



## **THE PERFECTION AND SELF-SUFFICIENCY OF THE QUR'ĀN IN THE LAW OF INHERITANCE (PART TWO)**

Ibrahim Nuhu Tahir

*Department of Economics, Kulliyah of Economics and Management  
Sciences, International Islamic University Malaysia, Jalan Gombak  
53100, Kuala Lumpur (E-mail: ibrahimnuhu@iiu.edu.my)*

### **ABSTRACT**

This paper addresses the law of inheritance as detailed in the *Qur'ān*. It deals with the method used by the *Qur'ān* in this regard. It is so comprehensive in such a way that not a single person among the heirs of the deceased is left out (with the exception of the grandmother) even though the *āyāt* that tackled the issue are not more than four *āyāt*. This attitude itself indicates the great important position held by this knowledge. It is about a system that Allah took complete responsibility of its explanation in detail. This is different from the norm, whereby Allah gives the general ruling and its details or explanation will be given by the Prophet (*ṣal-Allāhu 'alayhi wa sallam*). Failure to put the shares of the estate in their proper position can lead to serious disputes among family members which can lead to cutting of ties between family members. This is contrary to Islam which deems family unity and integration as essential, Allah the Almighty has taken the said responsibility of explaining it in detail to the *Ummah*. The paper aims to expose the beauty of the concise information about inheritance mentioned in the *Qur'ān*. This will be done solely through reliance on the *Qur'ān* and other sources which support the *Qur'ān*. This is the second part of two articles. Part One discusses the first type of inheritance (*Far'ḍ*), and Part Two discusses the second type of inheritance (*Ta'ṣīb*). In this article, each set of conditions that qualify an heir to inherit a fixed share is accompanied by a table that illustrates their application.

JEL classification: K00, K1, K2, K3, K4

Keywords: *Ta'ṣīb*, *Far'ḍ*, Estate, *Āyāt*, *Irth*

## 1. INTRODUCTION

The second article in the series discusses *Ta'ṣīb in the Qur'ān*. It was stated in the previous article (Part One) that one of the main objectives of *Sharī'ah* is to attain peace in the society. In order to ensure the achievement of this objective, *Sharī'ah* grants and protects the rights of individuals and the society collectively. The right of heirs is one such right. Therefore it is from *īmān* that a muslim should love, prefer and uphold the law of Allah in this regard just as with all His other laws. Allah says (*interpretation of the meaning*):

“But no, by your Lord, they can have no Faith, until they make you (O Muḥammad [ṣal-Allāhu 'alayhi wa sallam]) judge in all disputes between them, and find in themselves no resistance against your decisions, and accept (them) with full submission.” (*Qur'ān*, 4:65)

In addition to that, a muslim should also fear the punishment of Allah which would come if they followed other than what Allah has instructed. This is because abandoning this particular law is a straight path to misguidance. Allah says in the last *āyah* of *Sūrah al-Nisā'* (*interpretation of the meaning*):

“(Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.” (*Qur'ān*, 4:165)

The work in this article starts from *ta'ṣīb* until the inheritance of the *dhawi al-arḥām*. This will be followed by a conclusion.

## 2. TA'ṢĪB IN THE QUR'ĀN

The law of inheritance (*farā'id*) is of two types: *Far'ḍ* and *Ta'ṣīb*. Inheritance by the way of *far'ḍ* has already been discussed in the first article. In this article focus is on inheritance with *ta'ṣīb* and its existence in the *Qur'ān*. *Ta'ṣīb* literally means to tighten something and it is technically defined as inheritance with no fixed portion in inheritance. These types of heirs are called *'aṣabah* which is the

plural of *‘aṣīb*. They are called *‘aṣabah* because they were the ones who were surrounding him with protection. There are many who get their portion through *ta ṣīb* and they are mainly male heirs.

## 2.1 TYPES OF ‘AṢABAH

There are three types of *‘aṣabah*: *‘Aṣabah bi al-Nafs*, *‘Aṣabah bi al-Ghair*, *‘Aṣabah ma‘ al-Ghair*.

### 2.1.1 ‘AṢABAH BI AL-NAFS

This type of *‘aṣabah* is all males with the exception of the last one. By their nature they are *‘aṣabah*, they are the ones who take either the whole estate or take the balance after the portion of the *aṣḥāb al-furūd*. The *‘aṣabah bi al-nafs* are: son, grandson (no matter how much he descends through the male heirs), father, grandfather (father’s father, no matter how much he ascends through the male heirs), full brother, consanguine brother, son of a full brother (no matter how much he descends through the male heirs), son of a consanguine brother (no matter how much he descends through the male heirs), full uncle (no matter how much he ascends through the male heirs), paternal uncle (no, matter how much he ascends through the male heirs), son of a full uncle (no matter how much he descends through the male heirs), son of a paternal uncle (no matter how much he descends through the male heirs), *al-mu’tiq* (a man who granted emancipation to a slave), and lastly is *al-mu’tiqah* (a woman who granted emancipation to a slave).

The inheritance of the son and grandson in the *Qur’ān*: If he is alone he takes whatever is left after the *aṣḥāb al-furūd*. “Allah commands you as regards your children’s (inheritance): *to the male, a portion equal to that of two females...*” (*Qur’ān*, 4:11) (*interpretation of the meaning*). The *āyah* indicates that the male among the children has no fixed portion of inheritance by the *Qur’ān*. The portion the *Qur’ān* has given him is the remainder after the *aṣḥāb al-furūd*. If he is accompanied by the daughter / daughters, he takes that which is equal to the portion of two females.

