

THE QURANIC LAW OF INHERITANCE

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I. INTRODUCTION

It is a universally acknowledged fact that the extent of help and cooperation, which a person receives from his parents, children and other similar relations, has little chances of being paralleled by any other association. Undoubtedly, the world has always considered the kith and kin of a deceased as the rightful beneficiaries of the wealth he has left behind. But certain issues in this regard have always remained unresolved, for example, who among the kindred is nearest with respect to the benefit he holds for the deceased? And how should the inherited shares be ascertained on this basis? In this matter the extent to which the human mind has faltered and stumbled can be seen from the frequent history these blunders have continued to make. It is not that human endeavor in this regard has fallen prey to any lack of application; rather it is due to certain inherent limitations of the human mind, which have made the task itself beyond its reach. Love, hatred, prejudice and other emotions, have made it impossible for the human intellect to come to grips with this challenge.

The purpose of this essay is to promote a more rational understanding towards Islamic law of inheritance, its rules and its basis. In part II of my essay, I will elaborate upon the two founding principles of Islamic Law of inheritance. Part III of the essay will specifically deal with the rules of inheritance as provided by Quran and their respective interpretations as adhered by different school of thoughts.

II. BASIS OF ISLAMIC LAW OF INHERITANCE

The Islamic law of inheritance is one of the most comprehensive systems of intestate succession. It finds its origin in the pre-Islamic days in Arabia. The Quranic injunctions brought radical changes in the principles of succession that existed before the advent of Islam by eliminating all that was unjust and inequitable and by introducing instead just and equitable principles. It would, therefore, be proper and relevant to examine in brief the following two basic principles of Islamic law of inheritance:

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- A. Divine Principle of Determination of Heirs
- B. Principle of Benefit of Kinship

A. Divine Principle of Determination of Heirs

One of the most peculiar principles of Quranic law of inheritance is that all of its rules are divine in their source. The Almighty Himself has guided mankind in this affair to relieve an Islamic society from the disorders which have originated on this account:

"You know not who among your children and parents are nearest to you in benefit. This is the law of God. Indeed, God is Wise and all-Knowing."¹

It is from this specific verse that the above-mentioned two principles have emerged. Since the Almighty Himself has indicated who the heirs of a deceased should be, a more just law in this regard could not have been enacted. Hence, after this Divine Directive, no one has the right to bequeath his wealth in favor of the heirs designated by the Almighty Himself. The verse, in fact, admonishes all ill-advised elements, who on the basis of their own intellect or personal inclinations may desire to amend the law. A warning is being sounded to them that these shares have been apportioned by the immense knowledge and wisdom of the Creator of the heavens and the earth, which encompass all His directives. Man, in spite of his formidable talents, can neither acquire the vastness of His knowledge nor comprehend the profundity of His wisdom. If he is a true believer he must submit to the Word of God.

The following directive of the Prophet (sws)² is based on this Quranic injunction:

"Indeed, God has granted every rightful person his right. So no bequest can be made to an heir."³

B. Principle of Benefit of Kinship

The second implication of the above verse⁴ is also clear. The law of inheritance as stated in the Quran is based on the underlying cause of 'the benefit of kinship', as indicated by the words *laa tadroona ayyuhum aqrabu lakum naf'aa*.⁵ Consequently, the directive in reality does not pertain to the relatives but is related to the underlying cause present in this relationship,

¹ THE HOLY QURAN, 4:11

² *Salay alla wa alay-hi wasalam* abbreviated as (sws). An Arabic expression to convey peace upon Prophet Muhammad and his family.

³ TIRMAZEE, KITAB-UL-WASAAYAA, Chapter 5

⁴ THE HOLY QURAN, 4:11

⁵ Translation: You know not who among your children and parents are nearest to you in benefit.

which actually entitles them to become the heirs. All the relatives whose shares have been stated in the Quran will be considered eligible to be the recipients only in case the underlying cause of this directive, that is, benefit can be proven in their relation to the deceased. This benefit is, by nature, present in parents, children, brothers, sisters, husbands, wives and other close relations. Hence, in normal circumstances, they will be considered the heirs to the legacy of a deceased. However, in certain unusual circumstances, if an absence of benefit in any of these relationships is diagnosed by sense and reason, the style and pattern of the verse demands that such a relative should not become an heir to the legacy. Therefore, in such cases, if someone is deprived from his share, it would be perfectly in accordance with the purport of the verse, to which its words so clearly testify.

In the diverse nature of human relationships, there can be certain instances in which an absence of benefit in close associations can be clearly seen. A little deliberation shows that two such cases are very apparent:

- 1) Owing to some reason, no relationship on the basis of Islam remains between a legatee and a legator.
- 2) A legatee kills his legator.

The absence of benefit is extremely evident in the second case, for what benefit can be expected from a person who is after the life of his relations? However, the first case might be beyond the comprehension of people for whom religion is no more than a cultural heritage. But any one who has studied the Quran knows that the Divine Message simultaneously demands faith in God, and renunciation of every evil belief, from the believers. If a person has established a relationship with the Almighty in a manner prescribed by Him then no relationship of love and affection, help and co-operation on the basis of economic and social benefit, can be developed and established with people who deviate from the prescribed path. The very essence of Islam is *nakhla 'oo wa natrukoo man yaffjuruk*.⁶ If the obligations stipulated by Islam as stated in *Surah Mumtahinah*⁷ are kept in consideration then it must be conceded that the absence of benefit in the first case is more obvious than in the second.

