

## THE QUR'ANIC LAW OF INHERITANCE: AN ANALYSIS OF SOME PRACTICALLY RELEVANT ISSUES

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*The Qur'an addresses man as a whole, guiding him in all walks of life. It seems the most significant dimension in human life is economic. The Qur'an outlines the fundamental principles of economic life and activities, including property distribution. Four aayaat in the Qur'an—2:180; 4:11-12; 4:176—deal with the issue of inheritance. Muslims are in general aware of the significance of these commands of Allah. Yet, there seems to be confusion over several matters: (1) allocated portion of son is twice that of daughter; (2) position of bequest vis-a-vis law of inheritance; (3) payment of deceased's debt; (4) father's disowning of son; (5) legality of property distribution prior to death; and (6) deprivation of mahjub. It is argued by modern Muslims and others that double portion allocated to son is tantamount to injustice against daughter. Many Muslim scholars have declared the provision of bequest practically invalid (mansukh). Generally, property is distributed among inheritors, leaving the deceased's debt unpaid. If a father is angry with any of his children, he disowns him/her so as to deprive him/her from their share in his property. There are cases in which father distributes his property among his male children at the cost of female ones during his life-time. Fuqaha' insist that mahjub has been denied his/her share in the grandfather's property. These issues need to be addressed afresh while maintaining the sanctity of the sacred sources, the Qur'an and the Sunnah. This paper represents a humble attempt to reinterpret these six issues related to the Qur'anic law of inheritance.*

**Keywords:** *The Qur'an, Sunnah, Inheritance, Mansukh, Mahjub*

### Introduction

Distribution of property is one of those issues the Qur'an has dealt with in detail leaving no confusions as to the implementation of divine law of inheritance. Yet, the Muslim Ummah is beset with some kind of misunderstanding in the practical execution of the command

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of Allah concerning shares of Property as described in the verses: 2:180, 4:11-12, and 4: 176. Many Muslims like critics of the Qur'an consider the daughter's share vis-a-vis the son's as allocated in the divine law (4:12) injustice. Majority of fuqaha' view bequest (2:180) as practically invalid. Generally inheritors ignore the issue of the deceased's debt which is required to be paid from his/her property before its distribution. In some Muslim communities there is a practice of disowning the children and thus depriving them from their legal shares in the property. There are cases in which fathers distribute their property while they are still alive among their male children at the cost of female children. It is believed that mahjub (one whose father died while the grandfather is still alive) has no right to inherit property from his grandfather. These are some well-known issues related to property distribution which need to be addressed afresh with a view to suggesting viable solution to the problems.

### **Allocation to daughter Half of the Son's Share**

The opening phrase of 4:12 reads: "*Allah commands you concerning your children—for the male the share is equal to that of two females*". The statement is quite obvious on who among the male and female children should get how much. Allah advises in no unequivocal terms that female's share in the property is half of the male's. It apparently looks unfair. The Qur'an here seems to have treated unequally male and female inheritors of property. Female here appears inferior to male. It is this apparently unjust allocation which has caused many to raise eyebrows. Some even have suggested erasure of this discrimination from the Qur'an. Some have interpreted it in a way that the share of both male and female becomes equal.

Allah is perfectly Just and extraordinarily Fair in His dealings with His creatures concerning all aspects of the life. The Qur'an has repeatedly spoken about the fact Allah loves those who deal with justly. *Surah al-Ma'idah*: 42 reads: "*And if you judge, judge between them with equity; surely, Allah loves those who judge equitably*". *Surah al-Hujurat*: 9 reads in the end: "*Make peace between them with justice and act equitably; surely, Allah loves those who act equitably*". *Surah al-*

*Mumtahinah*: 8 reads: "*Show them kindness and deal with them justly; surely, Allah loves the doers of justice*". Allah makes doing of justice binding on the believers. *Surah al-Nisa*':58 reads: "*Verily, Allah commands you to make over trusts to their owners and that when you judge between people, judge with justice...*". *Surah al-Nahl*:90 reads: "*Surely Allah enjoins the doing of justice...*" One then thinks how can Allah who is so sensitive to justice be unfair in the property distribution?

