



## THE BASIC PRINCIPLES OF THE DISTANT KINDRED UNDER ISLAMIC LAW OF INHERITANCE AND PAKISTANI JURISPRUDENCE: AN INTRODUCTION

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### Abstract:

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This paper discusses how the entire framework of the Islamic law of inheritance is directly available in the Holy Qur'an. What are the categories of inheritors/legal heirs? Who are sharers, residuaries and distant kindred? How is the inheritance distributed to the legal heirs especially the distant kindred? What is the jurisprudence regarding the law of distant kindred as set by the Pakistani Superior Courts? The main findings of this paper are that the Islamic law of inheritance is a mandatory law that is to be followed. There are three categories of sharers under the law of inheritance: the sharers, the residuaries, the distant kindred. The distant kindred are those who are related to the deceased through a female blood relation and are neither a residuary or a sharer. The distant kindred are only entitled to the inheritance should there be no sharer or residuary, otherwise, they are deprived or excluded from the inheritance due to the presence of the sharers or residuaries. Thus, the first two take higher priority than the distant kindred. There are two conflicting schools of thought in regards to the distant kindred. There are three methods of distribution for the distant kindred, namely: *Ahl-al-Rahm*, *Ahl-al-Tanzil*, *Ahl-al-Qarabah*. The Pakistani superior courts give somewhat accurate observations on the Islamic law of inheritance regarding the distant kindred, but it is often not detailed and is only a brief explanation based on secondary treatises rather than the primary sources of Islamic Law. The methodology used in this paper is doctrinal.

### Keywords:

Islamic Law of  
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Distant Kindred,  
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## I. Introduction

This paper discusses the principles of *Usul-ul-Fiqh* (Islamic Jurisprudence); the sources of Islamic law; how the entire framework of the Islamic law of inheritance is directly available in the Holy Qur'an; what are the categories of inheritors/legal heirs, who are shares, residuaries and distant kindred; what is the law surrounding the legal heirs; how is the inheritance distributed to the legal heirs; what is the jurisprudence regarding the law of distant kindred by the Pakistani Superior Courts;

## II. Basic Principles of Islamic Law of Inheritance

The primary sources of Islamic Law are the Holy Qur'an, Sunnah of the Holy Prophet (P.B.U.H), Ijma and Qiyas. Under Sunni law, there are categories of inheritors. The first category are the fixed sharers. These are the classes of inheritors or legal heirs that already have their shares in the inheritance already fixed specifically by Allah Almighty Himself in the Holy Qur'an.<sup>2</sup> The Holy Qur'an has a number of verses that discuss the law of inheritance. The Holy Qur'an says:

*“Just as there is a share for men in what their parents and kinsfolk leave behind, so there is a share for women in what their parents and kinsfolk leave behind - be it little or much a share ordained (by Allah)”<sup>3</sup>*

Hence, we can clearly see that both male and female have a share of inheritance left behind for them by their parents or other ascendants. This is of course the direct command of Allah Almighty and thus has to be followed as it is a mandatory command. Of course, this is not just all. Allah Almighty even specifies the shares of both genders as well and even specifies according to different conditions. The Holy Qur'an says that

*Allah thus commands you concerning your children: the share of the male is like that of two females. If (the heirs of the deceased are) more than two daughters, they shall have two-thirds of the inheritance; and if there is only one daughter, then she shall have half the inheritance. If the deceased has any offspring, each of his parents shall have a sixth of the inheritance; and if the deceased has no child and his parents alone inherit him, then one-third shall go to his mother; and if the deceased has brothers and sisters, then one-sixth shall go to his mother. All these shares are to be given after payment of the bequest he might have made or any debts outstanding against him. You do not know which of them, your parents or your children, are more beneficial to you. But these portions have been determined by Allah, for He indeed knows all, is cognizant of all beneficent considerations.”<sup>4</sup>*

*“And to you belongs half of whatever has been left behind by your wives if they die childless; but if they have any children then to you belongs a fourth of what they have left behind, after payment of the bequest they might have made or any debts outstanding against them. And to them belongs a fourth of what you leave behind, if you die*

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<sup>2</sup>. See, Hamid Khan, *“The Islamic Law of Inheritance: A Comparative Study of Recent Reforms in Muslim Countries”*, (Karachi: Oxford University Express, 2<sup>nd</sup> ed., 2021). p. 80.

