eISSN 2600-8408
http://journals.iium.edu.my/al-fiqh
Pp. 57 - 67

Literalism Versus Rationalism In The House of Islam: A Case Study of Islamic Law of Succession

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Abstract

The conspicuous difference that exists among Muslim jurists from the formative stage until the contemporary time is not disconnected from the different basic approaches to the interpretation of religious texts, namely, the textualist and rationalist. This phenomenon has shaped the scholastic contention in virtually all fiqh discourses. Against this background, this article explores the surface of the aforementioned trends in selected issues relating to the Islamic Law of Succession. The research adopts historical and analytical approaches. While the historical approach assists in tracing the development of succession law in Islam, the analytical approach helps in identifying the areas characterized by literalist and rationalist trends and which one between the two is juristically given prominence. The study discovered that in most of the sampled issues, the rationalist approach triumphed over the literalist. It also detected that Muslims across the globe have maintained- as far as inheritance is concerned- the implementation of rationalist-based verdicts.

Keywords*: *Literalism, Rationalism, Islam, Law, Succession.

الحرفية مقابل العقلانية في الإسلام: دراسة حالة فقه الميراث

ملخص البحث

إن الاختلاف الفقهي الذي بدأ من فجر الإسلام واستمر إلى الوقت الراهن لم يكن سببه منعزلا عن طريق تفسير النصوص الدينية المنقسم إلى منهجي الحرفيين والمقاصديين العقليين. وقد برزت هذه الظاهرة في جميع الاختلافات الواردة في معظم المسائل الدينية. وبناء على هذا، تستهدف هذه المقالة إبراز هذه الظاهرة في مسائل الميراث المختارة. واختار البحث المنهج التاريخي لاستقراء تطور الميراث والمنهج التحليلي لإبراز المسائل التي لاح فيها منهج الاستدلال الحرفي والمقاصدي العقلي. ومن نتائج البحث أنه اكتشف أن منهج الاستدلال العقلي المقاصدي تغلب على المنهج الحرفي في جميع المسائل المدروسة في هذه المقالة. وبالإضافة، ظهر أن المسلمين في العالم تبنوا الآراء الميراثية التي نتجت من المنهج العقلي المقاصدي وآثروها على غيرها.

كلمات مفتاحية: الحرفية، المقاصدية العقلية، الإسلام، الشريعة، الميراث.

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1. Introduction

One of the characteristic features of *Sharīʿah* is flexibility, which connotes the openness of religious texts to change as a result of time, context, and audience (Qaraḍāwī, 2006, 59). The attempt to rigidify through an authoritarian approach some religious matters that are susceptible to human rationalization has given rise to another counterpart trend. From the formative stage of Islam, as represented by the prophetic era, till the contemporary time, the religious discourse has been highly characterized by the rigidity of the *Ahl al-Athar* i.e., the textualists and the flexibility of the *Ahl al-Ra'y* i.e. the rationalists. Although some scholars will claim the combination between the two trends, as propounded by Ibn Taymiyyah (d. 1328 C.E.), the truth remains that such scholars will still be inclined more toward one of the two trends (Arikewuyo, 2022, 267).

The Islamic Law of Succession enjoys much sacredness among Muslims. The sacredness emanates from the popular notion that Allah, in exclusion of human interpretation, has conclusively addressed the shares of every heir (Arikewuyo, 2022, 125). In addition, the highest population of Muslims do not only believe- through unauthentic traditions- that Inheritance Law is the best discipline in Islam, but they also await the time when specialists in the field would become infinitesimal (Arikewuyo & Jawondo, 2021, 58). Despite this popular belief, the content of the Islamic Law of Succession is replete with instances of scholastic rationalization, which have even remained the foundation of distribution among Muslims across the globe.

Against this backdrop, this study explores areas where the two trends of literalism and rationalism have surfaced in the Islamic Law of Succession. The objective of the study is to determine which among the two tendencies the Muslim scholarship built its operation concerning inheritance matters.

The previous bulk of research has vested much interest in the interplay between the trends of textualism and rationalism in Islamic scholarship. Abou El-Fadl (2001) has many times described modern Salafism as the flagbearer of the literalist trend. Qaraḍāwī (2006) in his submission asserts that, though the *Ẓāhiriyyah* School of Thought, which stood for the ultra-literalist trend in the second to fifth centuries, has faded away; the modern *Salafīs* have succeeded in resurrecting the notorious school in the contemporary time. In his submission, Chapra (2010) asserts that what led to the intellectual decline of the Muslim world was not so much the use of reason by the rationalists, but rather their efforts to impose some of their unacceptable views on unwilling orthodoxy with the help of coercive power of political authority which did not enjoy the confidence of the people. The rationalists being referred to in the statement of Chapra were the *Muʿtazilites*. The word as used in this study embraces all scholastic efforts that believe in the place of reason in the interpretation of religious texts.

