

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

www.ijlra.com

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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC – NET examination and has been awarded ICSSR – Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

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AN ANALYTICAL STUDY OF INHERITANCE LAWS IN ISLAMIC JURISPRUDENCE: TRADITION, INTERPRETATION, AND CONTEMPORARY APPLICATION

AUTHORED BY - TUSHAR KAUSHIK

KEYWORDS

Muslim inheritance, Sunni inheritance, Shia inheritance, inheritance law, Muslim personal law.

ABSTRACT

The research paper explores the realm of inheritance under Muslim Law. The study investigates how inheritance under Muslim law operates and its application in contemporary times. The research technique includes an examination of the literature on the inheritance under Muslim Law. The conclusions have repercussions for jurists and legislators who must modify their approaches to better comprehend and interact with these various cohorts.

RESEARCH OBJECTIVES

The research paper seeks to describe inheritance under Muslim Law and the significance of the same in contemporary times; to analyze impact of inheritance scheme provided under Muslim law; to explain the procedure and process of inheritance under Muslim Law.

RESEARCH QUESTIONS

1. How does inheritance law operate within the framework of Islamic jurisprudence?
2. What are the key principles and concepts governing inheritance in Islamic law?
3. How does inheritance under Muslim law differ from inheritance laws in other legal systems?
4. How do cultural and regional variations influence the interpretation and application of inheritance laws in Muslim-majority countries?
5. What are the rights of women and other marginalized groups in inheritance under Islamic law, and how have these evolved over time?

LITERATURE REVIEW

The legal mobilization and the outlook of policy makers--specifically their approach to regulating family life, their understanding of group norms, and their normative vision of family life-shaped the major changes in Indian Muslim (Subramaiam, 2008). The Sunni law of inheritance relies on a particular interpretation of the Qur'anic inheritance verses. Even though Shi'i inheritance law is strikingly different from Sunni law, the Sunni interpretation of the Qur'anic texts has rarely been questioned (Kimber, 1998). THERE is no part of the Islamic law which is more typical of both the spirit and letter of the Shari'a than is the Islamic law of inheritance. (Anderson, 1965). Muslim law does not discriminate against foreigners or non-Muslims in matters of property, right, or contract. Once a right is lawfully acquired, or a contract validly entered into by a foreigner, Muslim law applies to it the same rules and provides it with the same safeguards, regardless of the nationality or religion of the parties concerned. (Habachy, 1962).

METHODOLOGY

The research methodology of this paper is qualitative/doctrinal. The researcher will carry out a critical and analytical literature review of the research, articles and essays on the topic and examine theories related to inheritance under Muslim Law. In this research paper the author will legally analyze the recent development in the field of inheritance under Muslim Law. A doctrinal research methodology is an approach to research that involves examining and analyzing existing literature, theories, and concepts related to a specific topic. The existing research work is thorough but scattered and dispersed, thus this research paper will analyze different theories and research works and present a conclusive result.

1. INTRODUCTION

In contrast to other personal laws observed in our society, Muslim personal law is distinct and peculiar since it is not codified and derives its authenticity straight from the religion's holy book, "The Quran." Section 2 of The Muslim Personal Law (Shariat) Act, 1937¹ deals with the application of personal law to all Muslims. It reads as: "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,

¹ The Muslim Personal Law (Shariat) Act, 1937, No. 26 of 1937, s2.

including talaq, ila, zihar, lian, khula and mubaraat, 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).” It restates how Muslim personal law applies to all Muslims in terms of marriage, divorce, succession, and other matters. Nevertheless, the statute does not codify these personal law principles. Thus, one must comprehend the sources of authority for Muslim personal law in order to comprehend its notions. They are –

1. The Holy Quran
2. The Sunna - that is, the practice of the Prophet
3. The Ijma - that is, the consensus of the learned men of the community on
 1. what should be the decision on a particular point
4. The Qiya - that is, an analogical deduction of what is right and just in accordance with the good principles laid down by God.

