

DEAR STUDENTS

Now we are going to discuss the Unit IV and last unit of Muslim law i.e., Law of Inheritance under Sunni Law. Shia law of inheritance is not placed in your syllabus that why we have to focus only Sunni law of inheritance. For your kind knowledge it is little bit complex and typical in comparison to Hindu law of inheritance. The salient features of Quranic heir is that every sharer, their shares are fixed. It does not depend upon the quantity of the property which left by the deceased.

MUSLIM LAW OF INHERITANCE : SUNNI LAW

Under the Sunni law, the heirs are divided into two broad categories :

- (a) Principal Classes or Related Heirs and**
- (b) Subsidiary Classes or Unrelated Heirs**

Following class of persons are the heirs who are entitled to the estate of a deceased Muslim :

A. The Principal Classes

- i. Sharers or Quranic heirs
- ii. Residuaries or Agnatic heirs
- iii. Distant Kindred or Uterine heirs

B. Subsidiary Classes

- i. Successor by Contract
- ii. Acknowledge Kinsman
- iii. Universal Legatee, and
- iv. The State

General Rule :

From the above it is clear that Principal classes comprise only blood relatives with the exception of surviving spouse of the deceased. The Property in the first instance is to be distributed among those sharers who are entitled to get property. Their shares are fixed. Once the property is distributed among the sharers, and anything is left, this surplus called the residue goes to the next category called residuaries. When there is no residuary present, the property passes to the third category which comprises cognates. So long as any heirs in the former two categories is present, the property does not pass to the third category of distant kindred. This rule has one exception viz., in absence of the residuaries, if either of the spouses is present i.e., widow or widower, then the spouse will take his/her fixed share as a sharer and the rest of the property would be taken by the distant kindred.

Position of husband and wife is peculiar. When there are no residuaries, the Quranic heirs would get the share by the rule of 'Return', except the husband or wife. In such a situation, the residue would not go to the distant kindred. In case the only heir is husband or wife, the residue shall also devolve on the husband or wife, after any of them had taken his or her allotted share. But court has held that when the only sharer be husband or wife, and there be no relation belonging to the class of residuaries, the

husband or wife will take his or her full share and the remainder of the estate will be divided among distant kindred.¹

Class I : The Principal Classes

Sharers or Quaranic Heirs (Heirs affiliated by marriage or affinity and blood or consanguinity) :

- i. **Affiliated by marriage or affinity** (Zowjeeat)
 - a. Husband,
 - b. Wife
- ii. **Heirs affiliated by blood or consanguinity (nasab)**
 - a. Male ascendants
 - i. Father,
 - ii. True grandfather, how high soever
 - b. Female ascendants
 - i. Mother,
 - ii. True grandmother, how high soever
 - c. Female Agnatic descendants
 - i. Daughter
 - ii. Sons' daughter, (grandfather) how low soever
 - d. Female Agnatic collaterals
 - i. Full sister
 - ii. Consanguine sister
 - e. Cognatic Collaterals
 - i. Uterine brother, and
 - ii. Uterine sister

Only twelve heirs are entitled to succeed to specific shares from the above rules. The shares of each of them have been fixed in the Quran.² The twelve sharers are :

1. Husband,
2. Wife,
3. Father,
4. True grandfather how high soever
5. Mother
6. True grandmother
7. Daughter
8. Sons's daughter, how low so ever
9. Full sister
10. Consanguine sister
11. Uterine brother, and
12. Uterine sister

Among all the heirs, the husband or the wife is related to marriage or affinity and all the other ten heirs are related by blood or consanguinity. Heirs by blood consists ascendants, descendants and collaterals. Out of twelve heirs only four heirs are males and the remaining eight are females.³

Heirs and their allotted Shares :

1. Husband : The husband gets $\frac{1}{2}$ if there is no (a) child or (b) child of son how low soever (h.l.s);

¹ Ali Saheb v. Hajra Begum, AIR 1968 Mys 361

² Baillie, I, 696

³ Saira Bai v. S.S.Joshi, AIR 1960 MP 262

if there is (a) child or (b) child of son h.l.s then husband gets $\frac{1}{4}$.