For full and consanguine brothers and their male descendants, *Qur’ān* dealt with them in the same way it dealt with the males among the children. *Qur’ān* says (*interpretation of the meaning*), “*if there are brothers and sisters, the male will have twice*

*the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.” (Qurʾān, 4:165).*

As for father and the grandfather, *Qurʾān* says (*interpretation of the meaning*): “For parents, a sixth share of inheritance to each if the deceased left children; but if he has no children, *and his parents have inherited him, the mother has a third*; if the deceased left brothers or (sisters), the mother has a sixth.” (*Qurʾān*, 4:11). This means that whatever is left after the portion of the mother and the spouse (since these are the only ones who can inherit in the presence of a father and a child) goes to the father and this is precisely what an *ʿaṣīb* does.

### 2.1.2 ʿAṢĀBAH BI AL-GHAIR

The following is the list of *ʿaṣabah bi al-ghair*: daughter (she becomes *ʿaṣbah* together with a son), granddaughter (she becomes *ʿaṣbah* together with a grandson), full sister (she becomes *ʿaṣbah* together with a full brother), consanguine sister (she becomes *ʿaṣbah* together with a consanguine brother). The *Qurʾān* confirms this list (*interpretation of the meaning*):

“Allah commands you as regards your children's (inheritance): *to the male, a portion equal to that of two females...*” (*Qurʾān*, 4:11)

“They ask you for a legal verdict. Say: “Allah directs (thus) about *Al-Kalālah* (those who leave neither descendants nor ascendants as heirs). If it is a man that dies leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; *if there are brothers and sisters, the male will have twice the share of the female.* (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.” (*Qurʾān*, 4:176)

It should be noted that if the male and female siblings are combined, the female has no fixed portion, and instead she will join the brother at her level to share the inheritance (*...the male will have*

*twice the share of the female*) according to what is designed by the previous *āyah*.

### 2.1.3 'AṢABAH MA' AL-GHAIR

The following is the list of *'aṣabah ma' al-ghair*: full sister (she becomes *āṣibah* with the existence of a daughter or granddaughter) and consanguine sister (she becomes *āṣibah* with the existence of a daughter or granddaughter). As for the sisters inheriting in the presence of daughters or granddaughters, this is because there is nowhere in the *Qurān* mentioned that a sister does not inherit anything in the presence of a daughter. Therefore if there is no male child and only a female child exists, the sister shall take whatever is left after the portion of the daughter(s). She is the best and most appropriate person to get this portion more than the male sibling who is farther than her.

### 3. THE ISSUE OF GHARRAWAIN OR 'UMARIYYATAIN

This is an issue where the components are father, mother and wife or husband. It should be noted that the father has no fixed portion of inheritance in the absence of the deceased's children. Rather, he will automatically become *āṣib* and take the balance after the *aṣḥāb al-furūd* or the whole estate if there is no *ṣāḥib far'ḍ* (a person who inherits with *Far'ḍ*). The issue which is different from the norm, is a case whereby the *ṣāḥib far'ḍ* is a spouse. In this case the spouse will receive his/her portion as usual, while the mother will not get a complete  $\frac{1}{3}$  of the estate. Instead, she gets  $\frac{1}{3}$  of the balance after the portion of the spouses, and the father takes what she leaves as the balance after her portion. This is what is understood from the *Qurān* (*interpretation of the meaning*): *For parents, a sixth share of inheritance to each if the deceased left children; but if he has no child, and his parents have inherited him, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth.*

Thus the mother has  $\frac{1}{3}$  in the *āyah* which means  $\frac{1}{3}$  of what they both inherit and not  $\frac{1}{3}$  of the whole estate (*but if he has no child, and his parents have inherited him, the mother has a third*). This is understood because the only other one who inherits in the presence of the father is the spouse or children and their descendants. In this situation none of the deceased's children are present, and the

*Qur'ān* did not say that nobody else can inherit with the parents in that situation. Having in mind that the only one who can inherit with the parents are either children or the spouses, the *Qur'ān* negates the existence of children in this case. Thus the only one who remains to inherit with the parents is the spouse. So when the *Qur'ān* says: *but if he has no child, and his parents have inherited him, the mother has a third*; it means she takes a third of what is inherited by both of them after the portion of the spouse, and not the third of the whole estate. This is actually the portion given to her when she is the only one who exists together with the father; she thus takes  $\frac{1}{3}$  of what they both inherited. This is the understanding of the vast majority of the scholars of this *ummah*. Furthermore, if we deal with the issue as usual, the father would have received less than the mother, and there is no such case in inheritance where you have two heirs, male and female, who are equal in their level and the female gets more than the male. They will either have an equal amount or the male will receive more (Ibn Kathīr, 2006). Tables 1 and 2 illustrate the issue *gharrawain* or *'umariyyatain*.

Table 1  
The Issue of *Gharrawain* or *'Umariyyatain*

Fixed Share	Heir	Portion	The Estate (RM)
		6	48
$\frac{1}{2}$	Husband	3	24
$\frac{1}{3}$ of the remainder after the portion of the husband	Mother	1	8
<i>'Āṣib</i>	Father	2	16

Husband:  $48 \div 6 = 8$ ,  $8 \times 3 = 24$

Mother:  $48 \div 6 = 8$ ,  $8 \times 1 = 8$

Father here is *'āṣib* who takes the balance (which is RM 16 in this case) after the portions of those who inherit with *far'ḍ*.