⁶ Translation: "O Lord! we shall leave every person who is disobedient to you."

⁷ See THE HOLY QURAN, 60: 11. These verses read as "O ye who believe! do not make friends [with these Meccan people, these] enemies of Mine and yours. You offer them friendship whilst they have denied the truth that has come to you and drive away the Prophet and yourselves [from Mecca] because you believe in Allah, your Lord---If you come forth to fight [against them] for My cause and to please Me [and come forth] sending them secret messages of friendship despite the fact that I know full well all that you conceal and all that you reveal---and [in spite of this, if you still come forth like this, then] those among you who do so [should very well remember that] they have strayed from the right path."

Since the law of inheritance is based on the underlying cause of benefit, both these cases are, in fact, not included in its sphere of application. These exceptions do not annul the directive, but are understood to exist in its connotations from the day it was revealed. They are inherent in the meaning of the verse and not extraneous to it. Anyone having a linguistic appreciation can clearly comprehend this fact.

The Prophet (sws) is reported to have said:

"A Muslim cannot be an heir of a disbeliever nor can a disbeliever be a Muslim's."⁸

It is also related from him (sws):

"The slayer shall not receive the legacy of the person he slays."⁹

III. THE QURANIC RULES OF DISTRIBUTION OF ESTATE

After this preliminary discussion, we will now present our interpretation of the law as stated in verses 11-12 and verse 176 of Surah Nisaa.¹⁰ Since our view is different from the general, a detailed explanation supported with all relevant arguments follows. We expect that our learned scholars will accept or reject this viewpoint in the light of these arguments only.

A. Children

Verse 11 of Surah Nisaa¹¹ begins with the shares of the children:

"God enjoins you about your children that a boy's share is equal to that of two girls'. And, if there are only girls among the children and they are more than two then they shall receive two thirds of the inheritance, and if there is only one girl then her share is half."¹²

In the original Arabic version of above text, the sentence *Yoosee kumullaahu fee aulaadikum*¹³ acts as a prelude to *lizzakari mithlu hazzil unthayain*.¹⁴ The word *aulaad* denotes both the female and male offspring. Hence, the correct sentence analysis in our consideration is: *lizzakari minhum mithlu hazzil unthayain*, meaning hereby, [among the children] a boy's share is equal to that of two girls'.

⁸ BUKHARI, KITAB-UL-FARAAIDH, Chapter 26

⁹ TIRMAZEE, KITAB-UL-FARAAIDH, Chapter 17

¹⁰ THE HOLY QURAN, Chapter 4

¹¹ Id.

¹² THE HOLY QURAN, 4:11

¹³ Translation: God enjoins you about your children.

¹⁴ Translation: That a boy's share is equal to that of two girls'.

If this commandment had ended on the words *lizzakari mithlu hazzil unthayain* then it would have meant that:

- (i) If the children of a deceased are only a boy and a girl then the boy will receive twice as much as the girl,
- (ii) If the number of boys and girls exceed this, the inheritance shall be divided among them in a manner that each boy receives twice the share of a girl,
- (iii) If there are only boys or only girls then the whole inheritance shall be given to whoever among the two is present.

The third case is also, quite evidently, an essential outcome of the style and pattern of the verse. If it is said that this money is to be distributed among beggars and a male beggar is to be given twice the amount of a female beggar then this means nothing except that the money is actually meant for the beggars; hence if all beggars are male, all the money shall be distributed among them and if all the baggars are female, then also the same procedure shall be adopted.

But the directive does not end here: an exception immediately follows, thereby amending it: the sentence *fa inkunna nisaaan fauqathnataini fala hunna thulutha maa tarak*¹⁵ is an exception to *lizzakari mithlu hazzil unthayain*. This means that if among the children of the deceased there are girls then whether they are two or more, their share is two thirds. The words *wa in kaanat waahidatan falahan nisf*¹⁶ are co-ordinated to this exception by the copulative particle (*harf-i-`atf*) *wau* and do not form an independent clause.

We have interpreted the meaning of *fauqathnatain* (more than two) as two or more than two. The reason behind this is that before it, the word *ithnatain* (two) has been suppressed, which is due to the style and pattern of the Arabic language. If in the language of the Quran, the share of a girl and of two or more girls are to be stated separately owing to a difference in their proportions then there can be two ways of doing so. If an ascending order is adopted the share of one girl shall be stated first followed by the share of two girls. If the share of more than two girls is to be the same as that of two girls, there is no need to mention it in words. After specifying the share of two girls after that of one, due to a difference in their amount, if a silence follows, then this is a clear indication that the share of two or more girls is equal to that of two girls. If a descending order arrangement is employed, then again, the words *fauqathnataini au ithnatain* (more than two or two) are inappropriate as regards the linguistic style and pattern of Arabic; so after stating the shares of more than two girls, the share of one girl will be stated. In this style and arrangement the commencement of a sentence by

¹⁵ Translation: And if there are only girls among the children and they are more than two then they shall receive two thirds of the inheritance.