Rohman (2012) explores the surface of textualism in the exegesis literature of modern Salafism and submits that, they generally ignore the context of revelation and interpretation; therefore, in his wording, can be best described as "wooden literalism", which is worse than "soft literalism". Qaṭṭān (1989) argues that the Hanafi School of Jurisprudence represents the rationalist trend, though, only in the realm of applied segments of religious teachings. Arikewuyo (2019) submits that the *Ikhwān* replaces the Hanafi School in contemporary time because of their emphasis on the place of reason in understanding religious revelation. 'Imārah (2011) describes Muḥammad 'Abduh (d.1908) as the founder of the modern rationalist school.

Muslimin (2017) advocates for the application of a rationalist approach to *Waqf* (Islamic Endowment) through the redefinition of Islamic justice and separation between the text and context. Ibn Jamā'ah (2010) traces the evolution of the literalist and rationalist tendencies to the time of Prophet Muhammad. Safi (2022) explores the threat posed by globalization and modernization to Islam and the best possible ways religious rationalism can help save the religion from extinction.

It is obvious from the previous literature that the two trends have received fair academic attention in a broader sense. However, this study focuses on the manifestation of the trends in the Islamic Law of Succession. The study will be segmented into four sub-topics namely, an overview of the literalist and rationalist trends in Islam, the historical development of the Islamic Law of Succession, an assessment of the two trends in selected inheritance matters, and a conclusion.

2. The Literalist and Rationalist Trends in Islam: An Overview

It is good to start here with a conceptual definition of what we mean by literalism and rationalism. The former is an act of sticking to the letter of a text with no or minimal consideration of its intent and contextual connotation (Muhammad, 2010). The latter means different things to different people; while some have limited it to the *Mu'tazilites* and Muslim philosophers who gave preference for the reason above texts (Chapra, 2003, 104). Some others used the word to accommodate those Sunni schools such as the *Ḥanafite* that are not hostile to the use of reason to check and balance the manipulative tendency of interpreting the texts (Qaṭṭān, 1989, 87).

It would be too parochial to limit- as Chapra has done- the rationalist school in Islam to the *Mu'tazilites* and Philosophers whose method of rationalism requires the giving of preference to reason above the dictates of texts; this is because there is unanimity among the classical scholars of Islam over the being of the two representing the extremist clique of the rationalist trend [RMM1] (Ibn Taymiyyah, 2006, 2/456). Thus, in the context of this study, rationalism represents the trend of using reason and intellectual disposition for the interpretation of the text as against holding on to the textual letter.

Historically, the two trends date back to the lifetime of Prophet Muhammad. He witnessed the surface of literalism and rationalism among his Companions without any condemnation from him. This can be established by the incident of Banū Qurayẓah. The Prophet had ordered some of his Companions to move to the enclave of Qurayẓah with the emphasis that the *'Aṣr* prayer must not be observed except after reaching their destination. On their way, *'Aṣr* Prayer approached. Some of them literally understood the directive of the Prophet as not to observe the Prayer in its stipulated time while others acted against the literal pronouncement by observing the Prayer before reaching their destination. The Prophet did not chastise any of the two groups (Bukhārī, 2008, no.1770). According to Ibn al-Qayyim (2001), the aforementioned scene is the starting point of the literalist and rationalist approach in the history of Islam.

After the death of the Prophet, a lot of issues have polarized his Companions as a result of the different approaches used in interpreting the available texts. From the convictions of each of them, it is apparent that the adoption or inclination to either the literalist or rationalist tendency defines the outcome of his interpretation or juristic exercise. For instance, Mu'āwiyah bin Abī Sufyān opined that two *mudds* of wheat is equal to four *mudds* of grains in breaking alms as against the textual provision of four *mudds* for all kinds of food (Bassām, 2004, 1/45). His argument is based on the fact that wheat has become more valuable than grains. Other companions disagreed with him premising their argument on the textual provision. 'Umar bin al-Khaṭṭāb banned the execution of amputation due to the economic crisis that hit the Muslim domain as against the provision of the Qur'ān that orders its execution without stating any exceptional circumstances (Qaraḍāwī, 2005, 124). There are many other instances of the manifestation of rationalism during the era of the Companions.