The term "inheritance" describes the conveyance of property from a deceased individual to a living relative. there are two types of succession: testamentary (where a will was made before the death of the decedent) and non-testamentary (when the decedent passes away intestate, that is, without leaving a will). The Muslim Personal Law (Shariat) Application Act, 1973² governs non-testamentary succession in the Islamic faith, whereas distinct Shariat laws apply to testamentary succession for the Sunni and Shia sects of Muslims. Sharers and Residuaries are the two categories of heirs recognized by Islamic law. Residuaries would inherit the portion of the estate that remains after the sharers have claimed their share. Sharers are the people who are entitled to a specific portion of the deceased's property.

2. TRADITIONAL INTERPRETATIONS OF INHERITANCE LAW

The Qur'an brought about a variety of new rights and inheritance regulations, including what at the time were broad advancements in the way that women and families were treated. A comprehensive legal system was formed by the Qur'an's attempts to correct the laws of inheritance. Pre-Islamic societies had very different inheritance laws than this development. On the other hand, they also diverge from continuous secular egalitarian advancements made since then, primarily in the present era. In addition, the Qur'an mentioned nine relatives, six of whom were female and three of whom were male, introducing extra heirs who were not eligible

² The Muslim Personal Law (Shariat) Act, 1937, No. 26 of 1937.

to inheritance in pre-Islamic times.³ Other male relatives—the husband and the mother's half-brothers—who were previously excluded from inheritance were also covered by the Qur'anic inheritance regulations. The mother, father, brother who shares the same mother, wife, daughter, full sister, sister who shares the same mother, and consanguine sister are among the heirs listed in the Qur'an. Generally speaking, the Qur'an raised women's position by explicitly stating their inheritance portion. Additionally, it outright prohibited the custom of inheriting widows. [4:19] "This is not meant as a regular legal ordinance, but is part of the Qur'anic endeavor to improve the position of women," according to orientalist Joseph Schacht. Although the Qur'an stipulates that a son's part must be double that of a daughter's, it does not specifically address the shares of male relatives, such as the decedent's son. Muslim theologians use the overall framework of Islamic law, which places accountability and responsibility for women's safety, security, and sustenance on men, to explain this element of inheritance. Islam stipulates that women are entitled to a "dowry" from their husbands upon marriage, on top of any provisions made by their parents. This could be the reason why a daughter's share of the son's inheritance is only half of his. From that point on, the husband's responsibility is to provide for and support his wife, and the "dowry" is effectively an advance of her right to inherit from her husband's estate. Muslims were required by the Qur'an to create a will specifying how they wanted to dispose of all of their property before the verses containing the aforementioned amendments were revealed. But Muslims can only leave up to one-third of their property in the now-optional will known as a *waṣeyya*; the remaining portion will be divided in accordance with the verses of inheritance after all debts, if any, have been settled, since the majority of jurists now concur that the verses of inheritance have superseded the verses of *waṣeyya*.⁴ If Muslims are present during the partition of property, they are also encouraged to donate money to the underprivileged and orphans. Old agnatic conventions and Islamic law were combined, which resulted in a variety of issues and debates that Muslim jurists have addressed in various ways. The paternal grandpa, maternal grandmother, and agnatic granddaughter are the three additional heirs that Muslim jurists introduced by applying deductive reasoning (*Qiyas*). If eligible, these heirs receive their fixed parts, and the residuaries (*'apaba*) inherit the remaining inheritance. This resulted in a few minor variations between the Sunni maddhabi schools of law. Although they are founded on the same principles, Twelver Shia's laws of inheritance also differ in a number of ways because they reject some Hadith reports and because they interpret

³ Kimber, Richard. "The Qur'anic Law of Inheritance." *Islamic Law and Society*, vol. 5, no. 3, 1998, pp. 291–325.

⁴ Rashid, K. (1979) *Muslim law*. Lucknow: Eastern Book.

specific events in early Islam differently. However, the inheritance system of the Zaidis and Kharajite Ibadis is very similar to the Sunni system. Modern Muslim nations typically apply a variety of legal traditions, including Shia, along with several significant modifications to the established framework. One of these systems' primary accomplishments was the codification of inheritance laws.