¹⁶ Translation: And if there is only one girl then her share is half

fauqathnatain bears evidence to a suppression of the word *ithnatain* before it. A little deliberation shows that the verse readily suggests this fact. The finesse in the arrangement demands that *ithnatain* should come after *fauqathnatain* while linguistic principles dictate that *ithnatain* should come before *fauqathnatain*. To fulfill both these requirements the Quran has suppressed the word *ithnatain* by adopting an elliptical style of expression in the descending order arrangement. In the last verse of Surah Nisaa¹⁷, these shares have been stated in an ascending order. Accordingly, we observe there that *fauqathnatain* has been suppressed after *ithnatain*:

*In umru'un halaka laisa lahu waladun wa lahu ukhtun falahaa nisfu maa taraka wa huwa yarithuhaa in lam yakunlahaa walad. Fa in kaanathnataini fala humathuluthaani mimmaa tarak*¹⁸.

Translation: If a man dies childless and he has only one sister, she shall inherit half of what he leaves and if a sister dies childless then her brother shall be her heir; and if there are two sisters, they shall inherit two thirds of what he [or she] leaves.

B. Parents

The shares of the parents are stated next:

"And if the deceased has children, the parents shall inherit a sixth each, and if he has no children and only the parents are his heirs then his mother shall receive a third, and if he has brothers and sisters then the mother's share is the same one sixth after the payment of any legacies he may have bequeathed and after discharging any debts he may have left behind."¹⁹

The connective particle *wau in wa li abwaihi li kulli waahidim minhumas sudusu mimmaa tarak*²⁰ does not co-ordinate this clause either to *fa in kunna nisaaan fauqathnatain* or to *wa in kaanat waahidah*; in fact, it co-ordinates it to the whole directive above which relates to the shares of the children. Hence this co-ordination (*'atf*) is not copulative (*lil jama'*), rather it is amending (*lil istadraak*) in nature. The reason is that though it is clear from the words *lizzakri mithlu hazzil unthayain*, that a boy's share is twice a girl's, their actual proportion has not been indicated. This linguistic style can be appreciated from an example: If it is said 'This money is for the children. Let each boy receive twice as much as a girl, and let the father receive half the amount', any person who has a little linguistic sense will clearly understand these sentences to mean that the money is actually meant for the children. If these sentences had ended without a mention of the father's share, all the money would have been distributed among the boys and girls

¹⁷ THE HOLY QURAN, Chapter 4

¹⁸ Id at verse 176.

¹⁹ Id at verse 11.

²⁰ Translation: And if the deceased has children, the parents shall inherit a sixth each.

in the proportion indicated. But since the father is also to be given half the amount, it is imperative that the father should first receive this amount and then what remains should be distributed among the children. Our jurists are also of the same opinion. Abu Bakr Jassaas writes:

"And another inference from the verse *lizzakari mithlu hazzil unthayain* is that if besides children other heirs like parents and a husband or a wife are also present then after giving them their shares the remaining legacy shall be distributed among the children."²¹

But our jurists have erred in regarding *fa in kunna nisaaan fauqathnatain* as an independent clause like *wa li abwaihi* and have started adding 2/3 to 1/3 and 1/4²²; whereas *fa in kunna nisaaan fauqathnatain* is an exception to *lizzakari mithlu hazzil unthayain* and explains one of its aspects, as has been pointed out before. As such this exception cannot have a different implication. The total implied meaning can be appreciated by an example: 'In this amount Omer, Ali and Saeed have exactly equal shares, and if only Ali and Saeed are present, let Ali receive two thirds and Saeed one third, and give ten rupees from this to our sister.' A little deliberation shows that though it has been said that in the absence of Omer, Ali and Saeed shall receive two thirds and one third respectively, an amendment at the end necessitates that ten rupees from the amount should first be given to the sister, and whatever remains should be distributed between Ali and Saeed according to their shares.

The verse under discussion is also of the same style. Consequently, if this is kept in mind, it is not at all difficult to comprehend that after the clause *fa in kunna waahidatan falahan nisf* the shares of the parents and the spouses which are coordinated to the shares of the children by the connective particle *wau* shall all necessarily be distributed first and whatever remains shall only be distributed among the children. Whether among the children there are only boys or both boys and girls, the same principle shall apply. Similarly, if only female children are present they shall receive two thirds or half (whatever the case may be) from the remaining inheritance and not in any case from the total inheritance.

This, in our opinion, is the correct meaning of the verse. Any person who after comprehending the implications denoted by the particle *wau in wa li abwaihi* and the particle *fa in kunna nisaaan* reads the verse, shall spontaneously reach the same conclusion.

Regrettably, our jurists have failed to appreciate this meaning. They insist upon giving the female offspring their two third share from the total inheritance. As a result, in some cases it is not possible to distribute an inheritance. They solve this problem by equally decreasing the proportion of each share. This in their terminology is called *'aul*. Ibn i Abbaas comments

²¹ ABU BAKR JASSAAS, AHKAAM-UL-QURAN, Vol 2 at p.80

²² i.e., the shares of two daughters are added to the share of the parents and the share of the husband--and the total sum exceeds one!

on this in the following manner, as reported by Abu Bakr Jassaas in his "Ahkaam-ul-Quran":²³

"Ataa bin Abee Ribaah narrates that he heard Ibni Abbaas speaking about the shares of inheritance, and specifically referring to 'aul among them. He was saying 'Do you people reckon that the one Who has knowledge about every sand particle shall distribute wealth in one half and one half and one third. And after giving this half and this half how shall you give the third?' Ataa says that he replied 'what benefit is this to you and me. After we depart from this world, our own legacy shall be distributed in the manner people have adopted, contrary to our own view.' Upon this Ibni Abbaas replied 'Then let us summon our sons and their sons, our women and their women and ourselves and their-selves and pray together that the curse of God be on every liar. God has not distributed any wealth in one half and one half and one third."

