THE LEGAL POSITION OF FATHER'S FATHER IN COMPETITION WITH THE COLLATERALS IN ISLAMIC LAW OF INHERITANCE

BY

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DECLARATION

It is humbly declared that, this research work is done by my humble self, without any external help.

All the materials and books used for the research have been duly acknowledged in the footnotes.

AMIR SALAH LAKHVI

CERTIFICATION

This thesis entitled: "The Legal Position of Father's Father in Competition With Collaterals in Islamic Law of Inheritance" by Amir Salah Lakhvi meets the regulations governing the award of the degree of LL.M of Ahmadu Bello University, and is approved for its contribution to the knowledge and literary presentation.

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DEDICATION

To my beloved and dear father
Shaikh Salah Uddin Haider
who left their sweet home (Pakistan),
who sacrifice their whole life for us;
to make sure that their children are
spiritually and worldly well educated.

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Acknowledgement and praise is due to Allah whose worth cannot be described by speakers, whose bounties cannot be counted by calculators and whose claim (to obedience) cannot be satisfied by those who attempt to do so, whom the height of intellectual courage cannot appreciate, and the divings of understanding cannot reach. The perfection of acknowledging Him is to testify Him, the perfection of testifying Him is to believe in His one-ness, the perfection of believing in His one-ness is to regard Him Pure, and the perfection of His Purity is to deny Him attributes. He is only One, such that there is non with whom He may keep company or whom He may miss in his absence.

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ABBREVIATIONS

A.S.	Alayhissalam
C.B.	Consanguine brother
C.H.	Chapter of Holy Qur'an
C.S.	Consanguine sister
D	Daughter
D.S.	Daughter of son
F	Father
FF	father's father
G.B.	Germane brother
G.S.	Germane sister
H	Husband
H.H.S.	How High Soever
H.L.S.	How low soever
M	Mother
MM	Mother's mother
Moq	Muqasima
R	Residue
RAA	Radhi Allahu Anhu
S	Son
S.A.W.	Sallalahu Alayhi Wasalim
S.S.	Son's son
S.W.T.	Subhanahu Wa Ta'ala
U	Uncle
U.B.	Uterine brother
U.S.	Uterine sister
W	Wife

CHAPTER ONE

1. INTRODUCTION

The subject of inheritance is an old phenomenon in the history of mankind. There had been various terms, rules, regulations, customs etc of how the properties of one person passes to another after the former's demise. Those customs or traditions even though old, however, differ from one society to another.

Thus, the science of inheritance laws is the knowledge of estate division and the correct determination of the proper shares in an estate with regards to the relation of the individual shares to the basic division.[1] Islamic law of inheritance, therefore, has something to do with jurisprudence namely, with inheritance law, as far as it is concerned with the laws concerning the legal shares of inheritance, the doctrine of Awl and Radd, and others.[2]

It would not be inaccurate to state that the law of inheritance is a craft that, concerned with calculations as well, that deals with determining the correct shares of an estate for the legal heirs. It may happen that there is a large number of heirs, and one of the heirs dies before distribution and his share have to be re-distributed among his heirs. Or, the individual portions, when they are counted together and added up, may exceed the whole state (Awl), etc. All this require solution, in order to determine the correct amount of the shares in an estate and the correct share that

goes to each heir. A good deal of calculations comes here.[3]

The main theme of the science of inheritance under Islamic law is, essentially, the protection of weaker sex and orphans. In the pre-Islamic period, succession to properties both among Arabs and non Arabs were quite unsatisfactory.[4] Succession was confined only to able male relations. Females, minors and incapable persons had no share in the inheritance.[5]

These inequalities vanished by the magic touch of the Holy Prophet Muhammad Bin Abdullahi (SAW). Equitable and just principles of inheritance were adopted. Hence, Islam did justice where justice was supposed to be done. Consequently the weaker sexes and infants were allowed to inherit.[6]

As it has been rightly observed that Islamic Law of Inheritance has something to do with jurisprudence, that is, with the inheritance laws as far as it is concerned with the laws concerning the legal heirs. And it has also a great deal to do with arithmetic, in as much as it is concerned with determining the correct amount of the shares in accordance with the laws evolved by the Muslim jurists. Because of its dual nature, the subject of inheritance is very vast, interesting and technical.[7] Therefore, it is against this background, an area is selected out of the vast area of inheritance which looks very narrow. Nevertheless, is very vast and technical, hence the main theme of this research work is, "The Legal Position of Father's Father In Competition with the Collaterals in Islamic Law of Inheritance".

1.2 HISTORICAL DEVELOPMENT & EVOLUTION OF ISLAMIC LAW OF INHERITANCE

Before the discussion on the historical development of Islamic Law of Inheritance, it is viewed as significant to highlight the system of distribution of deceased's estate, which were already existing even before the advent of Islam. For instance, the rules and regulations establishing the system of inheritance among the Arabs pagans. Arab Jews, Christians and some other ancient societies. The details of these systems will give an answer to the question that why Allah (Subhana wa Ta'ala) revealed this unique and wonderful system of inheritance on the Holy Prophet (SAW), irrespective of the fact that there were many laws already existing and governing the issues of inheritance.

Thus, under this topic, the shortcomings and the unjust rules existing in these ancient legal systems would be pinpointed. This would make the reader to realize the objective and wisdom behind the evolution of this wonderful and unique system of inheritance as forwarded by Islam.

1.2.1 INHERITANCE IN THE PRE-ISLAMIC ARABIA

Arabia is the great western peninsula of Asia. With area of about 1,230,00 square miles. The name is said to be derived from "Araba", a small district in the south east of the province of Tehama to which Yarab, the son of Kahtan, the father of the Arabs, gave his name, and where some ages after,

dwelt Ismail, the son of Ibrahim.[8]

The religion of Arabs before Islam was, in the main gross, idolatry. The Sabian religion or the idolatry being the most widely extended among the whole nation, though there were also considerable number of Christians, Jews and Magians among them.[9]

The Sabians believed in God. However, they also worship stars and plants and angels. While the Magian religion or the fire worship was introduced by the Persian Zoroastrians through their frequent intercourse with the Arabs.[10]

Judaism was introduced among the idolatrous Arabia by the Jews who filled in a great number into Arabia from the fearful destruction of their country by the Romans. Christianity, likewise, had made good progress among the Arabs before Islam. The persecutions and disorder which darken the eastern church soon after the beginning of the third century, obliged a great number of Christians to seek shelter in Arabia, the country of liberty.[11]

Arabia during the pre-Islamic days, was in a very low state of civilization. Awful superstitions and idolatry prevailed everywhere. Gross adultery and fornification was very common. Crimes of infanticide and human sacrifices were rampant. The various tribes were in a constant and perpetual warfare with each other. The whole peninsula was in a pitiful state of chaos, sin, impurity and wickedness. Opposition, persecution and brutal force were everyday's occurrences.[12]

Among the pre-Islamic pagan Arabs, the grounds of inheritance were follows:-

1. **Al** - Nasab
2. Al - Tabna
3. Al - Halaf.[13]

1. Al-Nasab

The blood relationship, which was only confined to the paternal male descent, even among them, only those who had ability to hold arms and had actually fought along with the deceased. Hence, those male descendants who had no ability to hold arms, such as minors, incapables and old people were impeded from inheritance.[14]

2. Al-Tabna

Al - Tabna or adoption was another ground of claiming a share from the estate of a deceased. If a deceased during his life time had adopted a strange person as his son, this adopted son, as a matter of right would be allowed to claim his share from the estate of the deceased like any of his begotten son.[15]

3. Al - Halaf

The confederation was another ground of inheritance. This confederation was used to be formed by way of contract, in the sense that, the deceased would enter with a stranger into a

defence pact. In other words, each of them would defend the other in a case of war, for consideration of share in the estate of the one who pre deceased the other.[16]

1.2.2 Inheritance among the Jews

Jews or Yahud are those people who are apparently believed to be the followers of Prophet Moses or Musa (PBUH). Nowadays, they are the plunderers and usurpers of major part of Palestine.[17]

Judaism is the name of the religion of the Jews. It is the eldest of the great monotheist religions, elder than Christianity and Islam. The "Torah" is the Hebrew name for the laws of Moses (PBUH), which was divinely revealed to the Moses (PBUH) on Mount Sinai soon after the exodus of the Israelites from Egypt.[18]

As far as the Jewish Law of Inheritance is concerned, female relatives of the deceased are completely neglected and are impeded from inheritance, whether she is a daughter, wife, mother or a sister of the deceased.

Nevertheless, if the deceased is not survived by any male relative, it is only then a daughter can inherit.[19]

Grounds of Inheritance Under the Jewish Law:

There are four grounds of inheritance in the Jewish Law of Inheritance.

1. Sonship

2. Fatherhood

3. Brotherhood

4. Uncleship[20]

In other words, this means that there is only one ground of inheritance, that is, the Blood relationship. Hence, it is clear from the above stated grounds that a female have no place in the grounds, hence, impeding them from inheritance. The Jewish Law of Inheritance also provides, among other things, that:-

a) If a father dies and he is survived by both sons and daughters, as it is earlier mentioned, it is only the sons who are entitled to inherit him, as such no any other person can inherit along with him. And also even among the sons, the eldest son is entitled to a double share.

b) If a father dies and he is survived by both sons and daughters, as it is stated above, it is only the male issues who are entitled to inherit him. The daughters are entitled to maintenance only, from the estate of the deceased, up to the time when they are married or they have reached maturity. And when either of these conditions are met their right of maintenance lapses.

c) And if a son or daughter dies their mother is not

entitled to inherit them. But on the other hand, if the mother dies, her estate is for the sons and in their absence the estate goes to the daughters. And if she is not survived by any issue, then her estate goes to father or grandfather, how high so ever.

d) And where a wife dies her estate and all property belongs to her husband no one else can inherit along with him. Whether she had issues from the same husband or from any other previous husband. But on the other hand, if the husband pre-deceased her, she is not entitled to inherit him at all.[21]

1.2.3 Inheritance Among The Romans

According to the traditions found in Livy, Dionysivs of Halicarnassus and other Augustan writers, Rome was found by Romulus about 750BC. Romulus was a descendent of the Trojan Aenaes who had founded Lavinium.[22]

The primitive Roman laws did not provide satisfactory rules and regulations governing inheritance. For instance, it was only the leader of a family who could inherit, hence, husband, wife and children who were under the direct control of the leader were entitled to inherit.[23] A daughter who had passed into the hands of husband during her father's life time, could have no share in her father's inheritance. And if a daughter wanted to have a share from her father's estate, then

she had to marry a person who was a heir to her father's estate. If the daughter was already married, she was to abandon her husband to marry the heir. And if the heir was a married man, he was to divorce his wife in order to marry his relative who would inherit her father.[24]

This law continued for a considerable time among the Romans. Nevertheless, this law was amended by emperor Justinian (reigned AD 565-572) under the heading of "Institute of Justinian".[25] The laws of Justinian has the following striking laws concerning inheritance.

a) The estate of the deceased person was to remain within his family. Accordingly, only the descendants of the deceased were entitled to inherit him. Even the illegitimate children were given the same status of the legitimate children. Because of this rule the children were not allowed to inherit their mothers. A daughter was allowed to inherit her father. But after her marriage her children can not inherit her. Rather her properties go back to her paternal family, that is her brothers and sisters, so that the wealth of their family could remain within the family. The wife cannot inherit her husband as well.

b) The leader of a family had unlimited power to deprive a heir from inheritance who had refused to live under his

authority.

c) Adoption is considered to be a ground of inheritance. However, under a condition that the adopted child is younger than the person who had adopted him. There must be an age difference of eighteen years.

d) In the absence of the descendants, ascendents and collaterals, the members of the outer family are entitled to inherit.[26]

Elsewhere in the world, the same inequalities and unnatural laws were existing concerning inheritance. Hence, among the Buandiks of south Australia there was nothing like heirs or inheritance. Because if a person dies they burn all that the deceased owned, so that nothing shall be left to revive the sorrow of the dead person's relatives, and the dead are, utterly forgotten. With the same feeling they cut down the dead man's fruit trees as mark of respect and affection. It was also practiced in the eastern Indian Archipelago and in South America.[27]

In India, among the Hindus, as it was sons alone that could form a family, daughters had no right of succession. The rule of primogeniture was applied, that is, where a deceased had several sons, the eldest son had a preferential claim over the estate of the deceased, excluding the younger sons.[28]

And in Europe, some western systems deny the principles of inheritance, other give the holder of the property full freedom to distribute it by testament or dispose of his wealth at his whim even though his legal heirs are completely deprived of it.[29]

Hence, from the aforementioned facts concerning the systems of inheritance and other immoralities and social disorder, existing in the pre-Islamic era, the eminent reader can conclude, with an open and distached mind, free from any atom of bias and without hesitation that, indeed, there was a need for revolutionary changes in the world. Because the world was in deep darkness both socially and morally. Hence, God sent light in form of Islam, along with its teachings and morals, at a time when need for guidance was most strongly needed. And it was in this dark and dreadful environment that the Divine Mercy felt agitated to gush forth. Hence, the Holy Qur'an states,

> "This is the Book; in it is guidance sure without doubt, to those who fear God; who believe in the Unseen, are steadfast in prayer and spend out of what We have provided for them. And who believe in the Revelation sent to thee, and sent before thy time and (in their hearts) have the assurance of Hereafter".[30]

Thus, Islam, in a nutshell, purified the soul of these semi-savage inhabitants of the Arabian peninsula specially, and the world at large, from self seeking egotism, tyranny and indiscipline. Islam created, in turn, God fearing men, adorned with kindness, generosity, mercy, sympathy, peace, scrupulous, fairness and truthfulness towards mankind and other creations.[31]

1.2.4 AL-MIRATH: Inheritance Under Islamic Law:

In Islamic jurisprudence the words used for the Law of Succession are, "Al-Mirath" and "Ilmul-Fraidh". The latter is more frequently used by the Muslim jurists than the former. The word "fraidh" is derived from the word "faradha" which means duty, in other words it means, a duty imposed by the Divine command whose violation is punishable. When we say "Ilmul-Fraidh", it is referred to the science that deals with the entire system of inheritance. On the other hand, the word "Al-Mirath" is derived from the verb "waratha" which means, to inherit anything. Another literal meaning of the word "Mirath" is that, it connotes the handling over of a thing from one person to another.[32] In the legal terminology, the Islamic Law of Inheritance guides as to who is entitled to and who is not entitled to have a share from the estate of the deceased relative and why. It also guides as to how to divided the estate among the legal heirs. Accordingly, Mirath is the science which shows the eligible heirs their shares by using some authentical and jurisprudential doctrines.[33]

The enactment of Islamic Law concerning the distribution

of deceased's estate are on the whole, equitable and show a great advancement upon the unjust and indeed cruel customs which were applicable in the pre-Islamic era.[35] In the same vein the Holy Qur'an provides,

"From what is left by parents and those nearest related there is share for men, and a share for women, whether t h e property be small or large, - a determinate share".[36]

Accordingly, it is reported by Jabir Bin Abdullah (RAA) that the widow of Saad Bin Rabie (RAA) complained to the Holy Prophet (SAW) that,

> "These are the two daughters of Saad. Their father was fighting beside you on the day of Uhud, and was martyred. Their uncle took away the martyr's property and left them with nothing; and without means they will not be able to get married." The Prophet (SAW) said, "It is God who will judge in your case". The broad principles of inheritance were revealed in Chapter 4:11,12. Hence, the Holy Prophet (SAW) sent to their uncle and order him to, "Give the daughter of Saad Two Third (2/3) of the inheritance; to mother (Saad's wife) the eight (1/8) and the remaining is your share".[37]

When Allah (S.W.T.) revealed that women should have a portion of inheritance, and laid down the principles governing the distribution of the legacies, many people still holding the

pre-Islamic customs objected to the new system. Imam Bukhari reported from Ibn Abbas that,

> "..When Allah's Law of Inheritance was sent down to grant a share to all sons, daughters and parents, many people were disinclined to accept it. They argued that, neither the wife who is given a half, nor the small boy who is given a large portion, are good for fighting the enemy or attaining the booty (of war). Some people were of the opinion that the matter should be concealed in the hope that the Prophet (SAW) may forget about it or the whole system reconsidered by Allah. Others approached the Holy Prophet (SAW) saying,
> "O Messenger of Allah (SAW, the slave girl (the daughter) is given half of what is left by her father while she does not ride with the warriors or fight our enemy, and the male child takes the inheritance, while is good for nothing".
> But Allah (S.W.T.) revealed in CH. 4: 11 that,
> "Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All Knowing, All Wise".[38]

It is important to note at this juncture that, under the earlier Islamic Law of Inheritance, there was a ground of

inheritance which was based on the "Brotherhood". When the Holy Prophet (SAW) and his companions (RAA) settled at Yathrib, later on known as "Madina Al-Munawwara", the people of Madina were given the title of "Ansar", the helpers of the Prophet (SAW). While those who emigrated with him from Makkah received the title of "Muhajereen". The Holy Prophet (SAW) in order to unit both classes in close bonds, established between them a brotherhood which linked them together as children of the same parents, with the Prophet (SAW) as their guardian. Furthermore, in the same spirit, if an Ansari dies his brother in faith, the Muhajir, had a right to inherit him and vice versa. This continued for some time until the question of emigration was abrogated and an islamic State was established. Thus, after the establishment of Islamic state the comprehensive verses of Holy Qur'an, concerning inheritance, were revealed, thereby abrogating the brotherhoodship as a ground of inheritance.[39] Thus the Holy Qur'an says,

> "And those who accept faith subsequently, and adopt exile and fight for the faith in your company, they are of you. But kindred by blood have prior rights against each other in the Book of Allah. Verily Allah is Well-acquainted with all things".[40]

Thus, from the above stated analysis, we can judge, without any hesitation, that there was a need of more equitable

and just rules to govern the subject of inheritance in the pre-Islamic era. And that, the laws and the rules provided by Islam are just and are in accord with natural justice, equity and good conscience.

1.3 Sources of Islamic Law of Inheritance

It is a unanimous view of the jurists that there are four most important sources of the Islamic law. They have also unanimously agreed that each of the sources should be given preference over the other in the same sequence as they are listed below.[41]

i. The Holy Qur'an
ii. The Sunnah of the Holy Prophet (SAW)
iii. The Consensus of jurists (Ijma)
iv. The Analogy (Qiyas)

1.3.1 THE HOLY QUR'AN

The original source from which all the principles of Sharia are drawn is the Holy Book Al-Qur'an. The word "Qur'an" is an infinitive noun from the root "Qara'a" which means, he read or recited. It also means a book that is or should be read or recited, or the most widely read book.[43]

Thus, the first and the most important source of Islamic Law is the Holy Qur'an. It is the divine constitution send down to earth by Allah (SWT) for the guidance of the mankind. Accordingly, it is comprehensive code of life covering each

and every aspect and phase of human life.[44]

This Divine Book was revealed on Holy Prophet (SAW) through angel Jibril (AS) written between the two covers of the Holy Mushaf; and transmitted to us by way of "tawatur", or recurrently, without any iota of doubt.[45]

1.3.2 THE SUNNAH

The second source of Islamic Law is the Hadith or Sunnah of the Holy Prophet Muhammad Bin Abdallah (SAW). Sunnah therefore, explains and serves as demonstration of the Holy Qur'an, its basic principles, general rules and objectives.

Sunnah, literally means, a way or rule or manner of acting or mode of life, or custom, or behavior, or conduct, irrespective of whether being acceptable or detestable. However, it is commonly used in the context of good commendable way of life, custom and conduct.[46]

According to the jurists on the other hand, Sunnah simply means "The saying, deeds and tacit approvals of the Holy Prophet (SAW) which related to justice and jurisprudential provisions of the Shari'ah".[47]

Thus in the light of the above stated definition, Sunnah is classified into three categories, namely:-

i. Al-Sunnah al-Qawliyyah

ii. Al-Sunnah al-Filliyah

iii. Al-Sunnah al-Taqririyyah[48]

Al Sunnah al Qawliyyah , denotes the saying of the Holy Prophet (SAW).[49]

Al-Sunnah al-Filliyah, connotes the deeds and practices of the Messenger of Allah (SAW), which has bearing on religious and legal matters.[50]

Al-Sunnah al-Taqririyyah, on the other hand, means a tacit approvals of the Holy Prophet (SAW). It is a situation where an act or saying, which involved a legal rule, was practiced or said in the presence of the Holy Prophet (SAW) or brought to his knowledge and he kept silent over it. This silence is deemed to be an approval of that particular act or saying and it becomes a permissible one. Because it is unbecoming for the Holy Prophet (SAW) to close an eye or turn a deaf ear to wrong deeds or saying.

1.3.3 AL - IJMA

Al-Ijma literally means unanimous opinion and it is used when many people or folk agreed on one opinion or an action. It is also means firm determination. The word "Ijma" is derived from "Jam" which means collecting or gathering together. In the terminology of the Muslim jurists, Ijma means a consensus of opinions of the mujtahidun or an agreement of the muslim jurists of a particular are on a question of law, after the death of the Holy Prophet Muhammad Bin Abdullah (SAW).

The jurists use, among others, the following verses of Holy Qur'an to establish the legality of Ijma:-

> "If anyone contends with the Apostle even after guidance has been plainly conveyed to him, and follows a path other than that becoming to men of Faith. We shall leave him in the path he has chosen, and land him Hell, what an evil refuse".[52]
>
> At another place Qur'an states.
>
> "And hold fast, all together, by the Rope which God (stretches out for you), and be not divided among yourselves..."[53]

1.3.4 AL - QIYAS

Al-Qiyas, literally means estimation, equalization, measuring by or comparing with, or judging by comparing with a thing. And in the terminology of the Muslim jurists, Al-Qiyas is defined as follows:-

> "Al-Qiyas is the process of comparing illah i.e. effective cause, of an original case known as Asl, (one whose rule has been prescribed by the text of Al-Qur'an or al-Sunnah or by both) with that of a novel case, known as Far, (that which the texts are not explicit about) if the effective

cause of the two cases happens to be similar in certain aspects"[54]

In other words, Qiyas is not an independent source of law per se. Rather, it is a process of deduction by which the law of text is applied to cases which are, though not covered by the language, governed by the reason (illah) of the text, that is, the Qur'an, Sunnah and Ijma.[55]

1.4 PURPOSE OF THE RESEARCH

The main purpose of this research work goes in line with the traditions of the Holy Prophet (SAW), as reported by Caliph Umar Bin Khattab (RAA) that Holy Prophet (SAW) said,

"Learn the fixed ordinance of inheritance, (Ibn Masud added: and divorce and pilgrimage) as they are of your religion".[56]

And it is reported by Ibn Masood (RAA) that Holy Prophet (SAW) said,

"Learn Qur'an and teach it to the people, and learn (the knowledge of) Inheritance (Al-Faraidh) and teach it (to the people). Indeed I will be taken away, the knowledge (of Qur'an and inheritance) will be

raised up. And very soon, there will be an argument between two people in inheritance and (other) cases. And they will find no one to settle them".[57]

And it is reported by Abu Hurairah (RAA) that, Holy Prophet (SAW) said,

"Learn Inheritance (Al-Faraidh) and teach it. Indeed it is the half of the knowledge. And it would be forgotten. And it (inheritance) will be the first thing which will be raised up from my community (Ummah)".[58]

It is also reported that the Sahaba of Holy Prophet (SAW) used to have a lot of debates among themselves especially regarding issues concerning inheritance. And the Holy Prophet (SAW) used to praise them for this.[59]

In the light of the above stated traditions of Holy Prophet (SAW) therefore, I took the pain of doing the tedious research work to try to make an attempt to put my humble name in the list of those people who have done some thing to keep this important knowledge alive.