The subsequent generation of Muslims witnessed- as against the individual nature of the two trends during the time of the Companions- what could be described as the congregational or organizational nature of the trends. The *Ahl al-Hadīth* School of Hijaz and *Ahl al-Ra'y* School of Iraq emerged in the era of the second generation of Muslims as the major platforms for juristic identity (Qaṭṭān, 1989, 78). The former advocated for the reliance on textual provisions with a literalist tendency while the latter emphasized the rationalization of the texts in the face of changing phenomena. It is worthy of note that the schools were propounded by two notable companions namely, Ibn 'Abbās and Ibn Mas'ūd respectively (Ibid., 79). Later, the four Schools of Jurisprudence namely, the *Ḥanafī, Mālikī, Shāfi'ī,* and *Ḥanbalī* overshadowed the aforementioned two schools of thought. However, each of the four Schools of Jurisprudence traces its methodology to one of the two fading schools; for instance, the *Hanafiyyah* was said to be representing the rationalism of the *Ahl al-Ra'y,* while the *Ḥanbalī* stood for the literalism of the *Ahl al-Hadīth.* Both *Mālikī* and *Shāfi'ī* also have a fair share of the two schools. The *Ḥanābilah* are regarded as ultra-conservative and hostile to rationalization. They discouraged and condemned the utilization of reason in the understanding of texts. Their founder, Aḥmad bin Ḥanbal (d. 240 A.H.) said, "It is not of *Sunnah* to make analogy and inference; the *Sunnah* can neither be understood by reason nor by whims, it is all about blind-following and abandoning of whims" (Ḥanbal, 2013, 32). A core adherent of Ahmad in the person of Barbahārī (d.329 A.H.) also said, "Beware that *Sunnah* does not condone using analogy and whims; it only requires obedience to the saying of the Prophet with no need of rationalization of why or how." (Barbahārī, 2013, 68). The most reputable school of literalism that emerged within the first three centuries in Islam is the *Ẓāhiriyyah*. The school outright condemned the utilization of reason in religious matters, such that it was not satisfied with the literalist tendency of the *Ḥanābilah* (Abū Zahrah, 1952, 38).

It should be noted that during the first three centuries in which the two tendencies evolved, there had always been a visible hostility among their flagbearers. For instance, Imam Abū Ḥanīfah (d. 767) who led the trend of juristic rationalism was discredited by some of Imam Ahmad's students among whom was his biological son, 'Abd Allāh (d. 290 A.H.). Outside the orthodox terrain, the liberal *Mu'tazilites* have used state power to coax the traditional literalists during the regime of the Umayyad (Chapra, 107). The two trends continued to characterize the interpretation of religious discourse till the contemporary time. The flagbearers of each trend have always quoted some religious verses to legitimize their approach.

Some of the evidence relied on by the literalists include "And obey Allah and the Messenger that you may obtain mercy." (Āl-'Imrān: 132). Others with the same meaning as the aforementioned include Al-Nisā': 59, Al-Mā'idah: 92, Al-Anfāl: 1, etc. The above verses have been explained to require the believers of being doctrinaire and blind-followers of the textual teachings without any rationalization (Al-Albānī, 1998, 10). The rationalists have also relied on some verses that emphasize the virtue of reason, among which is "He gives wisdom to whom He wills, and whoever has been given wisdom has certainly been given much good. And none will remember except those of understanding." (Al-Baqarah: 269). Others include Baqarah: 197, 269, Āl-'Imrān: 7, 190, Al-Mā'idah: 100, Yūsuf: 111, Ibrāhīm: 52 and Ṣād: 29, etc.

It is good to note that the verses relied on by the literalists do not in any way suggest that reason should be jettisoned while obeying religious dictates. Also, some of the traditions that discourage the utilization of reason in religious discourses have been interpreted to mean unsound reason that emanates from ignoring the sacredness of religious texts (Qaraḍāwī, 2005, 123). All in all, the denial of the role of sound reasoning in religious judgment is almost impossible. It has played a major role in the verification of the historical authenticity of revelation, the understanding of the meaning and implications of the language of revelation, the appreciation of the wisdom of revelation, and the thoughtful and correct application of religious guidance (*Daᶜwah* Institute of Nigeria, 2019, 7-8).