Next consider, the remaining part of the verse:

The word *walad* in *in kaana lahu walad* (if he has children) and *fa* in *lam ya kun lahu walad* (if he does not have children) is used both for male and female children. In the Arabic language this connotation is customary. Besides being used here, it has also been used subsequently where the shares of the spouses have been stated. In our consideration, in all these instances it has the same meaning. There is no contextual indication, intrinsic or extrinsic, to use the word specifically for male children. The linguists clearly maintain that it is used in the singular as well as the plural sense and, also, both for the masculine and the feminine gender. In all the cases mentioned, whether boys and girls in the indicated numbers are present or absent, these connotations of the word shall be considered understood. The following Quranic verse conclusively testifies to this meaning:

"And they regard the *jinn*s as Allah's equals, though He created them, and impute without knowledge sons and daughters unto Him. Praise and Glory to Him! Exalted is He above their imputations. He is the Originator of the heavens and the earth. How can He have children when for Him there is no consort. He created everything and He has knowledge about all things."²⁴

In the above verse, after a mention of the fact that the idolators have falsely ascribed sons and daughters as partners to God, this claim has been clearly refuted by the words: *Annaa yakoonu lahu walad* (how can He have children?). Obviously, *walad* here is meant both for the masculine as well as the feminine gender.

According to the linguistic principles of Arabic, after the words *fali ummihi thuluth* (the mother's share is one third) the words *wa li abeehi thuluthaan* (and the father's share is two thirds) or words of similar meaning

²³ See Jassaas, supra note 20 at p.91

²⁴ THE HOLY QURAN, Chapter 6 at verse 100-101

have been suppressed, as is being readily suggested by the words *wa warithahu abwaahu* (and his parents are his heirs). Hence, this mention is a clear proof of the suppression. When it is said 'if the heirs of this money are only Zaid and Ali, Zaid's shares is one thirds' then after this there is no need to say that 'the remaining two thirds is for Ali'---something which is understood by all requisites of common sense.

Also, in our estimation, after *fa in kaana lahu ikhwatun fa li ummihis sudus*²⁵ the words *wa li abeehis sudusu aidhan*²⁶ or words having a similar meaning have been suppressed. The contextual indication for this is also very evident. If the brothers and sisters are present then the mother's share is the same one sixth as in the case when a deceased has children. This also bears witness to the fact that the father's share is also the same and that there is no need to express it in words. If a reader relishes the finer aspects of a language, he instinctively concludes that if the mother's share has reverted to its original amount, so should the father's share. Thus in our opinion the correct analysis of these verses is: 'If there are children, both the father and the mother shall receive one-sixth. If there are no children and only parents are the heirs, the mother's share is a third, but if there are brothers and sisters, the mother's share is the same one sixth'. One can very well see how this style effectively induces the mind to spontaneously jump to the suppressed words: 'and the fathers share is also the same one sixth.'

It is clear from these verses that in the absence of children, brothers and sisters take their place. Our view is endorsed by the last verses of the *surah*, but we will delay an explanation until the end, when these verses shall be discussed.

The word *ikhwatun*, in our consideration, only signifies the existence of a being. It merely specifies that in the presence of brothers and sisters regardless that they are one, two, or more in number, the parental shares revert to their original amount. Plurality here does not indicate a numerical amount, rather it only denotes the existence of an entity. To quote a Hamaasi poet:

*Iyyaaka wal amralazee in tawassa`at
Mawaariduhu dhaaqat `alaikal masaadiru*²⁷

The poet has used the words *mawaarid* and *masaadir*. It will be outright injustice to this literary utterance if it is interpreted to mean that it urges the reader to refrain from getting involved in matters whose *mawaarid* and *masaadir* are, after all, three or more. The poet only intends to establish the existence of a *maurid* and a *masdar* and obviously has no intention to

²⁵ Id. Arabic text, translation: And if he has brothers and sisters then the mother's share is the same one sixth.

²⁶ Id. Translation: And the father's share is also one sixth.

²⁷ Id. Translation: "Avoid entangling yourself in a matter in which if the paths that lead to it (*mawaarid*) are wide, those that come out (*masaadir*) are narrow."

convey their numerical amount. There may be only one way of getting involved and withdrawing from an affair and there may be several ways to do so. Similarly, a deceased may leave behind a brother and a sister and their number can also be five or ten. The word *ikhwatun* encompasses all these different cases. To convey such meanings every language employs this style of plurality. If it is said, 'If you have children then give these sweets to them', no one will consider this to mean that if the addressed person has only one child, he cannot be given the sweets, merely because the word children has been used by the speaker. Such a meaning can only be inferred by someone who instead of appreciating a language in literary perspectives starts analyzing it on the basis of crude mathematical axioms. Our able scholars insist upon qualifying *ikhwatun* in numerical terms. They are adamant on a literal interpretation that must conform to the norms of duality and plurality.

The words *mim ba'adi waseeyatin yoosee bihaa au dain*²⁸ at the end of the directive imply that if a deceased has outstanding debts to his name then first of all they must be paid from the wealth he has left behind. After this, a part of his legacy, which he might have bequeathed, shall be paid, and whatever remains shall be distributed among the heirs. Though the directive of discharging of debts has been stated at the end of the verse, it shall be given priority over all payments. The reason is that a person from whom money is borrowed has a rightful share in the wealth of a deceased borrower before his death, while an heir becomes a rightful shareholder in a person's wealth only after his death. As far as the precedence of the payment of any bequeathed legacy in the actual statement of the verse is concerned, it owes much to a touch of elegance in presentation, a distinctive feature of Quranic Arabic.