A lot of erudite jurists have done tremendous work on this subject. For example Ibn Thabit, his work is known as "Malikites", Justice Abul-Qasim Al-Hewfi and his work is known as "Mukhtasar lil Abdul-Qasim Al Hewfi", and Abu Muhammad

Al-Hassan, who wrote "Al-Jadi". Among the more recent Africans who wrote on this subject is, Ibn Al Munammar At-Tarabulusi.[60] Nevertheless, all these works have been written in Arabic language. Therefore, it is felt that there are needs to transmit this knowledge in English language in a simple way for the understanding of the members of general public who lack the knowledge of Arabic language.

The objective of this research work therefore, are to try to briefly explain the general principles of Islamic law of Inheritance, so that when the reader is going through the main theme of this research would not face any difficulty in understanding.

To extensively discuss the share of Father's father generally, and when he is competing with the collaterals.

To extensively expose the different views of Sahaba (RAA) and the different schools of jurisprudence concerning the competition.

1.5 SCOPE AND LIMITATION

Hence, to achieve the aims of this research, it has been divided into five chapters:-

Chapter one contain introductions, purpose and approach of the research. The sources of Islamic law of Inheritance and the developments and evolution of the Islamic Law of Inheritance. It also contains a brief introduction of the different schools of Islamic jurisprudence.

Chapter two deals with the elements of Islamic law of Inheritance which includes, the estate, the deceased and the heirs.

Chapter three discusses the grounds of inheritance which includes, blood relationship, marriage and emancipation. Impediments to the inheritance is also discussed in this chapter.

Chapter four delves into the legal position of father's father in competition with the collaterals.

Finally, chapter five is the closing chapter. According, it contains conclusion and suggestions, which will hopefully be useful for further research.

In order to achieve the aforementioned aims and objectives of this research, the views of the different schools is discussed. The different opinions of the jurists in understanding the interpretation of the meaning of some texts of the Holy Qur'an and or the Prophetic Traditions led to the foundation of different schools of Islamic jurisprudence.[61] The founders of these schools are known as "Imam", that is leader. These Imams were religious minded persons and they spent their whole life as God fearing person and always adhered to the path of righteousness.[62]

It must be noted at this point that, these Imams had never forced anyone to follow them. And furthermore, these Imams had also sincerely instructed their followers that, whenever they discover an authentic report in the Prophetic Tradition which

is against their opinions, that report will be their opinion and should be strictly followed. And it is not fair to one who takes our opinions and give judgement without investigation.[63]

These great schools of Islamic jurisprudence are still remembered by the names of their great founders, and they are:-

i. Maliki School of Jurisprudence
ii. Hanafi School of Jurisprudence
iii. Shafi'i School of Jurisprudence
iv. Hanbali School of Jurisprudence
v. Shia Schools of Jurisprudence

1.5.1 MALIKI SCHOOL OF JURISPRUDENCE

This school was founded by Imam Malik Bin Annas Bin Malik Bin Abi Aamir Al-Asbahi. He was born at the city of Madina Al-Manawwara in the year of 93 After Hijra (A.H.). And died at the age of 86 at Madina in the year 179 A.H.[64]

Imam Malik completed all his education at Madina. He studied in the schools of many great "Tabiouns", the companions of the companions of the Holy Prophet (SAW).[65]

Imam Malik was a very intelligent and brilliant person. It is reported that he had memorized the whole Qur'an during his childhood. And that, his teacher used to read 30 traditions of Holy Prophet (SAW) in one lecture and Imam Malik used to commit them into memory at the same lecture time.[66]

Imam Malik was considered to be a great Muhadith (traditionist) and a great Faqih (jurist) of his time. Imam

Malik's jurisprudential views were similar to that of other great jurists with a little difference. In addition to the main sources of Islamic Law (Qur'an, Hadith, Ijma and Qiyas) Imam Malik considered the following to be the sources of Islamic law - peculiar to his school alone.

i. Al-Istahsan

ii. Al-Uraf

iii. Sadd Al-Dharai

iv. Al-Maslaha Al-Mursila

v. Amal Ahlal Madina.[67]

Hence, Imam Malik considered the act of the people of Madina as a source of establishing a rule of law, because the people of Madina practiced whatever their parents and grand parents were practicing. And the grand parents were the companions of Holy Prophet (SAW).[68]

There are about forty jurists who are said to be the teachers of Imam Malik. Most famous among them are, Rabiy Bin Abdul Rahman, Muhammad Bin Muslim Al-Zuhri, Nafay Bin Abdi Naim, and Nafay Maula Abdullah Bin Umar.

Imam Malik had a great number of students, the most famous among them are, AbdurRahman Bin Amaru Al-Awzai, Imam Shafi'i, Yahya Bin Said and Muhammad Bin Alhassan.[69]

Among the works of the Imam is the Muwawta a book of

hadith compiled by the Imam himself.[70]

1.5.2 HANAFI SCHOOL OF JURISPRUDENCE

The founder of this school is famously known as Abu Hanifa. His name is Nu'man Bin Thabit Bin Zounty. He was born in the city of Kufa (Iraq) in the year 80 A.H. He died in Baghdad at the age of 70 in year 150 A.H.[71]

He started his education very early at Kufa. Kufa was considered to be the center of knowledge. Because there were around 1500 companions of Holy Prophet (SAW) residing at Kufa in those days. And Ali (RAA) also once stayed.[72]

Imam Abu Hanifa, was very strict in collecting the traditions of Holy Prophet (SAW) and very strict in the chain of narrators pertaining to each Prophetic traditions.[73] He is considered to be the first person who divided the Fiqh knowledge in different forms. He was famous in Ijtihad and an expert in the law of inheritance.[74] The following are the jurisprudential principles of Imam Abu Hanifa.

i. The first source of Islamic law is Qur'an
ii. Then comes the sound tradtions of Holy Prophet (SAW)
iii. Then the saying of the companions of Holy Prophet (SAW)
iv. And if all the above are silent, then comes person Ijtihad. Under the strict condition that, the person doing Ijtihad is well versed in Qur'an and Sunnah, and there is

no any saying of the companion of Holy Prophet (SAW) dealing with the issue in hand.

v. It is after all the above sources, the application of Qiyas is allowed.

vi. Lastly, Isstehsan is allowed as a source of Islamic law.[75]

Imam Abu Hanifa had a very large number of students. However the most famous of them are, Abu Yusuf (Yaqub), Dawood Al-Tai, Muhammad Bin Hassan, Assad Bin Amaru, yusuf Bin Khalid Al-Santi, Yahyah Bin Zakariya, Hafs Bin Ghiyyas, Fudhail Bin Ayyadh, Qaim Bin Mouin, Abdullah Bin Al-Mubarik.[76]

The following books were written by the jurists of his school.[77]

i. Kitab Al-Figh Al-Akbar

ii. Kitab Al-Alam Wal Muttalm

iii. Resalah Ila Uthman Bin Muslim Al-Baiti

iv. Kitab Fi Radd Alal Qadiria.[78]

The followers of his school are found in Pakistan, India, Afghanistan, Central Asia, Iraq and some parts of United Arab Emirates.[79]

1.5.3 SHAFI'I SCHOOL OF JURISPRUDENCE

Shafi'i school of jurisprudence is founded by Imam

Muhammad Bin Idris Bin Al-Abbas Bin Uthman Bin Shafi'i Al-Qurashi is the founder of the Shafi'i school of jurisprudence. He was born at the city of Ghaza in the year 150 A.H. And he died in Egypt at the age of 54 in year 200 A.H.[80]

Imam Shafi'i was the first person to introduced the principles of jurisprudence (Usul Al-Fiqh).[81] It is reported that Imam Fakhruddeen Al-Razi said, in respect of Imam Shafi'i that, "As Arasto is remembered to be the founder of the science of Logic (Ilmul Mantaq) and Al-Khalil Bin Ahmed as the founder of the science of Geology (Ilmul Arooz), similarly, Imam Shafi'i is remembered as the founder of science of Fiqh (Ausul al-Fiqh).[82]

He considered the Holy Qur'an, Sunnah, Ijma and Qiyas as the most important sources of Islamic Law. He did not accept Isstahsan as a source of law. However, he considered Al-Istashsab to be one of the source of Islamic Law.[83]

Imam Shafi'i has written a lot of books, the most important among them are,

i. Kitab Al-Umm
ii. Kitabl Al-Hujja
iii. Kitab Al-Rissala.[84]

Imam Shafi'i had a large number of students, the most famous among them are, Abu Yaqoob Yusuf Bin Yahya Al-Bowaity,

Al-Rabiy Bin Suleiman Al-Maraw, Yunus Bin Abdul Aala and Muhammad Bin Abdul Hakeem Bin Aain Al-Misri Al-Qarshi.[85]

1.5.4 HANBALI SCHOOL OF JURISPRUDENCE

Imam Ahmed Bin Muhammad Bin Hanbal Al-Shibani was the founder of the Hanbali school of Islamic jurisprudence. He was born in a small town know as "Maro", in the year 164 A.H.[85] And after one year of his birth his father took him to the city of Baghdad.153 And he died in Baghdad at the age of 77 in the year 241 A.H.[86]

Imam Ahmed Bin Hanbal was very found of education since from his childhood. For the search of knowledge he travelled to Yemen, Kufa, Basrah, Madina and Makkah, a lot of times.[87] Accordingly, he had a large number of teachers, among them are, Hushaim Bin Bashir Bin Abi Hazam Al-Wasty, Imam Shafi'i and Abu yusuf Yaqoub Bin Ibrahim.[89]

Imam Hanbal was very inquisitive and intelligent, he begun his early study of Hadith at the age of sixteen. It is reported that Imam Ahmed Bin Hanbal committed into memory a million traditions of the Holy Prophet (SAW).[90]

He was considered to be a great scholar of Hadith of his time. He considered the following to be among the sources of Islamic Law.

i. The Holy Qur'an

ii. The Sunnah of Holy Prophet (SAW)

iii The Ijma

iv. The famous saying of the companions of Holy Prophet (SAW)

v. And Qiyas which is allowed only under necessity.

Imam Ahmad Bin Hanbal did not allow Al-Isstehsan to be a source of Sharia. Imam Ahmed Bin Hanbal has written many books, among which are,

i. Kitab Al-Salat

ii. Kitabl Al-Sunnah and

iii. Al-Musnad.[91]

The followers of Imam Ahmad Bin Hanbal exist mostly in Saudi Arabia, Syria, Bahrain and some parts of Iraq, Egypt and Yemen.[92]

1.5.5 SHI'ITE SCHOOL OF JURISPRUDENCE

Shi'ia literally means, helpers, group or to follow. Technically, Shi'ia are those people who are the supporters of Ali Bin Abi Talib (RAA) and his descendants; and consider them to be the rightful successors of The Holy Prophets (SAW).163 Hence, according to Shi'ites, "The first Imam who was chosen by the Prophet was Ali (upon whom be peace). After him eleven other members of the family of the Prophet were chosen for his position.164 They also believe that, "During the last year of his life the Prophet, while returning from pilgrimage to Madina in a place called Ghadir Khumm, officially designated "Ali as his successor before a large gathering of Muslims." and that,

after Ali, eleven of his descendants became consecutively the successors and vicegerents of the Prophet and with Ali himself comprise the 'Twelve Imams'. Their names are as follows:-

1. Ali Ibn Abi Talib
2. Hassan Ibn Ali
3. Hussain Ibn Ali
4. Ali Ibn Al-Hussain
5. Muhammad Ibn Ali Ibn Al-Hussain
6. Jafar Ibn Muhammad
7. Musa Ibn Jafar
8. Ali Ibn Musa
9. Muhammad Ibn Ali Ibn Musa
10. Ali ibn Muhammad
11. Hassan Ibn Ali Ibn Muhammad
12. Muhammad Ibn Hassan.[96]

It is the belief of the Shi'ism that, the earth can never be without the special representative of God. They have been order to guide, lead and train the people of the world and continue to do so. Shiism believes that the twelfth Imam is right now alive and endowed with a long life.[97]

Hence, it is clear, from the above stated Shi'ites dogmas that, Shi'ism was nothing but a political party or group. However, after a long span of time, Shi'ia started distinguishing themselves as a different religious sect within

the umbrella of Islam.[98] Accordingly, they have written books on Tafseer (interpretation of Qur'an), Hadith, and jurisprudence (Figh). Some of their books are as follows:-

Books on Tafseer Al-Qur'an

1. Tafseer Al-Hassan Al-Akssary
2. Tafseer Al-Tamey
3. Al-Tabyan Lil-Tossy
4. Al-Huran Fi Tafseer Al-Qur'an
5. Baher Al-Anwar
6. Kanz Al-Irffan[99]

Books on Hadith

1. Al-Qaffi
2. Hashiyya Alal Qaffi
3. Al-Tahdieb
4. Al-Istabisar[100]

Books on Figh

1. Mustamsaka Al-urwatul Wuthagy
2. Musuat Faqihatu Asriyya[101]

Shi'ism later on divided into different sects and sub-sects,
in accordance to the Imams they follow. Hence, it is reported that, there were about 54 sects and sub-sects among the Shi'its

world.[102] However, the most famous and which have survived up to day, are,

1. Shia Al-Zaidiyya
2. Shia Al-jaffriyya, or Immaiyya, or Ithana Ahsara

SHI'ITE AL-ZAIDIYYA

This sect got its name from Imam Zaid Bin Ali ZainalAbeddeen Bin Hussain Bin Ali Bin Abi Talib.[103] The followers of this group believe that Imam Zaid is the first Imam from the descendants of Imam Ali (RAA).[104]

Imam Zaid fought a lot of wars with the Bani Umayyad Caliphat. It is during these wars that Imam Zaid was martyred in the year 122 A.H.[105]

The jurisprudential views of Shi'ia Zaiddiya are considered to be very close to the Sunni jurisprudence.[106] Some of their principles are as follows:-

1. After the death of Imam Hussain Bin Ali Bin Abi Talib (RAA), it is only the descendants of Fatimah (RAA) Bint Muhammad (SAW) are entitled to become the Imams or leaders.
2. Ali Bin Abi Talib (RAA) was more entitled to become the first Caliph than Abu Bakar (RAA). Nevertheless, the Caliphat of Abu Bakar (RAA), Umar (RAA) and Uthman (RAA)

is accepted.

3. Mutta or the temporary marriage is prohibited by Zaiddiyya school.

4. The doctrine of "Taqqiyah" is practiced by Zaiddiyya school.[107]

Hence, it is clear from the above stated facts that Zaiddiyya school is very close to the Sunni schools.

It should be noted that after the death of Imam Zaid, his followers were able to make their own government in Yemen. Their government continued until 1962, when military took over from them. Followers of Zaiddiyya school are still existing in Iraq, East Asia and Yeman.[108]

SHI'ITE AL-JA'AFRIYYA

Shi'it Al-Jafriyya are also known as, Imammiyya and Ithna Ashara.[109] They are known as Ja'afariyya because they follow the Fiqh or the jurisprudence of their sixth Imam, Imam Ja'afar Al-Saadiq Bin Muhammad al-Baqeri.[110] They are known as Imammiyya because they have included the issue of Imammiyya in the five pillars of islam, thereby making them six, that is, "Al-Fatiqad Bil Imammah", or the belief in the twelve Imams.[111] Thus, if some one does not believe in this sixth pillar he is not a muslim.[122] And they are known as "Ithna Ashara" because they believe in twelve Imams, they are,[113]

1. Ali Bin Abi Talib
2. Hassan Bin Ali
3. Hussain Bin Ali
4. Ali Zainablabeddeen Bin Hussain
5. Muhammad Al-Baqar Bin Ali Zainalabeddeen
6. Ja'afar Al-Saadiq Bin Muhammad Al-Baqar
7. Musa Al-Kazam Bin Ja'afar Al-Saadiq
8. ali Al-Raha Bin Musa Al-Kazam
9. Muhammad Al-Jawwad Bin Ali Al-Radha
10. Ali Al-Hadi Bin Muhammad Al-Jawwad
11. Hassan Al-Aaskari Bin Ali Al-Hadi
12. Muhammad Al-Mahdi Bin Hassan Al-Aaskari[114]

Their jurisprudential believes are as follows:-

1. According to them there are six pillars of Islam
2. They believe that one fifth (1/5) of Zakkat is for the descendants of Muhammad (SAW).
3. Mutta or the temporary marriage is allowed.
4. Doctrine of Taqqia is allowed, and whoever does not believe in it is not a Muslim.
5. They also believe that their Imams know the time and day of their death and die according to their own will. And they have the knowledge of future, nothing is hidden from the (Ilmul Ghaib).
6. They also believe that, all their Imams are going to come back in this world and rule the world one by one.

7. They also believe that the Sunni Holy Qur'an is not a complete Qur'an. A lot of verses have been removed from the Qur'an. It is reported in "Al-Kaffi" that Imam Ja'afar Al-Saadiq said, "Our Qur'an is that of Fattima (RAA) which is three times bigger than your Qur'an (Sunni Qur'an)". (Al-Kaffi P.255).[115]
8. They abuse many companions of Holy Prophet (SAW) especially, Abu Bakar (RAA), Umar Bin Khattab (RAA), Aisha Bint Abu Bakar (RAA), Hafsa Bint Umar (RAA).
9. They also believe that after the death of Holy Prophet (SAW) except few, all the rest of Sahaba (RAA) apostated from the religion of Islam (Murtad).[116]

According to Shi'ite references, today, according to the latest statistics there are more than one hundred and thirty million Shi'ites in different parts of the world. They are concentrated mostly in Iran, Iraq, Pakistan, India, Indonesia, Syria, Jordan, Yeman, Lebanon, Egypt, etc.[117]

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CHAPTER TWO

2.1 ELEMENTS AND GROUNDS OF INHERITANCE

Elements and grounds of inheritance constitue, to a large extent, the fundamentals of the law of inheritance, without which the whole structure on which the law of inheritance stands can colapse easily. The purpose of this chapter is therefore to highlight those fundamentals of the law of inheritance, taking each one after the other.

2.1.2 Deceased Person

Deceased person is undoubtedly an essential element of the law of inheritance, for without him the operation of the law of inheritance in islam cannot operate. He is the person whose estate devolves upon his heirs, after his death. Before the transfers of his estate to his heirs, his death in law (hukman) or in fact (haqiqatan) must, first, be ascertained. In other words, his heirs msut survive him, no matter how little it may be. His estate can be inherited by his heirs only if he dies before his heirs, otherwise not.[1] Where his death in fact cannot be ascertained, his death in law must be established. His death in law must be established only if he happens to disappear for a certain period of time. Take for instance, where the deceased cannot be seen for a period of four years, his marriage with his wife is, first terminated and his wife shall wait for a waiting period of four months and ten days, as a widow.

Where he fails to appear in person, he will be decreed dead by a court, after his pears in the locality disappear or he attains a period of seventy years. This is the jurisprudence of the Maliki school. It is only this school that distinguishes the law relating to the missing person into two folds. The law which governs his marriage contract, with his wife, on one hand and the law that governs the devolution of his estate on the other hand.

The law governing the marriage contract of the missing person appears to be the same with the law that governs the distribution of his estate. For instance, in Hanafi school of jurisprudence, the missing person can only be decreed dead if he is not seen for a period of ninety years. It is at this period that his estate can be transferred to his or her heirs. This is not only the popular opinion in the Hanafi school of jurisprudence, but the majority view of the jurists of the school. This is also the view of the Shafi'i and Hanbali schools of law.[2]

2.1.3 Estate

This is the wealth that devolves on the heirs of the deceased person. Without the estate the heirs cannot have anything to inherit. Assuming that a person dies and is survived by his heirs who are to inherit him and he has not left an estate to be inherited by his heirs, the role of Islamic law of inheritance cannot come into play, since the estate is one of the essential ingredients of inheritance.

Defination of Estate

Estate as one of the fundamentals of inheritance is defined by the jurists of the Maliki school to mean any wealth left by the deceased person, after his death, regardless of whether or not other persons have claims in it.[3] To the jurists of the Hanafi school, wealth or estate is defined to mean any wealth left by the deceased person, in which no one has any claims in it.[4] To the jurists of the Hanbali school however, estate is defined to mean the wealth left by the deceased, from which only the bequest and the distribution of estate can be done. To the jurists of this school, any estate short of this defination is not an estate in the legal sense of it.[5]

2.1.4 **Are Claims Inheritable**

As to whether claims of the deceased persons are inheritable by his heirs or not, the Muslim jurists, to a certain extent are unanimous. For instance, any monetary or proprietery claims are inheritable, because those claims are wealth by themselves. These proprietory claims include - for instance - claims or rights of the deceased to passage over a piece of land, his or her rights or claims to fetch water, from, say, a tap, a well, a river, or a pond, which lays on a piece of land that belongs to others. His rights or claims over constructing one or more drainage on the piece of land that belongs to others, etc. To them, all these rights are equally inheritable by the heirs of the deceased. Because, these claims or rights are wealth in themselves. If the

Islamic law does not allow these rights to be inheritable by passing over to the deceased heirs, the transfer of the wealth to the heirs will be meaningless.[6]

All the Muslim jurists are also unanumous that certain rights, such as the right or claim which the deceased has in his job or appointment, or any right or claim which he may have in - for instance - delivering a lecture on a particular topic to some groups of persons, while alive are strictly personal. They belong to him exclusively. The right or claim of the deceased to pronounce talaq on his wife or to reoke the talaq after its pronouncement are - thus - personal. They die along with him (deceased). There is no one who can claim such right among his heirs.

The Muslim jurists are - however - not unanimous on the inheritability of certain rights. These rights include - among others - the rights of the deceased to claim a right of pre-emption, his right to affirm or repudiate a contract of sale within a particular period of time, etc.[7]

While these rights are inheritable by the heirs of the deceased person, on one hand, they are inheritable by the heirs on the other hand, according to the jurisprudence of the Hanafi school. The majority of the Muslim jurists, who approve of the inheritance of these rights rely on a tradition of the Prohpet (SAW), which says: "Whoever leaves wealth or right it belongs to his heir". To the Hanafi jurists, the word right which appears in the tradition is an addition not found in the text

of the tradition that came to them.

2.1.5 Claims against the Estate

The estate of the deceased Muslim is not meant to be transferred to the legal heirs without, first, settlements of certain claims or incumberances which the deceased himself may owe to creditors or Allah (SWT). Similarly, the deceased himself may also have a claim in form of settlement of his funeral expenses fro mthe estate. Legatees, to whom the deceased made a bequest before his death, may also have a claim in the estate. Some of the claims rank in priority against others, as can be seen, briefly discussed below.[8]

2.1.5.1 Funeral Expenses

This claim of the deceased from the estate he has left must be given first priority over others. This is done without squandering nor deficiency. It is done according to the status of the deceased in life.

