

Provisions of the Rights of Inheritance in Special Circumstances in the Muslim Law: An Overview

Mohi Uddin

Department of Law, International Islamic University Chittagong, Chittagong, Bangladesh

Email: adv.mohim@gmail.com

How to cite this paper: Uddin, M. (2021). Provisions of the Rights of Inheritance in Special Circumstances in the Muslim Law: An Overview. *Beijing Law Review*, 12, 205-214.

<https://doi.org/10.4236/blr.2021.121012>

Received: January 26, 2021

Accepted: March 19, 2021

Published: March 22, 2021

Copyright © 2021 by author(s) and Scientific Research Publishing Inc. This work is licensed under the Creative Commons Attribution International License (CC BY 4.0).

<http://creativecommons.org/licenses/by/4.0/>



Open Access

Abstract

The provision of rights of inheritance in the Muslim law is Allah's command to the Muslim Community. In the holy Quran, Allah specified the portions of an heir. This research will describe and indicate the rights of inheritance in particular circumstances under Muslim Law. The holy Quran does not express directly regarding the rights inheritance of a person in some special circumstances. For this reason, Jurists originate particular rules regarding their "right of inheritance" by the support of the Quran, "Hadith," Ijma, and "Qiyas". There is a gap between faith and humanity, and our social order does not preserve the portions of properties in some special cases. So, there is needed to protect the rights of inheritance of a person in special cases for better solutions of a future event and implement Allah's command in these regards. This article shall try to give an overview on the rights of inheritance of a child in the mother's womb, a missing person, the concurrent or simultaneous death. Finally, by this research, the researcher shall attempt to create a specific structure for protection of rights of inheritance in exceptional cases in acquiescence with the said provisions of the "Holy Quran, Hadith, Ijma, Qiyas", and likewise view of various renowned Imam and "jurists of the Muslim World".

Keywords

"Inheritance", Child in Mother Womb, Missing Person and Concurrent Death

1. Introduction

The provision of "Islamic law of inheritance" has been specified by "Allah (SWT)" in thoughtful also remaining method and in accord by way of the hu-

man nature. It is the utmost strict and logical law and the “Muslim jurists” put great significance on the “law of inheritance”, and they would often repeat the maxim of the “prophet (Peace be upon him)”, “learn the laws of inheritance and teach them to the people; for they are one-half of useful knowledge” (Majah, 2008). Inheritance is fundamentally the handover of status to the living person from the deceased concerning the definite assets (Lloyd & Derrett, 1965). Usually, the “laws of inheritance” are classified into two heads: testamentary and intestate. Most of the contemporary methods of succession are created on the person’s liberty to choose the forthcoming transfer of his property after his death. These are well-known as testamentary schemes of succession. In the event that the successor has an essential obligation to direct, even after the death of the person, his property will be transferred to his heirs by the rejection and will be determined as an underlying method of an inheritance (Lloyd & Derrett, 1965). In the “verses of Quran” specified to us by “Allah (SWT)” regarding rights inheritance and distribution of deceased person properties among his/her successors of those verses are “11, 12 and 176 of Surah Al-Nisa”. This research work explains the special circumstances of “Islamic Inheritance”. In his research, the researcher discusses only three exceptional cases of inheritance that are included in succession, namely: “The Case of Unborn Child, The Case of Concurrent Death, and The Case of a Missing Person”.

2. Main Objectives of the Research

The foremost aim of this research work is on the road to overview the rights of inheritance of an heir in some special cases under the Muslim Law. However, the research aims to attain the following specific objectives:

- a) To give a framework regarding distributions of properties of a deceased person in special cases among the heirs.
- b) To examine and analyse the actual distribution of property among heirs in the view of Quran and Hadith and also opinion of the jurists.

3. Significance of the Research

This research work would be useful to all those involved; to civil and family courts Judges in their application of Islamic law; to Lawyers in handling family matters; to parents and guardians as well as families in determining and distribution of the properties of deceased person among the heirs; to teachers, researchers and students of law who desire to pursue a career in this field, etc. This research examines the possible property distribution methods in the lights of the Quran, sunnah, and different opinions of the imam and jurist, from an Islamic law perspective.