C. Spouses

The shares of a husband and wife are stated next:

"And to you belongs a half of what your wives have, if they die childless. And if they have children, a quarter of what they leave shall be yours after payment of their debts and any legacies they may have bequeathed. Your wives shall inherit one quarter of what you leave, if you die childless. If you have children they shall inherit one eighth, after payment of your debts and any legacies you may have bequeathed."²⁹

The shares of the spouses are very clearly stated and need no explanation. After the payment of debts and any bequeathed legacy, these shares shall be given from the total remaining estate of a deceased.

²⁸ Translation: After the payments of any legacies he may have bequeathed and after discharging any debts he may have left behind.

²⁹ THE HOLY QURAN, Chapter 4 at verse 12.

D. *Kalaalah* Relatives

In the end, the shares of *kalaalah* relatives have been stated:

"If a man or a woman is made an heir on account of his [or her] *kalaalah* relationship [with the deceased] and he [or she] has one brother or sister, the brother and sister each shall receive a sixth, and if they be more than this, they shall be sharers in one third, after payment of any legacies bequeathed and any [outstanding] debts---without harming anyone. This is a command from God and God is Gracious and all-Knowing."³⁰

The most important word in this verse is *kalaalah*. Originally, it is a nomen verbum (*masdar*) in the meaning of *kalaal* ie, 'feebleness and frailty'. To quote a line from Aashaa's poetry:

*Fa aaa laitu laa 'arthee lahaa min kalaalatin*³¹

Mutammim Bin Nuvaairah says:

*Faka 'annahaa ba`dal kalaalati wassuraa`
`iljun tughaaaleehi qazoorum mulmi`oo*³²

Figuratively, the linguists attribute the following three meanings to this word:

- i) A person who leaves behind neither parents nor children.
- ii) Any relationship which is not through the parents or children.
- iii) All of one's relatives except the parents and children.

Zamakhsharee writes in his book "Kashshaaf":

"*Kalaalah* has three meanings: It is an adjective used for a person who leaves behind neither parents nor children; it also means all the relatives of a deceased except his parents and children, and it also denotes the relationships which are not through [the deceased's] parents or children. The Arabs says: *maa warithal majda 'an kalaalah* i.e., he could not become an heir to nobility because of a distant relationship. Likewise, you say: *maa samata 'an ayyin* i.e., he did not become quiet because he was unable to speak and *maa kaffa 'an jubnin* ie, he did not stop because of cowardice. And *kalaalah* is a nomen verbum (*masdar*) meaning *kalaal*. *Kalaal* means loss of strength because of weakness. Aashaa says: *fa aaa laitu laa 'arthee lahaa min kalaalatin* i.e., then I swore that I shall not show any mercy on her because of her feebleness and frailty. Later, it was

³⁰ Id.

³¹ Translation: "Then I swore that I shall not show any mercy on her because of her feebleness and frailty."

³² Translation: "That [she] camel after the night's tiring journey is indeed like a wild ass whom even a pregnant donkey tries to overtake."

figuratively used for the relationship not through the parents and children. The reason for this being that such a relationship is not as strong as the one through the parents and children. And when it is used as an adjective of a legatee or a legator it means *zoo kalaalah*. Similarly, you say *falaanum min qaraabatee* i.e., *falaanum min zawee qaraabatee*, and it can also be an adjective like *hajaajah* and *faqaaqah* meaning foolish."³³

We could not find the word used in the first meaning i.e., a person who does not leave behind both parents and children, in pre-Islamic Arabic poetry though this use is grammatically correct.

It has been used at many instances in pre-Islamic Arabic poetry in the second meaning i.e., the relationship not through the parents as well as the children.

To quote Tirmaah:

*yahuzzu silaahan lam yarith hu kalaalatan
yashukku bihee minhaa ghumoodhal maghaabinee*³⁴

Amir Bin Tufail says:

*wa maa sawwadatnee `aamirun `an kalaalatin*³⁵

According to "Lisaan-ul-Arab":

"The Arabs say *lam yarith hu kalaalah* i.e., owing to his distant relationship he did not become an heir, but he inherited the estate because of nearness and entitlement to it."³⁶

The third meaning attributed to it i.e., all relatives of a person except his parents and children, is verified by many examples in the pre-Islamic Arabic literature.

A Hamaasi poet, Yazeed Bin Al-Hakam, while admonishing his son says:

*Wal mar'u yabkhalu bil huqooqi wa lil kalaalati maa yuseem*³⁷

Azharee, has quoted a poet's couplet:

*Fa inna abal mar'i ahmaa lahu
Wa maulal kalaalati laa yaghdhaboo*³⁸

³³ See ZAMAKHSHAREE, KASHSHAAF, Vol 1 at p.485

³⁴ Translation: "He is waving his weapon which he did not inherit because of a distant relationship. Through it he pierces the part concealed in her thighs."

³⁵ Translation: ("And the tribe of Amir did not make me the chief because of a distant relationship.")

³⁶ See LISAAN UL ARAB, Vol. 11 at Pg 592

³⁷ Translation: "Man shows miserliness in discharging his duties and after his death, his distant relatives take away his animals which graze in the forests."

