegiance, seen in these terms, does not as a general rule create any impediment to inheritance in Sharia law. Mutual rights of inheritance exist between Muslim relatives who are domiciled in different States, Islamic or non-Islamic, and between non-Muslim relatives (subject to the rules relating to difference of religion) who are domiciled in different Islamic states. The only exception to the general rule is in Hanafi and Shafi law where there are no mutual rights of inheritance between non-Muslim relatives if one is the subject of an Islamic state and the other is subject of a non-Islamic state, whether the latter is in treaty relationship with Islam or not. In the context of traditional Islamic polity this rule is nothing more than the modern equivalent of the barring from rights of succession of an alien enemy.<sup>18</sup>

However, the traditional opinion of Hanafi has been abandoned in many Muslim countries.

<sup>18</sup> Coulson, supra note 1, p.193.

## Slavery

Slavery is a bar to inheritance. However, since slavery has been abolished totally, so this provision lost all practical significances.

### 4. Classes of heirs<sup>19</sup>

The heirs of a deceased person are classified into the following three broad categories, for the purpose of distribution of the property according to Islamic law of succession:

- ✓ i. Sharer
- ✓ ii. Agnatic heirs
- ✓ iii. Distant kindred

#### Sharer

Sharers consist of the first group of heirs, who have been named in the Holy Qur'an and whose shares have been mentioned there specifically. Before the advent of Islam, the entire property used to go to the agnatic heirs only. The creation of a superior class of heirs, namely 'sharer', is one of the major reformations done by Islamic law. The sharers get their shares first according to the Quranic scheme, then rest of the property goes to the persons of other categories of heirs.

The term 'sharer', if is considered from the literal perspective, then the term seems to be misleading as it literally means any person who gets a share in a property. But the term in fact has been used to mean a particular group of heirs whose shares have been specifically mentioned in the Qur'an. Thus, they are

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<sup>19</sup> There is also separate chapter for each class of heirs that contains the elaborate discussion on the relevant issues.



also known as 'Qur'anic heirs'. In fact, the most appropriate term to mean this group seems to be the original Arabic term '*zabil furud*' meaning 'holders of specified shares', as they are entitled to a fixed shares mentioned in the Quran, unlike the heirs of other categories who do not get any fixed shares. However, the chance of confusion regarding meaning of the term 'sharer' has been reduced by this time, as it has acquired a secondary meaning through its long use by the jurists.

### **Agnatic heirs**

This is in fact the main group of heirs that includes, *inter alia*, sons of the deceased. In fact, prior to Islam, this group alone consumed entire property to the exclusion of others. However, this group consists of the relatives who are connected with the deceased through the male link without any female intervention at any stage. Apart from daughter, son's daughter, full sister and consanguine sister in some anomalous cases, this group basically consists of the male agnates that include descendants, ascendants and also the collaterals. They have been differently classified to determine their status in order of priority. They are known as *asaba*, the original Arabic term to mean this group.

### **Distant kindred**

This is the most remote group of heirs from the perspective of orders of priority among different classes of heirs, which consists of the persons who are neither sharer nor *asaba* and they are generally linked with deceased through any female intervention. They may be males or females, and the gender of the link is only important here—the link must be female. However, there are also some other female agnates who belong to this group, like brother's daughter.



'Zabil Arham' is the original Arabic term to mean this group.

### **Order of priority**

The property will be distributed among the above groups of heirs in the following order:

1. Property will be distributed among the sharers at first. In doing so they will get their Qur'anic shares.
2. Then what remains that will be distributed among the agnatic heirs or asaba. Thus they will get the 'residue', that means, what remains after exhausting the Qur'anic shares. (*Residue = 1 - shares of the sharers*).
3. In the absence of the above two groups, except the spouse, the distant kindred will get the property. Thus, the fate of distant kindred is dependant totally on the absence of the first two groups, obviously with the exceptions of husband and wife who do not exclude them. However, if they succeed as heirs then they will get 'residue'.

Thus, it appears that the second group may inherit together with first group. The second group totally excludes the third group and there is no chance of any one from the third group to get any property in any way if any heir from the second group is alive. The first group also excludes the third group, and the only difference in doing so with the second group is that husband and wife from the first group do not exclude the heirs of the third group as a class. Thus, there is no wrong if only husband or wife survives from the first two groups for the heirs of the third group as they can get property with the spouse. Each of the sharers except husband and wife totally excludes all heirs from the third group as a class.

However, if nothing remains after distributing among the sharers, then none will get anything and that will be the case of *de facto* exclusion that may occur in very rare combinations.

### **5. Arithmetical methodology to solve a problem**

Following is the convenient style to calculate the shares in any inheritance problem.

#### **Step 1**

Distribution of respective shares to each heir according to law.

<b>Heir</b>	<b>Share</b>
Wife	1/8 ✓
Father	1/6 ✓
Mother	1/6 ✓
Son	Residue ✓

#### **Step 2:**

The common denominator is to be sorted out considering all denominators together. In the above example, 24 will be the common denominator among 8, 6 and 6, as this is the minimum lowest total which may be divided by each of those denominators. Every fraction is to be converted through the common denominator just to have a uniform line of fractions. To do so, the common denominator will be the new denominator for everyone's fraction. Then, this common denominator is to be divided by each denominator and that is to be multiplied by the respective numerators and the results will be the new numerators respectively. And if there is any residue then that will be calculated accordingly.

Heir	Share	Common denominator = 24
Wife	1/8	3/24
Father	1/6	4/24
Mother	1/6	4/24
Son	Residue	13/24

However, if there is the necessity for further division of residue among the asaba, then one or two more columns may be necessary to add. In that case, another new common denominator is to be sorted out and the final result will through the second common denominator. In such a case, first common denominator is utilized only for the purpose of determining the exact amount of 'residue' accurately. Following is an example of such a distribution:

Heir	Share	Common denominator = 24	New Common denominator = 72
Wife	1/8	3/24	9/72
Father	1/6	4/24	12/72
Mother	1/6	4/24	12/72
Son	Res	13/24	$\frac{2}{3}$ of $\frac{13}{24}$ = $\frac{26}{72}$
Daughter			$\frac{1}{3}$ of $\frac{13}{24}$ = $\frac{13}{72}$

In case of 'awl' and 'radd' there should be additional column to reduce and increase the property proportionately, in the respective cases. This has been shown in detailed in the chapter on 'awl' and 'radd'. The methodology to sort out the shares of son and daughter according to the rule 'double share to male', especially, when they become more than two in number, has been explained in detail in the chapter on sharers where the daughter's share has been described.



## CHAPTER 3

### SHARERS OR QUR'ANIC HEIRS

<ul style="list-style-type: none"> <li>1. Sharers           <ul style="list-style-type: none"> <li>1.1. Meaning               <ul style="list-style-type: none"> <li>1.1.1. Justification of the naming</li> </ul> </li> <li>1.2. Classes of sharers ( based on male -female, fraction, exclusion, etc.)</li> <li>1.3. Who are the sharers</li> <li>1.4. Shares of the Quranic heirs (sharers)               <ul style="list-style-type: none"> <li>1.4.1. Shares allotted to husband</li> <li>1.4.2. Shares allotted to Wife</li> <li>1.4.3. Shares allotted to daughter</li> </ul> </li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>1.4.4. Shares allotted to father</li> <li>1.4.5. Shares allotted to true grandfather</li> <li>1.4.6. Shares allotted to full sister</li> <li>1.4.7. Shares of consanguine sister</li> <li>1.4.8. Shares allotted to the uterine brother</li> <li>1.4.9. Shares allotted to the uterine sister</li> <li>1.4.10. Shares allotted to son's daughter</li> <li>1.4.11. Shares allotted to mother</li> <li>1.4.12. Shares allotted to true grandmother</li> </ul>
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**1. Sharers:** This is the first category of the heirs. The property is to be distributed among the sharers at first in order of priority. This is the superior class of heirs in the sense of order of priority.

**1.1 Meaning:** They are the heirs who get the specified shares. Literally speaking, sharer means a person who holds a share. But the legal meaning of this term is different which says that they are those heirs who are named in the Holy Qur'an and their shares in the property have been specifically allocated in the Qur'an. Hence they are rightly termed as 'Quranic heirs'. The popular Arabic term to mean sharers is *Dhawi al-furudh*, meaning holders of the specific shares. The Holy Quran, the primary source of Islamic Law though speaks about the person who will get the property after death of one person and in doing so the Quran itself mentions certain relatives specifying their shares in the deceased's property, they are the sharers' or 'Quranic heirs' or '*Dhawi al-furudh*'.

However, there are a few shares of some sharers which though are not expressly found in the Quran, the jurists fixed those by interpreting the relevant Quranic verses. For example, the share of 1/6 for son's daughter or consanguine sister, mother's share of 1/3 of residue.

**1.1.1 Justification of the naming:** They are rightly termed as '*Dhawi al-furudh*' as they are truly the holders of specific shares. The term 'Quranic heir' used in connection to the sharers also gives proper impression, that they are the heirs whose shares are mentioned in the Quran, so they are named as 'Quranic heir', connecting them with the Quran. But what is the justification of using the term 'sharer'? The term literally means any person who gets any share in the property in any way and that does not in fact bear any specific connotation. Thus this term does not seem to be a proper terminology to mean this specific category of the heirs. May be some one at earlier time translated it from the original source as such and it has been established as a terminology by subsequent repeated uses of the jurists without examining the propriety of the term. However, the term 'sharer' now apart from its literal meaning has acquired another definite secondary meaning, but still it is confusing to the new readers.

**1.2 Who are the sharers:** They are twelve in number—

- (1) Husband
- (2) Wife
- (3) Father
- (4) Mother
- (5) Daughter
- (6) Son's daughter,
- (7) True grandfather
- (8) True grandmother

- (9) Full sister
- (10) Consanguine sister
- (11) Uterine sister
- (12) Uterine brother

However among these 12 sharers, son's daughter, grandfather and grandmother are not explicitly mentioned in the Qur'an as sharers, but they have been added in the list of sharers by *Qiyas* as substitute heirs. Among these substitute heirs, only son's daughter also may inherit even with the daughter as they have been grouped in a single class; but others never inherit with the heirs for whom they are the substitutes. It seems to be an easier methodology, in contrast to the traditional one, to take a particular sharer one after another and to determine the rights assessing his nearness of relationship with the deceased.

**1.3 Classification of the sharers:** The sharers may be classified from different dimensions.

1.3.1 Classification based on gender:

- I. Male
- II. Female

The number of female heirs is more than that of the male heirs in the category of the sharers. Male sharers are four in number, they are, husband, father, true grandfather and uterine brother. Rest eight are female heirs.

1.3.2 Classification based on the source of relationship:

- I. *By affinity (valid marriage)*
- II. *By lineage (Blood relationship)*

They are the sharers either by affinity or by lineage. Sharer by affinity arises by marrying each other and they are two in number—husband and wife. The rest



10 heirs to the group of the sharers by lineage who are the blood relations whether related through full blood or half blood. These blood relations again may be divided into three types:

- I. Ascendants: they are four in number—father, mother, true grandfather, true grandmother.
- II. Descendants: they are the daughter and son's daughter.
- III. Collateral: they are four in number—full sister, consanguine sister, uterine sister, uterine brother.