This question is consequent upon the erred concept of justice man has developed on his own. In the modern world the philosophy of feminism and women's liberation movement have made male and female stand on equal footing. Any discrimination therefore between man and woman from any angle is disapproved. In the modern concept of economic development, male and female are both supposed to play their part equally. It has been ignored that woman is biologically and physiologically different from man. This physiological difference between man and woman entails male to be the breadwinner. The Qur'an does not subscribe to the idea of a society where wife and husband are equally responsible for economic well-being of the family. It places the economic liability only on the shoulder of husband/father/brother. *Surah al-Nisa*':34 seeks to establish a family in which only the male members are required to earn for and spend on the members of the family: "*Men are the maintainers of women...as they spend out of their earnings...*" Syed Mawdudi observes: "The Islamic law has placed the economic burden of the family on male and exempted woman from most of the economic responsibilities. It is then out of justice that the share of woman in the property would be less than that of man".<sup>1</sup>

Absence of any kind of economic liability is a privilege to women from Allah due to which they are better placed in the society to play their role in accordance with their physiological leanings. The entire responsibility to earn and spend fall on the shoulders of male members in the society hence they have been allocated share twice that of females. One may here suggest that on the basis of economic liability men should be given all the shares in the property; and that women should deserve only zero. Allah has allocated to daughter half of the

share of the son as a token of special privilege to women. Psychologically, women also desire to be to certain extent economically independent. They want to help the needy; they wish to spend in the right cause; they crave to buy gifts for their husbands and others in the family; and above all, at times, they want to ease the economic burden of their husbands. Thus the share allocated to the daughter is to satisfy her reasonably valid human longings. The share to daughter in the property as allocated in the Qur'an (4:12) should rather be looked at as a special privilege for the daughter.

### Practical Validity of Bequest concerning Property

Surah al-Baqarah: 180 reads: "*It is ordained for you, when death approached any of you and he is leaving behind wealth to make bequest in favor of his parents and near of kin in accordance with what is fair: this is binding on all who are conscious of Allah*". As it is quite obvious in this command of Allah, bequest concerning wealth is obligatory for believers. But many scholars including Jalal al-Din al-Suyuti (d. 911 A.H.) relegate this divine order to the status of "abrogated" (*mansukh*). They find it in clear conflict with Surah al-Nisa': 11-12 in which distribution of property among the lawful inheritors according to the stipulated formula has been made obligatory on the believers.<sup>2</sup> Al-Suyuti quotes two more reasons for its abrogation: (1) the Prophet (s.a.w.) has prohibited his followers to leave bequests concerning property distribution— "*la wasiyyata li wraith*" (no bequest for the inheritors)<sup>3</sup>, and (2) Muslim 'Ulama' have consensus of opinion over its practical invalidity<sup>4</sup>.

The main ground for a command of Allah being abrogated is that it is in sheer conflict with another command of Allah. Is it possible for a verse in the Qur'an to contradict another verse? The Qur'an says: "*Do they not ponder over the Qur'an? Had it been from any other than Allah, there would surely have been contradictions a lot*". (4:82). The Qur'an declares non-existence of conflict among its verses, but Muslim scholars dare insist on the availability of contradictions among divine commands. Now there is a choice between Allah's declaration and scholars' belief. Undoubtedly, the only reasonable choice for true believers is Allah's announcement

concerning purity of the Qur'an of any kind of discrepancy among its verses.

But for the sake of argument it can be checked whether there is any conflict between *aayat al-wasiyyah*—verse on the bequest (2:180) and *aayaat al-mawarith*—verses on inheritance (4:11-12). The key words in the verse of bequest (2:180) that can unfold the truth are five: (1) *kutiba 'alaykum* (it was ordained for you), (2) *khayr* (wealth), (3) *al-wasiyyah* (the will), (4) *bi al-ma 'ruf* (according to what is fair), and (5) *haqqan 'ala al-muttaqin* (this binding on the God-conscious).