3. CONTEMPORARY APPROACHES TO INHERITANCE LAWS

Sharers

There are 12 sharers as follows: (1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son's son or son's son and so on), (5) Father, (6) Paternal Grandfather, (7) Mother, (8) Grandmother on the male line, (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12) Uterine brother.⁵

Each sharer's share will differ depending on a few factors. In the event that the marriage has no lineal descendants, for example, the woman receives one-eighth of the share; in other circumstances, she receives one-fourth. When a husband inherits from his wife's estate, he is entitled to half of the estate if the marriage has no lineal descendants and one-fourth otherwise. One half goes to a lone daughter. If the departed has many daughters, each daughter receives two thirds of the inheritance. Should the departed have left son or daughters, the daughters would no longer be sharers but would instead be residuaries, and the residual would be divided so that each son would receive twice as much as each daughter.

Non-Testamentary and Testamentary succession under Muslim law

The Muslim Personal Law (Shariat) Application Act, 1937⁶ is applied in non-testamentary successions. Conversely, in the event that an individual passes away testate, meaning that they made a will before to passing away, their inheritance is subject to the applicable Muslim Shariat Law, which applies to both Sunnis and Shias. Muslims are bound by the Indian Succession Act, 1925⁷ in situations where the subject of the property is immovable property located in the states of West Bengal, Chennai, and Bombay. This is an exception that solely applies to testamentary succession.

⁵ Russell, A.D. and Suhrawardy, A. al-Mamun (2008) Muslim law: An historical introduction to the law of inheritance. London: Routledge.

⁶ The Muslim Personal Law (Shariat) Act, 1937, No. 26 of 1937.

⁷ Indian Succession Act, 1925, No. 39 of 1925.

Birthright

According to Islamic law, a person's property can only be inherited after their passing; a child born into a Muslim family is not entitled to property at birth. An heir becomes a legitimate successor and is therefore entitled to a portion of the property if he survives even after the death of the ancestor. But no such right of inheritance or portion in the property will exist if the seeming heir dies before his ancestor.

Distribution of the Property

Property may be distributed either per strip or per capita in accordance with Muslim law. The Sunni legal system mostly employs the per capita distribution approach. The heirs share equally in the inheritance left by their forebears when using this technique. As a result, the number of heirs determines each person's portion. The Shia legislation recognizes the distribution mechanism per strip.⁸ This form of property inheritance divides the property among the heirs in accordance with the strip to which each belongs. As a result, the branch and the number of members of the branch determine the amount of their inheritance.

Widow's right to succession

No widow is barred from the succession under Muslim law.⁹ A Muslim widow without children is entitled to one-fourth of her husband's estate after paying his debts and burial and legal costs. On the other hand, an inherited widow is entitled to one-eighth of her late husband's estate if she has children or grandchildren. A Muslim man's widow is not entitled to inherit anything if he marries while ill and passes away from that illness before making a full recovery or finishing the marriage. However, in the event that her sick spouse files for divorce and then passes away from that condition, the widow will be entitled to a portion of the estate until she remarries.

A Child in the Womb

As long as the unborn kid is born alive, it can inherit while still inside its mother's womb. Since an embryonic child is thought of as a living being, ownership of the property passes to them right away. However, the portion already vested in such a child in the womb is divested if the child is not born alive, and it is assumed that there was no such heir (in the pregnancy) at all.

⁸ Anderson, J. N. D. "Recent Reforms in the Islamic Law of Inheritance." *The International and Comparative Law Quarterly*, vol. 14, no. 2, 1965, pp. 349–65.

⁹ Subramanian, Narendra. "Legal Change and Gender Inequality: Changes in Muslim Family Law in India." *Law & Social Inquiry*, vol. 33, no. 3, 2008, pp. 631–72.