### 1.3.3 Classification based on exclusion

This is obvious that all heirs cannot inherit together. There are certain rules of exclusion by which certain heirs are totally excluded under certain circumstances. But there are certain sharers who never become subject to total exclusion under any circumstance. Thus from this dimension of exclusion, sharers may be divided into two categories:

- I. Who are never totally excluded: They are five in number—(1) husband, (2) wife, (3) father, (4) mother and (5) daughter. They also belong to the category of **primary heirs** along with the son as their inheritance is guaranteed who under no circumstance will be totally excluded.
- II. Who may be totally excluded: They are seven in number—(1) True grandfather, (2) true grandmother, (3) son's daughter, (4) full sister, (5) consanguine sister, (6) uterine sister and (7) uterine brother. Thus, they belong to the category of **secondary heirs** as they are at risk of total exclusion under certain circumstances.

#### 1.4 Shares of the Quranic heirs or sharers:

The specific shares which have been allotted for the sharers under different circumstances are—

Shares of the sharers : Total six					
1/2	1/4	1/8	2/3	1/3	1/6

#### 1.4.1 Shares allotted to the husband:

Husband is a primary Qur'anic heir who will never be subject to total exclusion. The only condition is that his wife must die during the subsistence of marital tie or during the *idda* period of a revocable divorce.

There are two situations:

- (a) 1/2
- (b) 1/4

- (a) 1/2: Husband is entitled to 1/2 of the property on fulfillment of only one condition: the deceased leaves no child or son's child how low so ever (h.l.s.).
- (b) 1/4: Husband is entitled to 1/4 of the property on fulfillment of only one condition: the deceased leaves any child or son's child how low so ever (h.l.s.).

#### Explanations:

- Child includes
  - i. Son, and
  - ii. Daughter
- Son's child how low so ever (h.l.s.) includes—
  - i. Son's son
  - ii. Son's daughter
  - iii. Son's son's son or daughter  
h.l.s. as such.

□ Child of whom?

It does not matter whether he is the father of that child or not. That means it is not essential that the child is of his own blood. It will suffice if that child is the offspring of his wife and who is the father of that child that is immaterial. The indication regarding it is found in the following Quranic verse :

"In what your **wives** leave,  
your share is a half,  
**if they leave no child.**"

(Surah An-Nisa, iv, 12)

Thus, in the above Quranic verse the word "they" is directed towards the "wives". Let us have an example:

X marries Y. X gives birth to a son Z after two years of their marriage. Then, Y divorces X, when Z is ten years old. Afterwards, X marries B. She dies after 3 months of their marriage without having any child. In this case, X's husband B will get  $\frac{1}{4}$ , because X has a son, though the son is not of B.

Exclusion and conversion:

- Total exclusion: Husband is a primary heir who will never be excluded totally under any circumstance.
- Partial exclusion: If there is any child or son's child he will face partial exclusion, as the share in such a situation will be reduced from  $\frac{1}{2}$  to  $\frac{1}{4}$ .
- Conversion: He is never converted into residuary.

Special rule in case of divorce: Husband will get the property from his wife whether she dies after or before the consummation takes place. Thus, the consummation after the marriage is not the pre condition of getting property by way of inheritance. But, what will happen, if the wife dies during the *iddah* period after divorce. If the divorce is revocable



then the husband will get the property if the wife dies during her iddah period. Similarly, if the husband dies during her iddah period in a revocable divorce, the wife will get the property. In all other cases of divorce husband will get nothing.

Relevant Quranic Verse:

"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."  
 (Surah An-Nisa, iv, 12)

Illustration: Husband gets 1/2 in the absence of any child or son's child.

Heir	Share	Reasoning
Husband	1/2	As sharer, because there is no child or son's child.
Father	Residue (1/2)	As asaba, since there is no child.

Illustration: Husband gets 1/4 with any child, whether son or daughter.

Heir	Share	Reasoning
Husband	1/4	As sharer, because there is a child
Son	R=3/4	As asaba.

Illustration: Husband gets 1/4 with any child, whether son or daughter.

Heir	Share	Reasoning
Husband	1/4	As sharer, because there is a child.
Daughter	1/2	As sharer, because there is no son and she is one in number.

Illustration: Husband gets 1/4 with any son's child.

Heir	Share	Reasoning
Husband	1/4	As sharer, because there is a son's child.
Son's son	R=3/4	As asaba of the first grade.

**Table: Husband's inheritance.**

<b>Husband</b>		
Status : Sharer (always)		
$\frac{1}{2}$		$\frac{1}{4}$
Depends on child and son's child h.l.s.		
↑ <b>X</b> ←	Child or Son's child h.l.s.	→ √ ↑

#### **1.4.2 Shares allotted to the wife:**

Like the husband, wife is also a primary Qur'anic heir who will never be totally excluded. Similar condition applies in her case also, that her husband must die during the continuance of marital relationship or during her *iddat* period of a revocable divorce. Before the advent of Islam, she could not get anything from her deceased husband's property. This is one of the most remarkable improvements done by Islam, which affirmed the concept of economic empowerment of women. It is important to note that this share of the widow in her deceased husband's property has not been given as a part of welfare policy to show sympathy to her. Rather it has been allocated for her as a legal right irrespective of her financial solvency or constraints. Thus, this is a part of a total scheme of Islamic law to grant proprietary entitlements to the women in different capacities.

There are two situations:

- (a)  $\frac{1}{4}$
- (b)  $\frac{1}{8}$

(a)  $\frac{1}{4}$ : Wife is entitled to  $\frac{1}{4}$  of the property on fulfillment of only one condition: the deceased leaves no child or son's child h.l.s.

- (b) 1/8: Wife is entitled to 1/8 of the property on fulfillment of only one condition: the deceased leaves any child or son's child h.l.s.

Explanations:

- Child includes—
  - i. Son, and
  - ii. Daughter
- Son's child h.l.s. includes—
  - i. Son's son
  - ii. Son's daughter
  - iii. Son's son's son or daughter h.l.s. as such.
- Child of whom?

It does not matter whether she is the mother of that child or not. It is not essential that the child is of her own womb. It will suffice if that child is the offspring of her husband and who is the mother of that child that is immaterial. A Quranic verse gives indication in this regard:

"In what **ye** leave,  
 their (wives) share is a fourth,  
 if **ye** leave no child." (Surah An-Nisa, iv, 12)

Here, the term "**ye**" has been directed to the "husbands". Let us have an example:

Y marries X. X gives birth to a son Z after two years of their marriage. Then, Y divorces X when Z is ten years old. Afterwards, Y marries B. He dies after 3 months of their marriage without having any child. In this case, Y's wife B will get  $\frac{1}{4}$ , because Y has a son, though B is not the mother of that son.

Illustration: Wife gets  $\frac{1}{4}$  in the absence of any child or son's child.

Heir	Share	Reasoning
Wife	$\frac{1}{4}$	As sharer, because there is no child or son's child.
Father	$R=3/4$	As asaba, since there is no child.



Illustration : Wife gets 1/8 with any child, whether son or daughter.

Heir	Share	Reasoning
Wife	1/8	As sharer. Her share will be reduced from 1/4 to 1/8, because there is a child.
Son	R=7/8	As asaba.

Illustration: Wife gets 1/8 with any child, whether son or daughter.

Heir	Share	Reasoning
Wife	1/8	As sharer. Her share will be reduced from 1/4 to 1/8, because there is a child.
Daughter	1/2	As sharer, because there is no son and she is one in number.

Illustration : Wife gets 1/8 with any son's child.

Heir	Share	Reasoning
Wife	1/8	As sharer. Her share will be reduced from 1/4 to 1/8, because there is a son's child.
Son's son	R=7/8	As asaba.

### Rule of distribution if there are two or more wives:

If there is more than one wife, then they will be entitled to the same fraction to be divided among them equally. Their share will not increase based on their number. Because, the Holy Qur'an itself declared their share as 1/4 or 1/8 and the Qur'an did not differentiate it based on their number, rather the Quran used the plural term to mean in fact even if there are more wives. This is one of the instances, where the property does not increase with the increase of the number of the heirs of the same category.

Illustration 1: More than of Wife equally share the same share of one wife.

Heir	Share	Reasoning
Wife-1	1/4 = 1/8	As sharer. Their share will be, because there is no child or son's child and they share 1/4 equally.
Wife-2		
Father	Residue (6/8)	As asaba.

Illustration 2: More than of Wife equally share the same share of one wife.

Heir	Share	Reasoning
Wife-1	1/8 1/16	As sharer. Their share will be reduced from 1/4 to 1/8, because there is a child. They share 1/8 equally.
Wife-2		
Son	Residue (14/16)	As asaba.

Exclusion and conversion:

- Total exclusion: Husband is a primary heir who will never be excluded totally under any circumstance.
- Partial exclusion: If there is any child or son's child he will face partial exclusion, as the share in such a situation will be reduced from 1/2 to 1/4.
- Conversion: He is never converted into residuary.

Relevant Quranic Verse:

"In what ye leave,  
 their (wives) 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."  
 (Surah An Nisa, iv, 12)

**Table: Widow's inheritance.**

Widow		
Status : Sharer (always)		
$\frac{1}{4}$		$\frac{1}{8}$
Depends on child and son's child h.l.s.		
$\uparrow$ <b>X</b>	← Child or Son's child h.l.s.	→ $\uparrow$ $\checkmark$

### **1.4.3 Shares allotted to the Daughter:**

Daughter is a primary heir who is never excluded by anyone. Prior to Islam the daughters were excluded always and they did not have any proprietary right at all. But Islam granted them the proprietary rights like the sons though in a different proportion.

There are THREE situations:

- (a)  $\frac{1}{2}$
- (b)  $\frac{2}{3}$
- (c) Residue

a)  $\frac{1}{2}$  : Daughter is entitled to  $\frac{1}{2}$  of the property on fulfillment of the following two conditions:

- 1) the deceased leaves no son
- 2) she is one number

The Qur'an said: '...if only one, her share is a half...'<sup>1</sup>

#### Illustration:

Heir	Share	Reasoning
Daughter	$\frac{1}{2}$	(as sharer, because there is no son and she is one in number)
Wife	$\frac{1}{8}$	As sharer, because there is a child.
Father	$\frac{1}{6}+R$	(in dual capacity, because, there is a daughter and no son or son's son h.l.s.)

<sup>1</sup> Nisa: 11.



b)  $\frac{2}{3}$ : Daughters are entitled to  $\frac{2}{3}$  of the property collectively on fulfillment of the following two conditions:

1. the deceased leaves no son
2. the daughters are more than one in number, i.e., two or more daughters must be there.

The Holy Qur'an says: '... if (there are) only daughters, two or more, their share is two thirds of the inheritance...'.<sup>2</sup>

Illustration:

Heir	Share	Reasoning
2 Daughters	$\frac{2}{3}$	(as sharer, because there is no son and daughters are more than one in number)
Wife	$\frac{1}{8}$	As sharer, because there is a child.
Father	$\frac{1}{6}+R$	(in dual capacity, because, there is a daughter and no son or son's son h.l.s.)

Thus, it appears that with the increase in the number of the daughters from 01, under the similar circumstance, the total allotment for the daughters also increases from  $\frac{1}{2}$  to  $\frac{2}{3}$ .

c) **Residue:** The daughter/s become/s residuary with the son/s. And the property will be distributed among them following the formula—male:female=2:1. The Holy Qur'an says:

'Allah commands as regards your children's (inheritance); to the male, a portion equal to that of two females...'.<sup>3</sup>

Illustration: Daughter becomes residuary with the son.

<sup>2</sup> Nisa: 11.

<sup>3</sup> Nisa: 11.