The word "*kutiba 'ala*" (it is ordained) occurs in the Qur'an ten times (2:178 [*just retribution is ordained for you*]; 2: 180 [*bequest is ordained for you*]; 2: 183 [*twice—fasting is ordained for you as it was ordained for the people before you*]; 2: 216 [*fighting has been ordained for you*]; 2: 246 [*twice—if fighting was ordained for you... when fighting was ordained for them*]; 3: 154 [*slaughter was ordained for them*]; 4: 77 [*when fighting was ordained for them*]; and 22: 4 [*it is destined for Satan*]). Out of these ten commands through the same phrase—*kutiba 'alaukum* or *kutiba 'alayhim* or *kutiba 'alayhi*—nine are construed as obligations and only one (2:180) is rendered non-obligatory rather invalid. Scholars like Ibrahim al-Nakha'i (d.96 A.H.) and 'Amir al-Sha'bi (d.109 A.H.) are reported to have viewed the instruction of making a bequest concerning wealth as only commendable and non-obligatory.<sup>5</sup> If this interpretation is considered valid, one may also be allowed to consider other commands including fasting and fighting as non-obligatory.

The word "*khayr*" originally signifies anything desirable and coveted such as justice, favor, grace, bounty, and whatever is good and useful.<sup>6</sup> In the above context (2:180) it connotes wealth.<sup>7</sup> The Prophet's wife 'A'ishah and his son-in-law 'Ali bin Abi Talib used the word "*khayr*" in the sense of huge wealth. They advised people to leave will concerning their large property and huge wealth. That is why they were not in favor of bequest if the property concerned was not huge.<sup>8</sup> Even though others, including al-Zuhri (d. 125 A.H.) viewed "*khayr*" as mere wealth regardless of its quantity.<sup>9</sup>

The word "*al-wasiyyah*" literally denotes advice and counseling. In the context in view, it means bequest and will on the eve of one's

death.<sup>10</sup> The word “*ma'ruf*” signifies all that is commonly known and well-recognized.<sup>11</sup> From Islamic point of view, it refers to the act which is recognized by reason and approved by Islam as good.<sup>12</sup> In the context in view (2:180) “*ma'ruf*” will mean “in accordance with the divine law prescribed in the verses 4:11-12. This is because the widely known and well-recognized system of property distribution has been clearly laid down in these verses.

The phrase “*haqqan 'ala al-muttaqin*” (the God-conscious are duty bound) has occurred in the Qur'an twice, 2:180 and 2:241. In 2:236 an almost similar phrase “*haqqan 'ala al-muhsinin*” (the good-doers are duty bound) has been used. The payment of reasonable alimony for the divorcee is the duty for the God-conscious and the good doers (2:236 and 2:241). Al-Farahidi (d. 175 A.H.) explains the word “*haqqan*” as “*wujuban*”<sup>13</sup> (essential, obligatory, mandatory, indispensable, and required). The nature of the phrase “*haqqan 'ala al-muttaqin*” then signifies that bequest is a sacred duty for those who are sincerely devoted to Allah.

Possibly, three interpretations of the verse in view (2:180) could be derived. First, it is obligatory for a believer who is leaving behind a huge property to leave a will concerning distribution of his/her wealth among his/her parents and relatives. This interpretation corresponds to the view of two great Companions, 'A'ishah and 'Ali. Second, he/she has to necessarily make bequest for his/her property irrespective of its amount and size in favor of his/her parents and relatives who are not legally entitled for any share in that property. Third, a sincere believer is required to leave a will before he/she bids farewell to the transient worldly abode, specifying shares for his/her parents, children, and other next of kin in accordance with the law of inheritance as prescribed in the Qur'an (4:11-12).

In this modern age of ours, many a Muslim society does not care for the Qur'anic law of inheritance, and applies a man-made system, instead.<sup>14</sup> This somewhat customary law ignores the inheritance rights of parents and daughters. In this situation it really becomes incumbent upon Muslims to make a bequest concerning his wealth to the rightful inheritors, as stipulated in the verses of

inheritance (4:11-12). Thus the will ensures certain execution of the Qur'anic law of inheritance.

