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YBN UNIVERSITY

Established by the Act of Government of Jharkhand Act 15, 2017
Gazette Notification No. 505, Dated 17th July 2017
As per Section 2(f) of UGC Act. 1956



RAJALATU, NAMKUM, RANCHI, JHARKHAND-834010

INHERITANCE (Faraid)

MUSLIM LAW

Ch, 11.1 Inheritance

"Learn the laws of Inheritance and teach them (to the people) for they are one half of useful knowledge"—Prophet.

According to Tyabji the law of inheritance is admirable for its completeness and for its success in selecting the persons on whom the property devolved. Sir William Jones opines that these laws are excellent, for any question may be rapidly and correctly answered. The leading text is "SIRAJIYYAH" (the interpretation of the Koran) Mostly muslims in India are SUNNfS.

Ch. 11.2 Sunni Law Me in Principles

- (i) The spouse (husband or wife as the case may be) is an heir.
- (ii) Females and cognates are eligible to inherit.
- (iii) Parents and ascendants may inherit even if there are male descendants. (iv) Female is given one half of the share of the male.

The main features of the inheritance are: Classes of heirs : ' There are *three* principal classes and *four* subsidiary classes. *Three Principal Classes* :

- i. Koranic heirs (sharers) ii. Agnatic heirs (residuaries) iii. Uterine heirs (distant kindred)

Four Subsidiary Classes:

- i. Successor by contract ii, Acknowledged kinsman, iii. Sole legatee, iv. Escheat.

The principal heirs include all the blood relations. The succession is class I, first, then class II, and then class IIf.

The subsidiary heirs succeed thereafter in the order of classification.

- (i) *Property* : (Mai) No distinction is made between movable and immovable properties, joint and separate property. For purposes of inheritance, the property, is one and the same and includes the corpus and the usufruct (use).
- (ii) There is no birth right as in Hindu law. There is no spes successions (chance of succession) in Muslim law. The death of the owner (propositus) decides the succession.

(ill) *Rights of Mates and Females*

Males and females have, in Muslim law, the right of inheritance. If F, father dies leaving a son and daughter, the son gets two shares and the daughter one share, Widow estate is unknown to Muslim law,

(iv) The Doctrine of Representation is not recognised by Muslim law. According to Sirajiyah, "the nearest of blood must take." Whoever is related to the deceased shall not inherit while that person is living.

If A dies leaving his son Muhammad and, also Hussain, the son of the predeceased Basheer, Muhammad excludes Hussain. Both schools have recognised this.

(Many have opined that this is very unsatisfactory in India, But Pakistan has abolished this).

Ch. 11.3 Class-as of Heirs (Sunni law) There are three principal heirs :

Class I Koranic Heirs (Sharers) Class II Agnatic Heirs (Residuaries) Class III Uterine Heirs (Distant Kindred)

Subsidiary : Class IV Successor by Contract

Class V Acknowledged Kinsman

Class VI Sole Legatee¹

Class VII The State by Escheat

Succession is according to order, stated above. The property of the deceased goes to class I, then to class II and then to class III and so on.

Principal Heirs:

• Class I (The Koranic Heirs) Sharers :

To this belong the close relatives of the deceased. There are twelve relations: (1) Husband, (2) wife, (3) father, (4) true grandfather, (5) mother, (6) true grandmother, (7) daughter, (8) son's daughter, (9) full sister, (10) consanguine sister, (11) uterine brother, (12) uterine sister.

(In this there are 8 females.)

Principle to be followed is as follows

From the whole, of the property of the deceased, a slice is given to the above Koranic heirs. - Then the residue (which is the bulk) goes to the residuaries (called tribal heirs). .:'

E.g: A dies leaving his widow W and a son S, Here W is a Koranic heir and gets 1/8 of the estate. The son is class II heir and gets 7/8. Class II:

Agnatic Heirs:

These are "near male agnates", also called (wrongly) residuaries,,: There are three groups :

Group 1 : Son, son's son (how low so ever)

Group 2 Father, true grandfather.

Group 3 Full brother, full sister, consanguine brother and sister,,full brother's son etc.

Principles : .!;•_.

(i) Agnate heirs succeed when after giving a share to the Koranic heirs (Class I), a residue is left. In fact this residue is the bulk of the property.

(ii) The shares are given on priority basis :

The rule of *el Jabari* is first to the order, next to the degree and then to the strength of the blood.,

Class II: Uterine heirs: These are called "distant kindred." According to Sirajiyah A distant kinsman is every relation who is neither a sharer nor a residuary." i
There are three groups in this :

Group 1 : Descendants-

Group 2: Ascendants

Group 3 : Collaterals

The order of succession is, when there are no Koranic and Agnatic heirs the uterine heirs succeed.

Ch. 11,4 AWL and Radd (Increase and "returns")

The Prophet has said "Learn the laws of Inheritance and teach them, for they are one half of useful .knowledge."