2.1.5.2 Secured Debts

Claims which the deceased himself owe to other creditors take second priority. Where there is a clash between those claims which creditors have in the estate and those claims which Allah Himself has in the estate, the Muslim jurists differ. For instance, Ibn Hazam of Zahiri school and as-Shafi'i of the Shafi'i school are of the view that the claims which Allah has in the estate is given preference over those claims which creditors have in the estate.[9] Malik is of the view that those claims which Allah (SWT) has in the estate

takes priority only if the deceased person gave a mandate before his death that these claims were due in his estate but they were not taken. Abu Hanifah is of the view that those claims of Allah (in form of Zakkah, Kaffara, etc) are act of worship which are only obligatory upon the deceased person while he is alive. The obligation to pay them dies along with the deceased person. These claims refer to the claims in respect of which security are taken. They are referred to as secured debt.

The opinion of Abu Hanifah on this issue has been criticised as not only wrong but a clear violation of the tradition of the Prophet (SAW), which asks the Muslims to invest wealth that belongs to a child with a view to get profits therefrom. This is to avoid a situation whereby Zakkah consumes the wealth if is not invested.[10]

2.1.5.3 Unsecured Debts

These are claims in respect of which no security have been taken from the deceased. They are referred to as ordinary claims. They rank in the third category.[11]

2.1.5.4 Bequest

Rights of the legatees are protected in this category, within the maximum limit of one-third of the net estate. Where the amount of the estate bequeathed to the legatees happens to be in excess of the one-third or where the legatee happens to be a legal heirs, in either case, consent of the legal heirs must be given.[12] The consents must be free from druss, or

misconception of any kind, and that it must not be obtained from an heir who lacks legal capacity. An heir who lacks legal capacity. An heir who gives his or her consent should be prepared to suffer the excess amount in respect of which he consented to.[13]

2.1.5.5 Distribution of Residue to the Heirs

Lastly, what is left rom the deceased's estate, after deducting the funeral expenses, debts and bequest, are to be divided amongst the heirs of the deceased according to their entitlements.

2.1.6 AL WARITH: THE HEIR

The word "warith" is derived from the verb "waretha" which means to inherit any thing, and "warith", on the other hand, is a present participle, which means a heir, a successor or an inheritor. hence, warith or a heir may be defined as a person who is related to the deceased person either through blood relationship, marriage or emancipation.

Accordingly, under Islamic law of inheritance, the total number of heirs is twenty five, who may possibly be entitled to inherit. However, with the principle that, the closer relative exclude the remorter. There are fifteen male heirs and ten

female. Hence among the male heirs are;

1. Son
2. Son of son (SS), how low so ever (his)
3. Father
4. Grand father (FF), how high so ever (his)
5. Germane brother (GB)
6. Consenguine brother (CB)
7. Uterine brother (UB), from mother's side.
8. Son of Germane brother
9. Son of Consenguine brother
10. Full paternal uncle
11. Consenguine or half paternal uncle
12. Son of full paternal uncle
13. Son of half paternal uncle
14. Husband
15. Male emancipator, who freed his slave.[14]

However, it should be noted, if a person dies leaving all the above mentioned heirs, only three of them are entitled to inherit at the same time, they are, Son, Father and Husband, all the rest heirs are excluded either by son or the father, because of the principle that closer relative exclude the remorter.[15]

Female heirs, on the other hand, are as follows:

1. Daughter
2. Daughter of son (DS), how low so ever

3. Mother
4. Grand mother from father's side (MF)
5. Grand mother from mother's side (MM)
6. Germane Sister (GS)
7. Consenguine Sister (CS)
8. Uterine sister (US) from mother's side
9. Wife
10. Female emancipator, a mistress who freed her slave.

It should be noted here that, if a person dies leaving all the above stated female heirs, it is only five of them can inherit at the same time, when there is only one daughter, they are, A daughter, Daughter of son, Mother, Germane Sister and the wife.

And if both male and female heirs are coexiting then it is only, Father, Mother, Husband or Wife, Son and Daughter can inherit. And all the rest heirs are excluded because of the principle of remortness.[16]

2.1.6.1 CLASSIFICATION OF HEIRS

After discussing the special kind of heirs, now we shall highlight the traditional or the classical classification of the heirs. Hence, the majority of muslim jurists divide the heirs into two principal classes:-

1. Qur'anic Heirs, or the "Ashab ul faraidh"

2. Agnatic Heirs, or the "Asabah"

There are three more classes of heirs, that is,

3. Kindered heirs, or the "Dhawil arham"
4. Muslim Public Treasury, Or the "Bait ul mal"
5. Emancipator as an heir.

2.1.6.2 Qur'anic Heirs

These are those person who have a right to a specific or definite share, established by Qur'anic and Sunnah, in the estate of the deceased.

The word "faraidh" is the plural of "faridha", which literally means anything made obligatory, while in inheritance it means, a portion of share made obligatory.

For this reason the law of inheritance is generally spoken of an "ilm ul faraidh".

The Qur'anic heirs are thirteen in number, four maong them are male, while the remaining nine of them are females. The Qur'anic heirs are as follows:-

1. Husband
2. Father
3. Grand father
4. Uterine brother
5. Wife
6. Daugher
7. Daughter of son, how low so ever

8. Mother
9. Grand mother from father's side
10. Grand mother from mother's side
11. Germane sister
12. Consenguine sister
13. Uterine sister[17]

However, it should be noted that, if in a situation all the above stated heirs are coexisting, it is only few of them are entitled to inherit. Thus, if there are only male heirs in a case, then it is only husband and father can inherit, others are excluded by father. And in a case where all the above stated heirs are coexisitng, it is only husband or wife, father, mother, daughter and daughter of son can inherit. All the rest of the heirs are excluded, because of the principle of remoteness.[18]

At this juncture, it should be noted that, the shares alloted to the Qur'anic heirs are in form of fractions. They are specified by Qur'an in Chapter 4, verses 11, 12 and 176, they are: 1/2, 2/3, 1/3, 1/4, 1/6 and 1/8.

2.1.6.3 Asabah or The Agnates

When the heirs of the first group, that is, the Qur'anic heirs, have received their respective shares, the residue of

the estate falls to those relatives who are called the "Asabah", or the agnates, which implies those relatives in whose line of relationship no female enters. In other words, they are those relatives of the deceased person who are related to him through his father.[19]

Accordingly, if the deceased is not survived by any Our'anic heir, the whole of the property falls to the agnatices. The following are considered to be the agnatic heirs or the asabah:-

a) Male descendents; that is son, he is the first to get the residue in order of succession. The son of son (H.L.S.) is not entitled to any share in the presence of the son. Because the principle of remoteness is applied.

b) Male ascendents; that is, the father and the grand father (H.H.S), is entitled to a share in double capacity, that is, as a Our'anic heir, as well as a agnatic heir. Thus, when the decased is survived by a male descendent, (H.L.S.), then the father goes back to his Our'anic share, because in this case, he is excluded as an agnate by the descendent. But if the deceased is not survived by a male descendant, then the father will fall under the category of asabah. And generally, the grand father steps into the shoes of the father, in his absence.

c) Male collaterals; if the deceased is not survived by a male descendent (H.L.S.), or the father, then the germane brother and in his absence his son (H.L.S.).

d) If unfortunately, the deceased is not survived by any of the above mentioned agnatic heirs, then the consenguine brother will be entitled to the residue, and he will be preferred to the son of the germane brother.

e) Then comes the turn of full uncle (paternal) and his male descendents. After them, the consenguine paternal uncle and his male descentdants.

f) And lastly comes the male emancipator and female emancipator.[20]

Accordingly, the agnatic heirs are as follows:-

1. Son
2. Son of son (H.L.S.)
3. Father
4. Grand father (H.H.S.)
5. Germane brother
6. Consenguine brother
7. Son of the germane brother
8. Son of the consenguine brother
9. Full paternal uncle
10. Half paternal uncle
11. Son of the full paternal uncle
12. Son of the half paternal uncle
13. male emancipator and the female emancipator.[21]

CLASSIFICATION OF THE ASABAH

The asabah or agnates or the residuary heirs are divided into three classes:-

i. Agnate in his own right or "Asabah bi nafsihi"

ii. Agnate by another or "Asabah bi ghairihi"

iii. Agnate with another or "Asabah ma ghairihi"

Agnate In His Own Right

An agnatic heir in his own right is every male in whose line of descent to the deceased, no female intervenes. This group is classified in an order which determine eligibility to succession of other agnates, that is the closer agnate exclude the remoter.

It should be noted that an agnatic heir, atime, may cause the reduction of the share of a Qur'anic heir, for instance, in the presence of a son, who is an agnatic heir, the shares of father, mother, husband and wife are accordingly reduced.

The agnates in their own right are sub-divided into four classes, in order of priority, with the principle that the closer agnate exclude the remoter. That is, the first class exclude the second class, and the second class exclude the third class and so on. The dividion is as follows:-

a) The male descendents of the deceased; they are the son, son of son, (H.L.S), the closer son exclude the remoter sons.

b) The male ascendants of the deceased; they are the father, grand father (H.H.S.), with the sameprinciple, closer exclude the remoter.

c) Descendants of the deceased's father; they are the offsprings of the father of the deceased, that is the germane and consenguine brothers and their descendants. They are entitled to inherit in order of their closeness, that is the gemane brother exclude theconsenguine brother and the consenguine brother is given priority over the descendants of the germane brother. And t h e descendants of the germane brother are given priority over the descendants of the consenguine brother.

d) The descendants of the grand father; they are the full paternal uncle and the half paternal uncle and their offsprings. And the closer uncle exclude the remoter uncle.[22]

It should be noted that, if a situation arises where all or some of the above mentioned heirs are co-exisitng, then the son excludes all the other heirs and becomes the sole heir. However, the father or grand father who has double capacity, will get his Qur'anic share, which is one sixth. It should also be noted that, the son is not one of the, strictly speaking, Qur'anic heir; but he is a special agnate who can not be excluded by any other heir of any class, whether Qur'anic heirs, rather their shares are reduced, they are, Father.

Mother, Husband, Wife and Daughter.

Agnate By Another

They are the four female Qur'anic heirs, but become agnatised by their brothers of same class, degree and blood. They are daughters in the presence of sons; daughters of son in the presence of son of son. The germane sister in the presence of germane brother; and lastly the consenguine sister in the presence of the consenguine brother. Accordingly, they are entitled to the residue with the principle that male takes a double share of female. And also the closer exclude the remoter.[23]

Agnate With Another

This category comprises of the two female Our'anic heirs, who become agnates because of the presence of another female heir. They are, the germane sister and consenguine sister in the presence of daughter or daughter of son or both. Hence, in this situation, if the deceased, leaves a daughter, Germane sister and a consenguine sister; the daughter will be entitled to her Our'anic share, which one half (1/2), while the residue goes to the Germane sister as an agnate with another. But the consenguine sister is excluded by the Germane sister on the bases of remoteness.[24]

It should be noted at this juncture that, there may arise

an intrusting situation where by a heir who is originally excluded, but become entitled to a share because of the presence of another heir, who is known as the lucky kinsman. Or vice versa, that is, the heir is originally entitled to inherit, but is excluded because of his presence, then he is considered to be an unlucky kinsman. Hence, for instance, a person is considered to be a lucky kinsman; where the deceased is survived by two daughters and a daughter of son. The daughters will exhaust their Qur'anic share of two third (2/3), and the daughter of son is excluded, because the female share has been exhausted, which is two third. However, if the son of son is coexisting, then the daughter of son will be agnatised by the son of son (asab bil ghair). And therefore, they share the residue. Thus, here the son of son is considered to be the lucky kinsman. Nevertheless, the same son of son will become an unlucky kinsman, where for instance, the deceased is survived by husband, father, mother, daughter and daughter of son. In this case the husband is entitled to 1/4, father 1/6, mother 1/6, the daughter 1/2 and the daughter son is entitled to 1/6 to complete the female share of 2/3. But if the son of son is co-existing as well, then the daughter of son will be agnatised by the son of son, therefore entitled to residue, nevertheless, there is no residue in the above case, therefore, both son of son and daughter of son are excluded.[25]

This doctrine of the lucky and unlucky kinsman is also applied in exactly the same way, when a consenguine sister

co-existing with a germane sister and the other Qur'anic heirs as stated above. She also loses her right when a Consenguine brother comes on the scene.[26]

2.1.6.4 Kindred Heirs Or The "Dhawul arham"

The Dhawil arham are also known as the distant kindered or the cognates or the uterines. These are those relations of the deceased who are neither Qur'anic nor agnatic heirs. They are only entitled to inherit, if both the Qur'anic and agnatic heirs are absent.

This is the majority view of the jurists; comparising of the majority of Companions (RAA) of Holy Prophet (SAW), some of them are Caliph Umar Bin Khatab (RAA), Caliph Ali Bin Abi Tallib (RAA), Ibn Masud (RAA), Muath Bin Jabal (RAA). The view of these companions is adopted by Imam Abu Hanifa and Imam Ahmed Bin Hanbal.[27]

However, second group on the other hand, opine that these people are not entitled to inherit, rather the estate goes to Public Treasury or the "Bait al Mal". This view is reported to be the opinio n of some companion of Holy Prophet (SAW); comparising of Zaid Bin Thabit (RAA) and Ibn Abbas (RAA). This view was also adopted by Imam Malik and Imam Shafi'i.[28] Nevertheless, it is reported that, the Maliki and Shafi'i jurists, resolved by Ijma'a that the estate should not go to the public treasury, rather it should be inherited by Dhawil arham. As it is stated in a Maliki book, "Jawahir al Khalil",

Vol.2, page 332, that, these jurists held the opinion that where the public treasury is administered strictly according to the Islamic law, it is preferable to the Dhawil arham, but since it is not so today, the Dhawil arham must take precedence.[29]

The Dhawil arham are divided into four different classes, and they are:-

i. Descendents; these are the children of the daughter of the deceased and the children of the daughter of son (H.L.S.).

ii. Ascendents; these are the false grand father, that is, the maternal grand father, and the false or the maternal grand mother (H.H.S.)

iii. The descendants of collaterals; they are, the children of germane sister and consenguine sisters; children of uterine sister and brother; daughter of germane and consenguine brothers and daughter of son of the germane and consenguine brothers.

iv. The descendants of the ascendants; these are the maternal uncles and aunts, uterine brothers of father, paternal aunt, daughter of paternal aunt, the children of all the above; paternal and maternal uncles and aunts of the father of the deceased.[30]

Shares of Dawil arham

There are different views as regards to the shares of these people:-

According to the first view, which is known as "ahlul rahem", that is if the dhawil arham are the only surving heirs of the deceased, then all of them will share the estate equally, no priority will be given to the closer relative over the remoter; male and female take an equal share.

The second view is known as "Ahlul Qaraba", this view is supported by Ali Bin Abi Tallib (RAA) and Hanafi school. According to this view, the closer relative excludes the remoter just like in the case of Asabah. And that male takes a portion double of female.

Last view, which is known as "Ahlul Tanzil", which is the view of Hanbali, Maliki, and Shafi'i schools. According to this view, the Dawil arham will step into the shoes of their ascendants. In other words, they will replace their parents, therefore, their share will be the one which was supposed to be alloted to their parents. For instance, a man dies leaving a daughter of daughter, son of germane sister and a daughter of consenguine brother. Hence, in this case these people are entitled to the share of their parents; accordingly, the daughter of daughter is entitled to 1/2, and the son of germane sister is entitled to residue, because his mother (germane sister) becomes an agnate with another in the presence of a daughter. The daughter of consenguine brother is excluded by the son of germane sister, because a germane sister exclude a consenguine brother in this circumstance.[31]

2.1.6.5 Bait al Mal, The Public Treasury

"Bait al mal ul muslimin", or the muslim public treasury, is an institution of Islamic state, which was introduced by Caliph Abu Bakar (RAA) during his period of leadership. Its functions are concerning wealth and the revenue of the state.

According to the Maliki and Shafi'i schools, when a person dies who has neither Qur'anic heirs nor agnatic heirs, his net estate goes to the Bait al Mal ul muslimin; and not to the Dawil arham.[32]

The Maliki jurists and those who supported this view argued that, the Holy Qur'an has categorically spelt out the shares of all those relatives who can possibly be considered as heirs. And there is nothing provided by Holy Qur'an for the Dhawi arham, therefore, they are not entitled to inherit.

They also argued that, it is reported that, a man came to Holy Prophet (SAW), and asked him (SAW) about the share of a paternal and maternal aunts of the deceased. The Holy Prophet (SAW) replied, "They can not inherit anything". In another report he (SAW) said, "I can not find any succession for them".

Accordingly, the jurists argued that, we can not grant any right of inheritance to any person on the bases of mere analogy, without any textual authority. hence, in the event of the death of a heirless deceased, his estate will be taken to the Bait al mal; in lieu of the Qur'anic and agnatic heirs.[33]

Nevertheless, it must be noted that, as it has been earlier discussed, this rule of giving preference to the bait

al mal over the Dawil arham, has been amended by the Maliki and Shafi'i jurists, at the end of second century of Hijra, up to the extent that, if there is no any well established Islamic estate, in its strict sense, or the ruler is not trustworthy, then the estate of a heirless deceased goes to the Dawil arham.[34]

2.1.6.6 Emancipator as an Heir

Emancipator is a person, male or female, who has freed his slave in lieu of monetary consideration, or freed him in the cause of Allah. Accordingly, an emancipator is given the right of "Wala". In other words, at the demise of his heir, in a situation where the freed slave died heirless. However, it should be noted that, a freed can not inherit his former master, in a similar situation, where he died heirless. Because the freed slave is a stranger and has done a great favour to the slave, by giving him a new life as a free man. Hence, because of this favour he is given the right to inherit his former slave.[35]

However, if the emancipator is a non muslim. Then he can never claim the right of inheriting his former slave, even though if he become muslim later on after the emancipation.[36]

2.1.7 The Shares of Each Heir

As it has been earlier discussed that the shares alloted

to the heirs by Holy Qur'an and Sunnah are in form of fractions, and originally they are 2/3, 1/2, 1/3, 1/4, 1/6 and 1/8. Thus, in order to give an entitled heir his share out of the estate, we have to remove the fraction of the shares (for example husband is entitled to 1/2 and the mother 1/3, now here 1/2 and 1/3 are in fractions), so that the heirs will get their exact shares, without any fraction. And it will help in determining the residue for the agnates.

Hence, in order to remove the fraction, we have to find the base of division, which is also known as the divisor of the shares or the roots of cases or "al asal". This is the L.C.M., the least common multiple, that is the L.C.M. of the numbers below the lines in the fractions, that is, the denominator. For instance, the L.C.M. of 1/2, 1/3 and 1/4 is the least common multiple of 2, 3 and 4, which is 12. Thus, this 12, is the base of division of the above mentioned case.[37]

Hence, in order to find the base of division of a case, first of all we have to look at the heirs who are involved in a given case. Thus if the heirs consist of agnates only, then the base of division is their total number. For instance, if a man died and left behind6 sons only. In this case the base of division is the total number of sons,that is, 6. However, if the agnates are both male and females, then the number of males is multiplied by 2, because of the principle that male takes double of females, for instance, a man left 6 sons and 3 daughters, in this case the base is 6 x 2 = 12 + 3 = 15. Thus,

the base of division is 15, the females are entitled to 3 portions, one portion each, while males are entitled to 12, that is 2 portions each.

Nevertheless, if the heirs are the mixture of Qur'anic heirs, then the base of division is the L.C.M. of the denominators of the shares of the heirs. For instance, a man died and left a wife, mother and two germane sisters. Their shares are, 1/4, 1/6, 2/3 respectively. Thus, the base of division of this case is the L.C.M. of 4,6,3 (denominators), which is 12.[38]

To make things more easy the muslim jurists have introduced a formula for those who do not have the knowledge of as how to find out the L.C.M.

Accordingly, the jurists have divided the six Qur'anic shares (1/2,2/3,1/3,1/4,1/6,1/7) into 2 sections, that is section "A" and section "B". The section "A" consists of 1/2, 1/4 and 1/8, while section "B", 2/3, 1/3 and 1/6. Hence, if the 1/2 of section "A" is mixed with the any share of section "B", the base of division is always 6. For example, a woman died and left her husband, 2 germane sisters and mother, their shares are 1/2, 2/3, 1/3. Therefore, according to the formula the base of division is 6.

And if 1/4 of section "A" is mixed with the shares of section "B", then the base always is 12. For instance, a man died left behind his wife 2 germane sisters and mother. Their shares are 1/4, 2/3, and 1/6. Thus here the base of division

is 12. The base will be the same if the 1/2 is also mixed.

If the 1/8 of section "A" is mixed with the shares of section "B", then the base of division is always 24. For instance where a man is survived by his wife, 2 daughters and mother. Their shares are 1/8, 2/3 and 1/6. Accordingly the base of division is 24. The base will remain the same even if 1/2 is mixed as well.

However, on the other hand, if both the sections do not mix with each other then the base of division is always the biggerst denominator of their group. For instance, where a deceased is survived by his wife and a daughter. Their shares are 1/8 and 1/2. In this case the base of division is 8, because it is the biggest denominator. An example for the section "B" is for instance, where a deceased is survived by two germane sisters, uterine sister and mother. Their shares are 2/3, 1/6 and 1/3, thus the base of division is the biggest denominator which is 6.[39]

Hence, after finding out the base of division of a case, the next step to take is to remove the fractions of the shares of each heir. This is done by dividing the denominator of the fractions with the base of division. Thus the outcome of the division is the portion of the heirs without fraction. For instance, where the deceased is survived by her husband, mother and a uterine sister. Their shares are 1/2, 1/3 and 1/6 respectively, thus in this case the base of division is 6. Their portions, without fractions are;

Husband (H) 1/2 divided by 6 = 3 (portion of the husband)

Mother (M) 1/3 divided by 6 = 2 (portion of the mother)

U. Sisters (US) 1/6 divided by 6=1 (portion of the uterine sister).

In a mathematical way the division is as follows:-

H	M	US	
1/2	1/3	1/6	→(shares of the heirs)
3	+ 2	+1	→(portions)
		6	→(base)

It should be noted that, while distributing the estate, the portion of each heir is used. And not the shares in fractions.

The formula which is used to divide the estate is, the estate divided by the base of division and mutiplied by the portion of each heir. That is:-

$$\frac{\text{Estate}}{\text{Base}} \times \text{Portion of a heir} = \text{His share (money)}$$

More illustrations are given below, in case of discussing the shares of the heirs, in the following paragraphs.

2.1.7.1 Shares Alloted To Parents

The rights of parents are emphasised in various chapters

of Holy Qur'an, for instance, 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 third, if the deceased left brothers (or sisters) the mother has a sixth..."[40]

Accordingly, the father has three different cases, and they are;

a) The father is entitled to 1/6 if the deceased is survived by male descendents, how low so ever.

b) He is entitled to a double share; 1/6 and the residue, where the deceased is survived by female descendents only. Or the daughter of son (HLS).

c) He is entitled to residue as an agnatic heir, after the Qur'anic heirs, if any, have taken their shares, if the deceased left no descendents.[41]

2.1.7.2 MOTHER

The mother as well, as the father, has three different cases, that is,

a) She is entitled to 1/6 if the deceased is survived by descendents. Or the son's descendents (H.L.S.). Or where

the deceased is survived by more than one brother and or sister.

b) She is entitled to 1/3 of the net estate, where the deceased is not survived by any descendent and more than one brother or sister.

c) She is entitled to 1/3 of the remaining estate, after the other co-existing Qur'anic heirs have taken their shares.[42]

This situation arises, where the deceased is survived by mother, father and husband or wife. in the absence of the descendents. This case is known as the "Umeryyatain" for the "Gharawatan" case. It is known as such because it was decided by Caliph Umar Bin Khatab.