Syed Mawdudi regrets the approach of scholars who consider the verse of bequest (2:180) practically invalid. He maintains that leaving a will concerning property is obligatory on believers; and that by practicing this in the property distribution system several controversial issues related to wealth will easily be resolved.<sup>15</sup>

It is argued that the verse 2:180 stands abrogated by the Prophet's (s.a.w.) advice: “Verily, Allah has specified the right of every rightful inheritor hence no bequest in favor of the inheritors”.<sup>16</sup> Here arises a question whether a hadith can supersede a Qur'anic injunction. Muslim scholars are divided into two camps over this issue. Maliki and Hanafi schools of jurisprudence favor abrogation of the Qur'an by Hadith; but al-Shafi'i and Ahmad ibn Hanbal reject the notion on the grounds that Hadith serves as further elaboration of the Qur'an, and not all the reports containing information about sayings of the Last Prophet (s.a.w.) are definitively precise, whereas each and every single word of the Qur'an is certainly accurate.<sup>17</sup>

The Prophet (s.a.w.) also applied ellipsis and brevity (*al-hadhfw al-ijaaz*) in his sayings. It thus seems that the above Hadith is spectacular example of that phenomenon. If the probably omitted words from the Hadith are identified, it could be read as “*la wasiyyata li al-warithinilla bi al-ma'ruf*” (no bequest in favor of inheritors except in accordance with the divinely approved system). This reading has its root in the verse (2:180) where the word “*bi al-ma'ruf*” stands emphasized. Thus the practical significance of the Prophet's directive is to remind the believers to leave will concerning property distribution as per the Qur'anic law of inheritance.

Muslim scholars are unanimous over the one third amount of property as the legally valid limit for the bequest.<sup>18</sup> This is in the light of the Prophet's (s.a.w.) ruling on the matter. Sa'd ibn Abi Waqqas, a well-known Companion reports that he asked for the Prophet's (s.a.w.) permission to leave a will concerning his entire property. But when the Prophet (s.a.w.) did not grant him permission for that, he requested him to allow him to donate at least half of his property. The Prophet (s.a.w.) did not agree to that. And when Sa'd appealed

the Prophet (s.a.w.) to allow him to donate one third of his property, the permission was granted.<sup>19</sup>

Jalal al-Din al-Suyuti (d.911 A.H.) claims that the verse (2:180) stands abrogated due to *ijma'* (consensus).<sup>20</sup> Al-Tabari (d.311 A.H.) has is very categorical that there is *ikhtilaf*(difference) among scholars over this issue.<sup>21</sup> Al-Zamakhshri (d.538 A.H.) has reported two different views of scholars, one in favor of consensus and the other against the validity of claim of consensus. He is of the view that inheritors will get their share in the property through both law of the Qur'an and the bequest.<sup>22</sup> Fakhr al-Din al-Razi (d.606 A.H.) has quoted in his voluminous work of tafsir various controversial views of scholars over this matter and argued that mere claim of *ijma'* may not suffice to nullify the Qur'anic injunction of bequest.<sup>23</sup> Al-Qurtubi (d.671 A.H.) has given detailed information about who said what on the issue of bequest, which clearly suggests that scholars are not unanimous over the matter.<sup>24</sup>

### Payment of Deceased's Debt from the Property

In between detailed injunction on the prescribed shares of various inheritors of a property Allah has made clear and obligatory provision for the payment of the deceased's unpaid debt before the distribution of property. This divine instruction with a slight difference in wording has been reiterated four times, once in 4:11 and thrice in 4:12. This four-time repeated message concerning property distribution is that *“property is to be distributed as per the law of Allah but only after the matter related to bequest made by the deceased has been settled and the deceased's unpaid debt has been paid”*.

But in general practice during the distribution of the property the deceased's debt payment is ignored. Every one of the lawful inheritors is only concerned about his/her share in the property. There is the least consideration of the deceased's unpaid debt on the part of anyone of them. In case the property has been distributed among inheritors without having paid the deceased's unpaid debt, it constitutes a very serious offence on the part of those involved and unforgiveable sin in the eyes of Allah. The verse 4:13-14 read: *“These are bounds set by Allah, and whoever obeys Allah and His Apostle, He*

*will cause him to enter gardens beneath which rivers flow, to abide therein forever; and this is the great achievement. And whosoever disobeys Allah and His Apostle, and transgresses His bounds, He will cause him to enter Hell to abide therein, and a humiliating torment awaits him”*.

The law of Allah concerning property distribution falls under the category known as *Hudud*(bounds), which invariably denotes immutable laws of Allah. Divine law of inheritance consists of various provisions: (1) property must be distributed among the specified inheritors, (2) the amount of share for each inheritor is fixed, (3) deceased's unpaid debt is be paid first from the property in question, (4) before the execution of property distribution the will left behind by the deceased must be honored, and (5) any will negatively affecting the law of inheritance is invalid hence practically null and void. All these five provisions constitute *Hudud*. Any disobedience to any of them is tantamount to breaking *Hudud*.