4. Research Methodology

The methodology implemented in this research is doctrinal legal research. Re-course was had to legal documents and materials, i.e., text books, journals, arti-

cles, conference and seminar papers, statutes, case law, internet materials, etc., which were properly acknowledged.

5. Concept of Inheritance in “Islamic Law”

The “law of inheritance” in “Islamic law” is well-known as “ilm ul-fariad”. The Arabic term “Ilm ul-fariad” literally means acquaintance or learning of the sanctions regarding inheritance (Haque, 2009). The word “Mirath” means inheritance to be distributed from the assets of the deceased person between his successors. The learning of “Mirath” in shariah provides guidelines as to who succeed to and who is to be inherited and what portions go to the successors. The passing of a person passes about handover of utmost of his rights and responsibilities to persons who represent him and are called “Wuratha” that is to say successors and heirs (Abdul Hamid Siddiqui, 2005).

6. The Main Sources of “Islamic Law of Inheritance”

Utmost of the Muslim jurists recognised merely three sources of the Islamic law of inheritance viz.

- a) “The Holy Quran”;
- b) “The Hadith”; and
- c) “Ijma or Consensus opinion”.

Contrasting the further divisions of law, no confidence has been made on Qiyas or analogy with esteem just before putting miserable the “law of inheritance”.

7. Heritable Property under the Islamic Law of Inheritance

Heritable property is that property, which remains after the following expenditures:

- a) Pay funeral and burial expenses of the deceased person;
- b) Paying debts of the deceased including dower of his widow;
- c) Fix the value or will of the deceased which can only be a maximum of one third of the total properties; and
- d) Payable wages for personal service to the deceased.

8. “Child in the Mother Womb”

A “child in the womb” of its mother is capable to succeed to if it is born alive. For the determinations of succession, a child who is born alive is considered by law to have been alive, and thus to have possessed rights of inheritance, since the time of its conceived (Coulson, 1971). A child in germ is presumed as a living one and, by itself, the assets vest instantly given that child. In the case of rights of inheritance in place of a “foetus”, the jurists decide that a “foetus” is enabled on the way to the “inheritance” of a deceased angel in common through the other successors.

8.1. Requisites for Rights of Inheritance of “Child in the Mother Womb”

The rights inheritance for the foetus is matter to two circumstances viz.:

- a) The “foetus” or child in “womb” was conceived by its mother in the life time of the propositus; and
- b) The foetus or child is brought into the world alive in any event, for a couple of moments.

The Islamic law of Inheritance knows numerous symbols that lay down that the “foetus” is brought alive, for instance “crying, feeding, breathing, moving” this one limb and so onward. The Islamic scholar devours diverse views whether the full body of the “foetus” has to be intuitive alive or just partly. The “Syafii”, “Maliki” and “Hanbali” sections include that the “foetus” be intuitive alive by means of a complete. If merely almost portions of the “foetus” are born alive as well as at that time it passes missing, the “foetus” is not eligible just before get the inheritance even although the birth was tracked by crying.

8.2. Presumption of Legitimacy of a Child in Mother Womb:

The following matters should be taken for justifying legitimacy of a child in mother womb:

- a) According to Abu Hanifa (R), if a kid is born within two years after the death of the propositus then there may be presumption in this respect that the child was perceived in the life time of the propositus,
 - b) Other schools extend it up to 5 years and shias set it at months (Haque, 2009),
 - c) As per rules of the “section 112 of the Evidence Act, 1872”.
- “The fact that any person was born within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, 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.” (see 112, The Evidence Act, 1872)
 - However, this traditional view and may be reviewed in the assistance of modern medical technologies since there is no clear Qur’anic rule and authentic Hadith is found in support of the ancient views concerning the extended period of pregnancy of the child. Beside this Evidence Act, also give an outline regarding the time limit of legitimacy of a child.

8.3. Distribution of Property

When satisfying the circumstances beyond, the “foetus” takes the rights to the “inheritance” and the shares of the inheritance must be reserved for it awaiting its delivery.