To quote a Bedouin's saying:

"I have a lot of wealth and my heirs are *kalaalah* i.e., distant relatives."³⁹

Imaam Muslim has quoted the following words in a hadith narrated by Jabir: "O Prophet of Allah ! only *kalaalah* are my heirs."⁴⁰

Many traditions, in which Quranic verses have been explained, endorse this meaning. Abu Bakr Jassaas writes in his "Ahkaam-ul-Quran":

"In this regard, there are two narrations attributed to Abu Bakr, Ali and Ibn Abbaas. One of them says that all except the father and the children are *kalaalah* and Mohammad Bin Saalim reports from Shu'ba, who reports from Ibn Mas'ood that all except the father and the children are *kalaalah* and Zaid Bin Thabit has also reported this meaning."⁴¹

Now, let us consider the verse under discussion. Though our jurists have unanimously preferred the first meaning here, yet the verse itself testifies against adopting this meaning. If we carefully analyze verses 11 and 12 of Surah Nisaa⁴² from *yoosee kumullaahu fee aulaadikum*, we observe that after a mention of the shares of the children and the parents, the Almighty has directed us to carry out the distribution of legacy by the words *mim ba'di waseeyyatin yoosee bihaa au dain* (after the payment of any legacies he may have bequeathed and after discharging any debts he may have left behind). The directive has been repeated in the shares of the spouses in the words *mim ba'di waseeyyatin yooseena bihaa au dain* and *mim ba'di waseeytin toosoonah bihaa au dain*. A little contemplation shows that in all these instances the verb has been used in its active voice and the antecedent of *yoosee*, *yooseena* and *toosoonah* is clearly stated in each of these sentences. But in the verse of *kalaalah*, the verb has been used passively. This departure tells us that the subject (*faa'il*) of the verb *yoosaa* i.e., the legator in *wa in kaana rajulun yoorathu kalaalatan au imra'atan* has not been stated. Therefore, in this verse the word *kalaalah* cannot be regarded as an adjective for the deceased. The change conclusively testifies that the Quran has not used the word in its first meaning i.e., a person who does not leave behind either parents or children.

As far as the second and third meanings are concerned, any of the two can be preferred on the basis of a more delicate grammatical construction,

³⁸ Translation: "If a person is oppressed and persecuted, it is his father who, in his support, is infuriated the most. *Kalaalah* (relatives) are not infuriated to this extent in such a matter."

³⁹ See supra note 35.

⁴⁰ IMAM MUSLIM, KITAB-UL-FARAAIDH, Chap 2.

⁴¹ See Jassaas, supra note 20 at p.87

⁴² THE HOLY QURAN, Chapter 4.

because in both cases the implied meaning remains the same. Hence in this verse the verb *yoorathu*, in our consideration, is from the *if'aal* category used in its passive form and *kalaalah* is *maf'ool lahu* (an accusative on account of which something is done). *Kaana* here is an incomplete (*naaqisah*) and *yoorathu* is its predicate (*khabr*). *Rajulun* and *imra'atun* are the nouns (*'asmaa*) of *kaana*. Keeping in mind this analysis of the verse, it can be translated thus: 'and if a man or woman is made an heir because of his (or her) *kalaalah* relationship...'

Naturally, only the deceased person will have the right to make someone his heir. Since the second object of the passive verb *yoorathu* has not been stated, linguistic principles dictate that in the given context the verse should only mean that a *kalaalah* relative can be made an heir together with the rightful heirs as well as in cases when a portion of the inheritance remains after it has been distributed among the rightful heirs and also when none of them is present.

Wa lahu akhun au ukhtun fa li kulli waahidim minhumas sudus. Fa in kaano akthara min zaalika fa hum shurakaau fi thuluthi min ba'di wasseyyatim yoosaa bihaa au dain i.e., if a man or a woman from the associations of a single relationship is made an heir, then if the person who is made the heir has one brother or one sister, he (or she) will be given one sixth of what the heir himself receives and if the heir has more than one brother or sister then they shall share equally in a third of what the heir himself receives. After this there remains no need to say that the remaining five sixths or two thirds (whatever might be the case) shall be given to the person whom the deceased had made his heir. If it is said 'Ahmad has made your son the heir of his wealth but if he has a brother then the brother shall be entitled to a third of his share', it clearly means that after the brother receives his share the remaining money should be given to the son who has actually been made the heir.

This directive of the Quran has a very sound reason behind it. Naturally, a deceased can choose to make any brother, sister, aunt or uncle (*kalaalah* relatives) his heir. But there can be other brothers or uncles besides the one who has been made an heir by a deceased. The case is no different for sisters or aunts also. A person can prefer any uncle or aunt. But the Almighty does not approve the fact that all other associations of the same relationship should totally be deprived of any share. Therefore, if a person, for example, has made one of his paternal uncle, Saeed, the heir to his remaining estate in presence of two other paternal uncles then the two shall share equally in a third of what Saeed receives, and Saeed himself shall receive the remaining two thirds.

Ghaira mudhaaar. Wasseyyatim min Allah Wa Allaahu 'Aleemun Hakeem: These words at the end of the verse serve as a warning that making someone an heir should not be a source of harm for any of the rightful heirs. To dispel any element of foul play, the Almighty Himself has designated the shares of the real heirs. Since, according to the verse a person can make any

of his *kalaalah* relatives his heir, it has been emphatically stated that while exercising this prerogative the rights of a rightful heir should not be usurped ---This is not a piece of advice from an earthling. It is what the Creator of the heavens and the earth has directed us about. If any of His creation deliberately deprives a rightful claimant from his share then he should be aware that God has knowledge of all his deeds and if he errs unintentionally, the Almighty is Gracious and Merciful. He does not burden a person with a responsibility he cannot fulfill. All His directives bring ease and facility for His creation and are not meant to put them through hardship and difficulty.