Though the law of inheritance is admirable and any question can be answered-correctly and rapidly, there are two circumstances called Awl and Radd, where, there are some difficulties.

The classes of heirs in Muslim law (Sunni) are class I: Koranic heirs; class II: Agnatic heirs and class III: Uterine heirs. Then, there are four subsidiary classes.

In the Koranic heirs, and Agnatic heirs in so far as the sharers are concerned, fractions are allowed. This poses three circumstances;

(i) **Equal to Unity**

Example: If A dies leaving father, mother, and two daughters, the shares will be : father $1/6$, mother $1/6$, two daughters : $2/3$ Hence $1/6+1/6+2/3=1$. Here no difficulty arises.

(ii) *More than Unity (Awl)*

Example : Husband $1/2$, two sisters $2/3$. The total of this would be $1/2 + 2/3=7/6$. This is more than one and hence, the difficulty is resolved as follows: increase the denominator (this is awl) to make it equal to the sum of the numerators," Keeping the numerators as they are, the shares are to be reduced proportionately. '

Husband $1/2 = 3/6$ (Multiplying by 3)

2 daughters $\frac{2}{3} = \frac{4}{6}$ (Multiplying by 2) The total of the numerators is $3+4=7$. In this $3+4=7$, divide both sides by seven $\frac{3}{7} + \frac{4}{7} = \frac{7}{7} = 1$. Hence, the shares are husband $\frac{3}{7}$, 2 daughters $\frac{4}{7}$.

(iii) *Less than Unity: (Radd)* .

When the total of shares is less than one, and there are no heirs in class II, the residue returns to the Koranic heirs (Radd = returns).

E.g., mother $\frac{1}{6}$, daughter $\frac{1}{2}$.

The total $\frac{1}{6} + \frac{1}{2}$ is $\frac{2}{3}$ which means there is still $\frac{1}{3}$ which returns. Hence,

M = $\frac{1}{6}$

D = $\frac{1}{2} = \frac{3}{6}$ (Multiplying by 3) Total of numerators $1 + 3 = 4$. Dividing both sides by 4 $\frac{1}{4} + \frac{3}{4} = \frac{4}{4} = 1$. Hence mother $\frac{1}{4}$ and daughter $\frac{3}{4}$.

Ch, 11.5 Shia Law of Inheritance:

The main principles are as follows : (Ithna Ashari School of Jurisprudence).

1. Classification of heirs:

(a) Nasab (relationship by blood)

(b) Sahab (relationship by special cause) e.g.: Marriage etc.

(a) Nasab is of two classes (i) Koranic heirs and (ii) Agnates and Cognates.

(b) Sahab is of two classes :

(i) Spouse (Status)

(ii) Wala special legal relationship e.g., escheat. The heirs under Nasab are:

Class 1 : (i) Parents

(ii) Children and lineal descendants

Class 2 : (i) Grand parents

(ii) Brothers and sisters and their descendants.

Class 3 : Paternal uncles

Maternal uncles and aunts and their ascendants and descendants.

Heirs under Nasab are : 1. Koranic heirs

(i) Husband : $\frac{1}{2}$ if there are no children $\frac{1}{4}$ if there are children.

(ii) Wife : $\frac{1}{4}$ if there are no children $\frac{1}{8}$ if there are children, (if there are more wives they share the above noted $\frac{1}{4}$ or $\frac{1}{8}$ equally). (Note ; In the absence of all other heirs the husband or wife, takes the entire share)

(iii) Father, mother: They take $\frac{1}{6}$ each (iv) Daughter: $\frac{1}{2}$ of the share of the son (v) Grand children : To find out the quantum of shares by the grand children, when their parents are dead, the law recognises no *representation* and *stirpita!* succession.

Examples: (i) P has two sons A and B. B dies leaving his son C. If P dies, A excludes "C" as B is dead and 'C' is not allowed to represent, This is in both Shia and Sunni Schools. p

B (Deceased)

(ii) P has two, sons A and B, A dies leaving his son C, and B dies leaving his sons D and E.

A (Decased) B (Deceased)

When P dies C gets $\frac{1}{2}$ share; D and E together get $\frac{1}{2}$ moiety i.e., $\frac{1}{4}$ each. Here *there is no representation but only a stirpital succession*. It is only the "koranic share" that comes to the descendants.

Class H Heirs :

1. Ascendants (Collaterals not included)
2. Collaterals
3. Ancestors with Collaterals.

Class III heirs:

In the absence of class i and II heirs, class III heirs inherit, Tyabji has given a summary of the rules:

(i) Koranic share is to be given first to the surviving spouse, (ii) The residue is divided in order of priority.

A Group B Paternal and maternal uncles and aunts of the deceased.

C

Their descendants how low soever.

Paternal and maternal uncles of the deceased's father and mother. Their descendants how low soever.

Group D

Here each group has priority over the next group.