<sup>3</sup>. Qur'an, 4:7. The translation of the Qur'an in this work is taken, unless otherwise indicated, from *Towards Understanding the Qur'an*, abridged version of Syed Abul A 'la Mawdudi's Tafheem-ul-Qur'an, translated and edited by Zafar Ishaq Ansari, Leicester.

<sup>4</sup>. Qur'an, 4:11.

*childless; and if you have any child then to them belongs one-eighth of what you have left behind, after the payment of the bequest you might have made or any debts outstanding against you. And if the man or woman has no heir in the direct line, but has a brother or sister, then each of these shall inherit one-sixth; but if they are more than two, then they shall inherit one-third of the inheritance,<sup>23</sup> after the payment of the bequest that might have been made or any debts outstanding against the deceased, providing that the bequest causes no injury. This is a commandment from Allah; Allah is All-Knowing, All-Forbearing.”<sup>5</sup>*

Hence, we can see the specification of shares of both genders in different conditions due to their respective statuses. Thus, the males will inherit either as a father, grandfather, son, grandson brother or uncle while the females will inherit either as a mother, grandmother, daughter, granddaughter or aunt should the requisite conditions for each be fulfilled. In either case, they will inherit differently accordingly to their respective statuses and conditions attached therewith. This much should suffice as anything more would be beyond the scope of this paper.<sup>6</sup>

### **III. Categories of Inheritors/Legal Heirs**

Under Sunni law, there are categories of inheritors. The first category are the fixed sharers. As discussed hereinabove, these are the classes of inheritors or legal heirs that already have their shares in the inheritance already fixed specifically by Allah Almighty Himself in the Holy Qur’an.<sup>7</sup> The second category of inheritors are the residuaries. These are the inheritors that have no fixed shares but only inherit the remaining amount of the money or the residue after each sharer has been given his/her respective share of the inheritance.<sup>8</sup> The third category of inheritors or legal heirs are what we call the distant kindred. The distant kindred are those legal heirs who are males or females that are related to the deceased through the female blood relations.<sup>9</sup> They are also those relations who are neither a sharer or a residuary.<sup>10</sup> There are four classes of the distant kindred:

- i. Deceased’s Descendants such as the daughter’s and granddaughter’s children (children of the son’s daughter).
- ii. Deceased’s Ancestors such as the maternal grandparents.
- iii. Descendants of the deceased’s parents such as the sister’s children and brother’s daughters.
- iv. Descendants of the deceased’s both set of grandparents such as the paternal uncles and aunts from the same mother and the maternal uncles and aunts.<sup>11</sup>

<sup>5</sup> Ibid, 4:12.

<sup>6</sup> For a detailed discussion on the Islamic Law of Inheritance, see, Khan, *Inheritance*.

<sup>7</sup> Ibid, p. 80.

<sup>8</sup> Ibid, p. 90.

<sup>9</sup> Ibid, p. 99.

<sup>10</sup> As *Sirajiyah Fil Mirath*, English Translation of famous book on Laws of Inheritance, Australian Islamic Library, 34. <<https://ia802707.us.archive.org/19/items/AsSirajiyahAsSirajiFilMirathEnglishTranslation/As-Sirajiyah>> accessed 21<sup>st</sup> January:2024.

<sup>11</sup> Ibid.

Hence, we can clearly see that the law regarding the distant kindred has two basic principles, the first being that they are neither a sharer or a residuary and the second being that they are related to the deceased through a female blood relation.

#### IV. The Law of Inheritance regarding the Distant Kindred

As discussed hereinabove, the distant kindred are those legal heirs that do not come up in the first two classes of inheritors and are related to the deceased through their female blood relations. We must first understand that the distant kindred are only entitled to the inheritance should the first two categories not exist, that is to say, the first two categories take priority over the last category. So, the fixed sharers take the first priority alongside the residuaries. There are also cases where the legal heir becomes both sharer and residuary. Should there be no fixed sharer or residuaries, only then will the distant kindred be entitled to the inheritance.<sup>12</sup> Although, this is disputed among the Sunni schools of thought. Among the Companions, *Hazrat Zaid Bin Thabit* (R.A) was of the opinion that the distant kindred were not to receive any share of the inheritance and instead it was to be collected in the *Bait-ul-Mal* (public treasury).<sup>13</sup> He reports that the Holy Prophet (S.A.W) said that “*there is no inheritance for the distant kindred, but the property undisposed of is placed in the public treasury*”.<sup>14</sup> This view was also shared by Ibn Abbas (R.A) as well.<sup>15</sup> Among the *fuqaha* (jurists) Imam Maliki and Imam Shafi also agreed with this opinion.<sup>16</sup> However, a second group of Companions of which include *Hazrat Umar Ibn Khattab* (R.A.), *Hazrat Ali Ibn Abi Talib* (R.A.), *Ibn Masud* (R.A.), *Mu’az Bin Jamal* (R.A.) and *Ibn Abbas* (R.A.) disagree with this view and instead opine that the distant kindred are entitled to the inheritance in the absence of the sharers and residuaries.<sup>17</sup> Among the *fuqaha*, this view was shared by *Imam Abu Hanifa* and *Imam Ahmed Ibn Hanbal*.<sup>18</sup>