- a) **In the view of Maliki** group, the property cannot be disseminated ‘til the baby is born.
- b) **According to Abu Hanifa**, the assumption is that one boy or one girl will

be born, but appropriate security is to be taken from those heirs' entitlement will be diminished by the birth of two or more children. Abu Hanifa himself, along with certain scholars maintains that the law should assume that the pregnancy would be result in birth of four sons or daughters.

c) **According to "Abu Muhammad"**, the portion of three sons or daughters, the bigger amount thereof is to be kept for the foetus (Rahman, 1989).

d) And still, according to Abu Yusuf, the share of one son or one daughter, the bigger amount thereof is to be kept for the foetus (Rahman, 1989).

e) **Hambli and Shia** law provides that, the assumption is that doublet boys or doublet girls will be born, and other heirs are enabled to take the portion they would obtain in the one situation or former, either is less.

f) **Shafi law**, the assumption is that doublet boys or girls will be born, and further here heirs take their minimal shares accordingly. But there is to be no distribution to heirs of the same class as the unborn heir(s) until the result of the pregnancy known.

In the views of the majority of "fuqaha", the property can be disseminated formerly the birth of the "foetus", however the share that would be reserved for it is the determined whether it is a male or female.

8.4. Presume that, If an Unborn Child Is a Son or More

Suppose, a man died leaving a "pregnant wife, mother, father and a daughter." He left of Tk.20800

Table 1 shows that an unborn child is consider as a son also on the position of son would be entitled dual share then daughter.

8.5. Presumed that, If an Unborn Child Is a Daughter or More

Table 2 shows that an unborn child is consider as a Daughter and on the position of daughter would acquire equal share of the existing daughter.

Though, after such reservation, when the birth of the kid, if the kid is born

Table 1. An unborn child is a son or more.

Heir	Share	Tk.
Wife	$\frac{1}{8}$	2600
Father	$\frac{1}{6}$	3467
Mother	$\frac{1}{6}$	3467
Daughter	$\frac{1}{3}$	3755
Son (Unborn)	$\frac{2}{3}$	7510
	$\frac{24}{24}$	20,800

Table 2. An unborn child is a daughter or more.

Heir	Share	Tk.
Wife	$\frac{1}{8}$ Reduced to $\frac{3}{27}$	2312
Father	$\frac{1}{6}$ Reduced to $\frac{4}{27}$	3081
Mother	$\frac{1}{6}$ Reduced to $\frac{4}{27}$	3081
Daughter	$\frac{2}{3}$ Reduced to $\frac{16}{27}$	12,326
Daughter (Unborn)		
	$\frac{27}{24}$	$\frac{27}{27}$
		20,800

Nb. Here $\frac{27}{24}$ is the sum of the denominator and numerator.

alive, the according to its gender, and numbers as the case may be, the property is to be redistributed and adjusted. If there is any excess or any dead child is born then that is to be redistributed among the then heirs proportionally (Haque, 2009: pp. 231-232).

9. “Simultaneous Death of Two Heirs” or Concurrent Death

While two or more individuals die in such a situation that it is not ascertainable as to who pass away first (i.e., who survived whom) at that time, both of them come to an end to be an heir for each other.

In other words, wherever two or more heirs die concurrently and, it is not probable to establish as to who died first then in Muslim law, altogether the heirs are assumed to have died just at one moment. The consequence is that such successors are considered as if they did not exist at all; the inheritance unties omitting these successors.

Suppose, Abir and Borhan are legal heirs each other, in such a manner that when the death of any one of them, the alive person would inherit the assets of the deceased one. Then, both Abir and Borhan dies concurrently in an aeroplane crash, and it might not be well-known as to who survived whom.

In the provision of Muslim law, neither Abir would succeed to Borhan nor would Borhan inherit Abir. Therefore, the lawful heirs of Abir would succeed to Abir’s property as if there was no Borhan whatsoever. In the same way, the heirs of Borhan would succeed to Borhan’s assets as if Abir did not be existent at all?

For example, a woman and her son, both are died simultaneously in an aeroplane crash and the woman left her heirs as Husband and Full brother. They are the left of Tk.72000 each.