3. Historical Development of Islamic Law of Succession

Mīrāth, which is the Arabic word for the Islamic Law of Succession, means the transfer of something from one person to another. (Fayrūz Ābādī, 2007). Technically, it is, according to al-Ṣābūnī (2006), the act of transferring ownership from the deceased to his living heirs. Such transfer may concern cash or landed property or any right among the legal rights. As a discipline, it is, according to Badrān (1998), a field of knowledge that involves principles and mathematical calculations aimed at identifying 'what', 'how', and 'whom' the deceased's estate is given to. The discipline is also called al-*Farā'iḍ*, *'Ilm al-Irth,* and *al-Turāth*.

The benefit of studying *Mīrāth* is to know the legal heirs of the deceased, their legal shares, and the prevention of injustice and oppression in the estate distribution. It is also interesting to emphasize that the higher intents and objectives of *Sharīᶜah* (*maqāṣid*) behind the principle of *Mīrāth* are the preservation of wealth from waste, establishing love and unity among family members, and preservation of life. This is because the inaccurate distribution of an estate can cause chaos which could lead to loss of life and property. However, the subject has passed through various stages before reaching the peak of its development in contemporary times.

The Prophetic stage came first. It is not farfetched that the inheritance system precedes the Prophethood of Muhammad. There had been in the *Jāhiliyyah* period various patterns of distributing the estate of the deceased that were adopted by the Arabs. According to Albazm (2018), the Arabs in the pre-Islamic era did not have a unified system of inheritance, rather, each clan and family relied on an inherited custom of their ancestors. However, they shared common notions in aspects of *Mīrāth* such as barring females and infants from being beneficiaries of inheritance. The major eligibilities for inheritance during the *jāhiliyyah* era are blood relationship, adoption, and fraternity (*Muḥālafah*) (Albazm, 2018, 60).

The emergence of Prophet Muhammad marked a watershed in the history of social and moral revolution in Arabia. The inheritance system was among the socio-cultural norms visited by the Islamic reformation. The Qur'ān succinctly provides that gender is not a barrier to inheritance. (Al-Nisā': 7). The verses that mainly focus on Islamic estate distribution in the Glorious Qur'ān are nine in a single chapter. A thematic study of the verses revealed that the various rulings regarding the subject had been addressed by the Qur'ān. Notable among them include the fixed and residual share formula, mentioning the legal heirs, *al-ḥajb* (prevention), the legal ruling on the application of *Mīrāth*, and admonition for the appointed *walī* (guardian).

The verses revealed during the Prophetic era remained the primary sources of the Islamic Law of Succession. While corroborating the assertion that the verses are central to the discipline of inheritance, Al-Ṭabarī (2006) reported that Caliph Abū Bakr Ṣiddīq (d. 634) mentioned in his Friday sermon that "the first verse revealed about inheritance deals with the descendant and ascendant, the second verse was revealed to address the couples and maternal brothers and sisters, while the last verse which concludes the *Sūrat al-Nisā'* deals with the full brothers and sisters". Another verse that addresses *Mīrāth* is al-Anfāl: 75. Ibn Kathīr (2006) asserts that the phrase *Ulū al-arḥām* mentioned in the verse embraces all the legal heirs other than the specific meaning of the term.

Apart from the explicit Qur'ānic verses on *Mīrāth*, there are sayings and judgments of the Prophet which constitute the major literature on the subject during the Prophetic era. Some of the contributions of Prophet Muhammad to the subject are the categorization of heirs to fixed and residual share beneficiaries, preventing a Muslim from inheriting a non-Muslim and vice-versa, distribution formulae for the *ᶜAṣabah Maʿa al-Ghayr,* lumping two grandmothers for one-sixth share, etc.

Mīrāth during the eras of the Companions and their successors became widened as a result of matters that generated juristic controversy among the scholars in that era.

The outcome of such disagreement later constituted additional literature on the subject. The inheritance matters that attracted the intellectual

contributions of scholars at that stage include the inheritance of a Muslim from a non-Muslim. There is unanimity among the scholars that a non-Muslim cannot inherit a Muslim. However, as for a Muslim inheriting a non-Muslim, some scholars among the companions and their successors have contended that it is legitimate. (Al-Ṣan'ānī, 2006, 3/ 213). Some of the scholars are Muᶜādh bin Jabal, Muᶜāwiyah bin Abī Sufyān, Ibn al-Musayyab, Masrūq, etc. The evidence relied upon by these scholars is the tradition reported by Abū Dāud (2006) that the Apostle of Allah said: 'Islam increases and does not decrease". A prominent Muslim judge during the first century of Islam, Yaḥyā bin Yaᶜmar (d. 686) has given a judgment in favor of a Muslim and the mentioned tradition was his authority. (Dār Quṭnī, 1966, 81). The view was given state authority during the regime of Muᶜāwiyah (d. 680) who ordered all the judges under him including the prominent Shurayḥ (d.697) to adopt it. (Albazm 2018, 85).