It is so serious that the Qur'an declares those going against the law of inheritance in its totality or any part thereof as perennially condemned with no chance of being forgiven. The Qur'an has warned believers that they would be doomed forever if they committed any of three sins and died without having rectified them: (1) devoured usury [2:275], (2) transgressed the law of inheritance as stipulated in the verses 4:11-12, and (3) killed human unjustly [4:93]. Syed Mawdudi explains the gravity of the verses (4:14) that this is a very serious verse which warns the people, who modifies or breaks the divine law of inheritance, about everlasting torment. He further laments over the situation in Muslim societies. He says that despite so serious warning, Muslims have quite often dared modify the law of inheritance and transgressed its bounds.<sup>25</sup>

The Qur'an reiterates over and over again the matter related to *halal* (lawful) and *haram* (unlawful). It commands the people to use and eat what is lawful and shun and avoid what is unlawful. Allah addresses the humanity in its entirety in this regard: (1) *“O people! Eat the lawful and good things out of what is in the earth, and do not follow the footsteps of Satan who is surely your open enemy”* (2:168); and (2) *“Say: Have you ever considered all the means of sustenance which Allah has given you from on high—which you thereupon divide into*

*unlawful and lawful? Say: Has Allah given you permission to do that or do you forge a lie against Allah” (10:59). Allah also addresses believers: “And eat of the lawful and good things that Allah has given you; and be conscious of Allah in whom you believe” (5:88). It does not then suit man to do anything that could cause his wealth to fall under the category of unlawful. Inheriting a property without the deceased’s debt having been paid out of that makes the property unlawful. The Qur’an warns such people of dire consequence: “And do not utter lies by letting your tongues declare, “This is lawful and that is unlawful”; so as to attribute your own lies to Allah: for, behold, they who attribute their own lies to Allah will never attain to a happy state. This is a brief enjoyment but grievous suffering awaits them” (16:116-117).*

The deceased’s debt constitutes economic liability to be taken care of by his/her close blood-relatives such as children and parents. The best way for that debt to be paid off is to divide the deceased’s wealth into three portions, the will, the debt, and the shares of the inheritors who are entitled to get their share only after the settlement of the legacy and payment of the debt. According to Islamic jurisprudence, payment of the deceased’s debt is to precede funeral prayer and the burial. Once the Prophet (s.a.w.) was requested to lead funeral prayer of someone, he enquired whether the deceased had any debt to be paid. When the people testified that there was no debt left on the dead person, the Prophet (s.a.w.) agreed to lead the funeral prayer.<sup>26</sup> On another occasion the people made the same request to the Prophet (s.a.w.) to lead the funeral prayer. The Prophet (s.a.w.) led the prayer only after he was satisfied that the deceased had left unpaid debt and also the wealth out of which the debt could be settled off.<sup>27</sup> In the sources one can see cases where the Prophet (s.a.w.) did not agree to lead the funeral prayer for someone who left behind unpaid debt and no wealth.<sup>28</sup> He did agree to lead the funeral prayer only when someone owned the responsibility to pay the debt.<sup>29</sup> From the practice of the Prophet (s.a.w.) it is very clear that payment of the debt on the part of the deceased is enormously significant.

A Companion ‘Abd Allah al-Ansari was martyred in a battle. He had left behind him an orchard full of date fruits as property to be

distributed among lone son and six daughters and also huge amount of debt. His son Jabir ibn ‘Abd Allah approached the Prophet (s.a.w.) in this respect. The Prophet (s.a.w.) distributed all that was due on the deceased among the creditors. Consequently, there was left nothing that could be distributed among the six daughters. Jabir ibn ‘Abd Allah felt satisfied over this debt settlement of his father from his property.<sup>30</sup>

### **Father’s Disowning Son/Daughter**

Man is human, not angel. His relationships with others around him may not necessarily be always peaceful. Due to any reason whatsoever there might be conflict and bitterness between him and others in the family. Relationships between father and son/daughter are deemed in the society very warm and sincere. Yet, because of genuine or non-genuine reasons father might develop hostile attitude toward his son/daughter. When this kind of hostility crosses all reasonable bounds, leaving no way for compromise, father prefers to cut off all his relationships with the hostile son/daughter. And in most cases father makes a declaration according to which the son/daughter stands deprived from his wealth and property. Such declaration by father is known in legal term as *‘aaq* (disowning). Such kind of declaration may have its impact on monetary dealings between the son/daughter and others such as shopkeepers, friends, money lenders, gambling debt. The father will no longer be considered responsible for any such dealings carried out by his son/daughter.