It was decided as such because, if the mother was to be given her 1/3 of the net estate, then she would have got a share more than that of the father. And this is against the Islamic principle which provides that a male is entitled to a double share of a female, if they are of the same class. Accordingly, Calip Umar held that the mother is entitled to take her 1/3 after the husband or the wife has taken his or her respective share. And the residue goes to the father.[43] It can be more explained as follows:- If the mother is given 1/3 of the net estate;

H	M	F		W	M	F
1/2	1/3	R	or	1/4	1/3	R
3+	2+	1		3+	4+	5
	6				12	

On the other hand, according to the "Umeryyatain" case:-

H	M	F		W	M	F
1/2	1/3	R	or	1/4	1/3	R
3+	1+	2		3+	3+	6
	6				12	

Thus, according to the Umeryyatain case the father is getting a double share of that of mother. That is, in the first case, mother takes one portion out of 6, while the father takes two portions. And in the second case, the mother is entitled to 3 portions out of 12, and the father takes 6 portions out of 12.

2.1.7.3 Shares Allotted To Spouses

In respect of the shares of the spouses the Holy Qur'an provides:-

> "In what your wives leave, your share is a half, if they leave no child. But if they leave a child, you get a fourth after payment of legacies and debts. In what you leave, their (your wives) share is a fourth, if you leave no child. But if you leave a child, they get an eighth after payment of legacies and debts..."[44]

Hence, in the light of the above stated provisions of Qur'an the husband is entitled to the following shares:-

a) He is entitled to 1/2 of the net estate if the deceased is not survived by any descendent, whether male or female.

b) The husband is entitled to 1/4 if his deceased wife is survived by her children, whether male or female.[45]

Wife or Wives

The wife has the following shares, from the estate of deceased husband,

a) She is entitled to 1/4 of the net estate, if the deceased is not survived by any descendent, male or female.

b) The wife is entitled to 1/8 of the net estate, if her deceased husband is survived by his descendents.

It should be noted that, if the husband is survived by more than one wife, they share the above stated shares equally.

Nevertheless, it should be noted at this juncture that, the spouses are only entitled to inherit subject to the following conditions.

Firstly, there has to be a valid marriage contract existing between the spouses whether the marriage had been consumated or not. What is important is that, the conjugal relationship, whether in fact or in law, must be in existance at the time of the death of either spouse. Hence, the second condition to be satisfied is that the conjugal relationship must have been in existence whether in fact or in law. The relationship exists in fact, where the marriage was still in existence and the spouses were living together at the time of the death of either of them. And the relationship exists in law where the wife has been divorced and she is still serving her iddah.[46]

2.1.7.4 Shares allotted to the Female Decendants

The Holy Qur'an provides to this regards that:-

> "Allah (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females. If only daughters, two or more, their share is two-thirds of the inheritance. If only one, her share is a half..."[47]

Hence, by virtue of the above mentioned verse of Holy Qur'an, the daughters have three cases of inheritance:-

a) Where there is only one daughter she is entitled to 1/2 of the net estate of her parents, if she does not co-exist with her male counterpart, that is the son of the deceased.

b) Where there is more than one daughter (two or more), they take two-third of the net estate in the absence of their male counterpart (son).

However, there are differences of opinions as regards to the share of two daughters. This disagreement arose due to the fact that the above stated verse of Holy Qur'an talks of two-third as the share of more than two daughters and it is silent about two daughters only. However, according to the majority of the jurists, the two daughters are entitled to two third. Their authority is the Hadith of Jabir Bin Abdullah which is reported by Sahih al Tirmizi, which states:-

> Narrated by Jabir Bin Abdullah that, "the wife of Sa'ad Rabiy come with her two daughters by Sa'ad Bin Rabiy to the Messenger of Allah (SAW) and she said: "O Messenger of Allah, they are the two daughters of Sa'ad Bin Rabiy, their father was martyred with you on the day of Uhud, and their uncle has taken their property. He hasm left any property for them, and they can not be married unless they have got property. He (SAW) said "Allah

will act about that".

Hence, the verses of inheritance were revealed (Ch. 4:11). So the Holy Prophet (SAW) sent for their uncle and said: "Give the two daughters of Sa'ad two-third (2/3) and give their mother 1/8, and what remains is for you".[48]

However, according to the other view which is affiliated to Ibn Abbas (RAA) that the two daughters are entitled to only 1/2 and not 2/3, because this is how he interpretated the above stated verse of Holy Qur'an. However, according to Ibn Rushd this is not the opinion of Ibn Abbas, rather his opinion is in agreement with the majority. That is the two daughters are entitled to two-third (2/3).[49]

c) Where the daugher(s) coexist with her male counterpart, then she inherits as an agnate by another (asaba bil ghair). That is, she is entitled to residue along with her brother (son), on the basis of male taking a double share of the female. That is, after all the other Qur'anic heirs, if any, have taken their assigned shares, then whatever is remaining go to them as residue according to the above stated principle.[50] For instance, where a woman is survived by her Husband, father, mother, daughter and 2 sons. Their shares are as follows:-

H	F	M	D	2S
			↓	
1/4	1/6	1/6	R = 5	
3+	2+	2+	5 (1+2+2)	

12

2.1.7.5 Daughter of Son

She is the grand daughter of the deceased person through his/her son. And she is the only grand daughter who is allowed to inherit in Islamic Law. Accordingly, the daughter of son has five different cases of inheritance. They are as follows:-

a) She is entitled to 1/2 of the net estate of her grant-parent, if she does not co-exist with her male counterpart. And in the absence of direct son or daughter of the deceased.

b) Where there are more than one daughter of son, they are entitled to 2/3. In the absence of her male counterpart (son of son) and direct descendants of the deceased person (sons or and daughters).

c) And in a situation where she is co-existing with a direct daughter, she is entitled to 1/6. In the absence of son of son and direct son.

d) She is entitled to inherit as an agnate by another (asaba bil ghair). That is in the presence of a son of son,

both of them will take the residue after other Qur'anic heirs have taken their shares. On the bases of male taking a double portion of the female.

e) She is completely excluded from inheritance, if she co-exist with a direct son or a male descendent who is more closer than her. She is also excluded in a situation where there are more than one daughter and there is no one to agnatise her that is her male counter-part (son of son) or a son from a lower class who would help her to become an agnate by another (son of son of son HLS). For instance, a case where a deceased is survived by his wife, two daughters and a daughter of son.[51] Their shares are as follows:-

W	2D	DS
1/8	2/3	EX

However, in a situation where a son of son or son of son of son coexists in the above stated case, their shares are as follows:-

W	2D	DS	SS
		↓	
1/8	2/3	R = 5	
3	+ 16	+ 5	

2.1.7.6 Shares Allotted To Female Collaterals

These are the direct sisters of the deceased person. For the purpose of their right in the inheritance under Islamic Law, they have been divided into three classes. That is;

1. Germane sisters; she is the full sister who is related to the deceased through full blood, that is, same father and mother with the deceased.
2. Consenguine sister; she is the half sister, that is she has the same father with the deceased but different mother.
3. Uterine sister; she shares a same mother with the deceased person but a different father.

The shares of these female collaterals have been explicitly provided for by Holy Qur'an in two different places. Thus it provides:-

> "If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or sister, each one of the two get one sixth but if more than that, they share one third".[52]

And in the second verse Qur'an provides:-

> "They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants of ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, Who left no child, her brother takes her inheritance; If there are two sisters, they shall have two-thirds of the inheritance (between them). If there are brothers and sisters, (they share) the male having twice the share of female. Thus Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things".[53]

According to the unanimous view of the muslim jurists, the first verse of the Holy Qur'an, that is CH. 4:12, is speaking of the Uterine brothers and sisters. Because the inheritance of both Germane and Consanguine collaterals have been spelt out by Holy Qur'an in CH. 4:176. Where the sisters are entitle to inherit as Qur'anic heirs as well as an agnatic heirs, while coexisting with their male counterpart. And the uterine sisters and brothers, on the other hand, are only entitle to inherite as Qur'anic heirs, thus they never inherit as agnate heirs. It should be noted that, as far as, the uterine collaterals are concern, if both male and female coexist in a case, the principle of male taking double share of female is not applicable. Due to the fact that, the uterine collaterals

are related to the deceased through a female relative (mother). Accordingly, perhaps, the uterine brother is also considered to be a female, as far as inheritance is concerned. Therefore, he can not agnatise any one else. (And Allah knows Better). And the agnatic heirs, on the other hand, are always related to the deceased through a male relative.

2.1.7.7 Uterine Sisters/Brothers

Hence in the line of the above mentioned verses of Holy Qur/an, the uterine sisters and brothers have three different cases:-

a) The uterine sister or brother is entitled to one-sixth (1/6), in a case where he or she is only one. And in the absence of descendants and male ascendants of the deceased person.

b) Where there are two or more uterine brothers and or sisters, they are entitled to one-third (1/3), male and female share it equally.

c) They are totally excluded by the descendants and the male ascendants of the deceased person.[54]

2.1.7.8 Germane Sisters

The germane sister have five different cases, and they are:-

a) She is entitled to 1/2, when she is alone. And in the

absence of her male counterpart and the descendants and male ascendant of the deceased person.

b) They are taking 2/3 if they are more than one. And in the absence of her male counterpart and the descendants and male ascendant of the deceased person.

c) She is entitled to inherit as an agnatic heir by another (asaba bil ghair). When she is inheriting along with her male counterpart (germane brother). In the absence of male descendants and male ascendant of the deceased person.

d) She is entitled to inherit as an agnate with another (asaba ma al ghair). That is when she is inheriting along with the daughter or daughter of son. Hence in this case she takes residue, if any, after other Qur'anic heirs have taken their respective shares. In the absence of her male counterpart and any male descendant and male ascendant of the deceased, that is his father.

e) She is completely excluded from inheritance in the presence of the father of the deceased and the male descendants how low so ever.[55]

2.1.7.9 Consanguine Sisters

She is the sister of the deceased person who is related to him/her only through father. For the purpose of inheritance she has six different cases, they are as follows:-

a) She is entitled to 1/2, when she is only one, in the absence of a germane brothers and sisters, and in the absence of a consanguine brother. Also in the absence of the descendants and male ascendant of the deceased person.

b) They take 2/3 when they are more than one, in the absence of their male counterpart. And in the absence of descedants and male ascendant of the deceased person.

c) She is entitled to take 1/6 when she coexist with one germane sister, to complete the female share of 2/3. In the absence of their male counterparts and the descendants and male ascendants of the deceased.

d) She inherits as an agnatic heir in the presence of her male counterpart that is consanguine brother, as an agnate by another (asaba bil Ghair), where there are no germane brother and sister to claim the residue as the more closer asaba than the consanguine collaterals. And in the absence of the male descendants and male ascendant of the deceased.

e) She is entitled to take the residue as an agnate with another (asaba ma al Ghair), when she is coexisting with the daughter or daughter of son. In the absence of her male counterpart and other germane collaterals. And in the absence of the male descendants and male ascendant of the deceased person.

f) And lastly she is completely excluded in the presence of the male descendants, father, germane brother and sister

when they are inheriting as agnate with another. She is also excluded when there are more than one germane sister and there is no consanguine brother who would have agnatised her.

The authority of the entitlement of the Germane and Consanguine sisters as an agnate with another (asaba ma al ghair) is the tradition of Holy Prophet (SAW) which is reported by Huzail Bin Shurahbil that a person came to Abu Musa and Sulaiman Bin Rabia, and asked them about the right of inheritance of a daughter, and daughter of son and a full sister by the same father and mother (when they are coexisting). They replied that a daughter is to be given one half (1/2) and for the sister is half (1/2). And they adviced the man to consult Abdullah Ibn Mas'ud, remarking that he would agree with them. The man went to Abdullah and told him what they have advised him. There upon Abdullah said, "I shall be a sinner and not on right path (if I conform to their opinion). But I shall say what the Holy Prophet (SAW) had observed. That is, one half (1/2) is the share of the daughter and one sixty (1/6) for the daughter of son, thus completing the two third (2/3). And the remaining for the sister (germane). He (the man) then return to Abu Musa and intimated to him of the saying of Ibn Mas'ud. He (Abu Musa) said, "Do not ask me of any legal decision as long as this learned man is among us".[56]

It should be noted at this juncture that, this tradition

is also applicable in the case of the consanguine sister, because in the absence of a germane sister, the consanguine sister steps into her shoes and inherit as a germane sister.

It should be noted at this juncture that, woman in Islamic law generally takes half of the share of her male counterpart, as it has been observed in the above stated paragraphs. The daughter takes half the share of the son, the wife takes half the share of the husband. The Germane and Consanguine sisters half the share of their male counterparts (Germane and Consanguine brother). However, as it has been earlier discussed that, the uterine sisters take a share equal to that of their male counterparts (uterine brother), and also in the case of "Himariyya" where all the collaterals, male and female, share 1/3, their entitlement equally.

One of the reasons often given by muslim jurists for a female taking half the share of her male counterpart is that, a female in Islam does not shoulder the legal financial responsibility. On the contrary, she is always taken care of in all aspects especially financially. A female as a daughter is always maintained by her parents until she marries. And as a wife her husband is the one who is responsible for her full maintenance, including feeding, shelter, clothing, medicine and the others. A man on the other hand, at almost every stage of his life is under an obligation to maintain his other relatives. As a father he has his children to maintain. And as a husband he is responsible for the full maintenance of his

wife. It is very logical therefore, that a man should be entitled to a larger portion of property than the female in Islam, since he shoulders more financial responsibility as a compulsory legal duty. Any how, Allah knows best the rationale behind every rule He makes, and He does not make a rule except it is the best for the mankind.

2.1.7.10 The Shares of Grand Mothers

The grand mother, whether paternal or maternal (MF or MM), is entitled to two different shares, that is:-

a) She is entitled to inherit 1/6 of the net estate, whether she is one or more. And whether they are maternal or paternal or a mixture of them. In the absence of a mother or a closer grand mother. For example where the deceased is survived by a wife, paternal grand mother (FM) and the maternal grand mother (MM) and a germane brother (GB). Their shares are as follows:-



1/4		1/6		R = 7
3	+	2	+	7

12

2.2 Grounds of Inheritance.

The word grounds here are meant the basis on which an heir can claim, legimately, his or her right to inherit from the deceased person. Without the ground or the basis for inheritance, a purported heir cannot lay the claim of inheritance, in any way.

The purpose of this heading is to highlight those grounds of inheritance briefly.

2.2.1 Blood Relationship

This is one of the most important grounds of inheritance. The scope of this ground is so wide as to heirs like children, parents, siblings, uncles of the deceased person respectively. With the exception of a number of few heirs, such as the mother, mother's mother, uterine brothers or sisters of the deceased person, whoever lays any claim of inheritance from the deceased must have a sound blood relationship with him or her.

2.2.2 Marriage

Marriage is another type of ground of inheritance on the basis of which a surviving spouse can lay the claim of inheritance, also. For the purpose of this study, marriage as a ground of inheritance is divided into valid (sahih), irregular (fasid) and void ab anitio (batil)

2.2.2.1 Valid marriage (Sahih)

A marriage is said to be valid when it comforms with all the elements and conditions of validity such as the formular, witnesses, sadaq, quardian, witness and spouses. Once the

marriage becomes valid, the surviving spouse on one hand and the children of that marriage on the other hand are legally entitled to inherit from the deceased person.

All the Muslim jurists agree to this.

2.2.2.2 **Irregular marriage (fasid)**

This is a marriage whose legal defect is so minor as to render it voidable. For instance, where the marriage contract is concluded without making mention of the sadaq the marriage, once consumated, is held irregular. It is allowed to continue upon settling of the sadaq. This type of marriage is peculiar to the Maliki school alone. The surviving widow or widower of this marriage may inherit legitimately from the estate of the deceased, and

2.2.2.3 **Void marriage (Batil)**

This kind of marriage is agreed upon by all the Muslim jurists as having no legal effect whatsoever.

Like the two kinds of marriages discussed above, it does give any legal effect to any of the spouses. It is the marriage whose legal defects becomes so serious to the extent of going against its fundamentals. For instance, where the spouses happen to contract the marriage within the prohibited degree, that marriage is void forever. There is nothing to regularise it, as to become valid. The surviving spouse and the child of this marriage cannot inherit the deceased person in whatever way.

2.2.3 Emancipation

This is a third ground of inheritance. It is a relationship between a freed slave and his former master. Where the freed slave dies without an heir to inherit him/her or the heir to inherit does exist but that she cannot take al lthe estate, the remaining estate may be taken over by the emancipator. This is provided by the tradition of the Prophet (SAW) which says that the relationship between the freed slave and his master is like that of blood relationship. In view of the fact that the institution of slavery has been abolished, discussion on this topic is purely academic, which lacks practical relevance in our contemporary world.

2.3 IMPEDIMENTS TO INHERITANCE

As it has been discussed in the previous pages that before a person can claim heir or her right to inherit their deceased relative, they must show that they are related to him through one of the grounds of inheritance. Nevertheless, a situation may arise whereby a relative is barred to claim his right to inherit even though he might be duly falling under one of the grounds of inheritance. This is a situation whereby he is falling within one of the impediments to inheritance. These impediments are those factors which are recognized by Shari'a as those acts if committed by a heir, or he found himself in without his own act, would bar him from inheriting his deceased relative.[63] There are three impediments to inheritance, which

have been unanimously agreed upon by the four Sunni schools, they are:-

1. Killing
2. Difference of Religions
3. Slavery[64]

2.3.1 KILLING - QATAL

Qatal, killing, homicide, manslaughter, all are the names given to the act of taking the life of a fellow human being. The act of killing is condemned by all the legal systems of the world, since time immemorial.

In the same vein, Islam has condemned this act vehemently, as the Holy Qur'an states, "Never should a believer kill a believer, but (if it so happens) by mistake...."[65]

"If a man kills a believer intentionally, his recompense is hell, to abide there in (forever) and the wrath and the curse of God are upon him, and a dreadful penalty is prepared for him".[66]

"O ye who believe, the law of equality is prescribed to you in cases of murder, the free for free, the slave for the slave, the woman for the woman..."[67]

In the same vein, in islamic law of inheritance, killing is considered to be an impediment to inheritance. Because if a killer is to be allowed to inherit the person he killed, it

would become rampant. That is, the relatives would kill their rich relative so that they could inherit his estate. Therefore, in order to avoid such possibilities, Islam has provided rules impeding the killer to inherit. As it has been reported by Umar Bin Khatab (RAA) that,

"I heard Holy Prophet (SAW) saying, "The killer inherit nothing".[68]

And it is reported by Abu Hurairah (RAA) that the Holy Prophet (SAW) said, "The murderer shall not inherit".[69]

Hence, in the light of the above stated traditions of the Holy Prophet (SAW), it is clear that a killer can not inherit, at all, the person he killed.

However, jurists from the four Sunni schools, have different views, as regards to the type of killing which can prevent the killer from inheritance. Hence, for the purpose of considering the act of killing as an impediment, it has been classified as follows:-

i. Intentional killing
ii. Mistaken killing
iii. Quasi Intentional Killing
iv. Quasi Mistaken Killing[70]

i. Intentional Killing (Qatal al-Amad)

This is the murder of a human life with a clear, malicious

and unjustifiable intent.[71] Beside the sentence of death or the payment of the blood money, diyyah, there is a great punishment reserved for the killer to be met out on the Resurrection Day. This is provided for by the Holy Qur'an,

> "Those who invoke not, with God, any other god, nor slay such life as God has made sacred, except for just cause, nor commit fornication; and any that does this (not only) meets punishment, (but) the penalty on the Day of Judgement will be doubled to him, and he will dwell there-in in ignominy".[72]

As regards to the punishment in this world, Holy Qur'an says, "Nor take life which God has made sacred except for just cause. And if anyone if slain wrongfully We have given his heirs authority (to demand Qisas or to forgive)".[73]

In the same vein, the Holy Prophet (SAW), is reported by Abi Said al-Khudri and Abu Hurairah (RAA), to have said,

"If all the inhabitants of the heaven and the earth take part in the murder of a believer, Allah will throw them all into Hell".[74]

There are many other traditions of Holy Prophet (SAW), which provides that, killing is a detestable, infamous and a barbaric act.

However, it should be noted that, in some situations an

intentional killing might not be committed with a malicious and unjustifiable intent, this killing is known as legal killing. This situation may arise whereby a person participated in stoning to death of an adulterer, or killing is done inform of retaliation or Qisas by the order of a court, etc. All the above stated killings are considered to be legal killings, which do not inflict any punishment on the killer, neither retaliation nor expiation.[75]

ii. Mistaken Killing (Qatal al-Khata)

This is an act of manslaughter, which is caused by a person without any intention to do so. It may be due to the mistake of fact, that is, where a hunter shot at an animal prey, but later discover it to be a human being. Or where a hunter aimed his gun at an animal, but he missed his target and the bullet hit a human being. This killing committed in the above examples is considered to be a mistaken killing. And the person who caused the killing is required to pay blood money to the heirs of the deceased.[76]

iii. Quasi Intentional Killing (al-Qatal Shubha Al-amad)

This is an act of manslaughter which is neither intentional nor mistaken. Because in this case the deceased is hit with an implement which normally does not cause death of a human being, such as hitting with a stick or a small stone or slapping, etc. Hence, in the above stated situations, if a

person dies, such killing is known as Quasi intentional killing, because a force is used to hit the deceased, but without an intent to kill. And it is not a mistaken killing either, because in the mistaken killing there is no any intention to hit, but it happened accidently. The person who caused the killing is required to pay the blood money to the heirs of the deceased.[77]

The above stated principle, is the view of the majority of jurists. But according to the Maliki school, if a person dies in the above stated situations, such killing is an intentional killing, even if the deceased was hit with an implement which does not normally kills. Accordingly, the principle of retaliation is applicable in this case.[78]

iv. Quasi Mistaken Killing (Al-Qatal Shubha al-Khata)

This is a situation whereby a person, while under the influence of sleep, caused the death of another person. Or where a person who fall on another and caused his death. In the above cases the person who caused the death is required to perform "Kafara" or expiation.[79]

The above stated are the four classes of murder, which are classified as such for the purpose of impeding the killer from the inheritance.

