

## Islamic Law of Succession and Inheritance

The Holy Qur'ân states "*Allâh has purchased from the believers their persons and their wealth in lieu of Jannah.*"

Man is a trustee of the wealth that he owns for the duration of his life. When his term of life expires, his trusteeship over his wealth and property expires. It has then to be redistributed in accordance with the directive of The Absolute Owner - Allâh Ta'âla. Directives regarding the distribution of wealth after the demise of the provisional owner are explicitly detailed in the Holy Qur'ân.

### The First Science to be Lifted

The Holy Prophet *Sallallahu alayhi wa sallam* has said: "The first branch of knowledge which will be taken away from my Ummah will be *Ilmul Faraidh* [knowledge pertaining to inheritance]. This branch of knowledge is almost extinct. Most Muslims are blissfully unaware of the importance of the Islamic law of succession and the consequences of an un-Islamic Will.

### Evolution of the Law of Succession

***a) Inheritance by Virtue of Migration:*** During the early stages of Islam, the social system in Madinah was based on the brotherhood of the Muhajir and Ansâr.

This meant that when a Muhajir passed away, and he did not leave an immediate relative who had also migrated, his Ansâri brother would inherit from him.

The Holy Qur'ân refers to this bond of brotherhood in the following words:

*"Certainly, those who believed and emigrated (to Madinah) and strove in the path of Allâh with their property and persons as well as those who gave the asylum and aided them; they are heirs and protectors of one another."*

***b) Discretionary, Inheritance:*** This was later abrogated and replaced by a discretionary inheritance to blood relations. The Holy Qur'ân

states:

*"And blood relations among each other are more entitled (to inherit) according to the decree of Allâh then the (brotherhood) of believers and the Muhajir."*

The Holy Qur'ân further states: *"It is Prescribed that when death approaches one of you, if he leaves any assets, that he makes a bequest to parents and next of kin, according to reasonable usage. This is binding upon the Allâh conscious."*

**c) Abolition of inheritance by virtue of adoption:** Adopted children were no longer regarded as blood relations and were therefore barred from inheriting. The Holy Qur'ân states: *"Allâh has made your adopted sons your (real) sons. Such is only your manner of speech."*

**d) Ordained Shares:** Discretionary shares were abrogated and replaced by fixed shares for every heir. The Holy Qur'ân states *"From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be large or small. A share made compulsory."*

This verse elucidates three basic principles: "Those nearest related" - The criteria for determining the legal heirs and their proportionate shares is "proximity of relation". This proximity is not left to the subjective discretion of man, but is determined by Allâh Ta'âla Himself. The Holy Qur'ân states *"Between your fathers and sons you do not know which one of them is nearer to you in benefit..."*

Any, attempt to alter the heirs of their fixed shares is tantamount to challenging the wisdom and directive of Allâh Ta'âla.

"A share for men and a share for women" - During the days of ignorance, only those who could fight and defend the family were entitled to inherit. Women and children were thus naturally excluded from the estate. Islam entrenched the right of women, to the extent that a woman is guaranteed to inherit in her capacity as a mother, wife and daughter and in some instances in her capacity as a sister.

"A share made compulsory" - The Qur'ân has fixed the shares of each individual, which cannot be altered or changed. The share of each heir is binding in the same way as the number of rakâts are binding in *Salâh*.

### Common Errors

- A daughter is given a substantial gift at the time of nikâh and is then excluded from the estate;
- The testator stipulates that all his assets go to his wife after his demise and after her demise to their children;
- Certain children for various reasons are excluded from the estate; and
- A testator bequests shares in accordance to his discretion and not in accordance with the law of Allâh Ta'âla.

### Matrimonial Regime

Islamic marriages are governed by an ante-nuptial contract. Marriage in community of property is not consistent with the Islamic Law of inheritance.

### An un-Islamic Will

If a person has left a Will that contravenes the Shari'ah, it is incumbent on the heirs to redress the inconsistencies. They are obliged to forego their legal shares in favour of their Islamically determined shares.

### A Gift during your Lifetime

Observing equality in parental gifts or grants to children is preferable but not binding. If a parent elects to divide his estate in his lifetime to avoid potential dispute after his death, then the lifetime transfers will be regarded as gifts or grants, in which case he should preferably observe equality.

### Record of Liabilities and Assets

Nabî *Sallallahu alayhi wa sallam* has said: "It does not befit a believer

who is (obliged) to make wasiyyah to spend (even) two nights without making a record thereof."

A Muslim is obliged to keep a record of the following:

- Debtors
- Amanah [Items entrusted for safe-keeping]
- Unfulfilled religious obligations
- Creditors

#### Legal Requirements

- The Wills Act of 1953, as amended governs the execution of the Will.
- Any person of the age of 16 or over may make a Will.
- No beneficiary may sign as a witness.
- The testator/testatrix as well as the same witnesses who attest at the end of the Will, all being present must sign every page of the Will.

#### The Consequences of a Wrong Will

Nabî *Sallallahu alayhi wa sallam* has said: "A man or woman may devoutly obey Allâh for sixty years. Yet when death approaches them, they act wrongfully (when making their will). As a result the fire becomes binding upon them."

May Allâh grant us the foresight to enact His Law and the humility to accept it as the ultimate.