#### V. Manner of Distribution

There are three methods of distribution for the inheritance of the distant kindred. These are:

- i. *Ahl-al-Rahm*
- ii. *Ahl-al-Tanzil*
- iii. *Ahl-al-Qarabah*

The first method stipulates that the inheritance shall be distributed equally, while the second method stipulates that the inheritance shall be given based on the relation or link they have with the sharers or residuaries through whom they are connected to the deceased.<sup>19</sup> Thus, the system of representation is applied in this case.<sup>20</sup> For example, should the deceased originally have a sister who was supposed to have inherited, but she herself is no longer alive, then her daughter will take her place and receive the share that she was originally supposed to have inherited. Hence, the sister’s daughter is now representing her mother, the original inheritor. It would be more accurate to say that the deceased’ sister has been substituted by the sister’s daughter. This method was also the preference of *Imam Ahmed Ibn Hanbal* and the later *fuqaha*

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<sup>12</sup> Shahbaz Ahmad Cheema, “*Shia and Sunni Laws of Inheritance: A Comparative Analyses*” *Pakistan Journal of Islamic Research*, Vol 10, (2012): 71.

<[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2388741](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388741)> accessed 2<sup>nd</sup> December 2023.

<sup>13</sup> Khan, *Inheritance*, p. 99.

<sup>14</sup> *Sirajiyah*, p. 34.

<sup>15</sup> Muntaqa Yahaya Aminu, *Scholastic Views on Inheritance of Distant Uterine Relations: A Study of Sokoto State of Nigeria*, *Bassey Andah Journal*, vol. 9, (2016): 73.

<<https://www.academicexcellencesociety.com/scholarstic>> accessed 21<sup>st</sup> January 2024.

<sup>16</sup> *Ibid*.

<sup>17</sup> Aminu, *Scholastic Views*, p. 72.

<sup>18</sup> *Ibid*, 72-73.

<sup>19</sup> Khan, *Inheritance*, p. 99.

<sup>20</sup> *Ibid*.

of the *Shafi* school.<sup>21</sup> The last method is the preferred method of *Imam Abu Hanifa* and is based on the simple principle that the rights of the distant kindred are determined by the nature of their own relationship with the deceased.<sup>22</sup> Hence, the distant kindred are categorized into the nearest blood relations and are given inheritance on that basis. Thus, the descendants of the deceased would include the daughter's children while the ascendants would include the mother's parents, sister's children and paternal aunt.

## VI. Jurisprudence of the Superior Courts

We shall now proceed with an analysis of the judgements of the Superior Courts on the law regarding distant kindred. In the case of "*Sirajud Din v. Allah Rakha*"<sup>23</sup>, where there was a suit filed for possession of land based on inheritance. Upon the death of the original owner, Mehtab, the land was inherited by his son, Muhammad Din, who also passed away without having any children or wife and the land then went to his mother, Mst. *Pariah Bibi*. She gifted this land to her sister's husband, Faqir Muhammad and his son *Siraj-ud-Din*. She also then passed away. Allah Rakha, Mst. Umar Bibi and Mst. Resham Bibi all filed a suit for possession of land from them, claiming to be the paternal nieces and nephew of Mehtab. The instant case before the Supreme Court was an appeal of this same suit. The civil court had decreed the suit to the extent of 2/3<sup>rd</sup> of the property in favour of Allah Rakha. 1/3<sup>rd</sup> was reserved for Mrs. Pariah Bibi under the Muslim Personal Law (Shariat) Application Act, 1948 and thus the plaintiffs, not being the heirs of Pariah Bibi could only get 2/3<sup>rd</sup> and even then, only Allah Rakha could get this much as he was a male heir. The mother's share under Islamic Law is indeed 1/3<sup>rd</sup> as her son, the deceased had no children of his own when he had died.<sup>24</sup> Should the deceased have had any children, then the share of the mother would have only been 1/6<sup>th</sup> of the share of inheritance.<sup>25</sup> Allah Rakha was given 2/3<sup>rd</sup> of the property due to the fact that he was a residuary of Muhammad Din. However, it also came on record that Allah Rakha in fact had not proved that he was indeed Mehta's paternal nephew.<sup>26</sup> We shall of course confine ourselves to the observations of the Supreme Court in regards to the inheritance. The Court observes that "*in the presence of a sharer (except in the case of a husband or wife) distant kindred, cannot succeed.*"<sup>27</sup> The court ruled that as the nieces were first cousins of Muhammad Din, therefore, they are distant kindred and thus become excluded from the inheritance on the account that a fixed sharer, the mother was already there.<sup>28</sup> This observation of the court is laudable. In "*Mst. Bakhtan v. Haji Allah Wasaya*"<sup>29</sup>, where there was a suit of pre-emption of land, the court while relying on Muhammadan Law<sup>30</sup> observed that