The majority of Muslim jurists of the day rejected what they described as an illegitimate and unjustifiable specification of the generalization in the Prophetic statement. (Ibn Ḥajar, 2004, 12/50). Be it as it may, the controversy generated by the matter added weight to the literature on *Mīrāth* during the stage under review.

Another controversial matter that evolved in the era of the *Ṣaḥābah* was the case of making the full brothers and sisters or paternal brothers and sisters eligible to inherit in the presence of the legitimate grandfather. It is well established by the provision of the Qur'ān that the father of the deceased would always prevent all kinds of brothers and sisters from inheriting.

The rationale behind this is to prevent what seems to be a duplication of estate allocation. The brothers and sisters of the deceased are also the direct children of his father. Hence, any portion of the estate given to the father is tantamount to giving them as well, since they remain the major beneficiaries of it when the father passes on. However, in a simple principle, the grandfather ought to substitute the father in this role. This is because the grandfather steps into the shoe of the father when the latter is absent. The silence of the Qur'ān and *Sunnah* on the matter has fanned the ember of the disagreement among the companions and their successors.

Abū Bakr Ṣiddīq, Ibn 'Abbās, Ibn 'Umar, Ḥudhayfa bin al-Yamān, Abū Mūsā al- Ashaᶜrī, ᶜĀishah, Ḥasan al-Baṣrā, Ibn Sīrīn, etc. have held that the grandfather would prevent the *Ikhwah* from inheriting. (Al-Zuḥaylī, 2016, 205). In sharp contrast, ᶜAlī, Ibn Masᶜūd, Zayd bn Thābit, etc. opined that the *Ikhwah* can inherit in the presence of the grandfather. The Egyptian and Syrian laws have adopted this view. It is worthy to note that the supporters of *Ikhwah* inheritance with the grandfather have also differed among themselves regarding the formula to be used in sharing the estate.

Another matter that dominated the literature of *Mīrāth* during the time of the companions and their successors was the case in which the estate estimation surpasses the accumulated portions of all the heirs. The fate of the leftover technically known as *Al-Radd* is a subject of disagreement among the companions and Zayd bin Thābit. According to the former, the leftover would be shared among the heirs using the inheritance formula, while the latter insisted that it should be returned to the state treasury. (Albazm, 2018, 104).

Other cases that characterized the literature produced in the eras of the Companions and their successors are the cases of *al-Akhḍariyyah* and *Musharrakah*. It is obvious from the foregoing discussion that in the first century of Islam, the major contents of the literature of *Mīrāth* were the Qur'ān, Prophetic traditions, and polemics among the Companions and their successors. It is worthy of observation that the subject during this time was yet to receive the interest of documentation by Muslim writers. However, going by the depth of its contents, the subject was ripe for documentation during the time of the successors.

The documentation of *Mīrāth,* which took off in the second century of Islam, passed through three stages as discussed below.

i.Narrative Stage (2nd-3rd Century):

This is the era when the subject was documented using the style of narration for which the *Muḥaddithūn* (traditionalists) are reputable. *Mīrāth* was included in the chapters contained in the pioneer works on *ḥadīth*. Prominent among those *ḥadīth* works that reserved a chapter for *Mīrāth* included that of al-Bukhārī, Muslim, Al-Tirmidhī, Abū Dāud, Al-Nasā'ī, Ibn Abī Shaybah, Al-Dārimī, Ibn Khuzaymah, etc. The chapter of *al-Farā'iḍ* as adopted by the aforementioned authors constitutes the pioneer efforts of the documentation of the Islamic Law of Succession.