Table 2  
The Issue of *Gharrawain* or *'Umariyyatain*

Fixed Share	Heir	Portion	The Estate (RM)
		4	48
$\frac{1}{4}$	Wife	1	12
$\frac{1}{3}$ of the remainder after the portion of the wife	Mother	1	12
<i>'Āṣib</i>	Father	2	24

Wife:  $48 \div 4 = 12$ ,  $12 \times 1 = 12$

Mother:  $48 \div 4 = 12$ ,  $12 \times 1 = 12$

Father here is *ʿaṣīb* who takes the balance (which is RM 24 in this case) after the portions of those who inherit with *farʿd*.

#### 4. THE INHERITANCE OF GRANDFATHER ALONG WITH THE SIBLINGS

There is a strong controversy among the scholars on the matter of inheritance of the grandfather along with the siblings. It has been reported that the view of the majority is that the siblings can inherit in the presence of the grandfather. On the contrary, the scholars mentioned that Abū Bakr did not agree with this opinion. But since the paper is about inheritance in the *Qurʾān*, the only opinion that can be supported by the *Qurʾān* is that of Abū Bakr which says that the grandfather replaces the father in everything including this situation. This is also the opinion of ʿĀʾishah, Abū Ḥanīfah, Ibn al-Qayyim and many others (Ibn Bāz, 1392 and Al-Kātib, 1423).

The evidence in support of this view is that the *Qurʾān* calls Grandfather ‘father’ in many places (*interpretation of the meaning*):

“Or were you witnesses when death approached Yaʿqūb (Jacob)? When he said unto his sons, "What will you worship after me?" they said, "we shall worship your Ilāh (Allah), the Ilāh (Allah) of your fathers, Ibrāhīm (Abraham), Ismāʿīl (Ishmael), Ishāq (Isaac), one Ilāh (Allah), and to Him we submit (in Islām)." (Qurʾān, 2:133)

“And I have followed the Religion of My fathers, - Ibrāhīm (Abraham), Ishāq (Isaac) and Yaʿqūb (Jacob), and never could we attribute any partners whatsoever to Allah. This is from the Grace of Allah to us and to mankind, but most men thank not (i.e. they neither believe in Allah, nor worship Him)". (Qurʾān, 12:38)

Here it is clearly seen that Allah called the grandfather ‘father’, which means he acts like the father in his absence. This is in addition to the consensus of the scholars that the grandfather takes the position of the father in his absence in everything with the exception of the case of siblings inheriting along with the

grandfather. Based on the indication by the *Qur'ān*, grandfather replaces a father in his inheritance with everyone, and there is nothing to show any exception. Therefore, he should act like the father in this case as well (Al-Sa'dī, 1424). Allah knows best.

## 5. THE ISSUE OF 'AWL

'*Awl* literally means increase and technically it means an increase in the lowest common denominator which results in a decrease in the portions of the heirs. There are seven common denominators (2, 3, 4, 6, 8, 12 and 24) that are used in the law of inheritance to reach the portion of an heir from the estate. There are only three numbers that accept '*awl*:

- (a) 6, which extends in the following sequence: 7, 8, 9 and 10 (Tables 3, 4, 5 and 6 are examples of this issue).
- (b) 12, which extends in the following sequence: to 13, 15 and 17 (Tables 7, 8 and 9 are illustrations of this issue).
- (c) 24, which extends once to 27 as shown in Table 10.

It can be seen in Table 3 that the husband takes  $\frac{1}{2}$  of the estate because there is no child of the deceased. The six full sisters collectively get  $\frac{2}{3}$  because they are more than one, and there is no male sibling for the deceased at their degree.

Table 3  
The '*Awl* of 6 to 7

Fixed Share	Heir	Portion
		$\frac{6}{7}$ *
$\frac{1}{2}$	Husband	3
$\frac{2}{3}$	6 Full Sisters	4

The lowest common denominator (LCD) for  $\frac{1}{2}$  and  $\frac{2}{3}$  is 6 which is extended to 7.

\*Total of the portions is 7 thus the '*awl* is 7.

Table 4  
The '*Awl* of 6 to 8

Fixed Share	Heir	Portion
		$\frac{6}{8}$ *
$\frac{1}{2}$	Husband	3
$\frac{1}{6}$	Mother	1



$\frac{2}{3}$	2 Consanguine Sisters	4
LCD for $\frac{2}{3}$ , $\frac{1}{2}$ and $\frac{1}{6}$ is 6 which is extended to 8.		
* Total of the portions is 8 thus the <i>ʿawl</i> is 8.		

The husband gets  $\frac{1}{2}$  because the deceased has no child. The mother of the deceased is partially excluded from receiving  $\frac{1}{3}$  to  $\frac{1}{6}$  due to the existence of more than one sibling. The two consanguine sisters get  $\frac{2}{3}$  because they are more than one, and there is no male sibling for the deceased at their degree. Table 4 illustrates this case.

In Table 5 the husband gets  $\frac{1}{2}$  because the deceased has no child. The two full sisters get  $\frac{2}{3}$  because they are more than one, and there is no male sibling of the deceased at their degree. The two uterine brothers all share  $\frac{1}{3}$  because they are more than one and there is nobody to exclude them.

Table 5  
The *ʿawl* of 6 to 9

Fixed Share	Heir	Portion
		6/9*
$\frac{1}{2}$	Husband	3
$\frac{2}{3}$	2 Full Sisters	4
$\frac{1}{3}$	2 Uterine Brothers	2

LCD for  $\frac{1}{2}$ ,  $\frac{1}{3}$  and  $\frac{1}{6}$  is 6 which is extended to 9.