*"...it has been stated that if there be no sharer or residuary inheritance is divided amongst the distant kindreds. Under the Rules of Exclusion the distant kindreds stand excluded in the presence of residuaries. It is thus very much obvious that in order of succession, the residuary comes first and if there be no residuary then the distant kindreds will inherit."*<sup>31</sup>

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> PLD 1960 (W. P.) Lahore 261.

<sup>24</sup> See, Qur'an, 4:11, (n 17).

<sup>25</sup> Ibid.

<sup>26</sup> PLD 1960 (W. P.) Lahore 261, at para 1.

<sup>27</sup> Ibid, at para 4.

<sup>28</sup> Ibid.

<sup>29</sup> 1985 CLC 2544 [Lahore].

<sup>30</sup> The court has not specified which "**Muhammadan Law**" it is relying on.

<sup>31</sup> Ibid, at para 4.

This observation of the court is correct. The distant kindred do become excluded in the presence of residuaries. A similar observation was also made in many subsequent cases.<sup>32</sup> In the case of “*Muhammad Kasim v. Khair Muhammad*”<sup>33</sup> in which there was a dispute over the ownership of land in line with inheritance. The facts of the case were that the original owner of the land, Allah Jurio died without any children and 1/4<sup>th</sup> of his estate was given to his widow, Mst. Basran as her share of inheritance.<sup>34</sup> The widow’s share of inheritance was not in dispute. Rather, the respondents who were the sons of Mst. Bachal, Allah Jurio’s sister claimed the remaining 3/4<sup>th</sup> share of inheritance as Allah Jurio’s legal heirs while the Appellants also claimed the same on the basis that he was Allah Jurio’s cousin and both of them shared common ancestry from an agnatic or male blood relation. Hence, he was claiming the right of inheritance on the exclusion of the respondents as the respondents were related to the deceased Allah Jurio from a female blood relation. It was based on this very principle that the land was decreed in favor of the appellants as while both parties came under the category of distant kindred, the appellants had a closer blood relation to the deceased compared to the respondents as the former shared an agnatic blood tie to the deceased and thus excluded the latter. Thus, we can see that the Hanafi law of *Qarabah* has been applied in this case. The court while relying on Syed Ameer Ali’s book, “*Mohammadan Law*”<sup>35</sup>, observed that

*“it is clear that in the presence of an heir belonging to the category of “residuaries” no one falling in the class known as distant kindred can inherit the property of the deceased. In view of this clear legal position the appellant would exclude the respondents who fall within the category of distant kindred being related to the deceased through the intervention of a female.”*<sup>36</sup>

This observation is correct. In the case of “*Amir Afzal v. Ghulam Haider*”<sup>37</sup>, in another dispute over the inheritance of land, where the original owner, Muhammad Ismaili died without having any children. The land was then divided up with the deceased’s mother, Mst. Roshan Jan receiving 1/5<sup>th</sup> of the share, with his uterine brother and sisters receiving 1/5<sup>th</sup> of the share and his paternal uncle receiving 3/5<sup>th</sup> of the share. Ghulam Haider challenged this and sought declaration to the effect he along with his two sisters, who were also the paternal aunts of the deceased were entitled to the land to the exclusion of the deceased’s mother and uterine siblings. He also argued that the land was not supposed to be given to Muhammad Ismail as his father, Rehmatullah died before Amirullah, the deceased’s grandfather. When Amirullah died, he and his sisters had inherited the whole land from him, including the one illegally mutated to Muhammad Ismail and thus following Ismail’s death, his mother and sisters could not inherit the land from him. The civil judge did not accept this argument and held that Ismail was to inherit the land that his father Rehmatullah was to inherit had he been alive. The judge would also hold that the mother and uterine siblings of the deceased Ismail would receive 1/3<sup>rd</sup> share of the land each while the plaintiff would receive the remaining 1/3<sup>rd</sup> share. On appeal, the