Heir	Share	Reasoning
Daughter	Both of them will get the <b>residue</b> (here the entire property) together in proportion of 2:1. Thus,	Son always becomes residuary, whereas daughter, originally, is a sharer. But the
Son		

*Illustration: Daughters become residuary with the sons.*

Heir	Share	Reasoning
03 Daughters	They will get the <b>residue</b> (here the entire property) together to be distributed among them in proportion of <i>Male: female = 2:1</i> .	Son always becomes residuary, whereas daughter, originally, is a sharer. But the daughter always is converted into residuary with the son.
02 Sons		

For the convenience of the readers the distribution methodology among 02 daughters and 02 sons in proportion of *Male: female = 2:1* is shown below:

Formula:

1 male : 1 female = 2 : 1 = 2/3:1/3

∴ 02 males : 03 females = 2x2 : 1x3

∴ 02 sons : 03 daughters = 4 : 3 = 4/7 : 3/7

∴ 01 son gets  $4/7 \div 2 = 2/7$

and 01 daughter gets  $3/7 \div 3 = 1/7$

Thus, the final distribution is as follows:

Heir	Common denominator = 7 Share in the property
Daughter-1	1/7
Daughter-2	1/7
Daughter-3	1/7
Son-1	2/7
Son-2	2/7

### Alternative Formula:

Al Khawarizmi, one of the founder fathers of algebra, gives the following formula:

1 male : 1 female = 2 : 1

∴ Son : son : daughter : daughter : daughter = 2:2:1:1:1

∴ Total shares are=7

Thus, total property will be divided into 7 shares and in doing so 7 will be the common denominator. Then, each will get his/her respective share.

### Exclusion and conversion:

- Total exclusion : Never.
- Partial exclusion : Never.
- Conversion: The son, her male counterpart, according to the doctrine of 'Tasib', converts her into residuary.

Table: Daughter's inheritance.

Daughter		
Status		
Sharer		Asaba
	Depends on Son	
Share depends on their number		Residue
01	02 or more	Jointly with the son Male : Female= 2:1= 2/3:1/3
1/2	2/3	

### 1.4.4 Shares allotted to the Father:

Father is a primary heir. So, he will never be totally excluded. Thus, he gets the property even with the descendants of the propositus. The people of the then Arab society raised objection against such preference given to the ascendants. Because, prior to Islam, there



was no practice of giving any property to the ascendants in presence of the descendants. Islamic law of inheritance established the principle that the ascendants will get some property even in presence of the descendants of the propositus. The following Qur'anic verse was revealed as a reply to the criticism against this Islamic rule:

"From among your fathers and children, you do not know who will be more beneficial for you".

However, father enjoys an interesting status in the sense that though he is a sharer, but sometimes he becomes *asaba*. He sometimes even gets the double benefit of both sharer and *asaba*. There are THREE situations:

- a.  $1/6$
- b.  $1/6 + \text{Residue}$
- c. **Residue**

- a)  $1/6$  : Father is entitled to  $1/6$  of the property on fulfillment of only one condition:- If there is any son or son's son h.l.s.

The Holy Qur'an says: '*...for parents, a sixth share of inheritance to each if the deceased left children...*'<sup>4</sup>.

*Illustration: Father with the son*

Heir	Share	Reasoning
Father	$1/6$	As sharer, because there is a son.
Son	Residue	Because, he is the <i>asaba</i> of first category.

*Illustration: Father with the son's son*

Heir	Share	Reasoning
Father	$1/6$	As sharer, because there is a son.
Son's son	Residue	Because, he is the <i>asaba</i> of first category.

<sup>4</sup> Nisa:11.

Illustration: Father with the son and daughter

Heir	Share	Reasoning
Wife	1/8	As sharer, because, there are children.
Father	1/6	As sharer, because, there is a son.
Daughter	Res	Son is residuary as an <i>agnatic</i> heir of the first class and the daughter is converted into residuary with the son.
Son		

The final distribution is as follows:

Heir	Share	Common denominator = 72
Wife	1/8	9/72
Father	1/6	12/72
Daughter	Residue $\{[1-(1/8+1/6)]$ $=\{1-(3/24+4/24)\}$	1/3 of 17/24 = 17/72
Son	$=\{1-7/24\}$ $=17/24]$	2/3 of 17/24 = 34/72

b) **1/6+Residue:** Father is entitled to **1/6+Residue** on fulfillment of the following two conditions:

- 1) there are one or more daughters, or son's daughter/s; and
- 2) there is no son or son's son

Illustration 1: Father with 01 daughter:

Heir	Share	Reasoning
Daughter	1/2	As sharer, because there is no son and she is one in number.
Father	1/6+R	In dual capacity, because, there is a daughter and no son or son's son h.l.s.

The final distribution is as follows:

Heir	Common denominator = 2 Share in the property
Daughter	1/2 = 1
Father	$1/6+R=[1/6+\{1-(1/2+1/6)\}]$ $=\{1/6+(1-4/6)\}=1/6+2/6=3/6=1/2 = 1$

*Illustration 2: Father with 02 or more daughters*

Heir	Share	Reasoning
02 Daughters	2/3	As sharers, because there is no son and they are more than one in number.
Father	1/6+R	In dual capacity, because, there are daughters and no son or son's son h.l.s.

The final distribution is as follows:

Heir	Common denominator = 3 Share in the property	
Daughter-1	2/3 =	$\frac{1}{2}$ of $\frac{2}{3} = \frac{1}{3} = \frac{1}{3}$
Daughter-2		$\frac{1}{2}$ of $\frac{2}{3} = \frac{1}{3} = \frac{1}{3}$
Father	1/6+R=	$= [1/6 + \{1 - (2/3 + 1/6)\}]$ $= [1/6 + (1 - 5/6)]$ $= 1/6 + 1/6 = 2/6 = 1/3 = 1/3$

*Illustration 3: Father with 01 Son's daughter<sup>5</sup>:*

Heir	Share	Reasoning
Son's Daughter	$\frac{1}{2}$	As sharer, because there is no excluder or converter and she is one in number.
Father	1/6+R	In dual capacity, because, there is a son's daughter and no son or son's son h.l.s.

*Illustration 4: Father with 02 or more Son's daughters<sup>6</sup>:*

Heir	Share	Reasoning
03 Son's Daughters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
Father	1/6+R	In dual capacity, because, there are son's daughters and no son or son's son h.l.s.

<sup>5</sup> This solution is given according to Islamic Sharia Law of Inheritance. According to the Muslim Family Laws Ordinance, 1961, the law applicable in Bangladesh, the solution will be different which will be discussed later on in a detailed manner in Chapter 10 of this book.

<sup>6</sup> Ibid.



- c) **Residue:** He will be converted into *asaba* in the absence of any child or son's child.

Illustration:

Heir	Share	Reasoning
Wife	1/4	As sharer, because there is no child or son's child h.l.s.
Father	Res	As an <i>agnatic</i> heir his position is next to the son or son's son h.l.s. Since there is no child or son's child h.l.s. he is getting the residue as an <i>agnatic</i> heir.

The final distribution is as follows:

Heir	Common denominator = 4 Share in the property
Wife	1/4
Father	Residue = $1 - \frac{1}{4} = \frac{3}{4}$

**Exclusion and conversion:**

- Total exclusion : Never.
- Partial exclusion : Never. Father's allocated share is only 1/6. No other reduced specific share is allocated for him under any circumstance.
- Conversion: He is converted into residuary in the absence of any child or son's child. And in the absence of any son or son's son h.l.s. he inherits in dual capacity provided there is any daughter or son's daughter.

**Table: Father's inheritance.**

Father		
Status		
Sharer	Asaba	Sharer+Asaba
1/6	R	1/6 + R
<i>Depends on the child and son's child h.l.s.</i>		
S/SS = $\sqrt{\uparrow}$	Ch/S-ch = X S/SS/D/SD = X $\uparrow$	S/SS = X $\downarrow$ D/SD = $\sqrt{\uparrow}$

#### 1.4.5 Shares allotted to the True Grandfather:

True grand father means father's father and how high so ever (h.h.s.) in this line, e.g., FFF, FFFF, etc. Thus, it does not include the maternal grand father or any other grandfather like the uncle of the father. True grand father in fact gets the property as a substitute of the father. Thus, he does not get any property with the father of the deceased. Though he is a substitute heir of the father yet there are some differences between father and grandfather which have been discussed separately in this book considering its significance, length and differences among the schools in this regard. Like father, a true grandfather also has THREE situations:

- (a)  $1/6$
- (b)  $1/6 + \text{Residue}$
- (c) **Residue**

(a)  $1/6$  : True grandfather is entitled to  $1/6$  of the property on fulfillment of the following two conditions:-

- 1) There is any son or son's son h.l.s.
- 2) There is no father or nearer true grandfather.

Illustration: 1

Heir	Share	Reasoning
True Grand father	$1/6$	As sharer, because there is a son.
Son	Residue	Because, he is the <i>asaba</i> of the first category.

Illustration: 2

Heir	Share	Reasoning
True Grand father	$1/6$	As sharer, because there is a son.
Son's son	Residue	Because, he is the <i>asaba</i> of the first category.

Illustration: 3

Heir	Share	Reasoning
Wife	1/8	As sharer, because, there are children.
True Grand father	1/6	As sharer, because, there is a son.
Daughter	residue	Son is residuary as an agnatic heir of the first class and the daughter is converted into residuary with the son.
Son		

The final distribution is as follows:

Heir	Share	Common denominator = 72 Share in the property
Wife	1/8	9/72
True Grand father	1/6	12/72
Daughter	Residue [[1-(1/8+1/6)] ={1-(3/24+4/24)} ={1-7/24}	1/3 of 17/24 = 17/72
Son	=17/24]	2/3 of 17/24 = 34/72

(b) **1/6+Residue:** True grandfather is entitled to 1/6+Residue on fulfillment of the following three conditions:-

1. there are one or more daughters or son's daughter/s h.l.s.;
2. there is no son or son's son; and
3. there is no nearer true grand father or father.

Illustration 1: True grand father with 01 daughter:

Heir	Share	Reasoning
Daughter	1/2	As sharer, because there is no son and she is one in number.
True Grand father	1/6+R	In dual capacity, because, there is a daughter and no son or son's son h.l.s.



The final distribution is as follows:

Heir	common denominator = 2 Share in the property
Daughter	$\frac{1}{2} = 1$
True Grand father	$1/6+R=[1/6+[1-(1/2+1/6)]]$ $=[1/6+(1-4/6)]=1/6+2/6=3/6=1/2 = 1$

*Illustration2: True grand father with 02 or more daughters*

Heir	Share	Reasoning
02 Daughters	$2/3$	As sharers, because there is no son and they are more than one in number.
True Grand father	$1/6+R$	In dual capacity, because, there are daughters and no son or son's son h.l.s.

The final distribution is as follows:

Heir	Share in the property	Common denominator = 3
Daughter-1	$2/3 =$	$\frac{1}{2}$ of $2/3=1/3= 1/3$
Daughter-2		$\frac{1}{2}$ of $2/3=1/3= 1/3$
True Grandfather	$1/6+R=$	$=[1/6+[1-(2/3+1/6)]]$ $=[1/6+(1-5/6)]$ $=1/6+1/6=2/6=1/3 = 1/3$

*Illustration 3: True grand father with 01 Son's daughter<sup>7</sup>:*

Heir	Share	Reasoning
Son's Daughter	$\frac{1}{2}$	As sharer, because there is no excluder or converter and she is one in number.
True Grand father	$1/6+R$	In dual capacity, because, there is a son's daughter and no son or son's son h.l.s.