However, during this stage, some traditionalists have taken exception to the status quo by extracting the traditions relating to *Mīrāth* in an independent book, but they still relied on the narrative style of the *Muḥaddithūn.* Prominent among these authors was ᶜAbd Allāh bin Sufyān al-Thawrī (d. 161 A.H.) who entitled his work: *Kitāb al-Farā'iḍ.* The work contains ninety-one traditions relating to the subject (al-Thawrī, 1999: 19). Other authors who followed suit were Ibn Shubrumah (d. 144 A.H.), Abū Yūsuf (d. 182 A.H.), Al-Kalbī (d. 240 A.H.) and al-Karābīsī (d. 245 A.H.).

ii.Juristic Stage (3rd-4th Century):

This is the era when *Mīrāth* began to constitute a chapter in the evolving books of Islamic Jurisprudence. The pioneer works in Jurisprudence such as *Al-Umm* of Imām al-Shāfi'ī (d. 204 A.H.) contained information about the Islamic Law of Succession. In the third century of Islam, the books of jurisprudence and *ḥadīth* collection works remained the dominating sources of literature on *Mīrāth.* Although not all the pioneer authors in Islamic jurisprudence reserved a place for *Mīrāth,* some of those who took exception were Muḥammad bin Ḥasan (d. 189 A.H.) in his *al- Mabsūṭ,* Saḥnūn (d. 240 A.H.) in his *al-Mudawwanah* and others too numerous to mention.

iii. Independent Stage (4th Century to date):

As time went on, there was a need for a discipline to attain special attention. This is because of the emerging trend and continuous polemics that have widened the scope of the subject. Hence, from the third century onward *Mīrāth* became an independent discipline with special works authored on it. Some of the independent works that saw the light of day were *al- Farā'iḍ* by Muḥammad bin Naṣr al-Marwāzī (d. 294A.H.) and *al-Farā'iḍ* by Ibn Surayj (d. 306 A.H.). The former exceeds one thousand pages. Some authors chose to coin the subject in a poetic approach. An example is the poetic work of Muhammad al-Raḥbī (d. 579 A.H.) which attracts the highest number of explanatory works in the field. Another prominent work is *al-ᶜAdhb al-Fā'iḍ* by Ibrāhīm Al-Ḥanbalī (d. 1189 A.H.).

The common challenging features in the classical works on *Mīrāth* are haphazard arrangement, difficult approaches, and complex calculations. These features are responsible for the natural phobia that students nurse for the subject. In a bid to allay the fear, some modern scholars from the 19th century showed keen interest in simplifying the subject using a simple and modern approach characterized by sequential arrangement, simple language, and new emerging issues. Some of those works that have influenced modern scholarship in *Mīrāth* are discussed below.

1. ***Aḥkām al-Waqf Wa al-Mawārīth*:** The work is authored by Shaykh Aḥmad bin Ibrāhīm (d. 1945). The author is an Egyptian scholar who taught *Sharīᶜah* at the al-Azhar University of Cairo. His work focuses on endowment and inheritance.

2. ***Sharḥ Qānūn al-Aḥwāl al-Shakhṣiyyah*:** It is written by the late Professor Muṣṭafā as-Sibā'ī (d. 1967), a Syrian jurist who is credited with Islamic activism in Syria. The work is an explanatory note on the Muslim Personal Status Law of Syria; a large part of it is devoted to treating the matter of inheritance. Some modern trends affecting the subject such as *al-Waṣiyyah al-Wājibah* were also discussed.

3. ***Aḥkām al-Mawārīth fī al-Sharīᶜah al-Islāmiyyah* by Muḥammad Muḥyī al-Dīn 'Abd al-Ḥamīd (d. 1973):** The author was the chairman of the Committee on *Fatwā* of the Al-Azhar University. The work compares

the views of the four major schools of thought in Islamic Jurisprudence on controversial matters in *Mīrāth.*

4. ***Aḥkām a-Tarikah wa al-Mawārīth*:** The book is authored by Abū Zahrah (d. 1974). The author is one of the most prominent Muslim jurists in modern times. The author addresses a lot of modern issues affecting *Mīrāth.*

5. ***Uṣūl ʿIlm al-Mawārīth*:** This work is written by Aḥmad 'Abd al-Jawād (d. 1978). The author is an Egyptian scholar whose work on the subject is reputable for using the carat style in distribution. The carat style used by the author is the popular means of sharing landed property by traditional distributors. His work is characterized by the difficulty inherent in the classical works of *Mīrāth.*

6. ***Al-Fawā'id al-Jaliyyah fi al-Mabāḥith al-Farḍiyyah*:** The book is written by 'Abd al-'Azīz bin Bāz (d.1999). The author is the former Grand Mufti of the Kingdom of Saudi Arabia. His work is characterized by simplicity in language and methodology.

7. ***Al-Mawārīth fi al-Sharʿah al-Islāmiyyah*:** This work is written by Muḥammad 'Alī al–Ṣābūnī (d. 2021). The author is a former lecturer at Ummul Qura University, Makkah. His work is the most circulated and famous inheritance book being consulted in contemporary times. Comprehensiveness, simplicity, and logical arrangement give his work prominence over similar works in the field.