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<sup>32</sup> See, *Allah Dad v. Muhammad Khan*, 1986 SCMR 707, at para 5, *Muhammad Amin v. Mst. Khurshid Bibi*, 1991 MLD 969 [Lahore], 972, *Abdul Qadir v. Allah Dad*, 1997 CLC 48 [Lahore], at para 3, *Abdul Khaliq v. Fazalur Rehman*, PLD 2004 SC 768, at para 5, *Muhammad Saleem Ullah v. Additional District Judge, Gujranwala*, PLD 2005 SC 511, at paras 10-11, *Shah Muhammad v. Mst. Sarwara*, 2015 MLD 582 [Peshawar], at para 14, *Kullu v. Mst. Faizi*, 2015 YLR 2014 [Lahore], at para 8, *Syed Shabi-ul-Hassan Khusro v. Asad Mustafa*, 2016 MLD 266 [Sindh], 269, *Muhammad Ilyas v. Khursheed Bibi*, 2016 MLD 1674 [Lahore], at para 14, *Ghulam Hassan v. Mst. Wasso Mai*, 2018 YLR 2331 [Lahore (Multan Bench)], at para 12, *Khawaja Rashidullah v. Khawaja Faridullah*, PLD 2018 Sindh 129, 134, *Mst. Amina Khatoon v. Mst. Nighat Jabeen*, PLD 2018 Sindh 325, at para 4, *Hassan Aziz v. Meraj-ud-Din*, 2021 CLC 1821 [Islamabad], 1836.

<sup>33</sup> 1987 SCMR 1560.

<sup>34</sup> Qur’an, 4:11, (n 17).

<sup>35</sup> Syed Ameer Ali, “*Mohammadan Law*”, (New Delhi: Himalayan Books, Vol. 1, reprinted, 1985).

<sup>36</sup> *Ibid*, at para 5.

<sup>37</sup> PLD 1993 Peshawar 117.

Additional District and Sessions judge modified the decree, giving 2/3<sup>rd</sup> to the plaintiffs and only 1/3<sup>rd</sup> to the mother which would then be inherited by the uterine siblings as the mother's heirs. Now the same had been challenged in appeal before the Peshawar High Court. The plaintiffs, the mother and uterine siblings would argue by relying on D.F. Mulla's principles of Muhammadan Law<sup>38</sup> that all of them were entitled to 1/6<sup>th</sup> and 1/3<sup>rd</sup> shares respectively while the respondents argued that by virtue of the Muslim Family Law Ordinance, 1961, that Rehmatullah, the father of Muhammad Ismail, the deceased stood disinherited. Both the contentions of the plaintiff and respondent were rejected by the court, instead the court relied directly on the Holy Qur'an as it observed that under the principles of Islamic Jurisprudence, the Holy Qur'an is the primary source of Islamic Law and proceeded to rely on verses 11-12 and 176 of Surah An-Nisa.<sup>39</sup> The court then discussed the categories of inheritors or legal heirs under the Hanafi law of inheritance<sup>40</sup> and observed that under Hanafi Law,

*"...the property of the deceased goes, in the first instance, to the Quranic Heirs i.e. Sharers. If the estate is not exhausted by them, it goes, to the Agnatic Heirs or Residuaries. And finally, in the absence of Sharers and Residuaries, the property is distributed among the Distant Kindred."*<sup>41</sup>