E. Brothers and Sisters

Since according to our interpretation all brothers, sisters, uncles and aunts are *kalaalah* and a person can make anyone of them his heir it is possible that he might prefer an aunt or an uncle over his brothers and sisters. If a deceased has children, the nature of the directive is proper in all respects but if the deceased has no children and has brothers and sisters then this authority vested in him stands objected. It is an unquestionable reality that after one's children, his brothers and sisters among his *kalaalah* relatives are nearest to him. Common sense demands that in such a case they should receive a large portion of the legacy. Verses 11-12 of Surah Nisaa⁴³ clearly state that if a deceased has brothers and sisters, the parents shall receive a sixth each. Since this share is the same as what they receive in the presence of children, a question arises that whether it has still been left to the deceased to make the brothers and sisters his heirs or to deprive them a share in his wealth. While explaining verses 11-12 of Surah Nisaa⁴⁴, we had written that the style of the verses is such that in the absence of children, the brothers and sisters of a deceased should be his heirs. But obviously, the meaning unfolded by a particular style cannot be as certain and definite as the one which is directly stated in words. In the absence of children, the question about the shares of brothers and sisters can even arise today. It had arisen in the time of the Prophet (sww) as well. Jabir reports:

"He says: I was sick and in a state of unconsciousness when the Prophet of Allah arrived at my place. He performed ablutions and the people sprinkled some water over me from which the Prophet was performing his ablutions. When I came to my senses I said, O Prophet of Allah all my heirs are *kalaalah*; at this, this verse⁴⁵ of inheritance was revealed."⁴⁶

⁴³ Id.

⁴⁴ Id.

⁴⁵ It has been explained in the Hadiths that by 'this verse of inheritance' is meant the last verses of Surah Nisaa in which the shares of the brothers and sisters has been stated. Likewise, some other Ahaadith clearly mention that Jabir only had sisters among his heirs.

⁴⁶ See Muslim, Supra note 39.

From the words 'O Prophet of Allah all my heirs are *kalaalah*; at this, this verse of inheritance was revealed of the above tradition, it is evident that among the *kalaalah* relatives the question was particularly about brothers and sisters and the last verses of Surah Nisaa were revealed as a result of this inquiry.

A special style of the Quranic verses is that in them certain questions have been stated in a very concise and compact form. The actual nature of the question and its background is revealed by the answer, which the verses subsequently give. By not taking into consideration this style, our commentators have come across many difficulties in understanding *qul lilaahu yufteekum fil kalaalah*. Here also, if only the answer is analyzed, the meanings the verse convey are very evident:

"People ask your pronouncement. Say: God enjoins you about your *kalaalah* heirs that if a man dies childless and he has only a sister, she shall inherit half of what he leaves and if a sister dies childless then her brother shall be her heir; and if there are two sisters they shall inherit two thirds of what he [or she] leaves. If there are many brothers and sisters, the share of each male should be that of two females. God expoundeth unto you that ye err not and God has knowledge of all things."⁴⁷

Qul lilaahu yufteekum fil kalaalah (God enjoins you about your *kalaalah* heirs) is of the same style and pattern as *yoosee kumullaahu fee aulaadikum* (God enjoins you about your children). In the latter case, the directive is about the children as the heirs of a deceased while in the former case the pronouncement is about *kalalaah* relatives as the heirs of a deceased. The article *alif laam* defines the word *kalaalah* in this verse, which testifies to the fact that the question concerns some specific relations among the *kalaalah* relatives and the answer shows that these specific relations are the deceased's brothers and sisters. Verse 12 of Surah Nisaa⁴⁸ has already empowered a person to bequeath a part of his legacy in favor of *kalalaah* relatives like uncles, aunts, brothers and sisters. Here, a particular case has been mentioned after the general directive. Considering this, the correct meaning of the verse is: 'Say, Allah gives you a pronouncement about brothers and sisters among the *kalaalah* relatives'. Another example of this Quranic style can be seen in verse 189 of Surah Baqarah.⁴⁹

It should be clear that the words in *umru'un halaka laisa lahu walad...* (if a man dies childless....) do not state the meaning of *kalaalah*; they merely impose a condition which must be fulfilled if the brothers and sisters are to receive a share in a legacy. Just as in the verse *Fa in lam yakun lahu walad wa warithahu abwaahu* a condition has been imposed that if the deceased is

⁴⁷ THE HOLY QURAN, Chapter 4 at verse 176.

⁴⁸ THE HOLY QURAN, Chapter 4.

⁴⁹ AMIN AHSAN ISLAHI, TADABBUR-I-QURAN, Vol 1, Pg 471

issueless and only his parents are his heirs then they shall receive such and such shares. Similarly, in the given verse, a condition has been stated that if a person dies childless and he has brothers and sisters, their share is so and so. It is quite amazing that some people derive the meaning of *kalaalah* from these words. It should be kept in mind, that the Quran is not a dictionary. It is of a highly literary style revealed in the manifest language of Arabic. All its words are very well known and common Arabic words. We have conclusively proved above that the word *kalaalah* is not alien to the Arabic language. Even if it is considered a rare word, it is a matter of literary taste to determine the meanings of such words from the context in which they are used.