\*Total of the portions is 9 thus the *ʿawl* is 9.

The husband in the case shown in Table 6 gets  $\frac{1}{2}$  because the deceased has no child. The two consanguine sisters get  $\frac{2}{3}$  because they are more than one, and there is no male sibling for the deceased at their degree. The two uterine sisters all share  $\frac{1}{3}$  because they are more than one and there is nobody to exclude them. Grandmother gets  $\frac{1}{6}$  because there is no mother to exclude her.

Table 6  
The *ʿawl* of 6 to 10

Fixed Share	Heirs	Portion
		6/10*
$\frac{1}{2}$	Husband	3
$\frac{2}{3}$	2 Consanguine Sisters	4
$\frac{1}{3}$	2 Uterine Sisters	2
$\frac{1}{6}$	Grandmother	1

LCD for  $\frac{1}{2}$ ,  $\frac{2}{3}$ ,  $\frac{1}{3}$  and  $\frac{1}{6}$  is 6 which is extended to 10.

\*Total of the portions is 10 thus the *awl* is 10.

In Table 7 the husband is partially excluded from  $\frac{1}{2}$  to  $\frac{1}{4}$  due to the existence of a child of the deceased. The two daughters get  $\frac{2}{3}$  because they are more than one, and there is no male child of the deceased at their degree. The mother is partially excluded from  $\frac{1}{3}$  to  $\frac{1}{6}$ , due to the existence of a child of the deceased.

Table 7  
The *Awl* of 12 to 13

Fixed Share	Heir	Portion
		12/13*
$\frac{1}{4}$	Husband	3
$\frac{2}{3}$	2 Daughters	8
$\frac{1}{6}$	Mother	2

LCD for  $\frac{2}{3}$ ,  $\frac{1}{4}$  and  $\frac{1}{6}$  is 12 which is extended to 13.

\*Total of the portions is 13 thus the *awl* is 13.

The husband is partially excluded from  $\frac{1}{2}$  to  $\frac{1}{4}$  due to the existence of a child of the deceased. The daughter gets  $\frac{1}{2}$  because she is alone whereby the deceased did not leave any other child at the same degree as hers. Son's daughter here gets  $\frac{1}{6}$  as a completion of the share allocated to the daughters. The father is partially excluded from *ta šib* to  $\frac{1}{6}$ , due to the existence of a child of the deceased. The mother is partially excluded from  $\frac{1}{3}$  to  $\frac{1}{6}$  due to the existence of a child of the deceased. The distribution is depicted in Table 8 below.

Table 8  
The *Awl* of 12 to 15

Fixed Share	Heir	Portion
		12/15*
$\frac{1}{4}$	Husband	3
$\frac{1}{2}$	Daughter	6
$\frac{1}{6}$	Son's Daughter	2
$\frac{1}{6}$	Father	2
$\frac{1}{6}$	Mother	2

LCD for  $\frac{1}{2}$ ,  $\frac{1}{4}$  and  $\frac{1}{6}$  is 12 which is extended to 15.

\*Total of the portions is 15 thus the *awl* is 15.

Table 9  
The *Awl* of 12 to 17

Fixed Share	Heir	Portion
		12/17*
$\frac{1}{4}$	3 Wives	3
$\frac{2}{3}$	8 Full Sisters	8
$\frac{1}{3}$	4 Uterine Sisters	4
$\frac{1}{6}$	2 Grandmothers	2

LCD for  $\frac{1}{3}$ ,  $\frac{1}{4}$ ,  $\frac{2}{3}$  and  $\frac{1}{6}$  is 12 which is extended to 17 because of *ʿawl*.

\*Total of the portions is 17 thus the *ʿawl* is 17.

As shown in Table 9, the three wives get  $\frac{1}{4}$  because the deceased did not leave a child. The eight full sisters get  $\frac{2}{3}$  because they are more than one, and there is no male sibling of the deceased at their degree. The four uterine sisters get  $\frac{1}{3}$  because they are more than one and there is nobody to exclude them from inheritance. The two grandmothers get  $\frac{1}{6}$  because the deceased has no mother.

In the case illustrated in Table 10, the wife is partially excluded from  $\frac{1}{4}$  to  $\frac{1}{8}$ , due to the existence of a child of the deceased. The father is also partially excluded from *ta ʿīb* to  $\frac{1}{6}$ , due to the existence of a child of the deceased. The existence of a child also partially excludes the mother from  $\frac{1}{3}$  to  $\frac{1}{6}$ , due to the existence of a child of the deceased. The two daughters get  $\frac{2}{3}$  because they are more than one, and there is no male child of the deceased at their degree.

Table 10  
The *ʿawl* of 24 to 27

Fixed Share	Heirs	Portion
		24/27*
$\frac{1}{8}$	Wife	3
$\frac{1}{6}$	Father	4
$\frac{1}{6}$	Mother	4
$\frac{2}{3}$	2 Daughters	16

LCD for  $\frac{1}{8}$ ,  $\frac{1}{6}$  and  $\frac{2}{3}$  is 24 which is extended to 27 because of *ʿawl*.

\*Total of the portions is 27 thus the *ʿawl* is 27.