This observation is correct, although the court has forgotten to mention that this is not just the view of the *Hanafis* but also the *Hanbalis* as well. The court also observed in detail the principle of sharers,<sup>42</sup> residuaries,<sup>43</sup> and the distant kindred by relying on the *Al-Sirrajiyyah*.<sup>44</sup> The court also relied on Mulla's Muhammadan Law's tables of sharers and residuaries.<sup>45</sup> The court further discussed the number of heirs left by the deceased Ismail.<sup>46</sup> The court observes that the mother would receive 1/6<sup>th</sup> share of the inheritance as the deceased is also survived by a uterine brother and two uterine sisters.<sup>47</sup> The court would also proceed to observe the shares of the uterine siblings, where one will receive 1/6<sup>th</sup> and if it is more than one, then they will take 1/3<sup>rd</sup> collectively.<sup>48</sup> The court also discusses once again the full table of residuaries as well.<sup>49</sup> The court would then proceed to rule that the mother would receive 1/6<sup>th</sup>, the uterine siblings 1/3<sup>rd</sup> while the remaining 1/2 would be inherited by the paternal uncle as a residuary and the paternal aunts would be excluded from the inheritance,<sup>50</sup> thus modifying the decree of the Additional District Judge. The court has done a fantastic job here as the court relied directly on the primary source of Islamic Law on this regard and thus ruled accordingly to the established principle to give each person their respective share. It was appreciative of the court to rely directly on the Holy Qur'an rather than secondary sources such as treatises of Islamic Law and only even then, they were only consulted later on for the sake of convenience. In "*Muhammad Saleem Ullah v. Additional District Judge, Gujranwala*"<sup>51</sup>, the court observed that

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<sup>38</sup> D.F. Mulla, "*Principles of Muhammadan Law*", (Bombay: Thacker & Company, 1905).

<sup>39</sup> PLD 1993 Peshawar 117, at para 10. It should be noted however that rather than looking at the Holy Qur'an itself, the court instead relied on the verses of the Holy Qur'an from Hamid Khan's book, the "*Islamic Law of Inheritance*".

<sup>40</sup> Ibid, at para 11.

<sup>41</sup> Ibid, at para 12.

<sup>42</sup> Ibid, at para 13.

<sup>43</sup> Ibid, at para 14.

<sup>44</sup> Ibid, at para 15.

<sup>45</sup> Ibid, at para 16.

<sup>46</sup> Ibid, at para 17.

<sup>47</sup> Ibid, at para 18.

<sup>48</sup> Ibid, at para 19.

<sup>49</sup> Ibid.

<sup>50</sup> PLD 1993 Peshawar 117, at para 20.

<sup>51</sup> PLD 2005 SC 511.

*“The Muslims in the matter of inheritance, are governed strictly in accordance with law of Shariah and the rights of heirs of a deceased in his property, are certainly determined in order of the succession according to which the heirs connected with the deceased by the tie of blood, are divided into three classes namely, sharers, residuaries and distant kindred and the rule of proximity is that a nearer blood relation would inherit in preference to remote and if the claimants are equal in degree, the method of determining their right would be on the basis of line of relation. The collaterals in the order of succession, inherit after sharers and residuaries therefore, there can be no departure to the rule of law of inheritance in Islam that in presence of sharers and residuaries, the estate of a Muhanunadan would not devolve upon the collaterals, except in a case in which the only surviving sharer is husband or wife and in such a case after allotting the share of spouse, the remaining would go to collaterals. However, according to some of the Muslim jurists, if intestate dies leaving no other legal heir, except a wife or a husband, entire would go to her/him as the case may be, whereas other say that it would go to State.”<sup>52</sup>*

In *“Muqadar v. Mst. Roshah”*<sup>53</sup>, the court observed that there are three categories of inheritors or legal heirs, namely, the sharers, who are entitled to a prescribed share of the inheritance, the residuaries, who do not have any prescribed shares but rather take the residue of the shares of the sharers have been successfully divided up and lastly, the distant kindred, who are those blood relations who are neither sharers nor residuaries.<sup>54</sup> The court’s observation is correct to a certain extent as the court has forgotten to mention that the distant kindred only include the blood relations through the female bloodline and that they are excluded from the share of inheritance due to the presence of the sharers and residuaries.<sup>55</sup> This observation was also shared in subsequent cases as well.<sup>56</sup> This is largely due to the fact that the Pakistani courts rely on D.F. Mulla’s book, the Principles of Muhammadan Law, despite the fact that Mulla himself was not a Muslim, nor was he a genuine scholar of Islamic, nor did he claim to be.<sup>57</sup> He never read or researched any classical treatise of Islamic Law.<sup>58</sup> Instead, he only codified the British-Indian precedents in the area of Muslim Family Law, as understood and interpreted by the British-Indian Judges and thus presents a much-distorted version of the principles of Muslim Family Law.<sup>59</sup> And yet his book is given a higher status than a statute and even the Holy Qur’an itself. In fact, in India, some of the judges go to the extent of applying Maxwell’s principles of interpretation of statutes in order to ascertain the meaning of certain provisions in Mulla’s book.<sup>60</sup> These same decisions would then be relied upon by later courts as precedent.<sup>61</sup> Now,

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<sup>52</sup> Ibid, at para 11.