According to the Hanafi school, all those killings which impose Qisas or Kafara on the killer, are factors of impediment to inheritance. Therefore, according to this school, all the

above stated classes of killing will bar the killer to inherit the person he killed, even the mistaken killing.[80] They base their opinion on the tradition of Holy Prophet (SAW) which is reported by Umar Bin Shiba (RAA), a man killed his wife by mistake, and the Holy Prophet (SAW) ordered him,

"Give her blood money and you will not inherit her".[81]

They further argued that, the tradition reported by Umar Bin Khatab (RAA) which says that the killer inherits nothing does not qualify the type of killing, therefore, all kind of killings are impediments to inheritance. It is also reported that a man threw a stone which accidently hit his mother and killed her. The man wanted to have a share from her estate. But his brothers refused to give him anything. Thus, they took the matter to Ali Bin Abi Talib (RAA). Ali (RAA) replied to him, "Your share from her inheritance, is the stone you hit her with. Pay the blood money and you are not entitled to inherit anything".[82]

And according Jabir Bin Zaid (RAA), when a man kills a man or woman intentionally or mistakenly, he cannot inherit any one of them. And similarly, if a woman kills a man or woman, she too, is not entitled to inherit any one of them. He further said that, this is how Umar Bin Khatab (RAA) Shariah and other muslim judges, use to decide.[83]

The reason why a mistaken killing is also considered to be an impediment is that, the act of killing is a prohibited act ad initio, whether intentional or mistaken. Because if a

mistaken killing is not considered to be an impediment, it would open a way to kill one's rich relatives and claim the defence of mistaken killing.

However, according to Hanafi school, there are certain killings, which do not bar the killer to inherit his victim; and he is not punished under the Islamic Criminal Law. Thus, where a minor or a lunatic kills, he is not barred to inherit the deceased, because such persons are immune from all legal responsibilities.[84]

Secondly, where a killing is committed by the order of a court, where someone is given the right to kill in retaliation or Qisas. Or where the heir participated in stoning to death of an adulterer; or where the heir is an executioner. Or where the heir while using his right of self defence killed the other.[85]

Thirdly, a heir is not barred to inherit his victim, where he killed him in the heat of provocation. This may happen, for instance, where the killer found his wife, daughter or daughter in law, in the act of adultery and kill her or both of them in self defence.[86]

And lastly, a person is not held responsible for the death of the deceased, which is caused by his innocent act. For instance, where he dug a well and the deceased fall in it and died; or where he kept a big stone and the deceased collided with it and died.[87]

According to the Maliki school the killing which is an

impediment to inheritance is the intentional killing only, which must have been committed with a malicious and unjustifiable intention. Any one who committed this intentional killing, whether he is an adult, minor or a lunatic, would be impeded to inherit his victim.[88]

Accordingly, any killing which is not committed with a malicious and unjustifiable intent, is not an impediment to inheritance. Therefore, there are only two types of killings, intentional and mistaken killings. As it is provided for by the Holy Qur'an, "Never should a believer kill a believer; but (if so happens) by mistake, (compensation is due) if one (so) kills a believer.."[89]

"If a man kills a believer intentionally, his recompense is Hell, to abide therein (forever)..."[90]

In the same vein, the Maliki jurists opine that, since a mistake killing is excused by Allah and the offender is to pay diyyah only, therefore, such killing can not bar him to inherit his victim. However, he is not entitled to claim a share from the blood money he paid.[91] This blood money is to be shared by other heirs of the deceased, in proportion to their legal entitlements. As it is reported by Amru Bin Shuaib from his father, from his grandfather that, the Holy Prophet (SAW) decided that, "Blood money is an estate, which is to be shared by the heirs of the murdered in proportion to their legal entitlements".[92]

However, as regards to the legal killings, the Maliki

school have a similar opinion as that of Hanafi school. Thus, for instance, where a person is an executioner, or the killing is committed in self defence, etc. These killings are not impediments to inheritance.[93]

The Shafi'i school on the other hand, have taken entirely a different stand as regards to the killing which could bar the killer from inheriting his victim. Hence, according to this school all kind of killings are impediments to inheritance. Being it an intentional, mistaken, Quasi intentional or the quasi mistaken killings. Whether it was a legally backed killing or killing committed in self defence or in the heat of provocation. Or where the killing is committed by a minor a lunatic or a sleeping person. All these killings are impediment to inheritance.[94]

They further opine that, in a case of legal killings, the person who passed the sentence, the judge; the person who executed the sentence, the executioner; the witness who gave evidence, all the above mentioned people are impeded to inherit the deceased because of their participation, by one way or the other, in causing the death of their relative.[95]

By and large, according to this school, a person who caused the death of his relative directly or indirectly is barred to inherit the deceased. This school has taken the tradition of Holy Prophet (SAW), as it is, without giving any other interpretation. That is the tradition reported by Umar Bin Khatab (RAA) which says, "The killer inherit nothing".

Also the tradition which says, "There is nothing for the killer from the estate of the killed".

In the above mentioned traditions, word "Qata" is used, which simply means, killing; and it is not qualified as to which kind of killing, intentional, mistaken or the other type of killings. Therefore, all kind of murders are impediment to inheritance.[96]

According to the Hanbali school, the killing which would bar a person to inherit, is the killing which is punished by Shari'ah, either by Qiyas, diyyah or kafara. Hence, any killing which is followed by any kind of punishment is an impediment to inheritance, whether it is committed by a minor or lunatic. Thus, all the above stated four classes of murders would impede the killer. Nevertheless, the killing which is backed by Shari'ah, is not an impediment. Because they are not punished.[97]

2.3.2 DIFFERENCE OF RELIGION

This is a situation whereby the religion of the deceased is different from that of his existing relatives. Hence, where the religion of the deceased is different from his heirs, then the heirs are barred or impeded to inherit him.[98]

This impediment, arising due to the difference of religion, can be discussed under three sub-headings:-

i. Inheritance between Muslims and non Muslims

ii. Inheritance of an apostate or "Al-Murtad"

iii. Inheritance between a Muslim and a non Muslim

It is an unanimous view of the Muslim jurists that, a non Muslim can never inherit his Muslim relative. As it is provided for, by the Holy Qur'an, "...and never will God grant to the unbeliever a way (to triumph) over the believer".[99]

And it is reported by usama Bin Zaid (RAA) that, the Holy Prophet (SAW) said, "A Muslim can not be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim".[100]

Hence, in the light of the above stated authorities, difference of religion between the heirs and the deceased is, undoubtedly, a factor of impediment to inheritance.

Nevertheless, the Muslim Jurists have differed as regards to a situation whereby after the death of a Muslim relative, but before the distribution of the estate, the non Muslim heir converted to Islam.

According to Imam Abu Hanifa, Imam Shafi'i and Imam Malik, a non Muslim can never inherit his deceased Muslim relative, whether he converted to islam before the distribution or after the distribution of the estate.[101]

However, according to Imam Ahmad Bin Hanbal, a non Muslim relative can inherit his Muslim relative, if he converted to Islam after the death, but before the distribution of the estate.[102]

As regards to the right of a Muslim to inherit his non Muslim relative, the jurists have different of opinions. According to the majority of the jurists, a Muslim is not allowed to inherit his non Muslim relative.[103] They argued that, the tradition of Holy Prophet (SAW) has provided explicitly that, a Muslim can not be the heir of a disbeliever. It is also reported by Ali Bin Hussain Bin Ali Bin Abi Tali that,

> "At the death of Abu Talib, the father of Ali and Jafar (RAA), only Aqeel and Talib inherited him, because at his death, both Talib and Aqeel were disbelievers, that is why they inherited their deceased disbeliever father; while Ali and Jafar (RAA) were Muslims, therefore, they did not inherit their disbeliever father".[104]

Therefore, in the same vein, the majority of jurists hold the opinion that, a Muslim is impeded to inherit their non Muslim relative.

Nevertheless, some jurists and the companions (RAA) of the Holy Prophet (SAW) are of the view that, a Muslim can inherit his non Muslim relative. Among these Sahaba and jurists are, Ma'az Bin Jabel (RAA), Mu'awiyyah Bin Abu Sufyan (RAA), Hassan Bassari, Muhammad Bin Hanifa and Masrooq.[105]

They based their opinion on a tradition of Holy Prophet (SAW), which is reported by Ma'az Bin Jabel (RAA) that, the Holy Prophet (SAW) said, "..Islam gains, but never losses".[106]

They argued that, in the vein, a believer is allowed to marry a disbeliever woman, but not vice versa. Therefore, in inheritance as well, a Muslim can inherit a non Muslim but not vice versa.[107]

The majority on the other hand, argued that the tradition quoted above is as regards to the victories and the converts Islam gained and the losses are referring to an apostate who is to be killed. Secondly, this tradition is not directly referring to a case of inheritance, while the tradition which says that, a Muslim can not inherit a disbeliever, is a direct and explicit tradition, covering the issue of inheritance between a Muslim and non Muslim. Therefore, it is more stronger than the one quoted by the minority.[108]

Imam Ahmed Bin Habal is of the view that, a Muslim can only inherit a disbeliever, if the disbeliever was his freed slave, because in this case, the Muslim will inherit him as an emancipator.[109] As it is reported by Jabir (RAA) that, Holy Prophet (SAW said, "A Muslim can not inherit a christian, except if he was
his slave".[110]

However, according to Imam Abu Hanifa, Imam Malik and Imam Shafi'i, a Muslim can never ever inherit a disbeliever, whether he is related to him through blood relationship, or marriage, or emancipation.[111]

2.3.3 SLAVERY

Slavery is considered to be a factor of impeding a slave to inherit. Even though this factor is not caused by the act of the slave himself, rather he found himself in it.[112] A slave can not inherit his relative nor can his relative inherit him. Because a slave is considered to be the estate of his master, therefore, if he is allowed to inherit, indirectly it would be his master who would actually gain.[113] To this regard Holy Qur'an says, "God sets forth the parable (of two men: one) a slave under the dominion of another; he has no power of any sort..."[114]

And it is report that the Holy Prophet (SAW) said, "A slave does not posses anything, except the right to divorce".[115]

In the light of the above state authorities, the jurists have unanimously agreed that, slavery is an impediment to inheritance.

The above discussed, three impediments to inheritance, are those impediments which have been unanimously agreed upon by the four Sunni schools of Islamic jurisprudence. Nevertheless, there are some other factors which are as well considered, by some jurists, to be impediments to inheritance. For instance, according to Maliki jurists, the act of "Lian", Common Calamity and doubtedness in the existence of a preapositus or a heir, are as well impediments to inheritance.[116]

FOOTNOTES:

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CHAPTER THREE

3.0 COMPETITION OF FATHER'S FATHER WITH COLLATERALS

In the previous chapters we discussed the rules and regulations government the distributions of the estate of the deceased. We have also observed that, Islamic Law of inheritance is the most comprehensive branch of Shari'ah, in the sense that, most of its rules and regulations guiding the distribution of the estate are directly provided for by the primary sources of the Shari'ah.

In the same vein, the shares of each heir have been categorically provided for by Holy Our'an and or the Sunnah of Holy Prophet (SAW). Nevertheless, there are certain heirs whose entitlement have not been so categorically provided for by The Our'an and the Sunnah. Rather the matter have been left open for the jurists to solve with the help of primary and the secondary sources. Hence, the jurists have used certain verses of Holy Our'an and the traditions of the Holy Prophet (SAW), to deduct the shares of such heirs. Among these heirs is the entitlement of a father's father when he is coexisting with the collaterals of the deceased. This kind of problem had never arisen during the life time of the Holy Prophet (SAW) therefore, to fill this gap, the companions of the Prophet (RAA) had not alternative but to resort to Ijtihad whenever they were confronted with a problem involving father's father and the siblings.[1]

Hence, in trying to solve such kind of legal problems, controversy among the Sahaba (RAA) was inevitable.[2] It is reported that, the first case involving a father's father and a sibling was brought to Caliph Abu Bakar (RAA) for his decision.

Because of its complex nature, Caliph Abu Bakar (RAA) contacted Sahaba (RAA) for their view. The Sahaba (RAA) came out with seven different solutions. Among them two were considered to be the main solutions, while other were, somehow, extension to the main ideas.[3] Thus because of this diversity among the Sahaba (RAA), this particular case was given the name of "Al-Khuraqa", which means tatters, which signifies theextent to which the views of the companions (RAA) were torn and divided on the case.[4] The case shall be discussed later (Inshallah). And it is reported, some of the great Sahaba (RAA) were afraid of solving the legal problems involving the collaterals and the grand father. And they discouraged others to do so. Ali Bin Abi Talib (RAA) or Umar Bin Khatab (RAA) are being reported to have said, "Who so ever attempts to solve the case of grand father, is making an attempt towards fire".[5] In another report, Ali Bin Abi Talib (RAA) said, "Whosoever like to rush towards the virus of Hell, should decide among the grand father and the collaterals".[6] And in one report, Abdullah Ibn Masood (RAA) said, "Ask me any question concerning your obligations, but never ask me about the (competition) of Grand father and the siblings, there is no Allah's Blessing in it".[7]

Hence, in the light of the above facts, in this chapter, (Inshallah) the different views of these erudite Sahaba (RAA) and the jurists shall be discussed to see how far have they gone from each other in trying to solve this problem.

3.1 Definition of Grand Father

In Islamic Law of Inheritance, the word used for the Grand Father is "Al-Jad" which is derived from the word "Jadd", which means, fore-fathers; ancestor, it also means Father's father (H.H.S) as well as Mother's Father (H.H.S).[8]

For the purpose of inheritance "Jad" have been classified into:-

1. AL-JAD GHAIR AL-SAHIH or AL-FASID
2. AL-JAD AL-SAHIH.[9]

3.1.1 AL-JAD GHAIR AL-SAHIH

Al Jad Ghair Al-Sahih, literally means the untrue or the invalid grand father.[10] And technically it means, a person in whose line of relationship with the deceased a female exists.[11] In other words, it means that a grand father who is related to the deceased through his or her mother, that is, the mother's father, how high so ever (h.h.s.). This include the mother's father, mother's father's father or father's mother's father.[12]

A untrue or false grand father is neither a Qur'anic heir

nor an agnatic heir (asabah).[13] However, he can inherit as a member of outer family or kindred heir (Dhawil arham).[14] As it has been earlier observed that, a kindred heir is only entitled to inherit where there is no any agnatic (asabah) or the Qur'anic heir (Ashab Alfarudh) except spouses. Hence, in nutshell, all the rules and regulations governing the shares of the Dhawil arham are applicable to the false grand father.[15]

3.1.2 AL-JAD AL-SAHIH

A-Jad Al-Sahih, literally means to be a true or real grand father.[16] While, technically it means to be a person in whose line of relationship with the deceased, a female does not exist.[17] In other words, it means father who is related to the deceased through a father, how high soever (h.h.s). Therefore, the male ascendents of the father come under this category, that is, father's father or father's father's father, (h.h.s). It should be noted that it is this true grand father who is entitled to inherit as a Qur'anic heir and also as anagnatic heir.[18]

The entitlement of a true grand father can be discussed under two broad headings:-

A. Shares of grand father in the absence of collaterals, and

B. The shares of grand father in competion with the collaterals

3.2 The shares of Grand Father in the Absence of Collaterals

It is a unanimous view of the all Muslim jurists that a true grand father is considered to be a father in his absence.[19] Because, the Holy Qur'an has titled the fore fathers as father in many places such as, "....in the same manner as He got your parents out of the Garden".[20]

In another place Holy Qur'an says, "And follow the ways of my fathers - Ibrahim, Isaac and Jacob".[21]

Hence in the above stated authorities it is clear that the forefathers are given the title of "abb", or father. This signifies that, the forefathers are given the same level of relationship with the father. Thus, in the light of the above authorities, the jurists held that in the absence of the father, the more closer father of father steps into the shoes of the direct father, thereby inherits as if a father would have inherited.[22] As it is stated in the Holy Qur'an, " F o r parents a sixth share of the inheritance to each if the deceased left children, and if no children and the parents are the (only) heirs..."[23]

And in a tradition of Holy Prophet (SAW), which is reported by Ibn Abbas (RAA), the Holy Prophet (SAW) said, "Give the Qur'anic shares to those who are entitled to recieve it and whatever remains should be given to the closest male relative of the deceased".[24]

Hence, it is clear from the above stated Tradition that, in the absence of any more closer male relative such as son or the son of son, how low soever, the next closest male is entitled to inherit the residue, which is the father and in his absence it is the father's father, how high soever.

Nevertheless, it should be noted that there are certain exceptions to the general rule that, the father's father steps into the shoes of father, in his absence.[25]

Among the exceptions, is the situation which is known as "Ummaryatain" case. In this case the mother is forced to take 1/3 of the remaining of the estate.[26] This is done to allow the father to take a double share of mother to comply with the verse of Holy Qur'an, which states, "....To the male a portion equal to that of two females.."[27]

However, the jurists have unanimously agreed that, a fathers father can not compel the mother to take 1/3 of the remaining, rather, she would take her actual share which is 1/3 of the net estate.[28]

The second exception is that, the father always exclude his mother, that is, the father's mother; while a father's father can not exclude her.[29]

And thirdly, a father can never be completely excluded; while a grand father, on the other hand, is excluded by a more closer father.[30]

Another exception to the general rule is that, a father always excludes the collaterals, because he is more closer to

the deceased than the collaterals, on the other hand, according to the majority of the jurists, a father's father can never exclude the collaterals, except the uterine siblings.[31]

By and large, under this heading, the shares of a father's father are as follows:-

i. A father's father is entitled to 1/6 of the net estate, where the deceased is survived by any male descendent, that is son, (h.l.s.). For instance, where the deceased is survived by a Father's father, Son and a wife. Their shares are as follows.[32]

FF		W		**S**
1/6		1/8		**R**
4	+	3	+	17

24

ii. He is entitled to 1/6 and the residue, if any, where the deceased is survived by a female descendent and in the absence of a male descendent. That is where he is survived by a daughter(s) and or a daughter of son, (h.l.s). For instance, where the deceased is survived by:-[33]

M	**W**	**D**	**FF**		**M**		**W**	**DS**	**FF**
1/6	1/8	1/2	1/6+R	OR	1/6		1/8	1/2	1/6+R
4+	3 +	12+	**4+1(5)**		**4**	+	**3+**	12+	4+1(=5)

24 24

iii. The father's father inherit as an "Asabah" or agnatic heir in the absence of any of the descendants of the deceased. For instance where the deceased is survived by;-[34]

M	H	UB	FF		M	W	US	FF
1/3	1/2	EX	R	OR	1/3	1/4	EX	R
2 +	3+	0+	1		4+	3 +	0 +	5
6					12			

iv. Lastly, the true grand father or the father's father is completely excluded from inheritance in the presence of his son, that is, the father of the deceased; and a remoter true grand father is excluded by a more closer grand father. Thus, for instance, where the heirs of the deceased are,[35]

F	M	S	FF		M	S	FF	FFF
1/6	1/6	R	EX	OR	1/6	R	1/6	EX
1 +	1 +	4+	0		1 +	4+	1 +	0
6					6			

Hence, the above mentioned are the shares allocated to a true grand father when he is not coexisting with the collaterals.

3.3 THE SHARES OF FATHER'S FATHER IN COMPETITION WITH COLLATERALS

In the above paragraphs we have been discussing the shares of the father's father when he is inheriting with other Qur'anic and agnatic heirs, except the collaterals. Now we shall discuss the main theme of this research work. That is, the shares of father's father in the presence of collaterals.

For the purpose of inheritance, the collaterals, or the brothers and sisters of the deceased, have been divided into three classes:-

i. The Germane Brothers and sisters
ii. The Consanguine Brothers and sisters
iii. The Uterine Brothers and sisters

The germane siblings are as well known as the full brothers and sisters, who are related to the deceased through full blood. That is, they are the sons and daughters of the same father and same mother of the deceased.[36]

The consanguine siblings are the half brothers and sisters, who are related to the deceased through half blood. That is, the consanguine siblings are the sons and daughters of the same father but different mother of the deceased.[37]

While the uterine siblings on the other hands, are those collaterals who are related to the deceased only through mother. That is, the deceased and the uterine siblings are the

children of same mother but different fathers.[38]

As it has been discussed earlier that, all the Muslim jurists have unanimously agreed to the fact that the father's father is a substitute heir of the father. Nevertheless, they disagree among themselves, on whether the father's father can totally exclude all the collaterals from the inheritance as the father would have done.[39] However, they unanimously agreed to the fact that, a father's father can exclude the uterine siblings.[40]

Hence, the opinions of the Sahaba (RAA) and other muslim jurists can be discussed under two broad headings;_

1. The collaterals are excluded by the father's father
2. The collaterals are not excluded by the father's father

3.3.1 The Collaterals Are Excluded By The Father's Father

This opinion is championed by Caliph Abu Bakar Al-Sadeeq (RAA),[41] which is supported by Ma'az Bin Jabel (RAA), Abdullahi Ibn Umar (RAA), Aisha Bint Abu Bakar (RAA), Jabir (RAA), Abu Musa (RAA), Imran Bin Hasain (RAA).[42] And this view was later on adopted by Imam Abu Hanifa, Ishaq, Dawood Al-Mazani, Ibn Sarij and Ibn Munzar. Also one of the views of Imam Ahmad Bin Hanbal and his student Ibn Taimiyyah and Ibn Qayam. This is also the view of Imam Muhammad Bin AbdulWahab.[43]

Hence, according to Caliph Abu Bakar (RAA), the Father's

father is just like the Father himself in Islamic Law of Inheritance, accordingly his presence would also deprive the siblings to inherit their deceased sibling.[44] The supporters of this group have forwarded the following arguments to support their view.

a) The Holy Our'an, in a number of places, given a father's father the same status as that of direct father.[45] For instance, Holy Our'an says, "O children of Adam wear your beautiful apparel
at any time and place of prayer: eat and drink...."[46]

In this verse of Holy Our'an we are said to be the children of Adam who is our forefather. Thus, he is given the same status as that of father.

In another place, Holy Qur'an says,"And follow the ways of my fathers, Abraham, Isaac, and Jacob, and never could we attribute
any partners whatever to God..."[47]

In this verse, the father's father's father (Abraham) and father's father (Isaac) of Prophet Yusuf (PBUH) are given the same status as that of his direct father (Jacob), the word "Abbai", which is the plural of "abbi" which means my father, is used in
this verse to describe their relationship with prophet Yusuf (PBUH).