The ruling of *ʿawl* is also extracted from the *Qurʾān*, the evidence for this is that Allah fixed for every heir (that inherits with *farī*) his portion in inheritance. The heirs are of two types: some are deprived from inheritance, while others are not. The one who is deprived will not get anything. But in the cases where deprivation did not occur, two situations might arise: a situation where the fixed

portion did not finish the whole estate, and a situation where the fixed portions of the heirs finished and completed the whole estate of the deceased. The latter situation can happen in two ways: firstly when the quantity of the portions did not exceed the estate, and secondly when the quantity of the portions is higher than the estate. In the last situation we have two options; either we take from the portions of other heirs to complete the deficiency of the share of the other heirs, or we give each and everyone their shares as much as possible or according to our capability. In the latter case the heirs will just act like creditors who are owed money by the deceased and his estate cannot pay the debt in full. We distribute in proportion to his wealth. There is no way to reach this except through the means of *ʿawl*. Therefore it can be concluded that *Qurʾān* did not leave *ʿawl* without an explanation (Al-Saʿdī, 1424).

## 6. THE ISSUE OF *AL-RADD*

*Al-Radd* is the exact opposite of the method of *ʿawl* which literally means to return or to take back. This is a situation where the decrease is in the lowest common denominator and the increase is in the portions of the heirs. This happens when the fixed portion did not finish the whole estate, and there is no *ʿaṣīb* to take the remainder. Examples of this situation can be seen in Tables 11 and 12. The ruling according to the majority is to take it back to *Aṣḥāb al-Furūd* who inherited the deceased without exception if the cause of their inheritance is *nasab* (blood relationship), this is based on the saying of Allah (*interpretation of the meaning*):

“But kindred by blood are nearer to one another (regarding inheritance) in the decree ordained by Allah. Verily, Allah is the All-Knower of everything.” (*Qurʾān*, 8: 75)

This shows that the heirs who have this type of relationship are entitled to *al-radd*. As for the husband and wife, they will not be included in *al-radd* because they are not blood related to each other and this is in accordance to the view of the majority who excluded them from *al-radd*. Tables 14 and 16 are examples of how this opinion is applied.

On the contrary, there are some scholars who believe that they should be equal to everyone just like when *ʿawl* takes place we reduce from their portions thus when there is *al-radd* they should

also be included in *al-radd*. This is based on a legal maxim that says: “benefit goes with liability and liability accompanies gain” (Laldin et al., 2013) and the latter opinion Allah knows best is the closest to the truth and the most logical opinion according to the *Qurʾān* (Al-Saʿdī, 1424). Examples of *al-radd* are shown in Tables 13 and 15.

### 6.1 AL-RADD ACCORDING TO BOTH APPROACHES

The two grandmothers in Table 11 get  $\frac{1}{6}$  it because the deceased has no mother. The uterine brother also gets  $\frac{1}{6}$  because he is alone and there is nobody to exclude him from inheritance.

Table 11  
2 Grandmothers and a Uterine Brother

Fixed Share	Heir	Portion
		6/2*
$\frac{1}{6}$	2 Grandmothers	1
$\frac{1}{6}$	Uterine Brother	1

\* LCD for  $\frac{1}{6}$  is 6 which is reduced to 2 because of *al-radd*.

In Table 12, the five daughters get  $\frac{2}{3}$  because they are more than one, and there is no male child of the deceased at their degree. The three grandmothers get  $\frac{1}{6}$  because the deceased has no mother.

Table 12  
5 Daughters and 3 Grandmothers

Fixed Share	Heir	Portion	The Estate (RM)
		6/5*	25
$\frac{2}{3}$	5 Daughters	4	20
$\frac{1}{6}$	3 Grandmothers	1	5

\* LCD for  $\frac{2}{3}$  and  $\frac{1}{6}$  is 6 which is reduced to 5 because of *al-radd*.

### 6.2 INCLUSION OF THE SPOUSES IN AL-RADD WHEN ACCOMPANIED BY ONLY ONE TYPE OF HEIR

Table 13 illustrates a case where the spouse is accompanied by only one type of heir and they are included in *al-radd*. The three wives all get  $\frac{1}{4}$  because the deceased did not leave a child and they are also

included in *al-radd*. The four uterine brothers get  $\frac{1}{3}$  because they are more than one and there is nobody to exclude them from inheritance.

Table 13  
3 Wives and 4 Uterine Brothers

Fixed Share	Heir	Portion
		12/7*
$\frac{1}{4}$	3 Wives	3
$\frac{1}{3}$	4 Uterine Brothers	4

\*LCD for  $\frac{1}{3}$  and  $\frac{1}{4}$  is 12 which is reduced to 7 because of *al-radd*.

### 6.3 EXCLUSION OF THE SPOUSES IN *AL-RADD* WHEN ACCOMPANIED BY ONLY ONE TYPE OF HEIR

The three wives in Table 14 get a  $\frac{1}{4}$  because the deceased did not leave a child. Here they are not included in *al-radd*. The four uterine brothers take the balance after the portions of the wives.

Table 14  
3 Wives and 4 Uterine Brothers

Fixed Share	Heirs	Portion	The Estate	Share of Each
		4×12	48	
$\frac{1}{4}$	3 Wives	1	12	4
*B	4 Uterine Brothers	3	36	9

\*The lowest number used to extract the share of the wives which is a  $\frac{1}{4}$  is 4 where the remainder goes to the uterine brothers because of *al-radd*.

### 6.4 INCLUSION OF SPOUSES IN *AL-RADD* WHEN ACCOMPANIED BY MORE THAN ONE TYPE OF HEIR

In Table 15, the wife gets  $\frac{1}{4}$  because the deceased did not leave a child. The mother gets  $\frac{1}{3}$  due the absence of a child or group of more than one sibling of the deceased. The uterine brother gets  $\frac{1}{6}$  because he is alone and there is nobody to exclude him from inheritance.