In that case we can distribute their property in three ways:

9.1. Presume that, the Mother Died before the Son

Table 3 shows that if the mother died before the son, in that case son will be

inherent from mother's property.

9.2. Presume that, Son died before the Mother

Table 4 shows that if the son died before the mother, in that case mother will be inherent from son's property.

9.3. Presume that, Both Are Die Simultaneously Distribution of the Property of Deceased Person in Following Ways

Table 5 shows that if the both die simultaneously then, women property will be distributed among her heirs. Here are husband and brother legal heirs of the deceased woman.

Table 6 shows that as a sole heir of deceased son, father will get the whole property of his deceased son.

9.4. Opinion of the Jurist Regarding Simultaneous Death

a) According to "Hanbali, Shafii and Maliki", if order of passing of double

Table 3. The mother died before the son.

Heir	Share	portion
Husband	$\frac{1}{4}$	18000
Son	$\frac{3}{4}$	54000
Brother	Excluded by Son	72000

Table 4. Son died before the mother.

Heir	Share	portion
Father	$\frac{2}{3}$	48,000
Mother	$\frac{1}{3}$	24,000
		72,000

Table 5. Distribution of woman's property.

Heir	Share	portion
Husband	$\frac{1}{2}$	36,000
Full bother	$\frac{1}{2}$	36,000

Table 6. Distribution of Son's property.

Heir	Share	portion
Father	1 or whole	72,000/=

joint successors is not determined, at that time the situation is presumed to be concurrent. They cannot succeed to as of each other; this is founded on repetition of “Hazrat Abu Bakr and Hazrat Umar Al-Khattab (RA)”.

b) Imam Shafii rely on that if order of demise of two joint heirs cannot be determine, then the inheritance is postponed up to it is determined or there is conjoint settlement among the successors on who pass away first.

c) Imam Abu Hanafis contemplate that level if order is not determined; they can still succeed to since each other. This is founded on opinion of “Hazrat Ali (RA) and Hazrat Abdullah bin Masood (RA).”

If tat this point is concurrent death of conjoint successors as well as order is well-known, at that point this condition is so-called “Ma’nasikha.” “Inheritance” is distributed sum of times i.e., firstly among close relations and then their successors.

10. The Inheritance of Missing Persons

A “missing person” (Mafqood) is clear in “Islamic law” as a person whose situations is indefinite and nobody is certain as to whether such a person is still alive or not. Such a person is called Mafqood in Islam. Conversely, in Islamic Law, such “missing person” is presumed alive except his demise is definite.

According to the view of “Hanafi law”, a missing person was assumed to have been dead merely when ninety years from the date of his birth; till at that point the inheritance of his assets did not open. But now this rule has been out-dated by Sec. 108 of” the Evidence Act, 1872” which provides:

“When the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it”. (Sec.108, The Evidence Act, 1872)

Therefore, where a Muslim is absent for as a minimum seven years and if it might not be ascertained that he/she was alive at that time, that individual is legally presumed to be dead and the inheritance of his/her assets opens. Now question is that how long? Some say 90 years, others 70, while other says 60 years. So, there is a divergence of opinion of the Islamic jurist regarding the period of waiting.

10.1. Opinion of the Jurists

In “Shariah” such missing individual remains viewed as alive except if his/her passing is affirmed. The portion of the missing individual is held until he returns. On the off chance that he doesn’t return and his passing is affirmed, at that point his offer is conveyed among his beneficiaries. His passing date is viewed as the date when he was disappeared. In view of that date, his legitimate beneficiaries are found out. There is a distinction of sentiment on the sit tight dated for reappearance of missing individual:

a) “Imam Abu Hanifa” thought about 120 years, “Hanafi” law specialist, by and large, lays it as 90 years (as ordinary life expectancy).

b) “Maliki” believed it to be 70 years.

c) “Shafii and Hanbali” permitted court of law to decide the period of time. Be that as it may, Imam Ahmed (RA) thought about least 4 years, and “Imam Shafi (RA)” least 7 years if here is a solid assumption of passing away (like in war).