Here arises a question. Does this declaration of father’s disowning son/daughter legally deprive son/daughter from their rightful share in the father’s property after his death? Islamic legal experts are of the view that son/daughter or any direct blood relative could be denied their share in the deceased’s property provided that the inheritor is the killer of the deceased or changed his/her religion (from Islam to non-Islam) or hold citizenship of a country other than that of the father. If none of these three conditions exist, son/daughter cannot be deprived of their share in the property. The wording of the Qur’an in regard to the law of inheritance is unambiguous. The Qur’an says: *“Allah directs you as regards your children’s inheritance.....it is an*

*obligation ordained by Allah; verily, Allah is All-Knowing, All-Wise*" (4:11). Father, therefore, does not have any right to invalidate his son/daughter's share in his property.

The father's disowning son/daughter may, at times, be considered as a will. But this will not be effective due to two reasons. First, any will which harms the legal inheritor/s' share in the property is null and void. Allah says: "*But if anyone fears partiality or wrong-doing in the bequest, and rectifies the inheritors' shares; there is nothing wrong on his part: Allah is verily Oft-Forgiving, Most-Merciful*" (2:182). It means that rectification of the wrong done in the will must be made. If the father disowned his son/daughter in his life, others in the family are duty-bound to rectify the matter. None should fear that it would be a sin to alter the will. Second, The verses dealing with the inheritance (4:11-12) do not put any conditions that the inheritors should be pious and obedient to the father. What makes the son/daughter eligible for his/her share in the father's property is that he/she is deceased's biological son/daughter.

### **Legality of Property Distribution Prior to Death**

Man loves his name to continue through his progeny. He toils, works hard, and devotes most of his time and energy in earning and amassing wealth that could get legally transferred to his biological children. In the modern age there is now a trend to transfer the property to the legal heirs by the original owner in his/her own life. One might trace several factors behind this transfer of the wealth prior to death. First, it is to avoid conflict among children over property after the deceased's death. The objective here is commendable, as the conflict over property among legal heirs, at times, leads to murder, internecine war, and prolonged legal proceedings in the court of justice. Second, it is to see the children prosperous. This factor is also meaningful. Prosperity generally leads to peace among the people. Third, it is to deprive one or the other legal heir of his/her share in the property which he/she is entitled after the death of the property owner (i.e. father). This is condemnable. In this way the effected person's human right to inherit the property stands dishonored. This is a kind of

corruption on the part of the property owner. Fourth, son/s and other legal heirs force, out of greed, their father in his life to distribute the property among them.

It has become a widespread phenomenon in the Muslim families that the mature children want to enjoy freedom and independence in their financial matters and therefore force their father by hook or by crook to transfer his property to them. There are well-known cases at grass root level in the Muslim communities in which the sons in particular even resort to psychological humiliation and physical torture of their father so as to put pressure on him to distribute the property among them. This kind of behavior of children toward parent is grievously deplorable. By force property transfer might escape public condemnation and even the law of the land might not do anything to undo such inheritance. But in the eyes of Allah it is a serious offence. Even the slightest psychological, physical, and social affliction to the parent/s is counted as moral crime against humanity. The Qur'an spells out the command of Allah: "*Your Lord has decreed that you worship none but Him, and that you be kind to parents. Whether one or both of them attain old age in your life, say not to them even a word of contempt, nor repel them, and say to them word of honor*" (17:23).

### **Deprivation of *Mahjub***

*Mahjubis* is a jurisprudential term. It is derived from the verb *hajaba*, which denotes to hide. Thus the word *mahjub* literally means hidden. But it technically signifies the person whose father dies and grandfather is alive. Legally, that person (grandson) is not entitled to any share in the property of the grandfather. The reason is very simple. His/her father died in the life of his own father without inheriting property from him. It is the inheritance of property by someone from his father, which entitles his children to inherit from him.