<sup>7</sup> Ibid.

*Illustration 4: True grand father with 02 or more Son's daughters<sup>8</sup>:*

Heir	Share	Reasoning
03 Son's Daughters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
True Grand father	1/6+R	In dual capacity, because, there are son's daughters and no son or son's son h.l.s.

- (c) **Residue:** True grandfather will be converted into residuary in the absence of any child or son's child h.l.s.

*Illustration:*

Heir	Share	Reasoning
Wife	1/4	As sharer, because there is no child or son's child h.l.s.
True Grand father	Res	Father will be converted into residuary only as an agnatic heir, because, there is no child or son's child h.l.s. As an agnatic heir his position is next to the son or son's son h.l.s. and the father.

The final distribution is as follows:

Heir	Common denominator = 4 Share in the property
Wife	1/4
True Grand father	Residue = $1 - \frac{1}{4} = \frac{3}{4}$

**Exclusion and conversion:**

- Total exclusion : Father and nearer true grandfather excludes the true grandfather absolutely. In presence of either of them he will not be entitled to any property in any way.
- Partial exclusion : Never. True grandfather's allocated share is only 1/6. No other reduced

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<sup>8</sup> Ibid.

specific share is allocated for him under any circumstance.

- **Conversion:** He is converted into residuary in the absence of any child or son's child provided the father or nearer true grandfather is not present. And in the absence of any son, son's son h.l.s., father and nearer true grandfather he inherits in dual capacity provided there is any daughter or son's daughter.

### **An analysis of grandfather's position as a substitute heir in comparison with son's son:**

This is true that a true grandfather gets the property as a substitute heir of the father only in the absence of father. Son's son is also a substitute heir of the son. But there are some differences between the two: son's son sometimes is excluded *de facto*, though son is never excluded in any way. But, true grandfather is never excluded in the absence of father. The fact that the grandfather has also the scope to inherit as a sharer, places him in a better and more secured position than the grandson as a substitute heir. Coulson has rightly pointed out that\_\_

'[i]n a competition, for example, with the husband, mother and two daughters of the praepositus, a grandson would be *de facto* excluded, whereas a grandfather would take a Qur'anic portion (reduced by *awl*) of two-fifteenths of the estate.'<sup>9</sup>

Again, interestingly, in competition between ascendants and descendants heirs, between son's son and true grandfather with 02 daughters and mother, only true grandfather will succeed and son's son will have to face *de facto* exclusion. Citing this exceptional

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<sup>9</sup> Coulson, N.J., *Succession in the Muslim Family Law*, Cambridge University Press, 1971, p. 53.



situation, Coulson rightly concluded that '...while the position of a grandfather depends solely upon the presence or absence of one relative—the father, that of a grandson depends upon the presence or absence not only of any son but also of any daughter of the praepositus'.<sup>10</sup> However, true grandfather does not reduce the share of mother unlike father in *Umriyatn*. Son's son plays the same role like the son in the absence of son whereas except Hanafis, according to all other schools, true grandfather, unlike father of whom he is the substitute heir, cannot exclude the collaterals.

**Table:** True Grand father's inheritance.

<b>True grandfather</b>		
<i>Status</i>		
Sharer	Asaba	Sharer+Asaba
1/6	R	1/6 +R
<i>Depends on the child and son's child h.l.s.</i>		
S/SS= √ F/NTGF= X	Ch/S-ch= X (S/SS/D/SD=X) F/NTGF= X	S/SS= X D/SD= √ F/NTGF= X

#### **1.4.6 Shares allotted to the Full Sister:**

Female siblings have been given the proprietary rights by Islam, which was ignored by the then civilizations in the world. This is another women friendly improvement done by Islamic law.

There are THREE situations:

- a) 1/2
- b) 2/3
- c) Residue

<sup>10</sup> Ibid.

a)  $\frac{1}{2}$  : Full sister is entitled to  $\frac{1}{2}$  of the property on fulfillment of the following two conditions:

- 1) she is one number; and
- 2) following heirs shall not be present:
  - i. child
  - ii. child of a son h.l.s.
  - iii. father
  - iv. true grand father
  - v. full brother

That means, ascendants, descendants and male collateral will be absent.

The Holy Qur'an says: '*... If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance...*'.<sup>11</sup>

Illustration:

Heir	Share	Reasoning
Full sister	$\frac{1}{2}$	As sharer, because there is no excluder or converter and she is one in number.
Husband	$\frac{1}{2}$	As sharer, because there is no child or son's child h.l.s.

b)  $\frac{2}{3}$ : Full sisters are entitled to  $\frac{2}{3}$  of the property collectively on fulfillment of the following two conditions:

- 1) Full sisters are two or more in number; and
- 2) following heirs shall not be present:
  - i. child
  - ii. child of a son h.l.s.
  - iii. father
  - iv. true grand father
  - v. full brother

The Holy Qur'an says: '*... If there are two sisters, they shall have two thirds of the inheritance...*'.<sup>12</sup>

<sup>11</sup> Nisa:176.

<sup>12</sup> Nisa:176.

Illustration:

Heir	Share	Reasoning
02 Full sisters	2/3	As sharers, because there is no excluder (above i-iv) or converter (above -v) and they are more than one in number.
02 uterine sister	1/3	As sharers, because there is no excluder and they are more than one in number

c) **Residue:** two rules may be mentioned here:

i) Full sister is converted into residuary by full brother subject to not being excluded otherwise. This is the consequence of the usual rule that a female sharer is converted into residuary with her male counterpart, e.g., daughter with the son, son's daughter with the son's son, consanguine sister with the consanguine brother, with the exception of uterine sister, who does not become residuary with her male counterpart uterine brother.

ii) When with one or more daughters or son's daughters and no excluder, the full sister one or more become residuaries, i.e., they take the residue after deducting the shares of the daughters and/or son's daughters. This is one of the special cases, where a female sharer becomes residuary in her own, not being with her male counterpart.

Illustration 1: Residuary with the full brother:

Heir	Share	Reasoning
03 full sisters	They will get the <b>residue</b> (here the entire property) together to be distributed among them in proportion of	Full brother gets the property only as residuary, whereas, full sister is a sharer originally. But the full sister always is converted into residuary with the full brother subject to not being excluded otherwise.
02 full brothers	Male: female = 2:1.	



Thus, the final distribution is as follows:

Heir	Common denominator = 7 Share in the property
Full sister-1	1/7
Full sister -2	1/7
Full sister -3	1/7
Full brother -1	2/7
Full brother -2	2/7

*Illustration 2: Residuary in her own with the daughter without full brother:*

Heir	Share	Reasoning
01 Daughter	1/2	As sharer, because there is no son and she is one in number.
01 Full sister	Res	Because, there is a daughter and no other excluder is there.

*Illustration 3: Residuary in their own with the daughter without full brother:*

Heir	Share	Reasoning
01 Daughter	1/2	As sharer, because there is no son and she is one in number.
02 Full sisters	Res	Because, there is a daughter and no other excluder is there. Here each gets 1/4.

*Illustration 4: Residuary in her own with the son's daughter without full brother:*

Heir	Share	Reasoning
02 Son's Daughters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
01 Full sister	Res	Because, there are son's daughters and no other excluder is there.

But, according to section 4 of the Muslim Family Laws Ordinance (MFLO) 1961, son's daughters will represent directly the pre deceased sons, who will be given the status of the sons. So, they will get the whole property and full sister will be excluded.

Total Exclusion: She is excluded by each of the following:

- Son
- Son's son h.l.s.
- Father
- True grand father.

Father excludes full sister as he is her link heir. Grandfather, who enjoys the similar status of the father as an heir, though actually is not the link heir of full sister, yet he excludes the full sister. However, this view has not been unanimously accepted by all schools.

Exclusion as sharer and conversion: Full sister is excluded as sharer by one or more daughters or son's daughters. In such a case, she is converted into residuary even without being with any full brother. Of course, she is converted into residuary with the full brother.

Illustration: Total exclusion of full sister with father.

Heir	Share	Reasoning
Husband	$\frac{1}{2}$	Because, there is no child or son's child.
Father	Residue ( $\frac{1}{2}$ )	As asaba, in order of priority, since there is no son or son's son.
01 Full sister	Excluded	She is totally excluded by the father.

#### **1.4.7 Shares allotted to the consanguine sister**

Consanguine sisters who have been termed by some Egyptian writers as paternal sisters are also included in the list of the sharers. There are FOUR situations :

- (a)  $\frac{1}{2}$
- (b)  $\frac{2}{3}$
- (c)  $\frac{1}{6}$
- (d) **Residue**

(a)  $\frac{1}{2}$  : Consanguine sister is entitled to  $\frac{1}{2}$  of the property on fulfillment of the following two conditions :

- 1) she is one in number; and
- 2) following heirs shall not be present :
  - (a) child
  - (b) child of a son h.l.s.
  - (c) father
  - (d) true grandfather
  - (e) full brother
  - (f) full sister and
  - (g) consanguine brother

The Holy Qur'an says: '... If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance...'.<sup>13</sup>

Illustration:

Heir	Share	Reasoning
Consanguine sister	$\frac{1}{2}$	As sharer, because there is no excluder or converter and she is one in number.
Husband	$\frac{1}{2}$	As sharer, because there is no child or son's child h.l.s.

(b)  $\frac{2}{3}$ : Consanguine sisters are entitled to  $\frac{2}{3}$  of the property collectively on fulfillment of the following two conditions :

- 1) Consanguine sisters are two or more in number; and
- 2) following heirs shall not be present :
  - (a) child
  - (b) child of a son h.l.s.
  - (c) father
  - (d) true grandfather
  - (e) full brother
  - (f) full sister and
  - (g) consanguine brother

<sup>13</sup> Nisa:176.



The Holy Qur'an says: '... If there are two sisters, they shall have two thirds of the inheritance...'.<sup>14</sup>

Illustration:

Heir	Share	Reasoning
02 Consanguine sisters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
02 uterine sisters	1/3	As sharers, because there is no excluder and they are more than one in number.

(c) **1/6**: Consanguine sister (whether one or more) will take 1/6 ( $2/3 - 1/2 = 1/6$ ) of the property on fulfillment of the following three conditions:

- 1) there is only one full sister,
- 2) that full sister succeeds as a sharer; and
- 3) she/they (consanguine sister/s) is/are not otherwise excluded from inheritance or converted into residuary.

Illustration 1:

Heir	Share	Reasoning
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there.
02 Uterine sisters	1/3	As sharers, because there is no excluder and they are more than one in number.

Thus, the final distribution is as follows:

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<sup>14</sup> Nisa: 176.

<b>Heir</b>	<b>Common denominator = 6 Share in the property</b>
Full sister	3/6
Consanguine sister	1/6
Uterine sister -1	1/6
Uterine sister -2	1/6

*Illustration 2:*

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
02 Consanguine sisters	1/6	As sharers, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there.
02 Uterine sisters	1/3	As sharers, because there is no excluder and they are more than one in number.

Thus, the final distribution is as follows:

<b>Heir</b>	<b>Common denominator = 12 Share in the property</b>
Full sister	6/12
Consanguine sister	1/6
Consanguine sister	
Uterine sister -1	2/12
Uterine sister -2	2/12

It appears from the above two illustrations that with the increase in the number of consanguine sister in the second illustration, the allocated share has not been increased from the point which was fixed for one consanguine sister. Here the reason is technical in nature. This 1/6 comes to fulfill the quota of 2/3, so this allocation is static which does not increase even with the increase in the number of the heirs concerned. This concept of 'quota' is made clear in the following paragraph.