It is worthy to note that the available fertile grounds for research in the field today are matters relating to modern scientific discoveries as they affect the discipline. Such include inheritance of pregnancy, using a DNA test to establish blood relation with the deceased, hermaphrodites, etc. Modern Muslim academics have seized this opportunity to launch independent research on specific cases. The Master's Dissertation of Professor Ibrahim Jamiu Otuyo at the Imam University, Riyadh which focused on the inheritance of pregnancy is a typical example. (Otuyo, 1991).

4. The Surface of Literalism and Rationalism in Islamic Law of Succession

We shall sample the surface of the two trends in the Islamic Law of Succession in this section to identify the preference of Muslim jurists between the issues characterized by the two tendencies.

4.1 *Al-Gharrāwiyyah or Al-'Umariyyh*

The provision of the Qur'ān regarding an instance where a deceased is survived by father and mother without any descendant is to give the mother 1/3 of the total estate while the father takes the remnant, which is equivalent to 2/3 of the whole estate (Sūrat al-Nisā': 11). During the regime of 'Umar, the Second Caliph, a case was brought to him concerning a deceased who was survived by a husband, mother, and father. Undoubtedly, the case still falls within the provision of the aforementioned verse because the deceased was childless. Hence, going by the literal understanding of the verse, the Muslim leader gave 1/2 to the husband, 1/3 which is equivalent to 2 of 6 was given to the wife and the remnant which is 1 of 6 was given to the father. This distribution implies that contrary to all other cases where the father will either take a double share of the mother or pair similar share with her if the deceased is survived by male descendants, conversely in this case the mother is taking the double of what the father takes.

The victim father could not hide his grievances until the case generated a lot of uproar among the *Ṣaḥābah.* A special meeting for scholars was held by the Muslim leader over the issue. The companion of the Prophet who has been anointed by him as the most versed in succession, Zayd bin Thābit rationalized the provision of the Qur'ān by claiming that the one-third apportioned to the mother in this case should be what constitutes the ratio after the husband or the wife has taken his/her half. Consequently, one-third of the mother will be from the remaining estimation after the share of the husband. Practically, the husband, according to Zayd bin Thābit, would take 3 of 6 which is half of the total estate, and the mother would be given 1 of 6 which is 1/3 of the remnant of the estate after the husband has taken his share; the father would now be left with 2 of 6. The juristic interpretation of ibn Thābit put the matter to rest as it was

celebrated by the living companions (Ibn Qudāmah, 1968, 2/1462).

However, another respected companion, ʻAbd Allāh bin ʻAbbās, took exception to the judgment as he saw it as a manipulation of the literal meaning of the Qur'ānic verse (Al-Sābūnī, 2006, 59). Interestingly, the view of ibn 'Abbās is not popular among the specialists in the field of inheritance because the highest percentage of both classical and contemporary works on *Mīrāth* only contain the formula of ibn Thābit rather than ibn ʻAbbās. One may argue that the popularity and wide acceptance of the view of ibn Thābit may be attributed to the authority support it enjoys from the regime of ibn al-Khaṭṭāb. Be it as it may, the adoption of this rational-based formula of inheritance by Muslims across ages symbolizes that rationalism has a fair place in the religious practices of Muslims.

4.2 *Al-Jadd Maʿa al-Ikhwah*

The general rule in the Islamic Law of Succession is that a father will prevent all kinds of brothers and sisters from inheriting. It is also a rule that in the absence of a father, the grandfather steps into the father's shoe (Al-Sābūnī, 94). However, if a grandfather meets with the full or paternal brothers and sisters, will he prevent them from inheriting as the general rule entails, or they should all inherit with a special arrangement? This case has generated serious scholastic arguments among classical Muslim jurists. The case is so sensitive to scholars that ʻAlī bin Abī Ùālib and ʻUmar bin al-Khaṭṭāb often scared students away from indulging in the matter (Al-Sābūnī, 96).

The literalist approach in this matter was led by ibn ʻAbbās who opined that the grandfather should bar the brothers and sisters from inheriting because that is the general rule. In sheer contrast, the rationalist approach was led by ibn Thābit who argued that the rationale behind a father preventing the brothers is to avoid duplication of shares in the sense that those brothers shall soon inherit the shares given to the deceased's father who happens to also be their father. In the case of a grand-father, the reverse is the case in the sense that the brothers are to the grand-father like grand-children who are not eligible to inherit from him due to the existence of biological children. Preventing the brothers from inheriting their sibling because of their grand-father is tantamount to favoring their distant uncles who shall soon inherit the grand-father's share from the deceased who is much closer to them than their uncles (Al-Sābūnī, 97).