Life and death are both in the hands of Allah, the Creator, the Sustainer, the Provider, the Cherisher, the Controller of the entire universe. Man does not have any control over his life-span. Anywhere, anytime, and due to any known or unknown reasons one may depart to his/her heavenly abode. So now the question is whether the

*mahjub* would be left financially unsecured. Muslim scholars have responded to this question in two ways. First, the grandchildren have entitlement in the property of their grandfather. Javed Ahmad Ghamidi argues that the Qur'an at no place deprives the grandson from the property of the grandfather. He further claims that the words "*awlaad*" (children/descendants) and "*aabaad*" (fathers) do not in classical Arabic usage necessarily mean the direct children and direct fathers respectively; these words also include the grandchildren and grandfathers. Thus he is of the view that the Qur'anic injunction in 4:11— "*Allah directs you concerning inheritance of your children...*" is also applicable to the grandfather and grandchildren. He bases his argument on the last verse in *Surah al-Nisa'* (4:176)— "*They ask you to enlighten them. Say: Allah enlightens you about the laws concerning inheritance from those who leave no heir in the direct line: if a man dies childless and has a sister, she shall inherit one-half of what he has left, just as he shall inherit from her if she dies childless...*" In this verse even the indirect relatives have been granted their share in the property. Ghamidi stresses that grandchildren are representatives of their own fathers hence entitled for inheritance from the property of the grandfather.<sup>31</sup>

Second, Allah has not left orphan grandchildren financially unsecured. There is another way to ensure financial security of the orphans. *Surah al-Nahl*(16:90) reads: "*Behold, Allah enjoins justice ('adl) and generosity (ihsan)...*" Here justice and generosity are not recommended provisions but commanded (obligatory) ones, as the words in the Qur'anic text are "*inna Allah ya'muru*" (verily, Allah commands). This command must be executed wherever it is possible. An orphan stands in need of *ihsan*(generosity) from the grandfather who can leave a will in favor of the orphan grandchild for the same share the orphan's father (if alive) would be entitled to. Syed Mawdudi advises generosity to orphan grandchild through bequest for one-third or any part thereof in the property.<sup>32</sup>

The Qur'an seeks to establish a society based on social justice and generosity where all the members demonstrate spirit of fraternity (*ukhuwwah*). It makes it very clear that in the wealth of every believer even the deprived and the needy have their share: "*And in their property*

*is a portion due to him who begs and to him who is deprived*" (51:19). The orphan grandchildren fall under the category of the deprived ones. The grandfather is therefore obliged to allocate portion either before or after his death in his property for the fatherless grandchild/grandchildren.

### Conclusion

The Qur'anic law of inheritance is precise, clear, unambiguous, and detailed. There is hardly any room for any confusion over the matter. The Qur'an declares this law as sacred and obligatory as any other provisions known as *hudud*. Execution of the Qur'anic law of inheritance in its original spirit serves as boon, otherwise bane. Human society needs peace for its overall development. Any reason effecting adversely the environment of peace is to be removed. Property distribution is one of those reasons which cause enmity among family members. It is quite wise to manage property distribution in a way that there hardly remains any lacuna leading to chaos. The law of inheritance as stipulated in the Qur'an is based on two principles, justice and generosity. Muslims are duty-bound to manage property distribution in accordance with the divine law. If they ignore that law, they cannot escape perennial doom.

### Notes

1. Syed Mawdudi, *Tafhim al-Qur'an* (Idara Tarjuman al-Qur'an, Lahore, 1997), vol. 1, p. 326, note: 15.
2. Al-Suyuti, Jalal al-Din, *Al-Itqan fi 'Ulum al-Qur'an* (Dar al-Kutub al-'Ilmiyyah, Beirut, 2000), vol. 2, p. 43.
3. Ibid.
4. Ibid.
5. Ibn al-Jawzi, Abd al-Rahman, *Nawasikh al-Qur'an* (Dar al-Kutub al-'Ilmiyyah, Beirut, n.d.), p. 58.
6. Al-Asfahani, al-Raghib, *Al-Mufradat fi Gharib al-Qur'an* (Dar al-Ma'rifah, Beirut, 1998), p. 167.
7. Ibn al-Jawzi, 'Abd al-Rahman, *Zad al-Masir fi Ilm al-Tafsir*(Dar al-Kutub al-'Ilmiyyah, Beirut, 2002), vol. 1, part 1, p. 158.
8. Al-Zamakhshari, Mahmud bin 'Umar, *Al-Kashshaf*(Dar al-Kutub al-