Source and justification of above allocation of 1/6 in favour of consanguine sister:

It is worth mentioning here that 1/6 is not the direct Quranic allocation made for the consanguine sister; rather, it is the residue property of the quota of two-third allocated for the females (daughters or sisters) by a Quranic verse (which says that females get 2/3 of the property). By way of interpretation of this Quranic verse, after giving 1/2 of the property to the full sister, remaining 1/6 (to fulfill the quota of 2/3) is given to the consanguine sister/s just to fulfill the said presumed quota of the two-third. So, there is no scope of increasing the allocation in spite of the increase in its number. Again, for the same reason of fulfilling the quota of two-third, the said consanguine sister/s has not been excluded by the full blood though they are half blood relations. Of course, they would be excluded if there would be two or more sisters.

(d) **Residue** : Two rules may be mentioned here:

i) A consanguine sister is converted into residuary with the consanguine brother *subject to not being excluded otherwise*. This is the consequence of the usual rule that a female sharer is converted into residuary with her male counterpart, e.g., daughter with the son, son's daughter with the son's son, full sister with the full brother, with the exception of uterine sister, who does not become residuary with her male counterpart uterine brother.

ii) With one or more daughters or son's daughters, if there is *no full sister or any other excluder*, the consanguine sister one or more become residuaries i.e., they take the residue after deducting the shares of the daughters and/or son's daughters. This is another special case, where a female sharer becomes residuary in her own without being with her male counterpart.



Illustration 1: Residuary with the consanguine brother:

Heir	Share	Reasoning
03 consanguine sisters	They will get the <b>residue</b> (here the entire property) together to be distributed among them in proportion of <i>Male: female = 2:1</i> .	Consanguine brother gets the property only as residuary, whereas, consanguine sister is a sharer, originally. But the consanguine sister always is converted into residuary with the consanguine brother subject to not being excluded otherwise.
02 consanguine brothers		

Thus, the final distribution is as follows:

Heir	Common denominator = 7 Share in the property
Consanguine sister -1	1/7
Consanguine sister -2	1/7
Consanguine sister -3	1/7
Consanguine brother -1	2/7
Consanguine brother -2	2/7

Illustration 2: Residuary in her own with the daughter without her male counterpart consanguine brother:

Heir	Share	Reasoning
01 Daughter	$\frac{1}{2}$	As sharer, because, there is no son, and she is one in number.
01 consanguine sister	Res	Because, there is a daughter and no other excluder is there.

Illustration 3: Residuary in their own with the daughter without consanguine brother:

Heir	Share	Reasoning
01 Daughter	$\frac{1}{2}$	As sharer, because there is no son and she is one in number.
02 consanguine sisters	Res	Because, there is a daughter and no other excluder is there. Here each gets $\frac{1}{4}$ .



Illustration 4: Residuary in her own with the son's daughter without consanguine brother<sup>15</sup>:

Heir	Share	Reasoning
02 Son's Daughters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
01 consanguine sister	Res	Because, there are son's daughters and no other excluder is there.

Total Exclusion : She is excluded by each of the following:

- (a) Son
- (b) Son's son h.l.s.
- (c) Father
- (d) True grandfather
- (e) Full brother
- (f) More than one full sister and
- (g) Even by one full sister if she succeeds as a residuary.

Illustration 1: Exclusion by one full sister who succeeds as residuary:

Heir	Share	Reasoning
01 Daughter	1/2	As sharer, because there is no son and she is one in number.
01 full sister	Res	Because, there is a daughter and no other excluder is there.
01 consanguine sister	Excluded	Because, there is one full sister who does not inherit as a sharer. Full blood excludes half blood.

Exclusion as sharer and conversion into residuary: She is excluded as sharer by one or more daughters or son's daughters if there is no sister and in this case she is converted into residuary.

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<sup>15</sup> Ibid.

#### 1.4.8. & 1.4.9. UTERINE BROTHER AND SISTER

They are also known as maternal brothers and sisters. Interestingly, sometimes they get better position than paternal brothers and sisters. The most remarkable feature here is that both such brother and sister get property in the same way, i.e., as sharer, unlike other full or consanguine siblings, may be for the reason that for female intervention such brother can never become asaba. Thus, if he would not have been made a sharer, then he would be included in the inferior third category with a very slim chance of getting any property in comparison with other siblings. However, there is no difference among this type of siblings regarding their portion of shares like 2:1 unlike other siblings.

However, there are TWO situations :

(a)  $\frac{1}{6}$

(b)  $\frac{1}{3}$

(a)  $\frac{1}{6}$  : Uterine brother/sister is entitled to  $\frac{1}{6}$  of the property on fulfillment of two conditions :

- 1) he/she is one in number; and
- 2) following heirs shall not be present :
  - (a) child
  - (b) child of a son h.l.s.
  - (c) father
  - (d) true grandfather

The Holy Qur'an said:

*'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...'.<sup>16</sup>*

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<sup>16</sup> Nisa:12.

*Illustration 1: One uterine sister gets 1/6:*

Heir	Share	Reasoning
01 Uterine sister	1/6	As sharer, because there is no excluder and she is one in number.
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there.
Mother	1/6	As sharer, because there are more than one sisters.

Thus, the final distribution is as follows:

Heir	Common denominator = 6 Share in the property
01 Uterine sister	1/6 = 1/6
01 full sister	1/2 = 3/6
01 Consanguine sister	1/6 = 1/6
Mother	1/6 = 1/6

*Illustration 2: One uterine brother gets 1/6:*

Heir	Share	Reasoning
01 Uterine brother	1/6	As sharer, because there is no excluder and he is one in number.
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there.
Mother	1/6	As sharer, because there are more than one sisters.



(b)  $\frac{1}{3}$ : Uterine brothers/sisters are entitled to  $\frac{1}{3}$  of the property equally on fulfillment of two conditions :

- 1) Uterine brothers/sisters are two or more in number; and
- 2) following heirs shall not be present :
  - (a) child
  - (b) child of a son h.l.s.
  - (c) father
  - (d) true grandfather

The Holy Qur'an says: '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 more than two, they share in a third...'.<sup>17</sup>

*Illustration 1: More than one uterine sisters get 1/3:*

Heir	Share	Reasoning
02 Uterine sisters	$\frac{1}{3}$	As sharers, because there is no excluder and they are more than one in number.
01 full sister	$\frac{1}{2}$	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	$\frac{1}{6}$	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter are also there.

Thus, the final distribution is as follows:

Heir	Common denominator = 6 Share in the property	
Uterine sister-1	$\frac{1}{3}$	$\frac{1}{2}$ of $\frac{1}{3}$ = $\frac{1}{6}$
Uterine sister-2		$\frac{1}{2}$ of $\frac{1}{3}$ = $\frac{1}{6}$
01 full sister		$\frac{1}{2}$ = $\frac{3}{6}$
01 Consanguine sister		$\frac{1}{6}$ = $\frac{1}{6}$

<sup>17</sup> Nisa: 12.

Illustration 2: More than one uterine brothers get 1/3:

Heir	Share	Reasoning
02 Uterine brothers	1/3	As sharers, because there is no excluder and they are more than one in number.
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter are also there.

Thus, the final distribution is as follows:

Heir	Common denominator = 6 Share in the property	
Uterine brother -1	1/3	1/2 of 1/3 = 1/6
Uterine brother -2		1/2 of 1/3 = 1/6
01 full sister		1/2 = 3/6
01 Consanguine sister		1/6 = 1/6

Illustration 3: One or more uterine brothers with one or more uterine sisters get together 1/3 to be divided among them equally irrespective of the gender:

Heir	Share	Reasoning
01 Uterine brother	1/3	As sharers, because there is no excluder and they are more than one in number.
01 Uterine sister		
01 full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there.

Thus, the final distribution is as follows:

Heir	Common denominator = 6 Share in the property	
Uterine brother	1/3	$\frac{1}{2}$ of $\frac{1}{3} = \frac{1}{6}$
Uterine sister		$\frac{1}{2}$ of $\frac{1}{3} = \frac{1}{6}$
01 full sister		$\frac{1}{2} = \frac{3}{6}$
01 Consanguine sister		$\frac{1}{6} = \frac{1}{6}$

Thus, it appears that it is the only exceptional case where brother and sister get equal share deviating from one of the fundamental principles of distribution of property under Islamic law of succession that is, *Male:Female=2:1*. This is so because the Quran declared their shares as : "they are the equal partners in 1/3". That is why it has been an exception to the 2:1 principle.

**Exclusion** : Uterine brother/sister is excluded by each of the following:

- (a) child
- (b) child of a son h.l.s.
- (c) Father
- (d) True grandfather

It is worth mentioning here that the full brother or sister does not exclude uterine brother or sister. Because, full blood excludes half blood with the exception of uterine relations.

**Special features of uterine brother and uterine sister:**

- (1) *Male:Female=2:1*, this principle is not applicable in their cases.
- (2) They are not excluded by full blood.
- (3) They never become residuary unlike all other brothers and sisters.

### 1.4.10 Shares allotted to the Son's Daughter

The son's daughter means daughter of the predeceased son, i.e., her father died before the death of her paternal grandfather/ grandmother. Her shares have been established basically based on the same Qur'anic verses related to the daughters. There are FOUR situations:

- a)  $1/2$
- b)  $2/3$
- c)  $1/6$
- d) Residue

(a)  $1/2$  : Son's daughter is entitled to  $1/2$  of the property on fulfillment of the following two conditions:

- I. she is one in number; and
- II. the following heirs shall not be present:
  - i) son
  - ii) daughter
  - iii) higher son's son
  - iv) higher son's daughter
  - v) equal son's son

*Illustration:*

Heir	Share	Reasoning
Son's daughter	$1/2$	(as sharer, because there is no excluder or converter and she is one in number)
Father	$1/6+R$	(in dual capacity, because, there is a son's daughter and no son or son's son h.l.s.)

(b)  $2/3$ : Son's daughters are entitled to  $2/3$  of the property collectively on fulfillment of the following two conditions:

- 1. they are two or more in number; and
- 2. the following heirs shall not be present:
  - i) son
  - ii) daughter
  - iii) higher son's son



- iv) higher son's daughter
- v) equal son's son

Illustration:

Heir	Share	Reasoning
2 Son's Daughters	2/3	As sharers, because there is no excluder or converter and son's daughters are more than one in number.
Father	1/6+R	In dual capacity, because, there are son's daughters and no son or son's son h.l.s. is present.

It appears that with the increase in the number of the son's daughter from 01 to more, under the similar circumstance, the total allotment for the daughters also increases from  $\frac{1}{2}$  to  $\frac{2}{3}$ .

- (c) **1/6:** When there is only one daughter, or higher son's daughter but no (a) son, (b) higher son's son, or (c) equal son's son; the daughter or higher son's daughter will take  $\frac{1}{2}$  and the son's daughter h.l.s. (whether one or more) will take  $\frac{1}{6}$  (i.e.,  $\frac{2}{3} - \frac{1}{2} = \frac{1}{6}$ ).