Marriage under the Special Marriage Act, 1954

Where a Muslim contracts his marriage under the Special Marriage Act, 1954,¹⁰ he ceases to be a Muslim for purposes of inheritance. Accordingly, after the death of such a Muslim his (or her) properties do not devolve under Muslim law of inheritance. The inheritance of the properties of such Muslims is governed by the provisions of the Indian Succession Act, 1925¹¹ and Muslim law of inheritance is not applicable

4. CASE LAWS: APPLICATION OF INHERITANCE LAWS

Abdul Majid Khan Sahib v. Krishnamachariar (1916)¹²

In this instance, the court considered the issue of whether a co-heir who has all or a portion of the deceased's inheritance may sell that property to pay off debts without affecting the other co-heirs or the deceased's creditors. According to the court, if a person passes away, some of their inheritance is used to pay off their obligations and burial costs, and the remaining amount is given to their heirs. The court noted, citing precedents, that under the Muslim legal system, one co-heir is not entitled to deal with the shares of the other co-heirs. As a result, without permission, one co-heir cannot carry out any action concerning another's shares. Only under particular circumstances may he assign his interests to a different co-heir or a third party. A decree issued against one co-heir, onto whom all of the deceased's effects are in possession, will be binding on all other co-heirs because a decree passed against a co-heir is regarded as a decree passed against the deceased, and the co-heirs act as the deceased's representatives in such a decree. However, a single co-heir cannot bind other co-heirs in any action. As a result, it was determined that no co-heir could force the other co-heirs to sell voluntarily. Only inherited property in which he has a stake may be handled by him. Even in the event of debt repayment, he lacks the authority to act on behalf of the others.

Imambandi v. Sheikh Haji Mutsaddi (1918)¹³

In this instance, Ismail Ali Khan, the deceased left behind three widows and several children. One of his widows, Enayet-uz-Zhora, is the petitioner. Through a lawsuit, she purchased a portion of his estate together with her two small children. She was denied ownership of the shares and the ability to sell them when the defendants contested the validity of her marriage

¹⁰ The Special Marriage Act, 1954, No.43 of 1954.

¹¹ Indian Succession Act, 1925, No. 39 of 1925.

¹² Abdul Majid Khan Sahib v. Krishnamachariar AIR 1918 MADRAS 1049.

¹³ Imambandi v. Sheikh Haji Mutsaddi AIR 1918 PC 11.

to Ismail and the children. The petitioner argued that her children were legitimate, that she was their legal guardian, and that she was therefore entitled to her children's portion of the property. The mother has the legal right to custody of her minor children under the Muslim legal system, but this does not automatically make her the children's natural guardian, the court noted. The paternal grandfather steps in as the natural guardian in the event of the father's absence, and he has complete authority over the youngsters' affairs. According to Sunni law, the executor that the father appoints gets custody after his death. The paternal grandfather becomes the next in line for custody if the father passes away without designating an executor. Since the mother was not the children's natural nor legal guardian, it was decided that she lacked the right to alienate the property.

Illyas and Ors. v. Badshah alias Kamala (1989)¹⁴

The property of Munilal, a eunuch, was at question in this case. Munilal had left a will in support of Abdul Gafoor, who was claiming the land. The defendants, eunuch of Munilal, contended that they adhered to a property transfer custom within their society and that, as a result, they constituted a distinct class of heirs themselves through the Guru-Chela system. As a result, the respondent—a follower of Munilal—claimed possession of the assets and contended that Abdul's will was falsified. The appellant's will was deemed invalid by the trial court, who also issued a decree in favor of the respondent. After reviewing the respondents' submission, the court determined that the eunuchs' custom is widely accepted. The tradition does restrict the legatee's ability to carry out the will, but that does not render it illegitimate or contrary to public policy. Moreover, because the will document did not comply with Section 68 of The Indian Evidence Act, 1872, the appellant was unable to establish its validity. Furthermore, it was determined that the property could not be bequeathed to an individual who is not a member of the community through a will.