Table 15  
Wife, Mother and Uterine Brother

Fixed Share	Heirs	Portion
		12/9*

$\frac{1}{4}$	Wife	3
$\frac{1}{3}$	Mother	4
$\frac{1}{6}$	Uterine Brother	2

\*LCD for  $\frac{1}{3}$ ,  $\frac{1}{4}$  and  $\frac{1}{6}$  is 12 which is reduced to 9 because of *al-radd*.

#### 6.5 EXCLUSION OF THE SPOUSES IN *AL-RADD* WHEN ACCOMPANIED BY MORE THAN ONE TYPE OF HEIR

The wife gets  $\frac{1}{4}$  because the deceased did not leave a child. She did not get involved in the *al-radd* according to this view. The mother gets  $\frac{1}{3}$  and some more due to the absence of a child or a group of more than one sibling of the deceased. In addition she is included in *al-radd*. Uterine brother gets  $\frac{1}{6}$  because he is alone and there is nobody to exclude him from inheritance, in addition he is included in *al-radd*. This case is illustrated in Table 16.

Table 16  
Wife, Mother and Uterine Brother

Fixed Share	Heir	The case of the spouse	The case of <i>radd</i>		The final merger
		4	6	3	4*
$\frac{1}{4}$	Wife	1			1
$\frac{1}{3}$	Mother	3	2	2	2
$\frac{1}{6}$	Uterine Brother		1	1	1

\*LCD for  $\frac{1}{4}$  in the case of the spouse is 4 and for the case of *al-radd* is 6 to get the  $\frac{1}{6}$  of the mother and  $\frac{1}{3}$  of uterine brother which is reduced to 3 because of *al-radd*.

### 7. THE INHERITANCE OF *AL-KHUNTHĀ*

*Al-Khunthā* (intersexual) is a person who is created with both sex organs (*male* and *female*). The case of this type of people falls into one of the following situations: either his masculinity or femininity is clear, or it cannot be determined.

In the case where his masculinity is clear, we deal with him as a male heir in accordance with his nature. And in the case where her femininity is clear, we deal with her as a female heir in accordance with her nature. In this situation they will be included in the general rule of inheritance discussed by the *Qurān*. The third situation is when his gender cannot be determined and we cannot differentiate between whether he is male or female. If his gender does not affect his inheritance, then in this case his affair is clear.

For example, *al-khunthā* from the uterine siblings where the portion of the male is equal to the portion of the female. But if gender has an effect on his inheritance and there is no way to know whether he is male or female, in this case we do not give him the greatest portion due to the assumption that by doing that we might harm other heirs inheriting with him; and we also do not give him the least amount due to the assumption that by doing that we might harm him. Therefore there is no way left except the method of moderation (in the middle of the two extremes). Allah says (*interpretation of the meaning*):

“Fear Allah according to your capability.” (*Qurʾān*, 64:16)

Table 17  
The Case of Hope

Heirs	Assumption 1 (Male)	Assumption 2 (Female)	The final merger
	4	5	20
	5	4	
Son	2	2	8
Daughter	1	1	4
Son ( <i>Khunthā</i> )	2	1	5

As it can be seen in Table 17, the son and the daughter are both *ʿaṣabah* in this case and their gender is clear and known, thus their inheritance is also clear. As for the last child (*khunthā*), it is clear that in the first assumption he/she gets a share similar to that of his/her brother due to the assumption that he/she is a male child. In the second assumption he is given a share similar to that of his sister due to the assumption that he/she is a female child. It can be clearly seen from this case that everyone is treated with the least from both assumptions. The remainder, which is 3, will be detained until the disclosure of the real status of the *khunthā*, then it will be distributed to those who deserve it.

Table 18  
The Case of Despair

Assumption 1 (Male)	Assumption 2 (Female)	The final merger
------------------------	--------------------------	---------------------



	8	10	40
	5	4	
Son	2	2	18
Daughter	1	1	9
Son ( <i>Khunthā</i> )	2	1	13

Table 18 shows that the son and the daughter are both *ʿaṣabah* in this case and their gender is clear and known, thus their inheritance is also clear. As for the last child (*khunthā*) it is clear that in the first assumption the *khunthā* gets a share similar to that of his/her brother due to the assumption that he/she is a male child, while in the second assumption he is given a share similar to that of his sister due to the assumption that he/she is a female child.

Table 18 also illustrates that in the final merger, the common denominator in the first assumption is 5 whereas 4 is the common denominator in the second, and between 4 and 5 there is nothing but *mubāyanah* (which means there is nothing in common between the two numbers) thus the final merger is extracted in the following way:  $5 \times 4 \times 2 = 40$ . After this, the final merger is divided by the common denominator of each assumption where the result is placed on it. And the final merger is distributed in the following way: the son gets:  $(8 \times 2) + (2 \times 10) \div 2 = 18$  while the daughter inherits:  $(8 \times 1) + (1 \times 10) \div 2 = 9$  and lastly the child who is *khunthā* gets:  $(8 \times 2) + (1 \times 10) \div 2 = 13$ .