**This is in fact not a regular allotment.** Rather, this particular allotment ( $\frac{1}{6}$ ) is made by juristic analysis of a Quranic verse. It is mentioned at one place in the Quran that the females' share is two-thirds and thus it is presumed that  $\frac{2}{3}$  is the quota allotted for them. In the above case, normally the said son's daughter can not get any property because of her lower status in the hierarchy and the absence of even any converter (male counterpart generally, who converts her into residuary). Under this circumstance  $\frac{1}{2}$  of the property is given to the daughter or higher son's daughter and  $\frac{1}{6}$  ( $\frac{2}{3} - \frac{1}{2}$ ) property is left from their so called quota, and to fulfill this quota son's daughter or the lower son's daughter will get  $\frac{1}{6}$ .

Illustration:

Heir	Share	Reasoning
Daughter	1/2	As sharers, because she is one in number and there is no son who can convert her into residuary.
Son's daughter	1/6	As sharer, to fill up the quota of 2/3.
Father	1/6+R	In dual capacity, because, there are daughter and son's daughter and no son or son's son h.l.s. is present.

Illustration:

Heir	Share	Reasoning
Son's daughter	1/2	As sharers, because she is one in number and there is no male heir who can convert her into residuary.
Son's son's daughter	1/6	As sharer, to fill up the quota of 2/3.
Father	1/6+R	In dual capacity, because, there are son's daughters and no son or son's son h.l.s. is present.

Illustration:

Heir	Share	Reasoning
Daughter	1/2	As sharers, because she is one in number and there is no son who can convert her into residuary.
Son's daughter	1/6	As sharer, to fill up the quota of 2/3.
Son's son's daughter	Excluded	Because of the rule of hierarchy of degree and the quota of 2/3 has also been exhausted, so nothing is left for her.
Father	1/6+R	In dual capacity, because, there are daughter and son's daughter and no son or son's son h.l.s. is present.

Illustration:

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
2 Daughters	2/3	As sharers, because they are more than one in number and there is no son who can convert them into residuary.
Son's daughter	Excluded	Because of the rule of hierarchy of degree and the quota of 2/3 has also been exhausted, so nothing is left for her.
Father	1/6+R	In dual capacity, because, there are daughter and son's daughter and no son or son's son h.l.s. is present.

Interestingly, the allotment for the said son's daughter, under the above circumstances, never increases with an increase in the number of the son's daughter. The reason is obvious that this allotment is a special one just to fill up the quota, so there is no scope to increase their allotment, and thus they will get 1/6 irrespective of their number, if they get at all.

Illustration:

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
Daughter	1/2	As sharers, because she is one in number and there is no son who can convert her into residuary.
2 Son's daughters	1/6 To be divided among them equally	As sharer, to fill up the quota of 2/3. Thus, this 1/6 which was allotted earlier above just for one son's daughter that has not been increased though their number increased from one to two.
Father	1/6+R	In dual capacity, because, there are daughter and son's daughter and no son or son's son h.l.s. is present.



b. **Residue:** two situations may be mentioned here:

1. Son's daughter is converted into residuary by son's son of equal grade, subject to not being excluded for any other reason, e.g., exclusion for hierarchy of degree.
2. Son's daughter is converted into residuary even with son's son of lower grade, provided she is excluded as a sharer for the presence of two or more daughters or two or more son's daughters of higher grade.

Illustration: Converted into residuary by equal son's son.

Heir	Share	Reasoning
Son's daughter	Both of them will get the <b>residue</b> (here the entire property) together to be distributed among them in proportion of 2:1. Thus, the son will get 2/3 and the daughter 1/3.	Son's son always becomes residuary, whereas son's daughter, originally, is a sharer. But the son's daughter is converted into residuary with the son's son, her male counterpart by the application of the doctrine of <i>tasib</i> .
Son's son		

Illustration: Converted into residuary by lower son's son.

Heir	Share	Reasoning
2 daughters	2/3	As sharers, because they are more than one in number and there is no son who can convert them into residuary.
Son's daughter	All as residuary. The residue property is to be distributed among them in proportion of 2:1 (male : female).	Son's son's son always becomes residuary, whereas son's son's daughter, originally, is a sharer. But the son's son's daughter is converted into residuary with the son's son's son, her male counterpart by the application of the doctrine of <i>tasib</i> . In this case, son's daughter is excluded as sharer because of the presence of two daughters and since she is not getting any property otherwise, so she will be converted here into residuary with the son's son of lower grade.
Son's son's daughter		
Son's son's son		



Usually, the daughter or son's daughter or full sister or consanguine sister is converted into residuary with the male counterpart of equal grade. But, the above case is an exceptional one, where the son's daughter has been converted into residuary even with the son's son of lower grade. Because, otherwise, no chance remains open for her to get the property in any way. And without application of this rule if the said son's daughter is excluded that would create an anomaly that an heir of lower degree (here the son's son's son and son's son's daughter) will get the property whereas an heir of higher grade would get nothing.

**Exclusion**: two situations may be mentioned here:

1. Exclusion by son or son's son of higher grade: In presence of son or son's son of higher grade, son's daughter will be excluded totally and in no way she will be entitled to any property.
2. Exclusion by two or more daughters or by two or more son's daughters of higher grade: In presence of two or more daughters or two or more son's daughters of higher grade, son's daughter h.l.s. will be excluded as a sharer. But, under these circumstances, if there is any son's son of equal or even of lower grade, then the son's daughter being excluded as a sharer shall be converted into residuary with him. And in this case, if no such son's son is there, then the son's daughter shall get nothing.

Illustration: Exclusion of son's daughter for the presence of son.

Heir	Share	Reasoning
Father	1/6	As sharer, because there is a son.
Son	Residue	Because, he is the asaba of first category.
Son's daughter	Excluded	Because, there is a son. By the application of the doctrine of hierarchy of degree she has been excluded here.

Exclusion as sharer but gets property as residuary.

Heir	Share	Reasoning
2 daughters	2/3	As sharers, because they are more than one in number and there is no son who can convert them into residuary.
Son's daughter	Both of them will get the <b>residue</b> together to be distributed among them in proportion of 2:1.	Here the son's daughter has been excluded at first as a sharer because of the presence of two daughters, but she is getting the property being converted into residuary with the son's son who is an <i>asaba</i> .
Son's son		

Exclusion both as sharer and res even with 2 daughters only.

Heir	Share	Reasoning
02 daughters	2/3	As sharers, because they are more than one in number and there is no son who can convert them into residuary.
Son's daughter	Excluded	She has been excluded as a sharer because of the presence of two daughters. And since there is no person (equal son's son or even son's son of lower grade) who can convert her into residuary, so she is being excluded here absolutely both as sharer and residuary. Interestingly, here no son exists and still the son's daughter is excluded totally.

### **Basis of son's daughter's inheritance:**

Son's daughter in fact inherits as a substitute heir of the daughter. She has been treated as such not based on any Qur'anic verse; rather, she has acquired almost the similar status of a daughter by the following Hadith:

It has been narrated that Huzayl Ibn Shirahbi said, "Abu Musa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, 'The daughter will take one half and sister will take one half. If you go to Ibn Masud, he will tell you the same.' Ibn Masud was asked (about that) and was told of Abu Musa's verdict. Ibn Masud then said, 'If I give the same verdict, I will stray and will not be of the rightly-guided. The verdict I will give in this case will be the same as the Prophet (PBUH) did; that is, one half is for the daughter and one sixth for the son's daughter, thus both shares making two thirds of the total property; and the rest is for the sister.' Afterwards we came to Abu Musa and informed him of Ibn Masud's verdict, whereupon he said, 'So, do not ask me for verdicts, as long as this learned man is among you.' (Narrated by Al-Bukhari and others).

Thus, son's daughter has been incorporated in the group of 'female children' for whom the Qur'an has allotted 2/3 collectively.<sup>18</sup> That is why son's daughter gets 1/6 just to fulfill the maximum share allotted for this group with only one daughter subject to the satisfaction of some other conditions.

However, grandson, grandfather and grandmother—each of these substitute heirs is excluded totally by the presence of the heir of whom he/she has been substituted, but this is not true in case of son's daughter, as she may inherit even with daughter, one

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<sup>18</sup> Coulson, supra note 9, 55.



or more, if a daughter gets  $\frac{1}{2}$ , she gets  $\frac{1}{6}$  as a sharer or gets property as asaba with her male counter part in the absence of any son or higher son's son only. Coulson has rightly commented that '[a]s distinct, then, from the three other substitute heirs, who are always totally excluded from succession by the relative for whom they are a substitute, the granddaughter is never *de jure* excluded by the daughter'.<sup>19</sup> According to Ibn Masud:<sup>20</sup> 'a granddaughter was not to be converted into a residuary heir by a grandson when the Qur'anic *fard* of two thirds was exhausted by a plurality of daughters or nearer granddaughters' and 'granddaughters, when in competition with one daughter and a grandson or grandsons, should take either the Qur'anic portion of one sixth, or their share as residuary heirs, whichever was less'.

#### 1.4.11 Mother

Mother is a primary heir who will never be subject to total exclusion. She enjoys the status of a 'sharer' only as she never becomes 'asaba'. Though it has been mentioned that the shares of the sharers are mentioned in the Quran but there are some shares which are not found in the Quran directly; rather, some shares have been fixed by the jurists by way of interpretation of the relevant Qur'anic verse. Mother's share of  $\frac{1}{3}$  of residue is one such instance.

However, there are THREE situations of the mother:

- a)  $\frac{1}{6}$
- b)  $\frac{1}{3}$
- c)  $\frac{1}{3}$  of Residue

a)  $\frac{1}{6}$  : Mother is entitled to  $\frac{1}{6}$  of the property in any of the following three circumstances:

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<sup>19</sup> Ibid.

<sup>20</sup> Coulson, supra note 9,58.



1. There is a child or child of a son h.l.s.; or
2. there are two or more brothers or sisters, whether full, consanguine or uterine; or
3. even one brother and one sister, whether full, consanguine or uterine, of whatever combination.

The Holy Qur'an says: 'For parents, a sixth share of 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..' <sup>21</sup>

Illustration: Mother with child.

Heir	Share	Reasoning
Mother	1/6	As sharer, because there is a child.
Son	<b>residue</b>	As <i>asaba</i> of the first grade.

Illustration: Mother with 02 full brothers..

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are two brothers.
02 full brothers	<b>Residue</b>	As <i>asaba</i> of the 3 <sup>rd</sup> grade, in the absence of first two categories of <i>asaba</i> in order of priority.

Illustration: Mother with 01 brother and 01 sister.

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are one brother and one sister.
01 full brother	<b>residue</b>	As <i>asaba</i> of the 3 <sup>rd</sup> grade, in the absence of first two categories of <i>asaba</i> in order of priority.
01 uterine brother	1/6	As sharer, because he is one in number and there is no total excluder to him.

<sup>21</sup> Nisa: 11.

Illustration: Mother with 01 full brother and 01 consanguine brother.

Heir	Share	Reasoning
Mother	1/6	As sharer, because, in total there are two brothers.
01 full brother	<b>residue</b>	As <i>asaba</i> of the 3 <sup>rd</sup> grade, in the absence of first two categories of <i>asaba</i> in order of priority.
01 consanguine brother	Excluded	Because, full blood excludes half blood with the exception of uterine blood. So, the full brother excludes him here.

It is worth mentioning here, that in the above illustration, it is seen that the mother's share has been reduced from 1/3 to 1/6 because of the presence of two brothers in total, though one of them has been excluded by the other. Thus, this is interesting here that though the consanguine brother could not succeed as an heir but he successfully reduced mother's share. Likewise, another example of this type may be cited here:

Illustration: Mother with the father and 02 brothers.