The rationalist approach to this case has been adopted by three among the four schools of jurisprudence, namely, the *Mālikī, Shāfiʻī* and *Ḥanbalī* schools, and the majority of the *Sharīʻah* courts in the contemporary world except Saudi Arabia (Jawharī, 2020, 49).

4.3 *Ulū al-Arḥām*

The categories of heirs mentioned in the Qur'ān and *Sunnah* include the fixed and agnate beneficiaries. The textual provision is silent on an instance where a deceased is survived by relatives who do not belong to the two above categories. Hence, the *Mālikiyyah* and *Shāfiʻiyyah* opine that the estate in this case should be deposited to the Public Treasury (Al-Sābūnī, 176). It is understandable that their position is an outcome of a literalist approach that does not often ponder over a way out outside the confine of textual provisions. The *Ḥanafiyyah* and the majority of jurists, however, argue that the countless number of other relatives who are not captured by the textual provisions should be considered using the same template of distribution formulae for them (178).

It is worth mentioning that the rationalization approach of the majority of scholars gave birth to the third category of heirs namely, *Ulū al-Arḥām.* The rationalization does not stop at making this set of relatives eligible to inherit in the absence of the textual beneficiaries rather it extends to charting ways of distributing their shares. The contemporary works on the Islamic Law of Succession always contain the three modes rationally proffered by jurists for settling the case of *Ulū al-Arḥām.* This further showed the extent to which

rationalist tendency found its way to this noble subject in Islam.

4.4 *Al-'Awl* (Proportional Reduction)

Another case in which Muslim jurists display rationalization and literalism is *al-'Awl*. This is an instance where the textual shares for all the concerned heirs are more than the estate as represented by the highest common factor (HCF). The distributor will be faced with the challenge of whom among the heirs whose share would be sacrificed. When this happened during the regime of 'Umar after all the heirs could not sacrifice their shares, the Muslim leader assembled the scholars among the *Sahābah*. The resolution of the consultative meeting was given by ibn Thābit as usual to the effect that reduction should visit the shares of all the heirs according to their share ratio. This has been the formulae adopted by Muslims across the globe for similar incidents (116). The resolution does not go without contention produced by the literalist approach. Ibn 'Abbās later differed but his view is not popular.

4.5 *Al-Radd* (Proportional Addition)

The opposite of *al-'Awl* is when the total shares of the heirs could not exhaust the total estimate of the estate; thereby leaving some sets of estate uninherited. In this case, Ibn Thābit surprisingly abandoned his usual rationalization by opining that the leftover should be deposited into the treasury (Ibn Qudāmah, 1654).

However, other companions contended that the leftover should be re-distributed to the existing heirs according to the ratio of their shares (Albazm, 2018, 104). The view of the majority of scholars receives wide acceptance such that the view of Ibn Thābit only lives in the leaves of classical works.

5. Conclusion

From the foregoing discussion, the research discovered the following:

a. The literalist and rationalist trends in Islam date back to the formative stage of Islamic history.
b. The school of rationalism has a footing in orthodox thought; therefore, the word could not be restricted to the liberal *Mu'tazilites* and Philosophers.
c. The Qur'ān lays much emphasis on reason, which gives the trend of rationalism divine legitimacy over literalism.
d. The Islamic Law of Succession has passed through three stages namely, the Prophetic, Companion and successors' stage and the documentation stage.
e. The documentation of *Mīrāth* passed through three developmental stages namely, the narrative, juristic and independent stages.
f. The literalist and rationalist tendencies surfaced in sensitive matters of inheritance.
g. In all matters of inheritance where the two tendencies appeared, the majority of Muslim scholars have adopted rationalistic-based results.
h. Zayd bin Thābit, who was acknowledged by the Prophet as the most versed companion in the succession law adopted the rationalistic approach in almost all cases using the inheritance formulae he was credited with.
i. Muslims across the globe have an inclination to rationalistic tendencies as far as inheritance is concerned.

Recommendations

The research, therefore, recommends the following:

a. That research should be conducted on the factors for the inclination of Ibn 'Abbās to a literalistic approach in many matters relating to the Islamic Law of Succession.
b. That a comparative study should be conducted on the juristic choices of both Ibn 'Abbās and Ibn Thābit in inheritance cases.

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