In this case there is no remainder detained, this is due to the fact that there is no hope for the status of the *khunthā* to be known. Thus a system is devised where the distribution will encompass the whole estate. This is based on the principle of moderation, where everyone takes half of what he is supposed to take in both assumptions of the *khunthā*. Furthermore, it is possible for the two situations to be combined in the following way. It is observed that the *khunthā* in both of its assumptions can either be one or more. In the case where the *khunthā* is only one, there are five situations that can arise: inheritance with his masculinity alone; inheritance with his femininity alone; inheritance with both masculinity and femininity, but he gets a larger share with masculinity; inheritance with both masculinity and femininity, but he gets a larger share with femininity; and lastly where the *khunthā* inherits an equal share with both masculinity and femininity. The two situations can be combined in one table as shown in Tables 19, 20, 21, 22, 23, 25 and 27.

Table 19

Inheritance of *Khunthā* with His Masculinity Alone

Heirs	Assumption 1 (Male)	Assumption 2 (Female)	The final merger of hope	The final merger of despair
	1	1	3	6
	3	3		
Daughter	1	1	1	2
Daughter	1	1	1	2
Son's Son ( <i>Khunthā</i> )	1	–	– *	1
Uncle	Excluded	1		1

\*1 share is detained until the determination of the *khunthā*.

The *khunthā* in this situation can only inherit with his masculine gender as shown in Table 19. This is because if we assume him to be female, he will be excluded by the existence of more than one daughter due to the fact that the share allocated by the *Qur'ān* for the daughters is exhausted by the two closest daughters. Thus he receives nothing in that manner.

Table 20  
Inheritance with His Femininity Alone

Heirs	Assumption 1 (Male)	Assumption 2 (Female)	The final merger of hope	The final merger of despair
	7	2	14	28
	2	6-7		
Husband	1	3	6	13
Full Sister	1	3	6	13
Consanguine sibling ( <i>Khunthā</i> )	-	1	– *	2

\*Note: 2 shares are detained until determination of the *khunthā*.

The *khunthā* in this situation shown in Table 20 can only inherit with her feminine gender. This is because if we assume her to be male, she will be *ʿaṣīb* who takes the balance after the portions of the *Aṣḥāb al-Furūd*. And in this case there is no remainder for her to take because the husband takes half and the full sister takes half. Therefore she can only inherit with her femininity. Since in that case

she will take  $\frac{1}{6}$  which is the completion of the  $\frac{2}{3}$  allocated for the sisters by the *Qurān*.

Table 21  
Inheritance with Both Masculinity and Femininity, but He Gets a Larger Share with Masculinity

Heirs	Assumption 1 (Male)	Assumption 2 (female)	The final merger of hope	The final merger of despair
	3	2	6	12
	2	3		
Son	1	2	3	7
Child ( <i>Khunthā</i> )	1	1	2*	5

\*Note: 1 share is detained until determination of the *khunthā*

Table 21 clearly shows that the *khunthā* in this situation inherits with both his masculine and feminine gender, but the portion he takes with his masculine gender is greater than his portion as a female. This is because as a male he will inherit a similar amount as his brother which is half of the estate but if we assume him to be female, she will inherit  $\frac{1}{3}$  of the estate where the brother will inherit  $\frac{2}{3}$ .

The *khunthā* in Table 22 inherits with both his masculine and feminine gender. But the portion he/she takes with her feminine gender is greater than his portion as a male. This is because if he/she inherits as a male he will be *‘aṣīb* taking the balance which is only  $\frac{1}{6}$  of the estate. But in the other assumptions where we assume him to be female she takes half of the estate since she is alone and there is nobody to deprive her from that.

Table 22  
Inheritance with Both Masculinity and Femininity, but He Gets Larger Share with Femininity

Heirs	Assumption 1 (Male)	Assumption 2 (Female)	The final merger of hope	The final merger of despair
	4	3	24	48
	6	8		
Husband	3	3	9	21

Mother	2	2	6	14
Consanguine	1	3	4*	13
Sibling ( <i>Khunthā</i> )				

\*Note: 5 shares are detained until determination of the *khunthā*

Table 23  
The *Khunthā* that Inherits an Equal Share with Both Masculinity and Femininity

Heirs	Assumption 1 (Male)	Assumption 2 (female)	The final merger of hope	The summary
	4	4	4	4
Husband	1	1	1	1
Daughter	2	2	2	2
Full Sibling ( <i>Khunthā</i> )	1	1	1	1

The *khunthā* depicted in Table 23 inherits an equal amount with both his masculine and feminine gender. In this situation there is nothing to be detained until the disclosure of the status of the *khunthā*. This is because the portion given to the *khunthā* in both assumptions does not differ.

Furthermore, situations might arise where there are more than one *khunthā*. There is no new method to address this case and thus the old method is maintained. The only difference is the increase in the number of assumptions. Table 24 is a list of *khunthā* plus the number of assumptions that should be in each category while Tables 25 and 27 are illustrations of situations where there are two *khunthā* in a single case and three *khunthā* in a single case, respectively. Table 26 is a tabulation of the number of assumptions that might arise in a situation of three *khunthā* in a single case.

Table 24  
The case of more than one *khunthā*.

Number of <i>khunthā</i>	Number of assumptions
1	2
2	4
3	8
4	16
5	32

6	64
---	----

Table 25  
Two *khunthā* in a single case

Heirs	1	2	3	4	The final merger of hope	The final merger of despair
	20	15	12	12		
	3	4	5	5	60	240*
Son	1	2	2	2	20	98
Child <i>Khunthā</i>	1	1	2	1	12	71
Child <i>Khunthā</i>	1	1	1	2	12	71
First Assumption	M	F	M	F	16 detained	
Second Assumption	M	F	F	M		

Note: M = Male, F = Female, \*60×4=240

Table 25 shows that the common denominator: in the first assumption is 3, 4 in the second and 5 in the third and fourth. There is *tabāyun* (this means there is no common denominator between the numbers. Therefore, the final merger of hope is the product of all the three numbers:  $3 \times 4 \times 5 = 60$  which will be divided by the common denominator of every assumption and the quotient of every division is placed on top of every common denominator. The quotient placed on the common denominator of the first assumption is 20, and 15 on the second, while the quotient on both the third and fourth is 12. After this every heir is given the lowest portion of all the four assumptions. The son gets 20 while each of the two *khunthā* will be given 15.