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are two brothers. In this case, though the brothers will be excluded by the father absolutely, in spite of this fact, their presence adversely affects the mother's share and reduces that from 1/3 to 1/6.
Father	<b>residue</b>	As <i>asaba</i> of the 1 <sup>st</sup> grade, in the absence of any son or son's son, in order of priority.
02 full brothers	Excluded	Brothers belong to the third category of <i>asaba</i> while the father is of the second grade in order of priority. Thus the father excludes the brothers absolutely.

b) **1/3** : Mother is entitled to **1/3** on fulfillment of the following two conditions:

1. there is no child or son's child; and
2. not more than 01 brother or 01 sister (if any).

Illustration

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child and no brother or sister is present at all.
Father	residue	As <i>asaba</i> of the second grade, in the absence of the son or son's son, the <i>asaba</i> of first grade, in order of priority.

Illustration

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child; and not more than one brother or one sister. So, here the mother will get her maximum share.
Father	<b>Residue</b>	As <i>asaba</i> of the 1 <sup>st</sup> grade, in the absence of any son or son's son, in order of priority.
01 full brother	Excluded	Brother belongs to the third category of <i>asaba</i> while the father is of the second grade in order of priority. Thus the father excludes the brother absolutely.

c) **1/3 of Residue**: She will be entitled to 1/3 of what remains after deducting the wife's or husband's share on fulfillment of the following three conditions:

1. there is no child or son's child;
2. not more than one brother or one sister (if any); and



3. there is wife or husband along with the father.

Thus,  $\frac{1}{3}$  of residue is a special share allotted for the mother which is dependent on two sets of conditions. The positive condition is that wife or husband, as the case may be, and the father must be present. The negative condition is that the child or son's child and more than one brother or sister will not be present. Under such a special situation only, mother will get a peculiar share, that is, one third of residue. In this case, first of all husband or wife, as the case may be, will be given the allotted share and then the mother will get  $\frac{1}{3}$  of what remains and afterwards the property will go to other surviving heirs. So,  $\frac{1}{3}$  of residue here means  **$\frac{1}{3}$  of (1- Husband/Wife's share).**

Illustration

Heir	Share	Reasoning
Husband	$\frac{1}{2}$	As sharer, because there is no child or son's child.
Father	<b>residue</b>	As <i>asaba</i> of the 1 <sup>st</sup> grade, in the absence of any son or son's son, in order of priority.
Mother	$\frac{1}{3}$ of residue	As sharer, because there is no child or son's child; and no brother or sister at all. But there are husband and father.

Final distribution of the shares:

Heir	Share	Common denominator 6
Husband	$\frac{1}{2}$	$\frac{3}{6}$
Father	Residue	$\frac{2}{6}$
Mother	$\frac{1}{3}$ of residue = $\frac{1}{3}$ of (1- husband's share) = $\frac{1}{3}$ of (1- $\frac{1}{2}$ ) = $\frac{1}{3}$ of $\frac{1}{2}$ = $\frac{1}{6}$	$\frac{1}{6}$

Illustration

Heir	Share	Reasoning
Husband	$\frac{1}{2}$	As sharer, because there is no child or son's child.
Father	<b>residue</b>	As <i>asaba</i> of the 1 <sup>st</sup> grade, in the absence of any son or son's son, in order of priority.
Mother	$\frac{1}{3}$ of residue	As sharer, because there is no child or son's child; and not more than one brother or sister is present. But there are husband and father.
01 full brother	Excluded	Brother belongs to the third category of <i>asaba</i> while the father is of the second grade in order of priority. Thus the father excludes the brother absolutely.

Justification of the rule of '1/3 of residue':

Mother's share of '1/3 of residue' has not been found in any direct Qur'anic verse. But, it is fixed by some jurists on the ground that under the above circumstances, if the mother is given 1/3 of the whole property instead of 1/3 of residue, then the mother would get more than the father. Thus, the mother's share has in fact been reduced here just to adjust it with the father's share. Because, if the mother gets more than the father, that goes against one of the general norms of Islamic law of succession which gives male more than the female in a similar class. Based on this logic, the jurists deduced the principle of 1/3 of residue. Keeping 1/3 as intact it has been made of residue instead of the whole to make it in harmony with other Qur'anic verses that support the less entitlement of the females in comparison with their male counterparts. However, this principle of 1/3 of residue has not been accepted by the *Shia* school.

Illustration: Mother's share without application of the rule of 1/3 of residue.

Heir	Share	Common denominator 6
Husband	1/2	3/6
Father	Residue	2/6
Mother	1/3	1/6

Thus, it appears that without application of the rule of 1/3 of residue mother does not only get more than the father, but even it may be double than the father's share. To avoid such an anomalous situation, the jurists have enunciated this rule<sup>22</sup>.

#### **Exclusion of the mother:**

##### **Partial exclusion:**

The presence of child or son's child or two or more brothers or sisters of whatever combination reduces mother's share from 1/3 to 1/6. In the absence of all of them, if mother remains with the father and husband or wife, mother's share will be reduced mother's share from 1/3 to 1/3 of residue.

##### **Total exclusion:**

Mother is never excluded totally by any one. Thus, a mother will get property under any circumstance.

#### **1.4.12 True Grand Mother:**

Grandmother is a substitute heir of the mother. But the grandmother's share is fixed at 1/6 and it does not increase. Thus, her share is not changed to 1/3 of residue unlike the mother in any case, though the grandmother is treated as a substitute heir of the mother. Again, though she is the substitute heir of the mother, she does not exclude the heirs who are

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<sup>22</sup> For a detailed discussion about this rule of 1/3 of residue please see chapter 9 on special rules.



excluded by the mother. Moreover, the rule of 'Umriyatīn' is not applicable in her case.

Unlike grandfather, this grandmother may be both paternal and maternal. Primarily, only maternal grandmother was thought to be the sharer and subsequently paternal grandmother also have been included as a sharer as grandmother. Coulson has summed up the history of such inclusion of paternal grandmother as a sharer in the following words:

Abu Bakr, the first Caliph of Islam, is said to have been the judge in a case where the praepositus, whose parents were predeceased, was survived by both his paternal and maternal grandmothers. He decided that the *fard* of one-sixth should go wholly to the maternal grandmother, on the ground that she was the more proper representative of the deceased's mother than the deceased's father's mother. But this decision was apparently criticised on the ground that it ignored the principle of reciprocity; for it excluded the grandmother from whom the present praepositus, as the son's son, would have inherited, in favour of the grandmother from whom the present praepositus, as a daughter's son, would not have inherited. Abu Bakr then is said to have revised his decision and given both grandmothers equal shares in the *fard*.

<b>Grandmother</b>			
FFFM (1)	FMMM (2)		MMMM (3)
FFM (1)	FMM (2)		MMM (3)
FF	FM (1)	MF	MM (3)
F		M	
X			

True grandmother may be of the following three different types—

1. Father's mother h.h.s., e.g., FM, FFM, FFFM.  
[marked as (1) above.]
2. Father's mother's mother h.h.s., e.g., FMM, FMMM. [marked as (2) above.]

3. Mother's mother h.h.s., e.g., MM, MMM, MMMM. [marked as (3) above.]

It is worth mentioning here that along with the father's mother and mother's mother, the father's mother's mother is also included here, though she is from a little bit different line in comparison to the father's father's mother. Again, interestingly, mother excludes both the paternal and maternal grandmother as they are the substitute heirs of the mother; whereas father excludes only paternal grandmother as a connecting heir. The rules regarding distribution of shares among the grandmothers are discussed by classifying them into the following two groups:

- a. Paternal true grandmother (PTGM).
- b. Maternal true grandmother (MTGM).

Abdur Rahman Doi<sup>23</sup> added the following opinions with reference to *Al Qayrawani, Risalah*:

According to Malik more than two grandmothers cannot inherit. He allows only the father's mother and the mother's mother, how high soever. However, it is reported that Zaid Ibn habit had allowed three grandmothers to inherit. That is one from the side of the mother and two from the father's side. They are the mother's mother, the father's father's mother. But it has not been noticed as part of the practice of the rightly guided Caliphs to allow more than two grandmothers to inherit.

- a) **Maternal True Grand Mother** : she will be entitled to 1/6 of the property in the absence of the following heirs:

1. Mother

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<sup>23</sup> Abdur Rahman I. Doi, *Shariah The Islamic Law*, Ta Ha Publishers, London, UK, 1997, p.321.

2. Nearer paternal true grand mother
3. Nearer maternal true grand mother

Mother excludes MTGM for the rule of exclusion based on link. Mother excludes her for another reason as well as that is she is treated as the substitute heir of the mother, so naturally in presence of the mother she will be totally excluded. Other two exclude her because of the hierarchy of degree. In this regard, apart from nearer maternal true grandmother, the nearer one from paternal side also excludes her because both the true grandmothers whether maternal or paternal belong to the same class and thus the hierarchy of degree has been applied among the heirs of the same class.

**Exclusion:** She is excluded absolutely by each of the above.

*Illustration: 1/6 in the absence of the excluders.*

Heir	Share	Reasoning
Maternal true grand mother	1/6	As sharer, because there is no excluder to her.
Son	residue	As <i>asaba</i> of the first grade.
Father	1/6	As sharer, because there is a son.

*Illustration: Exclusion by mother.*

Heir	Share	Reasoning
Maternal true grand mother	Excluded	Because, mother is present. Obviously father does not affect her.
Son	residue	As <i>asaba</i> of the first grade.
Mother	1/6	As sharer, because there is a child.
Father	1/6	As sharer, because there is a son.



Illustration: Exclusion by nearer paternal true grand mother.

Heir	Share	Reasoning
Mother's mother's mother	Excluded	Because, nearer paternal true grand mother is present.
Father's mother	1/6	As sharer, because there is no excluder to her.
Son	residue	As <i>asaba</i> of the first grade.

Illustration: Exclusion by nearer maternal true grand mother.

Heir	Share	Reasoning
Mother's mother's mother	Excluded	Because, nearer maternal true grand mother is present.
Mother's mother	1/6	As sharer, because there is no excluder to her.
Son	residue	As <i>asaba</i> of the first grade.

It is worth mentioning here that father never excludes maternal true grandmother.

Illustration: father never excludes maternal true grand mother.

Heir	Share	Reasoning
Father	1/6	As sharer, because there is a son.
Mother's mother	1/6	As sharer, because there is no excluder to her. Neither the father nor the son excludes her.
Son	residue	As <i>asaba</i> of the first grade.

b) **Paternal True Grand Mother** : she will be entitled to 1/6 of the property in the absence of the following heirs:

1. Mother
2. Nearer paternal true grand mother
3. Nearer maternal true grand mother
4. Father
5. Intermediate true grand father.

All three heirs who exclude MTGM, each of them also excludes PTGM. Moreover, two more heirs also exclude PTGM. Thus it appears that PTGM's chance of getting inheritance is more restricted in comparison to MTGM, since her share is dependant on the absence of five heirs whereas MTGM succeeds in the absence of only three. Mother excludes PTGM for the reason that she is treated as a substitute heir of the mother like the MTGM. Other two nearer PTGM and MTGM exclude her because of the hierarchy of degree. Father excludes her as her connecting heir. The justification of exclusion by the intermediate true grandfather is that he becomes the connecting heir in that case.

**Exclusion:** She is excluded by each of the above.

*Illustration: 1/6 in the absence of the excluders.*

Heir	Share	Reasoning
Paternal true grand mother	1/6	As sharer, because there is no excluder to her.
Son	residue	As <i>asaba</i> of the first grade.