Thus, in the above stated verses of Holy Qur'an, a grand father is given the same status as that of a direct father, therefore, he should also be given the same status while inheriting along with the siblings.[48]

b) The father's father is given the power to step into the shoes of his son, in his absence, accordingly he inherits as a father would have inherited. Therefore, he would also be allowed to exclude the siblings as the father would have done.[49]

c) In Islamic criminal law, a father is not punished under the rules of Qisas or retaliation where he had killed his own son. In the same vein, the father's father is not punished under the rules of Qisas, where he had killed his son's son.[50]

In Islamic law of Evidence, the testimony of father in favor of his son is not admissible. Similarly, the testimony of father's father in favor of his son's son is inadmissible.[52]

And in Islamic Family Law, a father can not marry his female child and also he is not allowed to marry the wife of his deceased child or his sons divorced wife. The same rule is extended to the father's father.[53]

A father is not allowed to give Zakkat to his poor son, rather he is responsible for his maintenance. Similarly, a father's father is not allowed to give Zakkat to his grand son, rather in the absence of his father, he is responsible for the

maintenance of his poor grand child.[54]

In all the above stated instances, a grand father is treated like a father. That is, all the rules which are governing the conduct of a father towards his children are also extended to the father's father towards the same children (his grand children). Hence, it would be very much unjust, if we do not consider a father's father to be father in the cases of inheritance.[55]

d) There is no doubt that a son is the most closest relative of a deceased among his descendants. While from his ascendents line it is the father. And in the absence of a son it is the son of son who steps into his shoes and similarly, in the absence of father, it is the father of father who is most closest male relative from the ascendant line. Therefore, he has all the rights to exclude the siblings who are remoter than the grand father in their relationship to the deceased.[56]

e) The collaterals are allowed to inherit only, when the deceased is not survived by any male heir, either descendent or ascendant; that is where "Kalalah" happens to the deceased.[57]

As it has been provided for by the Holy Qur'an,

"They ask thee for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendents as heirs. If it is a man that dies, leaving a sister but not child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, her brother takes her inheritance..."[58]

f) It is reported that Abdullahi Ibn Abbas (RAA) said, "Does not Zaid Bin Thabit fear Allah? He treats son of son as son himself, but does not treat father of father as father".[59] Hence, according to the statements of Ibn Abbas (RAA), if a son of son is allowed to step into the shoes of son. The father's father should equally be allowed to step into the shoes of father. Thereby he would also exclude the siblings as the father does.[60]

By and large, in the light of the above discussed arguments of the supporters of this group, the collaterals are excluded in a case of inheritance where they are competing with a grand father. For instance, where a deceased is survived by husband, mother, germane brother/sister and father's father:-[61]

H	M	GB/GS		FF
1/2	1/3	EX by FF		R
3 +	2+	0	+	1

Or where the deceased is survived by wife, mother, daughter, germane sister and father's father:-[62]

W	M	D	GS	FF
1/8	1/6	1/2	Ex.(by FF)	1/6 + R
3	+ 4	+ 12+	0 +	(4 + 1) = 5

24

Or where the deceased is survived by mother, consanguine brother/sister and a father's father:-[63]

M	CS/CB	FF
1/3	Ex.(by FF)	R
1+	0 +	2

3

3.3.2 The Collaterals Are Not Excluded By Father's Father

This opinion is championed by one of the most knowledgeable companion of Holy Prophet (SAW), that is, Zaid Bin Thabit (RAA).[64] About whom the Prophet (SAW said, "Among my companions, Zaid is the most learned person in the science of Mirath".[65]

There are many other companions of the Holy Prophet (SAW) who have a similar view as that of Zaid Bin Thabit (RAA), among

these companions are, Caliph Ali Bin Abi Talib (RAA) and Abdullah Ibn Masood (RAA). This view is also adopted by the majority of Muslim jurists, such as Imam Malik Bin Annas, Imam Shafi'i and the most famous view of Imam Ahmed Bin Hanbal.[66] This also the view of Imam Abu Muhammad and Abu Yusuf of Hanafi school. The shiite school of jurisprudence also hold the view that a father's father can not exclude the collaterals.[67]

This group also argued that when Caliph Umar Bin Khattab (RAA) was attacked by a Jew, before his death, Caliph Umar said, "This is my view as regards to the share of a father's father (that is siblings are not excluded), if you consider it to be reasonable and sound follow it". Uthman Bin Affan (RAA) replied, "Your view is reasonable and sound, but if we continue following the view of Abu Bakar (RAA), it would also be reasonable and sound".[68]

Hence, it is clear in the light of the above stated report that, Caliph Umar (RAA) allowed the collaterals to inherit along with the grandfather.

In another very sound report, it is reported that, Caliph Umar Bin Khattab (RAA), once went to see Zaid Bin Thabit (RAA) to discuss with him the issue of father's father competing with the collaterals. Hence, when Umar (RAA) went to Zaid (RAA)'s house, Zaid said, "O leader of the faithfuls, you would have send for me, I would have come at once". Umar (RAA) replied "The needy goes for his need. That is why I come to you so that we can have a discussion on the share of father's father".

Zaid Bin Thabit (RAA) started the discussion with a parable, saying, "The father's father is just like a main trunk of a tree, while the father is like the main branches and the sub-branches are like the colaterals. Hence, it is the branch which is attached to the trunk and the sub-branches are attached to the main branch. And the sub-branches are very close to each other, then their closeness to the trunk. Because the main branch is in between them and the trunk. O leader of faithfuls, is it not true that a brother (sub-branch) is more closer to his other brother (deceased) than the father's father (trunk)?" After listening to this parable, Caliph Umar sent for Ali Bin Abi Talib (RAA) for his view on this matter. Ali Bin Abi Talib (RAA) married the view of Zaid (RAA) by giving another parable, that is, a sea (father's father) which has a river (father) and many other channels or canals (collaterals) emerging out of the river. Hence, after listening to the parable of Ali Bin Abi Talib (RAA), Caliph Umar (RAA) gave a sermon to the people quoting the parable and saying that the collaterals are entitled to inherit in the presence of a father's father.[69]

Thus, it is clear from the above stated reports that Umar (RAA) had allowed the siblings to inherit along with the father's father.

Nonetheless, it should be noted that, even among the second group, which have allowed the collaterals to inherit in the presence of a father's father, there are different opinions

as regards to the entitlement of the father and the siblings. The different views of the jurists can be discussed as follows.[70]

i. Ali Bin Abi Talib's (RAA) School

a) A Father's father can never exclude the germane or the consanguine collaterals. Because their shares have been prescribed by the Holy Qur'an, therefore, they can only be excluded by a text of Qur'an, Sunnah, Ijma or a sound analogy, non of the above provides any rule which exclude the siblings.[71]

b) Both the father's father and the siblings are related to the deceased through a same channel that is the father. One of them is his ascendant, while the other is his descendant. In Islamic law of inheritance, the descendants are considered to be the most closest to their parents. But on the other hand, the parents are not considered to be so closed to their deceased child in comparison to the children of their deceased child, as it is clear from the rule of agnatisation, that is, in the presence of a son (descendant), the father (ascendant) is not allowed to inherit as an agnatic heir, rather his share is reduced to his minimum entitlement which is 1/6 of the net estate.

The same analogy is applicable, when the father's father

(ascendant of father) is inheriting along with the collaterals (descendants of the father). And that both father's father and the collaterals are related to the deceased through the father, therefore both of them belongs to same class and same degree of closeness to the deceased. Therein, the father's father can not exclude the siblings.[72] Accordingly the shares allocated to the father's father and siblings are:-

i. The father's father inherits along with the collaterals as one of them. In other words if the siblings are germane, the father's father would become a germane brother; and if the siblings are consanguine brothers, then he would become a consanguine brother. And accordingly, he would inherit along with them as a brother, under the principle of "Muqasima", or participation of sharing. That is the siblings and the father's father would share equally the residue or the net estate, as the case may be.[73]

Some examples are given below to illustrate the above stated rule. Hence, for instance, where the deceased is survived by germane brother and father's father. In this case the father's father would become a brother and by way of Muqasima, would share the net estate with the brother on equal basis. Therefore, the net estate would be divided into two, each of them would take a half, that is,[74]

GB,		FF		
1	:	1		
1	+	1	=	2

2

In a case where the deceased is survived by two consanguine brothers and a father's father. The estate would be divided into three equal portions. Thus, the father's father and the brothers would take one portion each. That is,[75]

GB		GB		FF		
1	:	1	:	1		
1	+	1	+	1	=	3

3

Nonetheless, it should be noted that a father's father should never be given a share which is less than his specific share 1/6 of the net estate.[76] Accordingly if in a case where he is competing with the collaterals as one of them, he is getting a portion which is less than 1/6, he would quickly return back and claim his Qur'anic share of 1/6 and the siblings would take the residue.[77] This 1/6 is given to him by the Holy Prophet (SAW), as it has been reported by Umar Bin Hussain (RAA) that, "a man came to Holy Prophet (SAW) and inquired about his portion of inheritance from the estate of

his grand child, and he (SAW) replied that his share is one sixth (1/6)..."[78]

This situation may arise in the following instances:-

i. Where the deceased is survived by a father's father and six brothers (not uterine). Hence, in this case if the father's father participate with the siblings as one of them, he would get 1/7 which is less than his Qur'anic share 1/6. Thus, the father's father will not participate in this case as a brother; rather he would claim his Qur'anic share. Thus,[79]

MUQASIMA			1/6 OF NET ESTATE		
6GB,		FF	6 GB		FF
6	:	1	R		1/6
6	+	1	5	+	1
		7			6

Hence, in this case the father's father would take his Qur'anic share of 1/6 and not in Muqasim where he would have got 1/7.

ii. Where the deceased is survived by 4 germane brothers and 4 germane sisters; or three brothers and six sisters and father's father. Hence,[80]

MUQASIMA					1/6 OF NET ESTATE		
4GS		4GB		FF	4GS	4GB	FF
1	:	2	:	2	R		1/6
4	+	8	+	2	5	+	1
		14				6	

Thus, in this case by doing Muqasim the Father's father is getting 2/14 = 1/7 which is less than 1/6 of the net estate. Therefore, the father's father would take his specific share of 1/6 and the residue 5/6 goes to the siblings.

Nevertheless, in some other instances participation or Muqasima would be advantageous to the father's father than his 1/6 of the net estate.[81] Thus, for instance, where the deceased is survived by father's father and one germane brother ortwo germane. Or one germane brother and two sisters. In all the above instances, "muqasima" is better for the father's father. Thus,

MUQASIMA			
GB		FF	OR
1	:	1	
1	+	1	
	2		

MUQASIMA

2GB,		FF	
2	:	1	**OR**
2	+	1	
		3	

MUQASIMA

GB		2GS		**FF**
2	:	2	:	2
2	+	2	+	2
		6		

Thus, in all the above instances father's father is getting a share or portion which is more than 1/6. Therefore, in this kind of situations the father's father would inherit as a brother, thereby, participate by way of Muqasima.

However, a situation may arise, whereby both Muqasima and 1/6 of the net estate would be the same for the father's father. Thus in situation he can choose any one of them.[82] Thus, for instance, where the deceased is survived by 5 germane brothers and a father's father. That is,

MUQASIMA

5GB		FF
5	:	1
5	+	1
		6

1/6 OF THE NET ESTATE

5GB		FF
R		1/6
5	+	1
		6

Hence, in the both divisions the father's father is getting a share which is equal to 1/6 of the net estate.

b) Cases where the father's father is competing with female siblings. In these situations, the sister(s) would get their Qur'anic share 1/2 or 2/3 as the case may be; and the father's father would take the residue. For instance, the deceased is survived by a germane sister and father's father,[83]

GS		FF	
1/2		F	OR
1	+	1	
		2	

2GS,		FF	
2/3		R	OR
2	+	1	
		3	

GS,		CS	FF
1/3		1/6	R
3+		1+	2
		6	

Nevertheless, it should be noted that, as earlier discussed, if the residue happened to be less than 1/6 of the net estate, then the father's father would claim his specific Qur'anic share of 1/6. Thus, for instance, where the deceased is survived by his wife, mother 2 germane sisters and a father's father.[84]

W		M		2GS		FF		
1/4		1/6		2/3		R		
3	+	2	+	8	+	0	=	13 (Awl)

12

Hence, in this situation there is no residue left for the father's father. Therefore, the father's father would claim his Qur'anic share of 1/6, thus,[85]

W		M		2GS		FF		
1/4		1/6		2/3		1/6		
3	+	2	+	8	+	2	=	15(AWL)

12

In this case the total amount of shares have exceeded the unity or the base of division 12 to 15 (3+2+8+2 = 15). Hence, the doctrine of Awl is applied here, there in, the share of each heir is reduced proportionately up to the extent of the increase or Awl that is, 15. Therefore, all the heirs would get their shares out of 15 and not 12. Thus for instance, the share of father's father is 2/15 and not 2/12.[88]

FF		**D**		GS		FF		**2D**		GS
1/6		1/2		R	OR	1/6		2/3		R
1	**+**	3	**+**	2		**1**	**+**	**4**	**+**	**1**
		6						**6**		

By and large, according to Caliph Ali Bin Abi Talib (RAA), a father's father can never exclude the germane and consanguine siblings. And the share of the father's father should never be less that 1/6 of the net estate.

ii. Abdullah Bin Masood's (RAA) School

Generally, Abdullahi Bin Masood (RAA) have married the views of Caliph Ali Bin Abi Talib (RAA).[89] Nevertheless, he differed in one place. hence, according to Ibn Masood (RAA), when the father's father is inheriting along with the collaterals his share should never be less than 1/3 of the net estate.[90] Thus, if in a case whereby, by way of Muqasima or participation, his share happens to be less than 1/3, he would claim 1/3 of the net estate and the residue would go to the siblings. Ibn Masood (RAA) argued that when a father's father is inheriting along with two or more daughters, his share is equal to 1/3.[91] That is,

2D		FF
2/3		R
2	+	1
3		FF = 1/3

Therefore, when he is competing with the siblings his share should never be less than 1/3 of the net estate. Thus for instance, where the deceased is survived by daughter, father's father and germane brother,[92]

MUQASIMA				1/3 OF THE NET ESTATE				
2D		FF	GB	2D		FF		GB
				2/3		1/3		R
2/3		R						
2	+	1		2	+	1	+	0
		3				3		

Hence, in the above stated example, the father's father is getting a share which is less than 1/3, by way of Muqasima. Therefore, he would get his 1/3 of the net estate, and the Germane brother would get the residue which is nothing.[93]

iii. Zaid Bin Thabit's (RAA) School

Zaid Bin Thabit (RAA) is one of the greatest companions of Holy Prophet (SAW), about whom the Prophet (SAW) said, "Among my Sahaba, Zaid is the most knowledgeable person in the science of inheritance".[94] Hence, the views of Zaid Bin Thabit (RAA) are as follows:-

a) A father's father can never exclude the germane and the consanguine siblings.[95]

b) Where the father's father is participating with the siblings, his share should never be less than 1/3 of the net estate.[96]

c) Where the father's father is co-inheriting with the female siblings only. The father's father would agnatise the sister(s) as their brother, therefore, he would take a double portion. Similarly, where the sister(s) are inheriting as agnatic with another (asaba Ma'a Al-Ghair), that is, in the presence of a daughter or daughter of son, he would compete with the sisters as their brother and take a double share of the sister.[97]

However, it should be noted that, as earlier discussed, the share of the father should never be less than 1/3 of the net estate.[98] Hence, where he is participating with the sisters and his share happened to be less than 1/3, he would rush back to his 1/3 of the net estate and leave the participation. Some

illustrations are given below to explain the above stated rules:-

i. Where the deceased is survived by a Germane sister and father's father. Or two germane sisters or three germane sisters and father's father.[99]

MUQASIMA			MUQASIMA			MUQASIMA		
GS		FF	2GS		FF	3GS		FF
1	:	2	2	:	2	3	:	2
1	+	2	2	+	2	3	+	2
	3			4			5	

In the above stated examples, Muqasima is better for the father's father because he is getting a share which is better than 1/3 of the net estate, that is, 2/3, 2/4 and 2/5.

Nevertheless, in certain situations participation would not be favorable for the father's father. Therefore, he would take his fixed share of 1/3 of the net estate. For instance, where the deceased is survived by 3 germane brothers or five sisters, or two daughters, germane sister and the father's father.[100]

EXAMPLE i.

MUQASIMA			1/3 OF THE NET ESTATE		
FF		3GB	FF		3GB
1	:	3	1/3		R
1	+	3	1	+	2
	4			3	

EXAMPLE II.	MUQASIMA			1/3 OF THE NET ESTATE		
	FF		5GS	FF		5GS
	2	:	5	1/3		R
	2	+	5	1	+	2
		7			3	,

EXAMPLE III.	MUQASIMA				1/3 OF THE NET ESTATE			
	2D,		FF,	GS	2D,	FF,		GS
					2/3	1/3		R
	2/3		R					
	2	+	1		2+	1	+	0
		3				3		

By and large, from the above highlighted views of the erudite Sahaba (RAA),[101] it is clear that a father's father can never exclude the collaterals, except the uterines (siblings from mother's side only). Secondly, while competing with the collaterals, father's father share should never be less than 1/6, according to Caliph Ali (RAA), and 1/3 according to Ibn Masood (RAA) and Zaid Bin Thabit (RAA).

Hence, the supporters of this group have utilized the above discussed views of the Sahaba (RAA), to develop rules and regulations governing the shares of father's father in competition with the collaterals.[102] Accordingly, according to

Maliki, Shafi'i and Hanbali schools and Abu Yusuf and Abu Muhammed of Hanafi school,[103] and the Shiite school of jurisprudence,[104] the competition of father's father with the collaterals is divided into two broad categories:-

A. The competion of father's father with the collaterals in the absence of Qur'anic heirs.

B. The competition of father's father with the collaterals in the presence of the Qur'anic heirs.

3.3.3 A. The Competition of Father's Father with the Collaterals in the absence of Qur'anic heirs

This is a situation whereby the father's father and the collaterals are the sole heirs. In this situation the father's father is given two options, whichever is favorable to him, he takes it. The options are:-

1. To participate with the siblings as their brother of same degree and share the net estate, under the principle of male taking a double portion of a female.
2. To take 1/3 of the net estate. If in the participation his share is less than 1/3 of the net estate.[105]

Allocating this favorable share to the father's father is known as the advantageous rule.[106] Hence, under this advantageous rule there are five instances in which "Muqasima" or the participation with the siblings as a brother, would be favorable or better for the father's father. These five

instances are as follows:-

1. Where the deceased is survived by one germane or consanguine sister and a father's father.[107]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		GS	**FF**		GS
2	:	1	1/3		1/2
2	+	1	2	+	3
3			5		

Hence, in this case the father's father is getting 2/3 by way of Muqasima.

2. Where the deceased is survived by father's father and 2 germane or consanguine sisters.[108]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		2GS	**FF**		2GS
2	:	2	1/3		2/3
2	+	2	**2**	+	4
4			6		

In this case the father's father is getting 2/4 = 1/2 of the net estate by way of Muqasima.

3. Where the deceased is survived by 3 germane sisters and father's father.[109]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		3GS	FF		3GS
2	:	3	1/3		2/3
2	+	3	1	+	2
5			3		

Hence, in this case Muqasima is better for the father's father which is 2/5.

4. Where the deceased is survived by father's father and one germane brother.[110]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		GB	FF		GB
1	:	1	1/3		R
1	+	1	1	+	2
2			3		

In this case by way of Muqasima, the father's father is getting 1/2.

5. Where the deceased is survived by a germane brother and a germane sister:-[111]

MUQASIMA						1/3 OF THE NEXT ESTATE		
FF		GB		GS		FF	GB	GS
2	:	2	:	1		1/3		
2	+	2	+	1			R	
		5				1	+	2
							3	

Hence, by way of Muqasima the father's father is getting 2/5 which is better than 1/3,

Nevertheless, there are three circumstances in which 1/3 of the net estate is better for the father's father than to participate by way of Muqasima. Thus,

i. Where the deceased is survived by father's father and 3 consanguine brothers.[112]

MUQASIMA				1/3 OF THE NET ESTATE		
FF		3GB		FF		3GB
1	:	3		1/3		R
1	+	3		1	+	2
		4				3

Hence, in this case father's father is getting 1/4 by way Muqasima, which is less than 1/3 of the net estate. Therefore, he would take 1/3 of the net estate and the residue would to go the consanguine brothers which is 2/3.

ii. Where the deceased is survived by father's father and five consanguine sisters, or more.[113]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		5GS	FF		5GS
2	:	5	1/3		R(2/3)
2	+	5	1	+	2
7			3		

Hence, by way of Muqasima father's father is getting 2/7 which is less than 1/3, therefore, he would take 1/3 of net estate and the residue would go to siblings.

iii. Where the deceased is survived by two germane brothers and two germane sisters and a father's father.[114]

MUQASIMA				1/3 OF THE NET ESTATE			
FF	2GB		2GS	FF	2GB		2GS
2	: 4	:	2	1/3		R	
2	+ 4	+	2	1	+	2	
8				3			

In this case as well 1/3 of the net estate is favorable

for the father. Because by way of Muqasima he is getting 2/8 = 1/4 which is less than 1/3.

However, there are certain instances whereby both the Muqasima and 1/3 of net estate are equal, therefore, father's father can take any of the two options. For instance where there are father's father and 2 germane brothers or 4 sisters, or one brother and 2 sisters.[115]

MUQASIMA			1/3 OF THE NET ESTATE		
FF		2GB	FF		2GB
1	**:**	**2**	1/3		**R**
1	**+**	**2**	**1**	**+**	**2**
3			**3**		

Hence, in the above mentioned example father's father is getting 1/3 in both options.

3.3.4 B. The Competition of Father's Father with the Collateral in the presence of the Qur'anic heirs

This is a situation whereby the father's father and the collaterals are not the only heirs, rather there are some other Qur'anic heirs co-inheriting.116 For instance, where they are inheriting along with husband or wife, mother and or daughter or daughter of son, etc. Under this second category the father's father is given three options to choose whichever is most favorable to him. These options are as follows:-

i. Muqasima: That is, to participate with the collaterals as their brother, thereby, share the residue after the Qur'anic heirs have taken their shares.[117]

ii. 1/3 of the remaining estate: That is, after the Qur'anic heirs have taken their respective shares, what is left the father's father take 1/3 of it and the residue goes to the collaterals.[118]

iii. 1/6 of the net estate: That is, if his share is less than 1/6 in the above statedoptions, then the father's father would take at least 1/6. Even if by giving him 1/6, the collaterals would have no residue to share.[119]

Following is an example where Muqasima would be favorable to the father's father. Thus for instance, where the deceased is survived by husband, father's father and a germane brother.[120]

MUQASIMA

H		FF		GB
1/2		R		
2	+	1	+	1

4

1/3 OF REMAINING

H		FF		GB
1/2		1/3	of	R
3	+	1	+	2

6

1/6 OF NET ESTATE

H		FF		GB
1/2		1/6		R
3	+	1	+	2

6

Hence, it is clear from the above example that Muqasima is favorable to the father's father, because he is getting 1/4 of the net estate better than 1/6.

While in some instances 1/3 of the remaining is favorable to the father's father. For example, where the deceased is survived by wife, father's father and three consanguine brothers.[121]

MUQASIMA

W	FF	3GB
1/4	R	
4+	12(3+3+3+3)	

16

1/3 OF REMAINING ESTATE

W		FF		3GB
1/4		1/3		R
3	+	3	+	6

12

1/6 OF NET ESTATE

W		FF		3GB
1/4		1/6		R
3	+	2	+	7

12

Thus, in this case 1/3 of the remaining is better for the father's father, because he is getting 3/12 = 1/4 which is more than the Muqasima 3/16 and 1/6 of the net estate 2/12 = 1/6.

And in some instances it is favorable for the father's father to take 1/6 than to participate by way of Muqasima or to take 1/3 of remaining. For instance, where the deceased is survived by husband, daughter, father's father and 2 germane brothers.[122]

MUQASIMA

H		D		FF	2GB
					R
1/4		1/2			
3	+	6	+	3(1+1+1)	

12

1/3 OF REMAINING

H		D		FF		2GB
1/4		1/2		1/3		R
3	+	6	+	1	+	2

12

1/6 OF NET

H		D		FF		2GB
1/4		1/2		1/6		R
3	+	6	+	2	+	1

12

Thus, in this case 2/12 = 1/6 is better than the other two options, where the father's father is getting 1/12.