Mohammed Gani v. Parthamuthu Sowra (2008)¹⁵

The division of Abdul Rahiman Rowther's property was at issue in this lawsuit. He had divided the property between himself, his two sons (the defendants), his daughter (the plaintiff), and his first wife. When the partition deed was created, the plaintiff and the defendants were juveniles, and their mother served as their guardian. The plaintiff, who is requesting the division

¹⁴ Illyas and Ors. v. Badshah alias Kamala 1989 SCC OnLine MP 175.

¹⁵ Mohammed Gani v. Parthamuthu Sowra 2008 SCC OnLine 134.

of one-fourth of the defendants' rice mill share for herself, was offered a joint stake of the rice mill that their mother had acquired. The defendants rejected the plaintiff's allegation. It was asserted that under Muslim inheritance laws, the defendants were entitled to 7/8th shares, whereas the married plaintiff could only have 1/8th of a share. The High Court noted that the deceased's purpose was for the parties to enjoy the property jointly, and that the partition document did not specify an equal distribution of shares between the plaintiff and the defendants. However, because a partition is being requested, Muslim inheritance laws will be in effect, granting the plaintiff only one eighth of the shares and giving the defendants the remaining seven eighths.

Rijia Bibi and Ors. v. Abdul Kachem and Anr. (2013)¹⁶

The main issue in this case was whether or not (late) Abdul Khalaque's will was genuine. The first wife and her sons are the plaintiffs; the second wife, her daughter, and her sons are the defendants. 3.25 acres of land were left behind by the dead. The defendants disputed that the property was left to them in the will, thus the plaintiffs demanded that the land be divided. The trial court found that the plaintiffs were the beneficiaries of a fraudulent will. The defendants filed their first appeal against this ruling, which determined that the will was defective and changed the shares that were awarded to the plaintiffs while ruling out the possibility that the document was forged. The Court clarified that a Mohammedan will must be within a specified limit, have a competent legatee, and be given the heirs' agreement after the testator's death by citing Section 118 of the principles of Mohammedan law. Muslim may leave his property to his heir, but only if, following the testator's death, the other heirs' consent is obtained. It is considered consent when heirs do not contest the bequest over a considerable period of time. The testator's ability to leave a bequest that exceeds one-third of the remaining amount after debt and burial costs have been paid is restricted by Mohammedan law. Because the will in this case beyond the allowable maximum, it is void and denies the plaintiffs their just share.

Jannath Beevi v. Tahsildar (2022)¹⁷

Here, the petitioner—the deceased man's wife—filed for her husband to be recognized as his legal heir. The petitioner mistakenly omitted her father-in-law, who is a legitimate legal heir, and thus filed a new application. However, she was not given the opportunity to speak and her

¹⁶ Rijia Bibi and Ors. v. Abdul Kachem and Anr. AIR. 2013 Gau 34.

¹⁷ Jannath Beevi v. Tahsildar AIR 2022 Mad 26.

application was turned down due to a mistake. Therefore, the question was whether it was appropriate to deny the petitioner's request to include her father-in-law. The father is also a legitimate successor to the deceased's property, the court noted, alluding to the inheritance laws of Islam. Additionally, it stated that the petitioner was not given a fair hearing, which goes against the fundamentals of natural justice. As a result, the petitioner was given a fair hearing and the court remanded the case for review in compliance with the law, overturning the previous judgment that had denied her request.

5. CONCLUSION

In a larger sense, in India, Muslim inheritance is regulated by their individual personal rules, which are grounded in Islamic or Quranic precepts. It provides comprehensive guidelines on inheritance, distribution, and estate administration, so establishing the framework for how inheritance should be passed down within a Muslim household. Muslim personal regulations, however, are extremely inflexible and rarely subject to debate or revision. There have long been worries about things like the unequal property rights for male and female heirs, the exclusion of stepchildren, illicit children, and the non-recognition of adopted offspring, among other things. Moreover, an ongoing legal and judicial battle to reconcile personal laws with the constitution necessitates the creation of a more comprehensive legal framework that might try to strike a compromise between the two.

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