*Illustration: Exclusion by the mother.*

Heir	Share	Reasoning
Paternal true grand mother	Excluded	Because, mother is present.
Son	residue	As <i>asaba</i> of the first grade.
Mother	1/6	As sharer, because there is a child.

*Illustration: Exclusion by the father.*

Heir	Share	Reasoning
Paternal true grand mother	Excluded	Father excludes her as the connecting heir.
Son	residue	As <i>asaba</i> of the first grade.
Father	1/6	As sharer, because there is a child.
Maternal true grandmother	1/6	As sharer, since there is no excluder to her.

The rule that father excludes the paternal grandmother—is an unanimous opinion of all schools except Hanbalis according to which father does not exclude the paternal grandmother since she is the substitute heir of the mother.

*Illustration: Exclusion by nearer paternal true grandmother.*

Heir	Share	Reasoning
Father's mother	1/6	As sharer, since there is no excluder to her.
Father's father's mother	Excluded	Father's mother excludes her. Because, father's mother is nearer in degree than the father's father's mother.
Son	residue	As <i>asaba</i> of the first grade.

*Illustration: Exclusion by nearer maternal true grandmother.*

Heir	Share	Reasoning
Mother's mother	1/6	As sharer, since there is no excluder to her.
Father's father's mother	Excluded	Mother's mother excludes her. Because, mother's mother is nearer true grandmother in degree than the father's father's mother.
Son	Residue	As <i>asaba</i> of the first grade.

*Illustration: Exclusion by intermediate true grandfather.*

Heir	Share	Reasoning
Father's father	1/6	As sharer, because there is a son.
Father's father's mother	Excluded	Father's father excludes her as an intermediate true grandfather by the application of the doctrine of hierarchy of degree.
Son	residue	As <i>asaba</i> of the first grade.



It is important to note here that for an intermediate true grandfather to exclude a grandmother, the intermediate true grandfather must be in the same line; otherwise there will be no exclusion.

Who is an intermediate true grandfather?

Father's father's father (x)	Father's father's mother (alive)
Father's father (alive)—he is an intermediate true grandfather who excludes above true grandmother.	Father's mother (x)
Father (x)	
"X" dies leaving	

Illustration: Exclusion by intermediate true grandfather.

Heir	Share	Reasoning
Father's father	1/6	As sharer, because there is a son.
Father's father's mother	Excluded	Father's father excludes her as an intermediate true grandfather by the application of the doctrine of hierarchy of degree.
Father's mother's mother	1/6	As sharer, because there is no excluder to her. Even the father's father failed to exclude her, because he is not an intermediate true grandfather from the same line to be capable to exclude her.
Son	Residue	As <i>asaba</i> of the first grade.

However, equal true grandfather does not exclude the grandmothers.

Illustration: Equal true grandfather does not affect the grandmothers

Heir	Share	Reasoning
Father's father	Residue (5/6)	As <i>asaba</i> of the second grade, in the absence of any <i>asaba</i> of the first grade.
Father's mother	1/6	As sharer, since there is no excluder to her.

It is worth mentioning here that if two types of paternal true grandmothers exist in the same case, they will collectively get 1/6.

Illustration: Two types of paternal true grandmothers inherit together.

Heir	Share	Reasoning
Father's father's father	Residue (5/6)	As <i>asaba</i> of the second grade, in the absence of any <i>asaba</i> of the first grade.
Father's father's mother	1/6 (each gets 1/12)	As sharer, since there is no excluder to them.
Father's mother's mother		

Interestingly, if there are grandmothers both paternal and maternal at the same time, then they will also get collectively 1/6 to be divided among equally, subject to not being excluded otherwise.

Illustration: Paternal and maternal true grandmothers get 1/6 collectively.

Heir	Share	Reasoning
Father's father	1/6	As sharer, because there is a son.
Father's mother	1/6 each gets 1/12	Because, there is no excluder to them. Their share 1/6 is to be divided among them equally.
Mother's mother		

It is worth mentioning here that the maternal true grandmother gets property in an easier way than the paternal true grandmother. The reason is obvious, that the paternal true grandmother has five excluders whereas maternal true grandmother has only three excluders. Again, mother excludes both of them whereas father excludes only his mother.

Illustration: Mother excludes both maternal and paternal true grandmother

Heir	Share	Reasoning
Mother	1/3	As sharer, neither child or son's child nor any brother or sister is present.
father's mother	Excluded	By the mother
Mother's mother	Excluded	By the mother, as she is the connecting heir.

Let me cite few more illustrations to make the rules clear.

Illustration 1 : Impact of presence of mother and father upon the grandmothers of different types.

Heir	Share	Reasoning
Father	Residue	As the <i>asaba</i> of 2 <sup>nd</sup> grade, in the absence of any <i>asaba</i> from the first grade.
Mother	1/3	As sharer, neither child or son's child nor any brother or sister is present.
Mother's mother	Excluded	By the mother
Father's mother	Excluded	Presence of father and mother, for both the reasons.



Illustration 2 : Impact of presence of mother and father upon the grandmothers of different types.

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
Father	Residue	As the <i>asaba</i> of 2 <sup>nd</sup> grade, in the absence of any <i>asaba</i> from the first grade.
Mother	1/3	As sharer, neither child or son's child nor any brother or sister is present.
Mother's mother's mother	Excluded	By the mother
Father's father's mother	Excluded	Presence of father and mother, for both the reasons.
Father's mother's mother	Excluded	By the mother

Illustration 3 : Impact of presence of mother upon grandmothers of different types.

<b>Heir</b>	<b>Share</b>	<b>Reasoning</b>
Mother	1/3	As sharer, neither child or son's child nor any brother or sister is present.
Mother's mother's mother	Excluded	By the mother.
Father's father's mother	Excluded	By the mother.
Father's mother's mother	Excluded	By the mother.

Illustration 3 : Impact of presence of father upon grandmothers of different types.

Heir	Share	Reasoning
Father	Residue	As the <i>asaba</i> of 2 <sup>nd</sup> grade, in the absence of any <i>asaba</i> from the first grade.
Mother's mother's mother	1/6	Because, there is no excluder to her. Father cannot exclude maternal true grandmother as he is not her connecting heir and as well as she is not his substitute heir.
Father's father's mother	Excluded	By the father, because she is connected with deceased through this father.
Father's mother's mother	Excluded	By the father, because in this case also father is the basic connecting heir.

Illustration 4 : Impact of presence of father's father (true grand father) upon grandmothers of different types.

Heir	Share	Reasoning
Father's father	Residue	As the <i>asaba</i> of 2 <sup>nd</sup> grade, in the absence of any <i>asaba</i> from the first grade.
Father's father's mother	Excluded	By the father's father as he is an intermediate true grandfather.
Mother's mother's mother	1/6 (each gets 1/12)	Because, there is no excluder to them. Father's father cannot exclude them as he is neither the connecting heir nor an intermediate true grandfather.
Father's mother's mother		By the father, because in this case also father is the basic connecting heir.

Interestingly, though the father can not exclude the mothers' mother's mother, but the father's mother can exclude her.

Illustration : Father's mother can exclude mother's mother's mother though the father can not do the same.

Heir	Share	Reasoning
Mother's mother's mother	x	Here she has not been excluded by father, rather by the nearer true grandmother—father's mother. Here though father's mother herself has been excluded by the father, still she is capable to exclude the grandmother more remote than her.
Father's mother	x	By the father, as he is her connecting heir.
Father	1/6	As sharer, because there is a son.
Son	R	As the <i>asaba</i> of first grade.

But, in contrast to the Hanafi and Hanbali law, according to Maliki and Shafi schools of law, 'since the father does not exclude any maternal grandmother', so father's mother, 'a fortiori a female ascendant connected with the praepositus through him does not do so'.<sup>24</sup> Exclusion based on hierarchy of degree (nearer in degree excludes the more remote) is also applicable between different grandmothers. The Hanafis and Hanbalis treat all grandmothers as a single group and apply the rule of degree regardless of side, so that a nearer paternal or maternal grandmother excludes more remote grandmothers on both her own and the other side.<sup>25</sup> According to Imam Malik, the grandmothers cannot be more than two, and where there are two of them, they will share the 1/6.<sup>26</sup> The Hanafi School, on the other hand, says that there is a possibility of having three grandmothers coming together and still they share the 1/6.<sup>27</sup> Coulson, citing the following example has shown the principal divergences between different schools:

	Hanafi	Maliki	Shafi	Hanbali
Father	All	5/6	5/6	5/6
FM	X	X	X	1/6
FFM	X	X	X	X
MMM	X	1/6	1/6	X

<sup>24</sup> Ibid. at pp. 61-62.

<sup>25</sup> Coulson, *supra* note 9, p.61.

<sup>26</sup> Doi, *supra* note 23, p. 309.

<sup>27</sup> Ibid.



**Table: Shares, sharers and the relevant Qur'anic source<sup>28</sup>**

Share	Shareholder	Relevant Qur'anic verse
½	Husband	<i>In that which your wives leave, your share is a half if they have no child...</i>
	Daughter and Son's daughter	<i>...if only one, her share is a half...</i>
	Full and Consanguine sister	<i>... If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance...</i>
¼	Husband	<i>... but if they leave a child, you get a fourth of that which they leave...</i>
	Wife	<i>... In that which you leave, their (your wives) share is a fourth if you leave no child...</i>
1/8	Wife	<i>...but if you leave a child, they get an eighth of that which you leave...</i>
2/3	02 or more daughters or son's daughters	<i>... if (there are) only daughters, two or more, their share is two thirds of the inheritance...</i>
	02 or more full sisters or consanguine sisters	<i>... If there are two sisters, they shall have two thirds of the inheritance...</i>
1/3	Mother	<i>...if no children, and the parents are the (only) heirs, the mother has a third...</i>
	02 or more U. brothers and/or U. sisters	<i>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 more than two, they share in a third...</i>
1/6	Mother or Grandmother	<i>For parents, a sixth share of 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...</i>
	01 uterine brother or sister	<i>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...</i>

<sup>28</sup> All Qur'anic verses are from Sura An-Nisa (Qur'an , 4:11, 12 & 176). Full text of the verses are mentioned separately in the miscellaneous chapter.

Father or grandfather	For parents, a sixth share of inheritance to each if the deceased left children.
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**Table: shares established by Hadith**

Share	Sharer	Relevant Hadith
1/6	Son's daughter with only one daughter	<i>It has been narrated that Huzayl Ibn Shiraḥbi said, "Abu Musa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister. He said, "The daughter will take one half and sister will take one half. If you go to Ibn Masud, he will tell you the same." Ibn Masud was asked (about that) and was told of Abu Musa's verdict. Ibn Masud then said, "If I give the same verdict, I will stray and will not be of the rightly-guided. The verdict I will give in this case will be the same as the Prophet (PBUH) did; that is, one half is for the daughter and one sixth for the son's daughter, thus both shares making two thirds of the total property; and the rest is for the sister." Afterwards we came to Abu Musa and informed him of Ibn Masud's verdict, whereupon he said, "So, do not ask me for verdicts, as long as this learned man is among you." (Narrated by Al-Bukhari and others).</i>
	Consanguine sister with full sister	Following above Hadith same rule is applied to complete the so-called quota of 2/3.

**Table: shares established by Ijma**

Son's daughter	She will inherit like daughter.
Grandfather	He will be treated like father in his absence.