2. Widow : The widow gets $\frac{1}{4}$ if there is no (a) child or (b) child of son how low soever (h.l.s);

if there is (a) child or (b) child of son h.l.s then widow gets $\frac{1}{8}$.

If the propositus had left more than one widow, all the widows share equally out of the $\frac{1}{4}$ or $\frac{1}{8}$ share, as the case may be.

3. Father : The father will be treated as Residuary if there is no (a) child or (b) child of son how low soever (h.l.s);

if there is (a) child or (b) child of son h.l.s then Father gets $\frac{1}{6}$.

4. True Grandfather : True grandfather is entitled to inherit only in the absence of father. It means if the propositus dies leaving behind both father and a true grand-father, the true grandfather cannot inherit.

If there is no father, the true grandfather inherits like a father. It means if there is no father, the true grandfather would become residuary in the absence of children. But in the presence of children a true grandfather gets $\frac{1}{6}$.

5. Mother : The share of mother is $\frac{1}{3}$ in the absence of (a) child, or (b) child of a son h.l.s or (c) two full sister, or (d) two full brothers, or (e) one brother plus one sister, whether full, consanguine or uterine.

If the presence of above-mentioned relations, mother share is $\frac{1}{6}$.

6. True Grandmother : A paternal grandmother is excluded from inheritance in the presence of (a) mother, or (b) father or (c) a nearer true-grandmother whether maternal or paternal.

A maternal grandmother is excluded from inheritance in the presence of (a) mother, or (b) a nearer maternal or paternal grandmother.

If not excluded, the share of true grandmother is $\frac{1}{6}$. Two or more grandmothers get $\frac{1}{6}$ jointly.

7. Daughter : The share of one daughter is $\frac{1}{2}$

If there are two or more daughters, the share is $\frac{2}{3}$ to be divided equally among them.

But daughter together with son is treated as agnatic heir i.e., inherits as Residuary.

8. Sons's Daughter : The sons' daughter inherits only in the absence of (a) two or more daughters, or (b) son, or (c) higher son's son, or (d) two or more higher son's daughter.

In the absence of above relations, the son's daughter gets $\frac{1}{2}$ if single and $\frac{2}{3}$ if more than one.

If son's daughter is together with one daughter, the share of sons's daughter is $\frac{1}{6}$ whether such son's daughter is single or more. For example, if there is a daughter and two son's daughters, the share of son's daughter would be $\frac{1}{6}$ which would be divided equally among them i.e., each son's daughter would get $\frac{1}{12}$.

Son's daughter together with son's son is treated as agnatic heir i.e., inherits as Residuary.

9. Full Sister : The share of one full sister is $\frac{1}{2}$, if number of sister is more than one, share is $\frac{2}{3}$ to be divided equally among them.

If full sister is together with full brother, she becomes an agnatic heir and inherits as Residuary.

A full sister is excluded from inheritance in the presence of (a) child, or (b) child of son h.l.s or (c) father, or (d) father's father.

10. Consanguine-Sister : The share of one consanguine sister is $\frac{1}{2}$, if number of consanguine sister is more than one, share is $\frac{2}{3}$ to be divided equally among them.

With one full-sister, the share of consanguine sister is $\frac{1}{6}$ whether single or more.

A consanguine sister is excluded from inheritance in the presence of (a) child, or (b) child of son h.l.s or (c) father, or (d) father's father, or (e) two full sisters, or (f) one full brother

With consanguine brother, the consanguine sister becomes agnatic heir and inherits as Residuary.

11. Uterine Brother : The share of one uterine brother is $\frac{1}{6}$, if there are two or more uterine brothers, their share is $\frac{1}{3}$ to be equally divided among them.

Uterine brother is excluded from inheritance in the presence of (a) child, or (b) child of son h.l.s or (c) father, or (d) father's father.

12. Uterine Sister : The share of one uterine sister is $\frac{1}{6}$, if there are two or more uterine sisters, their share is $\frac{1}{3}$ to be equally divided among them.

Uterine sister is excluded from inheritance in the presence of (a) child, or (b) child of son h.l.s or (c) father, or (d) father's father.

Remaining next part.....