In other instance 1/6 is better for the father's father, where the deceased is survived by husband, 2 daughters,

father's father and germane brother.[123]

MUQASIMA

H,		**2D**		**M,**		FF,	GB
						↓	
1/4		**2/4**		1/6		R	
3	+	8	+	2	+	**0**	

12 Awl to 13

1/3 OF REMAINING ESTATE

H		**2D**		**M**		**FF**		**GB**
1/4		**2/3**		1/6		**1/3**		**R**
3	+	8	+	2	+	0	+	0

12 Awl to 13

1/6 OF NET ESTATE

H		**2D**		**M**		**FF**		**GB**
1/4		2/3		1/6		1/6		R
3	+	8	+	2	+	2	+	0

12 Awl to 15

The father's father is getting nothing in the first two options, because there is Awl or over subscription. Thus

1/6 of the net estate is better for the father's father. And the germane brother is getting nothing because there is no residue.[124]

However, there are certain cases whereby all the three options are equal. Thus the father's father can take any one of them. For instance, where the deceased is survived by husband, father's father and two germane brothers.[125]

MUQASIMA

H	FF	2GB
		R
1/2		
3 +	3 (1+1+1)	

6

1/3 OF REMAINING ESTATE

H	FF	2GB
1/2	1/3	R
3 +	1 +	2

6

1/6 OF NET ESTATE

H	FF	2GB
1/2	1/6	R
3 +	1 +	2

6

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the case.[1]

In this case, a woman died and she is survived by her mother, father's father and a germane sister. The case was presented to Caliph Abubakar (RAA) for his decision. Because of its complex nature, Caliph Abu Bakar (RAA) contacted the companions (RAA) for their advice. It is reported that there were seven different solutions forwarded by Sahaba (RAA). Among these solutions, two were considered to be the main ideas, while others were, somehow, extension to the main views.[2] These two main views were that of Caliph Abu Bakar (RAA) and Zaid Bin Thabit (RAA).[3] While other five views were that of Umar Bin Khattab (RAA), Uthman Bin Affan(RAA), Ali Bin Abi Talib (RAA) and the view of Abdullah Ibn Masuod (RAA).[4]

Hence, according to the first view, that is, the view of Abu Bakar (RAA), the mother is entitled to 1/3, the germane sister is excluded by the father's father who is a substitute heir of the father. Accordingly, he would take the residue as an agnatic heir. Thus,[5]

M		GS		FF
1/3		EX	BY FF	R
1	+	0	+	2

3

CHAPTER FOUR

4.0 EXCEPTIONAL CASES

It would be apt to note at this juncture that, apart from the above discussed general rules governing the shares of father's father competiting with the collaterals, there are certain exceptional rules which are applicable to some exceptional situations. They are so celebrated that they have been given specific names. Hence, these cases are:-

1. Mas'alah Al-khuraqah
2. Mas'alah Al-Akdariah
3. Mas'alah Al-Muaddah
4. Mas'alah Al-Mukhtasirah
5. Mas'alah al-Malikkiyyah
6. Mas'alah Al-Shibh Al-Malikiyyah

4.1 Mas'alah Al-Khuraqa

Mas'alah Al-Khuraqah or the tatter case, was the first case which involved the issue of competition between the father's father and the collaterals. This case was given the name of Khuraqah or tatter because it signifies the extent to which the views of the Sahaba (RAA) were torn and divided on

However, according to Zaid Bin Thabit (RAA) on the other hand, the mother is entitled to 1/3 and the germane sister would be agnatised by the father's father as her brother, therefore, under the principle of Tasib or agnatization the father's father would take a double share of the sister.[6] Thus,

M		GS		FF
		R		
1/3		**1**	:	2
3	+	6	(2 +	4)
		9		

Imam Malik, Imam Shafi'i and Imam Hanbali have adopted the view of Zaid Bin Thabit (RAA).[7] The Shiite school of jurisprudence have also adopted this view.[8] While, Imam Abu Hanifa have adopted the view of Caliph Abu Bakar (RAA).[9]

4.2 Mas'alah Al-Akdariah

This is a situation whereby the deceased is survived by husband, mother, father's father and a germane sister.[10] According to one report, the case is known as "Akdariah" because the division of whose estate was in question belonged to a tribe known as Bani Akdar, or it was the name of the town of the deceased or it was the name of the person who

brought the problem.[11]

However, according to another report, the word "Akdariyyah" is an Arabic word which is derived from the verb "Kaddara" which means, to trouble; to disturb or to agitate.[12] Hence, the word "Akdariyyah" signifies the becoulding nature of the case in hand with which Zaid Bin Thabit (RAA) was confronted that it had troubled him up to the extent that he had to deviate from his principle.[13]

According to the general principle forwarded by Imam Malik, Imam Shafi'i and Imama Ahmad Bin Hanbal, the father's father has three options, to choose the best. That is, Muqasima, or 1/3 of the remaining estate after the Qur'anic heirs have taken their shares or to take 1/6 of the net estate. And that the share of father's father should never be less than 1/6 of net estate. And that the germane sister should never be excluded by the father's father.

Nevertheless, in this "Akdariah" case, if the father's father is given his share from the first two options he would get a share which is less than 1/6 of the net estate. And if he is given a share from the third option that is, 1/6 of net estate, then the germane sister would be excluded. That is:-

MUQASIMA

H	M	FF		GS
		R		
1/2	1/3	2	:	1

$$\frac{9 + 6 + 3(2+1)}{18 \text{ (Tashih)}}$$

9 + 6 + 3(2+1)

---

18 (Tashih)

1/3 OF REMAINING ESTATE

H	M	FF	**GS**
1/2	1/3	1/3	**R**
9 +	6	**1** +	**2**

---

18 (Tashih)

1/6 OF NET ESTATE

H	M	FF	**S**
1/2	1/3	1/6	**R**
9 +	6 +	3 +	0

---

18 (Tashih)

Hence, in the above solution, if the father's father is given his share from Muqasima or 1/3 of remaining, he would get a portion which is less than 1/6, that is 2/18 = 1/9 as Muqasima, and 1/18 when he is to take 1/3 of the remaining. And if he takes his 1/6 of net estate 3/18 = 1/6, then the germane sister would get nothing because there is not residue left for her by 0/18. Thus, all the three options are going

against the rules forwarded by the Zaid Bin Thabit"s(RAA) school.[14] Therefore, to set matters right, Zaid Bin Thabit (RAA) preferred to contradict himself than to contradict the Sunnah of Holy Prophet (SAW) which provides that the father's father is entitled to 1/6.[15] Thus Zaid Bin Thabit viewed that, in this case the germane sister is entitled to her Quranic share of 1/2 and the father's father would take his Qur'anic share of 1/6. Husband would take 1/2 and mother 1/3.[16] This would amount to Awl or over subscription. (Another contradiction to his view, that is Zaid (RAA) does not allow to apply the doctrine of Awl in a case involving father's father and siblings).[17] The case goes like this,

H		M		FF		GS		
1/2		1/3		1/6		1/2		
3	+	2	+	1	+	3	=	9 (AWL)

6 = 9 (AWL)

Hence, father's father is getting 1/9 which is less than 1/6 of net estate. And the germane sister is getting 3/9 which is more than the share of father's father. Thus, father's would tell the sisters, "It is not fair for you to have a share (3/9) which is more than my own (1/9). Because, I am just like your brother (germane), therefore, let us bring our shares together and add them together, so that we

can share the total according to the principle of male is entitled to a double portion of female".[18] That is, 1/9 + 3/9 = 4/9. Since this 4/9 is not divisible into 2:1 proportion, therefore, the principle of "Tashih" or the modification of base of division or unity would be applied here. That is, the total of their proportion 3 (1+2=3) would be multiplied with all the case. Thus,[19]

	H		M		FF		GS
	1/2		1/3		1/6		1/2
					1	+	3
	3	+	2	+	4		
(Tashih)	(3X3)	+	(3X2)	+	(3	x	4)
	9	+	6	+			12(8+4)

6 increased up to 9 (awl)

9x3 = 27 (the modified base of division)

Thus, in the final division the father's father is getting 8/27 which is more than 1/6. And the germane sister is not totally excluded, rather she is entitled to half of the father's father share that is, 4/27, because in this case he is acting as her brother (germane). While the husband is entitled to 9/27 and mother 6/27.[20]

However, according to Imam Hanafi, there is no

Akdariyyah case. Rather the germane sister is excluded by the father's father who is a substitute heir of father. Therefore, he is entitled to the residue after the Qur'anic heirs have taken their shares. Thus,[21]

H		M		FF		**GS**
1/2		1/3		**R**		EX by FF
3	+	2	+	1	+	0 = 6

6

4.3 Mas'alah Al-Mu'addah

This is a very interesting situation, whereby the collaterals connived together to deprive the father's father from having a larger share.[22] In this case the heirs are, germane brother, consanguine brother and father's father.[23] As it has been discussed above that in the absence of any other Qur'anic heir the father's father has two options to choose the best. That is, Muqasima and 1/3 of the net estate, thus,

MUQASIMA

FF		GB		**CB**
1	:	**1**	:	**1**
1	+	**1**	+	**1**

3

1/3 OF NET ESTATE

FF		GB		CB
			R	
1/3		1	:	1
1	+	2(1	+	1)

3

Thus in this situation both Muqasima and 1/3 of net estate are equal, therefore, the father's father would take 1/3, the germane brother would also take 1/3 and the consanguine brother would take 1/3 as well. Nevertheless, it should be noted that a consanguine brother is always excluded by the germane brother.[24]

Thus, under this Mu'addah rule, the germane brother would exclude the consanguine brother and take his share (1/3) as well and add it up with his own share (1/3) making 2/3 (1/3+1/3 = 2/3). This is done according to the principle which provides, he who excludes, exclude for his own benefit.[25] Thus, the final division is as follows:-

158

FF		GB		CB	
1/3		R		EX	(by GB)
1	+	2	+	0	

3

It should be noted that, even if there is a consanguine sister instead of consanguine brother, the case is still that of Mu'addah. Thus, for instance, where there is a father's father, a germane brother and a consanguine sister.[26]

MUQASIMA

FF		GB		CS
2	:	2	:	1
2	+	2	+	1

5

1/3 OF NET ESTATE

FF		GB		CS
1/3			R	
1	+		2	

3

Thus, in this case Muqasima is better for the father's father, that is 2/5, and the germane brother would also take 2/5 while the consanguine sister would take 1/5. However, under the Mu'addah rule the germane brother will exclude the consanguine sister and add her share with his own. Thus,[27]

F.F		GB		CS	
2	:	2	:	1	
2	+	(2+ 1)		0	(EX by GB)
2	+	3	+	0	

5

However, there is a situation whereby, 1/3 of the net estate is favorable for the father's father. That is, where the siblings are more than two. Thus, for instance, where the deceased is survived by father's father, 2 germane brothers and a consanguine brother. That is,[28]

MUQASIMA

FF		2GB		CB
1	:	2	:	1
1	+	2	+	1

5

1/3 OF NET ESTATE

FF	2GB	CB
1/3	R	
1	+ 2	

3

Thus, in the above case, in Muqasim father's father is getting 1/5, which is less than 1/3 of the net estate. Therefore, he would claim his 1/3 of net estate and the residue would go to the Germane brother, while the consanguine brother is excluded by the Germane brother. Thus,[29]

FF		2GB		CB
1/3		R		EX by GB
1	+	2	+	0
		3		

Another example of Mu'addah rule is, where the deceased is survived by his wife, father's father, Germane brother and Consanguine brother. hence, in this case father's father has three options, that is, Muqasima, 1/3 of remaining and 1/6 of the net estate. Thus,[30]

MUQASIMA

W		FF		GB		CB
1/4		1	:	1	:	1
1	+	3 (1	+	1	+	1)
		4				

1/3 OF REMAINING ESTATE

W		FF		GB	CB
				R	
1/4		1/3			(1:1)
3	+	3	+		6(3+3)

12

1/6 OF NET ESTATE

W		FF		GB		CB
				R		
1/4		1/6		**(1**	**:**	**2)**
3	+	2	+		**7**	

12

In this case Muqasima and 1/3 of remaining are equal that is in both options father's father is getting 1/4 which is more than 1/6. Thus 1/4 would go to the father's father while 2/4 would go to the Germane brother and consanguine brother as residue. Hence, finally, under the principle of Mu'addah, the Germane brother would exclude the Consanguine brother and take all the residue.[31] Thus, by way of Muqasima,

W		FF		GB		**CB**	
1/4		1	:	1	:	**1**	
1	+	3(1	+	2(1+1)			EX by GB

4

4.4 Mas'alah Al-Mukhtasirah

Mu'addah and the Mukhtasirah cases are alike with a slight difference. Hence, in this case there are germane sister(s) in place of Germane brother, along with consanguine brother and father's father. The rule applicable in this case is different as well, because a german sister cannot exclude the consanguine brother.[32]

Nevertheless, under this Mukhtasira or "the restricted female",[33] the germane sister is giving the power to exclude the consanguine brother but only up to the extent, which is necessary to make up her own Qur'anic share of 1/2 or 2/3, as the case may be.[34] Hence, in this case consanguine brother is used to restrict the father's father from having a larger share. Thus, for instance, where the deceased is survived by father's father, germane sister and consanguine brother. In this case father's father have two options, that is, Muqasima and 1/3 of net estate, whichever is best for him. That is,[35]

MUQASIMA

FF		GS		**CB**
2	:	1	:	2
2	+	1	+	2

5

1/3 OF NET ESTATE

FF		GS		CB
1/3		1/2		**R**
2	+	3	+	1
		6		

Thus, in this case Mugasima is better for the father's father because he is getting 2/5 which is more than 2/6 = 1/3. Thus, he would take his share from Mugasima. Nevertheless, it should be noted that in Mugasima the germane sister[36] is getting a share which is less than 1/2 of net estate, that is 1/5. Hence, according to the Mukhtasira rule, the father's father would take his best share 2/5 from Mugasima, while the germane sister would insist on taking1/2 of net estate and the residue would go to the consanguine brother, thus,[37]

FF		GS		CB
2/5	(moq.)	1/2		**R**
4	+	**5**	+	**1**
	10			

The Mukhtasirah rule is also applicable in the following instances,

i. Where the deceased is survived by Father's father, Germane sister and consanguine sister. In this case father's father has two options, thus,[38]

MUQASIMA

FF		GS		**CS**
2	:	1	:	1
2	+	1	+	1
		4		

1/3 OF NET ESTATE

FF		GS		**CS**
1/3		1/2		1/6
2	+	3	+	1
		6		

In this case Muqasima is better for the father's father because he is getting 2/4 = 1/2 which is more than 1/3 of net estate, while germane sister is getting 1/4 which is less than 1/2 of the net estate. Thus, the rule of Mukhtasirah is applied here. That is, father's father would take his share from Muqasima 2/4 and germane sister would take her 1/2 and residue would to to consanguine sister, if any. Thus,

FF	GS	CS
2/4 (moq.)	1/2	**R**
2 +	2 +	0

4

Thus, finally, father's father is entitled to 2/4 = 1/2 by way of , germane sister takes 2/4 = 1/2 her Qur'anic share on the expanses of consanguine sister, because she is forced to take residue, which is nothing 0/4.[39]

ii. Where the deceased is survived by father's father, 2 germane sisters, consanguine brother and a consanguine sister. In this case father's father has two options, thus,[40]

MUQASIMA

FF	2GS	CS	**CB**
2 :	2 :	1 :	2
2 +	2 +	1 +	2

3

1/3 OF NET ESTATE

FF	2GS	CS	**CB**
1/3	2/3	**R**	
1 +	2 +	**0**	

3

In this case Muqasima is not favorable to the father's

father because he is getting a share which is less than his minimum entitlement of 1/3 of net estate, that is 2/7. Therefore, the father's father would take his 1/3 of net estate, and according to the rules of Mukhtasirah, the 2 germane sisters would take 2/3 and the residue, if any, would go to the consanguine siblings, thus, the final divisionis as follows:-[41]

FF		2GS		CS	CB
1/3		2/3			**R**
1	+	2	+		**0**

3

Thus, as it is clear from both Muaddah and Mukhtasirah rules that, the germane and consanguine siblings joined forces together to force the father's father to have a smaller share.

Nonetheless, Imam Malik has forwarded two more rules to help the father's father to have revenge on the germane and consanguine siblings. hence, these rules are, Mas'alah Malikiyyah and Shibh Malikiyyah.[42]

4.5 Massalah Al-Malikiyyah

In Mas'alah Al-Malikiyyah the father's father retrieved by way of retaliation, with the help of uterine siblings (collaterals from mother's side) to force the germane and

consanguine siblings to be totally excluded from the inheritance.[43] Thus the members of this mas'alah are, Husband, Mother, 2 uterine brothers/sisters, consanguine brother(s) and father's father.[44]

As it has been earlier discussed that, among all the collaterals it is only the uterine siblings who are excluded by father's father. The uterine collaterals are those siblings of the deceased who are related to him only through mother. It is also an established rule that the germane and consanguine collaterals can never exclude the uterine collaterals, rather they would take their Qur'anic share of 1/6 or 1/3 as the case may be. Hence, for instance, where the deceased is survived by Husband, Mother, two uterine brothers and consanguine brother. Thus, the case is as follows:-[45]

H		M		2UB		CB
1/2		1/6		1/3		R
3	+	1	+	2	+	0

6

Thus in this case the consanguine brother is entitled to nothing because there is no residue left for him. Nevertheless, in the above example, if father's father is present, the uterine brothers would be excluded. Generally,

their share would have been divided among the father's father and consanguine brother by way of Muqasima, or father's father would have taken 1/6 of net estate and the residue would have gone to the consanguine brother. Nonetheless, according to the principle of Mas'alah Malikiyya, since it is the father's father who exclude the uterine brothers, therefore, he would take their entire share, and the consanguine brother would be forced to take the residue which is nothing. Because, the principle says, he who excludes, exclude for his own benefit. Hence, according to Mas'alah Malikiyyah the division goes as follows:-[46]

H	M	FF	2UB	CB
1/2	1/6	1/3	EX by ff	R
3+	1+	2+	0+	0

6

Thus, in the above example joined together with the uterine brothers to force the consanguine brother to take residue. And later on the father's father excluded the uterine brother and took his 1/3. And there is no residue, therefore the consanguine brother is getting nothing.[47]

4.6 Mas'alah Shibh Al-Malikiyya

Mas'alah Shibh Al-Malikiyya or the Quasi Al-Malikiyyah case.[48] It is a Quasi Malikiyyah case because it is very similar to that of Al-Malikiyyah case, with only difference that, instead of consanguine brother there is a germane brother(s). Hence, the members of this case are, Husband, mother, father's father, 2 uterine brothers/sisters and germane brother(s).[49]

It should be noted that, in the absence of father's father the case would have been that of "Donkey case", that is "Mas'alah Al-Himariyyah", where the germane brothers, in their appeal before Caliph Umar Bin Khattab (RAA), requested to be treated as uterines, because, if inheriting as germane, they would get nothing because there is no residue in this case. Thus, Caliph Umar Bin Khattab (RAA) granted them the status uterines, therefore they equally enjoyed the share of the uterine brothers which is 1/3 of net estate. That is,[50]

H		M		2UB GB
1/2		1/6		1/3
3	+	1	+	2

6

In the same vein, in the presence of father's father, according to the principles of Mas'alah Shibh Malikiyyah, the germane brother is forced to retain his status of being a uterine brother, therefore, they too are excluded along with the uterine brothers by the father's father. And accordingly, their share goes to the father's father. Hence, the final division is as follows:-[51]

H	M	FF	2UB	GB
1/2	1/6	1/3	EX by FF	
3 +	1 +	2 +	0	

6

FOOTNOTES

1. Keffi, S.U.D. op. cit. p.49
2. Ibid. p.49
3. Ibid. p.49
4. Ibid. p.49
5. Al-Khateeb, M.S. Op. cit. Vol.5 p.223
6. Keffi, S.U.D. op. cit. p.49
7. Ibid p.49
8. Bin Baz, A.A. op. cit. p.21
9. Mulla, D.F. op. cit. p.192
10. Bin Baz, A.A. op. cit. p.21
11. Al-Kharshiy, A.M. (1317 H) Al-Kharshi Ala Al-Mukhtasir Saidi Khalil. Vol.5 Al Matba'a Al-Amira Al Sharfiyyah, Egypt, p.445.
12. Al-Khateeb, M.S. op. cit. p.23
13. Elias, A.E. op. cit. p.584
14. Keffi, S.U.D. op. cit. p.60
15. Ibid, p.60
16. Al-Kharshiy, A.M. op. cit. p.445
17. Ibid, p.445
18. Keffi, S.U.D. op. cit. p.60
19. Al-Advi. A.S. (No Date). Hashiyyah - Al-Advi Ala Sharah Abi Al Hassan Le Ressalah Ibn Abi Zaid. Vol.2. Dar Al-Fikar, Beirut. P.334.
20. Al-Kharshiy, A.M. op. cit. p.445
21. Ibid. p.445
22. Musa, M.Y. op. cit. p.213
23. Lakhvi, S.H. op. cit. p.35
24. Keffi, S.U.D. op. cit. p.56
25. Lakhvi, S.H. op. cit. p.35
26. Ibid. p.35
27. Keffi, S.U.D. op. cit. p.56
28. Lakhvi, S.U.D. op. cit. p.35
29. Ibid, p.36
30. Ibid. p.36
31. Ibid. p.36
32. Ibid. p.36
33. Ibid. p.36
34. Keffi, S.U.D. op. cit. p.56
35. Lakhvi, S.H. op. cit. p.36
36. Keffi, S.U.D. op. cit. p.57
37. Lakhvi, S.H. op. cit. p.36

38. Ibid. p.36
39. Keffi, S.U.D. op. cit. p.57
40. Ibid, p.57
41. Lakhvi, S.H. op. cit. p.36
42. Ibid. p.36
43. Keffi, S.U.D. op. cit. 60
44. Al-Zzaheliy, W. op. cit. p.344
45. Ibid. p.344
46. Al-Baajiy, S.K. (1332 H). Al-Kitab Al Mantaqi Sharah Muwatta Imam Malik. Vol.6 Matba'a Al Sa'ada Bejawar Muhafeza, Egypt. p.236.
47. Al-Kharshi, A.M. op. cit. p.446
48. Ibid, p.446
49. Al-Zzaheliy, W. op. cit. p.344
50. Ibid. p.345
51. Al Mardiniy, S. (1988) Al Rahbiyyah Fi Ilmil Fraidh. Dar Al Qalam, Damascus, p.95.

CHAPTER FIVE

5.0 CONCLUSION

This chapter is a summary of the project, it also contain suggestions.

5.1 SUMMARY

The word "Mirath" literally means to inherit anything. It also connotes the handing over of a thing from one person to another. Thus, the law of inheritance guide us to who is entitled to, who is not entitled to the estate of the deceased and why. It also guides us as to how to divide the estate among the legal heirs.

The subject of inheritance is an old phenomena in the history of mankind. There had been various terms, rules regulations, customs etc, of how the properties of one person passes to another after the former's demise. These customs or traditions even though old, however, differ from one society to another.