<sup>53</sup> 2008 CLC 43 [Peshawar].

<sup>54</sup> Ibid, 46.

<sup>55</sup> Ibid.

<sup>56</sup> See, *Syed Shabi-ul-Hassan Khusro v. Asad Mustafa*, 2016 MLD 266 [Sindh], 268, *Muhammad Ilyas v. Khursheed Bibi*, 2016 MLD 1674 [Lahore], at para 11, *Ghulam Hassan v. Mst. Wasso Mai*, 2018 YLR 2331 [Lahore (Multan Bench)], at para 10, *Khawaja Rashidullah v. Khawaja Faridullah*, PLD 2018 Sindh 129, 133, *Mst. Amina Khatoon v. Mst. Nighat Jabeen*, PLD 2018 Sindh 325, at para 4, *Muhammad Yousaf v. The State*, PLD 2019 SC 461, Concurring Opinion of Justice Syed Mansoor Ali Shah, at para 3, *Muhammad Tariq v. Sabira Bibi*, 2020 CLC 1864 [Islamabad], at para 7, *Hassan Aziz v. Meraj-ud-Din*, 2021 CLC 1821 [Islamabad], 1836.

<sup>57</sup> See, Muhammad Munir, *“Marriage in Islam: A Civil Contract or Sacrosanct?”*, *Hamdard Islamicus*, Vol. XXX, No. 1, (January-March 2008): 78. <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1534187](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1534187)> accessed 3<sup>rd</sup> December 2023.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Munir, *Marriage*, 78-79.

<sup>61</sup> Ibid, 79.



most Pakistani and Indian judges today rely on Mulla either directly or indirectly.<sup>62</sup> It is truly unfortunate that judges of the Superior Courts who have no understanding of the principles of Islamic Law, particularly the Islamic law of inheritance rely on books which do not contain accurate information regarding this and make an effort to try to understand it themselves, or even appoint an expert in this area, preferably a scholar as an *amicus curae* (friend of the court) to help them in understanding it. There are certainly a few exceptions but nonetheless, the majority rely on inaccurate books on Islamic Law for the sake of convenience rather than make all efforts to ensure proper understanding, interpretation and application. This problem is not only exclusive to the Islamic law of inheritance either.

In the case of “*Mumtaz Bibi v. Public at Large*”<sup>63</sup>, where there was a suit for possession of the land by means of inheritance. The facts of the case were that the original owner, Muhammad Akram died without having any children. He left behind his wife, Mumtaz Bibi and two brothers, Abdul Rehman and Muhammad Iqbal. Both the brothers of the deceased had also passed away. The respondents in the instant case were the sons of Abdul Rehman, thus they were the paternal nephews of the deceased, while the petitioners were the mother and daughters of Muhammad Iqbal. The civil court had issued the succession certificates and shares to both parties. This was appealed by the petitioners to the Additional District and Sessions Judge who dismissed the same. Now they had appealed the decision of the Additional District and Sessions Judge before the Lahore High Court. The petitioners had contended that Muhammad Iqbal was the deceased’s uterine brother while Abdur Rehman was the deceased’s paternal brother, therefore, the latter’s legal heirs do not fall under the category of residuary. They further contended that his legal heirs do not count as the legal heirs of the deceased, that declaring them as sharers is a misapplication of law. They also argued that under Muhammadan Law, the step-mother cannot receive any share of the inheritance. They relied on a number of caselaw. The respondents on the other hand disagreed with the petitioner’s arguments and while relying on a number of caselaw, contended that the respondents are entitled to the share of inheritance as residuary just like the legal heirs of Muhammad Iqbal. The court after perusing the record and hearing all arguments proceeded to first observe that

*“There are three classes of heirs namely; 1. Sharers, 2. Residuaries, and 3. Distant Kindred. “Sharers” are those who are entitled to a prescribed share, of the inheritance; “Residuaries” are those who take no prescribed share, but succeed to the “residue” after the claims of the sharers are satisfied; and “Distant Kindred” are all those relations by blood who are neither Sharers nor Residuaries.”*<sup>64</sup>

It further observed that

*“According to the Hanfi Law the first in the distribution of estate of a deceased Muhammadan, after payment of his funeral expenses, debts, and legacies, is to allot their respective shares to such of the relations as belong to the class of sharers and are entitled to a share. The next step is to divide the residue (if any) among such of the residuaries as are entitled to the residue. If there are no sharers, the residuaries will succeed to the whole inheritance. If there are neither sharers nor residuaries, the inheritance will be divided among such of the distant kindred as are entitled to succeed thereto. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries.”*<sup>65</sup>

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<sup>62</sup> Ibid.