There is no support from the primary source in this regard and jurist different widely starting from seven year up to ninety years. Among them on Shafi’s letter view seems to be reasonable (Minhaj-et-Talibin, 1989). But current view is this that the judge may give proper direction depending on the circumstances of any particular case (Ali, 1985).

For example

A “Muslim” woman died keeping husband, mother, uterine brother and full brother (missing). She left of Tk.12000. In that case we can distribute her property in two ways:

10.2. At First Presume that, Missing Person Is Alive or the Woman Died before the Missing

In **Table 7**, in this regard, distribution of property among the heirs in a way that missing person is alive or deceased person was died before the missing.

10.3. Presume that, Person Is Died or Missing Person Is Died before the Woman

Table 8 shows that, distribution of property among the heirs in a way person is

Table 7. Presumed that missing person is alive.

Heir	Share	portion
Husband	$\frac{1}{2}$	6000
Mother	$\frac{1}{6}$	2000
Uterine brother	$\frac{1}{6}$	2000
Full brother	$\frac{1}{6}$	2000
		12,000

Table 8. Person is died or missing person is died before the deceased person.

Heir	Share	portion
Husband	$\frac{1}{2}$	6000
Mother	$\frac{1}{3}$	4000
Uterine brother	$\frac{1}{6}$	2000
		120,00

died or missing person is died before the deceased person.

In the both methods of distribution, 1/6 is the lower one so; lower portion (Tk.2000) must be kept for the missing person.

11. Conclusion

This paper has exposed the provision of Islamic law of inheritance in exceptional circumstances and distribution among the heirs in the lights holy Quran and Hadith and also the opinion of Islamic jurists. This paper also has an analysis of the proper placement of deceased property among their successor. This one could be well-known that after a “Muslim” passed away without a will, his/her estate vested to his/her successors and not any one is indicted with its sharing. Here is however a different view that the property of a deceased may be distributed, uneven if it is bankrupt (Ahmad, 1999). The “Muslim” jurists provided a prodigious compact of standing to the “law of inheritance”, besides they remained under no circumstances drained of restating the saying of the Prophet: “Learn the laws of inheritance, and teach them to the people; for they are one half of useful knowledge”; as well as contemporary writers ensure well-regarded the method in place of the situation efficacy and prescribed superior it (Fyzee, 1993).

It further seems from the above that, Islam is a religion with a total set of principles and legacy is one of them and by legitimate use of the Islamic Law of Inheritance just as different Laws of Islam, it is practicable for us to make the definite tranquil condition right now can guarantee harmony in the post-existence.

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

- Ahmad, A. T. (1999). *Text Book of Mohammadan Law*. New Delhi: Central Law Agency.
- Ali, A. (1985). *Muhammedan Law* (Vol. II). Dhaka: Hira Publication.
- Coulson, N. (1971). *Succession in the Muslim Family Law*. London: Cambridge University Press. <https://doi.org/10.1017/CBO9780511557965>
- Fyzee, A. A. (1993). *Outlines of Muhammadan Law* (Fourth ed., p. 387). London: Oxford University Press.
- Haque, D. E. (2009). *Islamic Law of Inheritance: Rules and Calculation*. Dhaka: London College of Legal Studies (South).
- Lloyd, P. C., & Derrett, J. D. (1965). Yoruba Inheritance and Succession. In *Studies in the Laws of Succession in Nigeria* (p. 35). Oxford: Oxford University Press.
- Majah, A. A. (2008). *Sunan Ibn Majah* (Vol. 4). Dar Al Kotob Al Ilmiyah.
- Minhaj-et-Talibin, N. (1989). *A Manual of Mohameddan Law* (Translation by Howard, E.C. 1912, p. 253). Quoted by Mustofa Ali Khan, *Islamic Law of Succession*. New Delhi: Kitab Vhaban.
- Rahman, M. H. (1989). *Muslimm Law*. Rajshahi: Sayda Majina Khatun.
- Siddiqui, A. H. (2005). *Inheritance in Islam*. New Delhi: Kitab Bhavan.