In some societies like the pre-Islamic Arabia, there were only three grounds of inheritance, that is, blood relationship, adoption and confederation. And among these three grounds,

only male relations were allowed to inherit. Daughters, mothers, minors and incapable persons had no share in the inheritance. While in the Jewish society the inheritance was only confined to sonship, fatherhood, brotherhood and uncleship. And as far as the Romans are concerned, the estate of the deceased was distributed according to the will and whim of the family leader. And the estate was to remain within the family of the deceased. Therefore, children were not allowed to inherit their mother. In some other ancient societies, there was nothing like inheritance as they burn all that belonged to the deceased.

As it is clear from the above discussed systems of inheritance that weaker ones had no right to inherit. Therefore, there was a need for a revolutionary rules to do justice. Hence, these inequalities vanished by the magic touch of Islam through the Holy Prophet Muhammad Bin Abdullah (S.A.W). Thus, more equitable and just principles of distribution of wealth were adopted. Islam did justice, where justice was supposed to be done, consequently, the weaker sexes and infants were allowed to inherit. Similarly, under Islamic Law no distinction is made between father and mother both are entitled to inherit; first born and last born, male children and female children; married daughter, and unmarried daughter, etc. Hence, Islam introduced a system which is wide, comprehensive, differentiated, but indeed, an equitable distribution of inherited properties.

The sources from where the Islamic law of inheritance got its rules and regulations are, the Holy Qur'an, the Sunnah of Holy Prophet (SAW), the consensus of jurists (Ijma) and the Analogy or Qiyas.

In Islamic Legal System there are different schools of laws. The different opinions of the jurists in understanding the interpretation of the meaning of the same texts of the Holy Qur'an and or the Prophetic Traditions led to the foundation of different schools of Islamic Jurisprudence. The founder of these schools are known as Imams or leaders. These schools are still remembered by the name of their great founders, that is, Maliki school of Islamic jurisprudence, Hanafi school of Islamic jurisprudence, Shafi'i school of Islamic Jurisprudence and Hanbali school of Islamic Jurisprudence, and the Shi'it school of jurisprudence.

In Islamic law of inheritance, before a case, concerning inheritance can emerge, the presence of certain essential element, is very essential. That is the presence of the deceased person, the estate and the legal heirs.

There are certain right related to the estate, if they are attached to the estate, they must be settled first, in the following seriatim, the funeral expenses, settlement of debts, payment of legacies and lastly the distribution of the residue to the legal heirs. Under Islamic law of inheritance the total number of the heir, is twenty five, who may possibly be entitled to inherit. There are fifteen male and Ten female

heirs.

The heirs are defined as those relatives of the deceased, whether, male, female, minor or incapable, who falls within the ground of inheritance. The heirs have been classified in accordance to their entitlements. Thus, the first classification of the heirs is known as the Qur'anic heirs, they are those heirs who are entitled to a specific fix share either mentioned in the Qur'an or prescribed by the Sunnah. The second classification is known as the Agnatic heirs, they are those heirs who are related to the deceased from his/her father's side. They do not have any fix share rather they take the residue after the Qur'anic heirs have taken their share. The third classification is known as the kindred heirs. This class inherit only where both the Qur'anic and Agnatic heirs are absent.

Bait al mal (Public treasury) is also considered to be a heir, where there are no other heir, according to some jurists. Lastly emancipator who have freed a slave (as it then was) is considered to be the heir of that free slave if died heirless.

The shares of the Qur'anic heirs as provided for by the Holy Qur'an (Ch. 4:11,12,176) and the Sunnah of Holy Prophet (SAW) are 2/3, 1/2, 1/3, 1/4, 1/6 and 1/8. In order to distribute the estate to the entitled heirs a base of division or L.C.M. of each case is found. This done by finding the L.C.M. of the denominator of the fractions involved in a given

case. Then the next step is to remove the fractions of the shares of each heir. This is done by dividing the denominator of the fraction, with the base of divisions (L.C.M.), the outcome of the division is known as the portion of each heir. The formula which is used to divide the estate is, the estate divided by the base of division and multiplied by the portion of each heir. That is,

$$\frac{\text{Estate}}{\text{Base}} \times \text{Portion of an heir} = \text{His/her share (money)}$$

The heirs are entitled to different shares in different circumstances. A heir may be entitled to a higher share in one circumstance, while a lesser share in another. And sometimes he might be completely excluded, because of the presence of a mere closer heir.

However, it should be noted that before a heir can claim his share, he must prove that he is related to the deceased through one of the grounds of inheritance, that is either by blood, valid marriage contract or emancipation or by all the above mentioned grounds.

As it has been stated that in Islamic law of inheritance the legal heirs are entitled to fixed shares. However, a situation may arise whereby a legal heir would be barred to inherit his deceased relative, that is if the heir is the killer or he was involved in the killing of the deceased, or

the religion of the heir is different from that of the deceased; or where the heir happened to be a slave. There are some other impediments which have been forwarded by some Maliki jurists, these impediments are, the act of lian, common calamity and doubtness in the existence of a propositus or a heir.

As it has been discussed the share of each legal heir has been provided for either by Qur'an or the Sunnah. Nevertheless, there are certain heirs whose shares have not been so categorically provided for by the Qur'an or the Sunnah; rather the matter have been left open for the jurists to deduct the share of such heirs with the help of the primary sources. Among these heirs is the entitlement of a father's father when he is coexisting with the siblings of the deceased.

Hence, the companions of Holy Prophet (SAW) had no alternative but to resort to their own "Ijtihad" whenever they were confronted with a problem involving father's father and the siblings. In trying to solve such kind of problems, controversy among the Sahaba (RAA) was inevitable. Because of this controversy the Sahaba (RAA) disliked to attend to cases involving father's father and siblings. As it is reported that Caliph Umar Bin Khattab (RAA) said "who so ever attempt to solve a case of grandfather is making an attempt towards fire". And Abdullah Ibn Masood (RAA) said, "Ask me any question concerning your obligations, but never ask me about the (competition) of grandfather and the siblings, there is no

Allah's Blessing in it".

For the purpose of inheritance, the grandfather has been classified into two that is, Al-Jad Ghain al-Sahih or Al-Jad alfasid. And Al-Jad al-Sahih.

Al-Jad alfasid or the false grandfather is the maternal grandfather, that is, the father of the mother of the deceased, how high soever. The false grandfather is neither a Qur'anic heir nor an agnatic heir, rather he is a kindred heir i.e Dhawil arham.

Al-Jad al Sahih, on the other hand, is the true grandfather, technically it means to be a person in whose line of relationship with the deceased, a female does not exists, that is the grandfather who is related to the deceased through his father, that is father's father how high soever. It is this true grandfather who is entitled to inheritance as Qur'anic heir as well as an agnatic heir.

The entitlement of the father's father can be discussed under two broad headings, that is,

a) The share of father's father in the absence of siblings.
b) The share of father's father in competition with the siblings.

As far as the share of father's father in the absence of the siblings is concerned, he is treated to be just like the

direct father himself. That is the father's father steps into the shoes of the father, and inherit as a father. This is so because, there are many places in the Holy Qur'an where grandfather is titled with the word "Abb" or father, (for example chapter 7:27 and chapter 12:38). Thus in the light of the above the father's father is also entitled to the share of father (in his absence) as it has been provided for in Holy Qur'an chapter 4:11. Hence, father's father is entitled to 1/6 in the presence of male descendants. And he takes 1/6 and residue where the deceased is survived by only female descendants. And he inherits as an agnatic heir in the absence of the descendants of the deceased. Lastly, a grandfather is totally excluded in the presence of the father or a more closer grandfather.

Where the father's father is competing with the siblings, there is a great controversy among the Sahaba (RAA) and the Muslims jurists, as regards to the entitlement of father's father. Therefore the opinions of the Sahaba (RAA) and other Muslim jurists are discussed under two headings:-

i. The siblings are excluded by the father's father.
ii. The siblings are not excluded by the father's father.

Thus as far as the first opinion is concerned it is championed by Caliph Abu Bakar (RAA) and supported by a number of Sahaba (RAA), such as, Ma'az Bin Jabel (RAA), Abdullah Ibn

Umar (RAA), Aisha Bint Abu Bakar (RAA), Jabir (RAA), etc. This view was also adopted by Imam Abu Hanifa, Ishaq, Dawood Al Mezani and some other jurists.

According to this group, the father's father is just like father in Islamic law of inheritance, therefore, his presence would also deprive the siblings to inherit their deceased sibling. This group argued that, there are many places in the Holy Qur'an where the grandfather is given the status of father for instance in chapter 12:38 Allah says, "And (yusuf) have followed the religion of my father's, Ibrahim, Ishaq and Yaqub, and never could we attribute any partner whatsoever to Allah..." Hence, in the verse the father's father (Ibrahim) and father's father (Ishaq) are given the same status as direct father (Yaqub) the word "Abbai" which is the plural of "Abbi", which means my father, is used here to describe the forefathers.

And in Islamic criminal law like the father, father's father too is not executed for killing of his son of son. And a father is not punished (under Hadd) for stealing his son's property. Similarly a father's father is not punished (under hadd) for stealing the property of his son's son. In many other instances in Islamic law father's father is given the same treatment as the direct father, therefore, it would be very much unjust, if we do not consider a father's father to be a father in the cases of inheritance. And according to Ibn Abbas (RAA) if a son of son is allowed to step into the shoes

of a son, then why should not we allow the father's father to step into the shows of a father and accordingly exclude the siblings.

While on the other hand, according to the second group, the collaterals are not excluded by the father's father. This group is championed by the most learned (in the field of mirath) companion of Holy Prophet (SAW) that is Zaid Bin Thabit (RAA). There are many other Sahaba (RAA) who have a similar view, such as Caliph Ali Bin Abi Talib (RAA), Abdullah Ibn Masood (RAA) and according to one report Caliph Umar Bin Khattab (RAA). This view was also adopted by the majority of the Muslim jurists, among them are Imam Malik Bin Annas, Imam Ahmad Bin Hanbal and Imam Shafi'i.

However, even among the supporters of this group, there are differences as regards to the entitlement of father's father and the siblings.

Hence, according to Caliph Ali Bin Abi Talib (RAA), the father's father inherit with the siblings as one of them that is if the siblings is a germane brother, the grand father would become a germane brother and of the siblings is a consanguine brother then the father's father would become a consanguine brother and inherit under the principle of "Muqasima", or participation or sharing. However, the share of father's father should never be less than 1/6. Hence, if by way of Muqasima he is getting a portion which is less than 1/6, the father's father would return back and claim his Qur'anic share

of 1/6 and the siblings would take the residue. And where the female siblings is inhering along with the father's father in the absence of a male counterpart, the female siblings would take her Qur'anic share of 1/2 or 2/3 as the case may be, and the residue would go to the father's father. Nevertheless, if the residue happens to be less than 1/6, the father's father would take his 1/6 and not residue.

Abdullahi Ibn Masood (RAA) have generally married the view of Caliph Ali Bin Abi Talib (RAA), however, he differed at one place. That is according to Ibn Masood (RAA), the father's father share should never be less than 1/3 of the net estate.

According to Zaid Bin Thabit (RAA) on the other hand, the share of father's father should never be less than 1/3 of the net estate, and when the father's father is inhering along with female siblings the father's father would agnatise them as their brother, accordingly he would take a double portion of the sisters.

By and large, the Muslim jurists, who support this group, have utilized the above discussed views of Sahaba (RAA) to develop rules and regulations governing the shares of father's father in competition with the collaterals.

Hence, according to Maliki, Shafi'i and Hanbali schools, and Abu Yusuf and Abu Muhammad of Hanafi school this competition ٥٢٤ discussed under two broad headings:-

a) The competition of father's father with the collaterals in

the absence of other Qur'anic heirs.

b) The competition of father's father with the collaterals in the presence of other Qur'anic heirs.

Thus, under the first heading, where the father's father and siblings are the only heirs, the faher's father have two options, to choose the best. Either to participate with the siblings as one of them, that is "Muqasima", or to take his specific Qur'anic share of 1/3 of the net estate. For instance, where the deceased is survived by father's father and germane sister:-

MUQASIMA			1/3 OF NET ESTATE		
FF		GS	FF		GS
2	:	1	1/3		R
2	+	1	1	+	2
3			3		

Here in this case, the father's father is getting 2/3 in "Muqasima", therefore, he would claim his share as a germane brother.

And under the second heading, where the father's father and siblings are inheriting along with other Qur'anic heirs, the father's father has three options to choose the best.

Muqasima, 1/3 of remaining estate after other heirs have taken their share and lastly to take 1/6 of the net estate, for instance where the deceased is survived by Husband, father's father and germane brother:-

MUQASIMA			1/3 OF REMAINING			1/6 OF NET ESTATE		
1+	FF	GB	**H**	**FF**	GB	**H**	**FF**	GB
1/2		**R**	1/2	1/3	R	1/2	1/6	R
2 +	2(1+	1)	3 +	1 +	2	3+	1+	2
4 (Tashih)			6			**6**		

Hence, it is clear that Muqasima is favorable to the father's father because he is getting 1/4 which is better than 1/6 of other two options.

It should be noted that the above discussed rules are general rules. However, there are certain exceptional rules, which are applicable to certain exceptional situations. These exceptioned situation are so celebrated that they have been given different names. Among these situations in the case which is known as "Massalah Al-Khuraqah", which means tatter case, this was the first case which involved the issue of competition between father's father and the siblings. It is known as tattered case because the view of Sahaba (RAA) were torn and divided into seven different opinions. Among them two are considered to be the main view, and the other five are

considered to be the extensions. These two views were the view of Caliph Abubakar (RAA) and Zaid Bin Thabit (RAA). The heirs involved in this case were mother, germane sister and father's father. hence according to Caliph Abu Bakar (RAA) the mother is entitled to take 1/3, the germane sister is excluded by the father's father who is a substitute heir of the father. Accordingly he would take the residues. While according to Zaid Bin Thabit (RAA) on the other hand, the mother, is entitled to 1/3 and the germane sisters would be agnatised by the father as her brother, therefore, he would take a double share of the sister.

The second exceptional case is known as "Massalah Al-Akariah". There are many different reports as to the reason why it is known as Al-Akdariah, one of the report is that, it is known as "Akdariah" because it means trouble hence, it signifies the becoulding nature of the case in hand with which Zaid Bin Thabit (RAA) was confronted that it had troubled him up to the extent that he had to deviate from his principle. The heirs involved in this case are husband, mother, father's father and germane sister. Under the principle of Akdariyah case the husband is entitled to 1/2, mother would take 1/3 and father's father would take 1/6 and germane sister 1/2. However, later on the father's father would join and add his share with the share of the sister and claim to be her brother and therefore take a double share of the germane sister, from the total of the addition.

The third celebrated case is known as "massalah al-Muaddah". This is a situation where a new principle is applied which provides that he who exclude, exclude for his own benefit. Hence, the members of this case are, father's father, germane brother and consanguine brother. As it is a general rule that the consanguine brother are excluded by the germane brother. According to the Muaddah rule, the germane brother would allow the consanguine brother to compete with the father's father and claim his share. Hence, by way of "Muqasima" father's father is entitle to 1/3. However, later on the germane brother would exclude the consanguine brother, and add his share with his own, under the principle that he who exclude, exclude for his own benefit. Hence, finally, the father's father is entitled to 1/3 while the germane brother would take 2/3 (1/3 + 1/3).

The fourth exceptional case is known as "Massalah Al-Mukhtasirah", which is also known as the "restricted female case", the member of this case are father's father, germane sister and consanguine brother. Generally a germane sister has no power to exclude the consanguine brother. Nevertheless, under the Mukhtasirah rule, the germane sister is given the power to exclude the consanguine brother, but only up to the extent to make up her own Qur'anic share of 1/2 of 2/3, as the case may be. Hence, in this case the consanguine brother is used to restrict the father's father, germane sister and consanguine brother. Hence, by way of Muqasima, which is

better for the father's father, the father's father is entitled to 2/5, germane sister 1/5 and the consanguine brother 2/5. Thus, the germane sister is getting a share which is less than her Qur'anic share of 1/2. Hence, according to the "Mukhtasira", rule, the father's father would take his 2/5, while the germane sister would insist on taking 1/2 of net estate and the residue go to the consanguine brother.

The fifth exceptional case is known as "Massalah Al-Malikiyyah". In this Malikiyyah case, the principle , he who exclude, exclude for his own benefit, is again applied. But this time it is applied by the father's father for his own benefit. Hence the member of this case are husband, mothers, father's father two uterine brothers/sisters and consanguine brother. As it is a general rule that, the consanguine brother can not exclude the uterine siblings and that the uterine siblings are excluded by the father's father. Hence, under the Malikiyyah rule, the father's father would allow the uterine brothers to inherit and later on claim their share as he who exclude, exclude for his own benefit.

The last but not the least, exceptional case is "Massalah Shibh Al-Malikiyyah". Or the quasi Malikiyyah case, because it is very similar to that of Malikiyyah. The member of this case are, husband, father's father, mother, 2 uterine brothers, and germane brother. Generally, in the absence of father's father, the case in the donkey case, where on their request, the germane brothers are treated as the uterine brothers.

Under the principle of Shibh Malikiyyah case, the germane brother is forced to retain his status of being a uterine brother, therefore, they too are excluded by the father's father. And accordingly, their share go to father's father, because, he who exclude, exclude for his own benefit. Thus finally, the husband is entitled to 1/2, mother 1/6 and the father's father 1/3. While the uterine brother and the germane brother are excluded.

5.2 SUGGESTIONS

As it has been earlier discussed that the issue of father's father with the siblings is a very complicated area.

The most learned and the most pure people, after the Holy Prophet (SAW), in the history of islam, were the erudite Sahaba (RAA). The Sahaba themselves were afraid of deciding such cases. As it is reported that Caliph Umar Bin Khattab (RAA) said "who soever attempts to solve the case of grand father, is making an attempt towards fire". And Caliph Ali Bin Abi Talib (RAA) is reported to have said, "Whosoever like to rush towards the virus of Hell, should decide among the grandfather and the collaterals. And in one report, Abdullah Ibn Masood (RAA) said, "Ask me any question concerning your obligations, but never ask me about the (competition) of grandfather and the siblings, there is no Allah's Blessing in it".

Hence, in the light of the above, it would be very difficult, if not impossible, for a student of this

contemporary world to give any suggestion in respect of the competition.

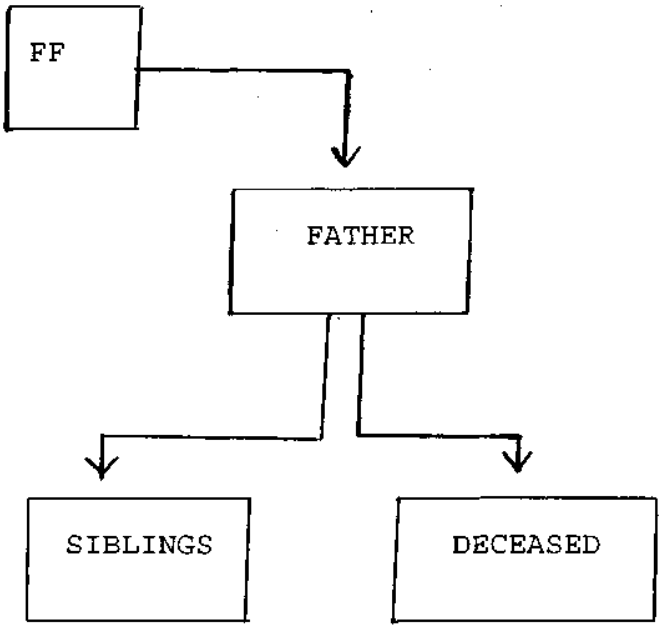
Nevertheless, a humble attempt is made to analyze the most honorable and the most respectful opinions of both groups and see which one of them can be adopted in this part of the world.

By and large, if the relationship of both the father's father and the siblings with the deceased is analysed, it is realized that the link between the deceased and the grandfather and the siblings is father. That is, the grandfather is the ascendent of the father, while the siblings are the descendant. It is a general principle of islamic law of inheritance that, in the presence of a descendant, the ascendent can not become an agnatic heir. This shows that, the descendant are more closer or stronger than the ascendant, for instance, in the presence of a son, father's share is reduced to his lowest entitlement of 1/6. In the same vein, the ascendant of father can not become an agnatic heir in the presence of the descendent of father. In other words, the father's father, who is an ascendent of the siblings (son of son/daughter of son of the grandfather), can not become an agnatic heir in their presence.

According to the first group, on the other hand, the father's father (ascendant) is given the sweeping power of excluding his descendants (siblings) and claiming to be the sole heir, in the absence of any other Qur'anic heir. This is against the principle of Islamic law of inheritance. Hence,

with due respect to the first group, their view here is looking very weak.

And if the relationship of siblings and grand father with the deceased is analyzed from another angle it is discovered that both of them are related to the deceased through same person, that is father. The relationship is shown in the following chart.



Hence, it is clear from the above chart that, the distance of relationship of both grandfather and siblings with the deceased is the same. Because one is ascendant of father, while the other is the descendant of the father. Therefore, one can not exclude the other, as far as the principle of the closer relative exclude the remoter is concerned. Thus, again, with due respect to first group, their view is looking very

weak.

In the light of the above discussion I would like to make a humble suggestions that those Muslim societies (Pakistan, India, Central Asia Republics) who have adopted the view of the first group, particularly the Hanafi school of Islamic jurisprudence, should review their rules governing the issue of father's father in competition with the siblings. And should apply the rules and regulations as forwarded by the Maliki and other schools of islamic jurisprudence, as adopted by the most West African Muslim Societies.

Finally, I would like to strongly advice the Muslims of almost all contemporary Muslim world that they should stick and insist on the application of Islamic law (Shari'ah) in toto. Allah the Creator and the Law Giver, knows and has provided a comprehensive system of rules and regulations governing the conduct of His creation. The Muslim should not accept only one aspect of Shari'ah (personal laws) and neglect the others. This is against the Islamic spirit and has been categorically disliked by Allah as it is provided for in Holy Qur'an where Allah says:-

"Those who deny God and His apostles...
Saying: "We believe in some but reject others":
And (those who) wish to take a course midway.
They are in truth (equally) unbelievers; and
We have prepared for unbelievers a
humiliating punishment'. (Qur'an Ch. 4 :150-151)

Hence, Muslims are duty bound to take a serious step towards Islamization of the legal system of the Muslim world.

Our duty - like that of all Muslim scholars committed to Islam is to start on the road and to exert the maximum effort of which we are capable. Success and ability (tawfiq) are the property of Allah to grant, as He alone (SWT) disposes.

Allah (SWT) says in Qur'an:-

"As for those who divide their religion and breakup into sects thou hast no part in them in the least: Their affairs is with God: He will in the end tell them the truth of all that they did" Qur'an 6:159.

In another place Allah (SWT) says;

"Say, "The Truth is from your Lord let him who will believe, and let him who will reject it - for the wrongdoers We have prepared a fire....." Qur'an Ch. 18:29.

And, again, Allah emphasises;

".... Verily never will God change the condition of a people until they change it themselves (with their own souls)..." Qur'an 13:11.

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