- 'Ilmiyyah, Beirut, 1995), vol. 1, pp. 221-222.
9. Al-Tabari, Muhammad bin Jarir, *Jami' al-Bayan* (Dar al-Kutub al-'Ilmiyyah, Beirut, 1997), vol. 2, p. 127, tradition no. 2687.
  10. Al-Asfahani, op. cit., p. 540.
  11. Al-Farahidi, 'Abd al-Rahman al-Khalil bin Ahmad, *Kitab al-'Ayn* (Dar Ihya' al-Turath al-'Arabi, Beirut, 2001), p. 623.
  12. Al-Asfahani, op. cit., p. 334.
  13. Al-Farahidi, op. cit., p. 201.
  14. It is not an imagination and false allegation. Generally, Muslims societies in India, Pakistan, Bangladesh, Sri Lanka, Nepal, and Afghanistan do not follow the Islamic Law of Inheritance. They do not regard parents and daughters as legal inheritors of the deceased's property. This awful situation is not confined to only those families that are considered liberal, progressive, and modern, but also Muslim individuals and families that are known as religious have fallen victim to their non-Islamic practices. Exceptions are not ruled out.
  15. Syed Mawdudi, *Tafhim al-Qur'an* (Idara Tarjuman al-Qur'an, Lahore, 1997), vol. 1, p. 141, Note: 182.
  16. Abu Da'ud, *Al-Sunan al-Kubra* (Dar al-Kutub al-'Ilmiyyah, Beirut, 1996), vol. 2, kitab al-wasaya, Hadith No. 2870.
  17. Al-Zarkashi, Badr al-Din, *Al-Burhan fi 'Ulum al-Qur'an* (Dar al-Ma'rifah, Beirut, 1994), vol. 2, pp. 162-163; Al-Zurqani, 'Abd al-'Azim, *Manabil al-'Irfan fi 'Ulum al-Qur'an* (Dar Ihya' al-Turath al-'Arabi, 1998), vol. 2, p. 503.
  18. Syed Mawdudi, op. cit., vol. 1, p. 140, note no. 182.
  19. Al-Bukhari, Muhammad ibn Isma'il, *Al-Jam' al-Sahih* (Dar Ihya' al-Turath al-'Arabi, Beirut, n.d.), vol. 2, kitab al-wasaya, section/sub-heading 2, Hadith No. 2742.
  20. Al-Suyuti, op. cit., vol. 2, p. 43.
  21. Al-Tabari, op. cit., vol. 2, p. 121.
  22. Al-Kashshaf, op. cit., vol. 1, p. 222.
  23. Al-Razi, Fakhr al-Din, *Mafatih al-Ghayb* (Dar Ihya' al-Turath al-'Arabi, Beirut, 1997), vol. 2, p. 234.
  24. Al-Qurtubi, Muhammad ibn Ahmad, *Al-Jami' li Ahkam al-Qur'an* (Dar al-Kutub al-'Ilmiyyah, Beirut, 2000), vol. 1, part 2, pp. 173-179.
  25. Syed Mawdudi, op. cit., vol. 1, p. 230.
  26. Al-Bukhari, Muhammad ibn Isma'il, *Al-Jam' al-Sahih* (Dar Ihya' al-Turath al-'Arabi, Beirut, n.d.), vol. 2, kitab al-hawalah, section/sub-heading 3, Hadith No. 2289, on the authority of Salamah ibn al-Akwa', a Companion.
  27. Ibid.
  28. Ibid.
  29. Ibid.
  30. Al-Bukhari, op. cit., vol. 2, kitab al-wasaya, section/sub-heading 36, Hadith No. 2781.
  31. Ghamidi, Javed Ahmad, *Yatim Potayki Wirathat* (inheritance of grandchild) in Monthly *ISHRAAQ*, Lahore, June 2011.
  32. Syed Mawdudi, op. cit., vol. 1, pp. 327-328.