<sup>63</sup> 2023 YLR 675 [Lahore].

<sup>64</sup> Ibid, at para 10.

<sup>65</sup> Ibid.

Both observations of the court are correct. The court also observed that

*“But there is one case in which the distant kindred will inherit with a sharer, and that is where the sharer is the wife or husband of the deceased. Thus, if a Muhammadan dies leaving a wife and distant kindred, the wife as sharer will take her share which is 1/4 and the remaining three-fourths will go to the distant kindred, the husband as sharer will take his 1/2 share, and the other half will go to the distant kindred.”*<sup>66</sup>

This observation is also correct. This is indeed the case where the deceased’s spouse and distant kindred are the legal heirs. The court would proceed to observe that in the instant case, the wife of the deceased shall receive her fixed share while the remaining legal heirs will receive the remaining inheritance.<sup>67</sup> The court observes that the principle is that the wife of the deceased will receive 1/4<sup>th</sup> share of the inheritance while the remaining 3/4<sup>th</sup> shall be given to the remaining legal heirs.<sup>68</sup> The court also observes that Muhammad Iqbal’s wife will receive 1/8<sup>th</sup> of the inheritance, 3/4<sup>th</sup> and 2/3<sup>rd</sup> of the remaining property will be given to all three daughters and divided between them equally.<sup>69</sup> The court also observes that had the deceased had any son, then Abdur Rehman’s sons would not have received any share.<sup>70</sup> However, as Muhammad Iqbal has no son and only three daughters, the remaining 1/3<sup>rd</sup> share will go to Abdur Rehman’s sons.<sup>71</sup> The court would then proceed to dismiss this petition as the petitioners could not point out any illegality of the judgements of the subordinate courts.<sup>72</sup>

## VII. Conclusion

From the discussion hereinabove, we can conclude that the entire principles of the Islamic law of inheritance can be derived from the Holy Qur’an itself. The law of inheritance is a mandatory law that is to be followed. That there are three categories of sharers under the law of inheritance: 1). The sharers, whose shares are prescribed or fixed specifically by Allah Almighty Himself in the Holy Qur’an, 2). The residuaries, whose shares are not fixed specifically in the Holy Qur’an but instead are given the remaining amount or the residue amount after the fixed sharers receive their shares, 3). The distant kindred, those who are related to the deceased through a female blood relation and are neither a residuary or a sharer. The distant kindred are only entitled to the inheritance should there be no sharer or residuary, otherwise, they are deprived or excluded from the inheritance due to the presence of the sharers or residuaries. Thus, the first two take higher priority than the distant kindred. There are two conflicting schools of thought in regards to the distant kindred. One school of thought provides that they are to be deprived of their inheritance and the remaining inheritance should instead be deposited in the *Bait-ul-Mal* (Public Treasury), while the other school of thought opines that the distant kindred are to be entitled to inheritance. There are three methods of distribution for the distant kindred: the first is *Ahl-al-Rahm*, in which the inheritance is given to each person equally, the second is *Ahl-al-Tanzil*, where the inheritance shall be given based on the relation or link they have with the sharers or residuaries through whom they are connected to the deceased. We can also refer to this as substitution. The last method is called *Ahl-al-Qaraba*, where the rights of the distant kindred are determined by the nature of their own relationship with the deceased. Hence, the inheritance shall be given to the distant who has a closer blood relation to the deceased. Lastly,

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<sup>66</sup> Ibid.

<sup>67</sup> 2023 YLR 675 [Lahore], at para 11.

<sup>68</sup> Ibid.

<sup>69</sup> Ibid.

<sup>70</sup> Ibid.

<sup>71</sup> Ibid. It should be noted that the court has mistakenly switched around the names of Muhammad Iqbal and Abdur Rehman.

<sup>72</sup> 2023 YLR 675 [Lahore], at para 16.

the Pakistani superior courts give somewhat accurate observations on the law of inheritance regarding the distant kindred, but it is often not detailed and is only a brief explanation.

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