Also evident from the condition in the verse is that brothers and sisters are heirs of a deceased, only in case he dies childless. If he leaves children, they do not have any share in his wealth except if a deceased makes a bequest in their favor according to the general directive mentioned in verse 12 of Surah Nisaa.

The shares of brothers and sisters stated here are the same as those of the children stated earlier. Also, the style of the words *In kaanooh ikhwatan rijaalan wa nisaan fa lizzakari mithlu hazzil unthayain*⁵⁰ bears witness to the fact that these shares also shall be given after the parents and the spouses are handed over their shares. We have presented the relevant arguments in the section which deals with the shares of the children. Hence, if the deceased only has sisters then two thirds or one half (whatever the case may be) of the share meant for the brothers and sisters shall be given to the sister or sisters.

We have indicated earlier that it is evident from verse 12 of Surah Nisaa that in the absence of children, the brothers and sisters of a deceased take their place. This particular verse of Surah Nisaa conclusively proves the premise. It was possible to misinterpret it from the style of verses 11-12, but here all doubts have been removed as to what the words imply. The Quran, therefore, says:

"God expoundeth unto you that ye err not and God has knowledge of all things."⁵¹

F. Left Over Legacies

According to our interpretation of the law of inheritance, if a deceased has only daughters or sisters, a portion of his wealth is left over after the heirs have been given their shares. Likewise, if a deceased does not have any children, parents, brothers, and sisters, a large portion of his estate remains undistributed. One solution to the problem, as indicated above, is that the Quran itself has directed a person to make someone his heir. But if a

⁵⁰ Translation: If there are many brothers and sisters, the share of each male shall be equal to that of two females.

⁵¹ THE HOLY QURAN, Chapter 4 at verse 176.

person has not done so, what is to be done? The following tradition answers the question:

"Give the heirs their share and if something remains, it is for the closest male [relative]."⁵²

IV. LAW OF INHERITANCE OUTLINED

At the end of this discussion, we present a brief outline of the law. Every person can assess from this that how clear and simple the Islamic law of inheritance is. There is no question of *'aul* or *rad* in it. All its aspects are manifest and unambiguous. Both the *badouin* of the deserts and scholars of the academies can distribute their legacies with equal ease.

The outline is stated thus:

1. If a deceased has outstanding debts to his name then first of all they should be discharged. After this any legacies he may have bequeathed should be paid. The distribution of his inheritance should then follow.

2. After giving the parents and the husband or wife their shares, the children are the heirs of the remaining inheritance. If the deceased does not have any male offspring and there are only two or more girls among the children, they shall receive two thirds of the inheritance left over, and if there is only a single girl, her share is one half. If the deceased has only male children all his wealth will be distributed among them. If he leaves behind both boys and girls then the share of each boy shall be equal to the share of two girls and, in this case also, all his wealth shall be distributed among them.

3. In the absence of children, a deceased's brothers and sisters shall take their place. After giving the parents and the husband or wife their shares, the brothers and sisters shall be his heirs. The proportion of their shares and the mode of distribution is the same as that of the children stated above.

4. If a deceased has brothers and sisters, whether or not he has children, the parents shall receive a sixth each. If he does not even have brothers and sisters then after giving the husband or wife his (or her) share, one third of what remains shall be given to the mother and two thirds to the father. If there is no one among the spouses, all of the inheritance shall be distributed among the parents in the same proportion.

5. If the deceased is a man and he has children, his wife shall receive one eighth of what he leaves and if he does not have any children his wife's share shall be one fourth. If the deceased is a woman and does not have any children then her husband shall receive one half of what she leaves and if she has children, the husband's share is one fourth.

6. Together with these rightful heirs, apart from them or in their absence a deceased can make a near or a distant relative except his parents, and

⁵² See Muslim, *Supra* note 39 in chapter 1.

children his heir. If the relative who is made an heir has one brother or one sister then he or she shall be given a sixth of his share and he himself shall receive the remaining five sixth. However, if he has more than one brother and sister then they shall be given a third of his share and he himself shall receive the remaining two thirds.

7. If a person dies without making anyone his heir, his remaining legacy shall be distributed according to the principle *li aulaa rajulin zakar* (for the closest male).

8. The words "a deceased's children" and "a deceased's brothers and sisters" are used both in the singular and plural sense as well as for both the male and the female gender; whether there is only one or more boy or girl or there are only boys or there are only girls among the children and whether there is only one brother or sister or there are many brothers and sisters---in all the cases these connotations shall be considered understood.

V. CONCLUSION

In this short essay I have briefly presented the explanation of the law of inheritance of the Quran, which I hold to be correct, not on the basis of the person(s) who ascribe to this explanation, but on the basis of the words of Quran. The whole point of discussion in my essay was "what are the shares stipulated for heirs by Quran?" Keeping with the linguistic minutiae involved, my essay has focused mainly on the interpretation of the verses revealed on the issue.

The Islamic law of inheritance is a very finely related system. It recognizes man as 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 directives of Allah Almighty. These directives relating to the distribution of wealth after the demise of provisional owner are explicitly detailed in Quran. The rules of inheritance introduced by Quran emphasizes upon parental, spousal and family ties. It is only by following these principles that a just distribution of estate between heirs is possible. Man, in spite of his formidable talents, can neither acquire the vastness of Allah's knowledge nor comprehend the profundity of His wisdom. If he is a true believer, he must submit to the Word of God.