The final merger of despair is the result of multiplying 60 (merger of hope) by 4 which is equal to 240. Therefore the portion of every heir should be the result of multiplying his portion in each situation by its *juzu as-sahmi* (quotient in the case of hope). The son in the final merger of despair takes:  $(2 \times 12 \times 2) + (15 \times 2) + (20 \times 1) = 98$ . The first *khunthā* takes:  $(12 \times 1) + (12 \times 2) + (15 \times 1) + (20 \times 1) = 71$ .

Table 26  
The Eight Assumptions of the Three *Khunthā* in a Single Case

No	Number of <i>khunthā</i>	First	Second	Third
1	All are male	Male	Male	Male
2	Only the first is male	Male	Female	Female
3	Only the second is male	Female	Male	Female

4	Only the third is male	Female	Female	Male
5	All are female	Female	Female	Female
6	Only the first is female	Female	Male	Male
7	Only the second is female	Male	Female	Male
8	Only the third is female	Male	Male	Female

The common denominator (in Table 27): in the first assumption is 4, 5 in the second, 7 in the third, fourth and fifth, and 6 in the rest. There is *tamāthul*, (this is where the numbers are the same) *tawāfuq* (this is where there is a common denominator between the numbers) and *tabāyun* (this means there is no common denominator) between the numbers (denominators). Therefore, the final merger of hope is  $4 \times 5 \times 7 \times 3 = 420$  which will be divided by the common denominator of every assumption and the quotient of every division is placed on top of every common denominator. The quotient placed in the first assumption is 105, 84 on the second, 60 on the third, fourth and fifth, while the rest have 70 on top. After this every heir is given the lowest of all the four assumptions. The son gets 105 while every *khunthā* will be given 60.

Table 27  
Three *Khunthā* in One Case

The eight assumptions									The final merger of hope	The final merger of despair
1	2	3	4	5	6	7	8			
105	70	70	70	84	60	60	60	60	420	3360*
Son	4	6	6	6	5	7	7	7	105	1053
Child <i>Khunthā</i>	1	2	2	2	2	2	2	2	60	769
Child <i>Khunthā</i>	1	2	1	1	1	1	2	2	60	769
Child <i>Khunthā</i>	1	1	2	1	1	2	1	2	60	769
Child <i>Khunthā</i>	1	1	1	2	1	2	2	1	60	769
First assumption	M	M	F	F	F	F	M	M	130	
Second assumption	M	F	M	F	F	M	F	M		
Third assumption	M	F	F	M	F	M	M	F		

Note: M = Male, F = Female, \* $420 \times 8 = 3360$

The final merger of despair is the result of multiplying 420 (merger of hope) by 8 which is equal to 3360. Therefore the portion of every heir should be the result of multiplying his portion in each situation by the *juzu as-sahmi* (quotient in the case of hope). The son in the final merger of despair takes:  $(3 \times 70 \times 2) + (3 \times 60 \times 2) + (84 \times 2) + (105 \times 1) = 1053$ , while each and every *khunthā* takes 769 which is the result of multiplying his/her portion from each.

## 8. THE INHERITANCE OF *DHAWUL-ARḤĀM*

The same thing can be said when it comes to the inheritance of the *dhawul-arḥām*, the general indication of the *Qurān* supports their inheritance. This is when a person dies and he does not leave behind any heir to inherit him. The issue of his inheritance will be between giving *dhawul-arḥām* who are the relatives of the deceased and who are possibly related to him through an heir of the deceased or forwarding it to *bait al-māl* of the *muslimīn* which will benefit people who are strangers to the deceased. In this case it is better to give the *dhawul-arḥām* who are attributed to the deceased through one of his heirs in their absence. The evidence of this is the saying of Allah (*interpretation of the meaning*):

“But kindred by blood are nearer to one another (regarding inheritance) in the decree ordained by Allah. Verily, Allah is the All-Knower of everything.” (*Qurān*, 8:75)

This shows that if we are to take the estate to *bait al-māl* we are diverting the money to someone who is not the most appropriate according to the dictation of this verse. Therefore the estate must be given to the *dhawul-arḥām*. The method of their inheritance is each and every one of them should replace the one who connected them to the deceased in his inheritance (Al-Sa‘dī, 1424). However, there are two different approaches as illustrated below:

- (a) The view of *al-Qarābah*: This means that the closest among the *Dhawul-arḥām* in terms of order, degree and strength of blood tie takes the whole estate and excludes the most remote in terms of degree and strength of blood tie.
- (b) The view of *al-Tanzīl*: This means that each one of the *Dhawul-arḥām* inherits the share of the one who connected him to the

deceased. In other words, replaces the one who connected him to the deceased. The following is an illustration of the said controversy to ease its understanding. Table 28 is an illustration of the two approaches of *al-Tanzīl* and *al-Qarābah*.

Table 28  
Illustration of the two approaches

Distant Kindred	The connection	The view of <i>al-Tanzīl</i>	The view of <i>al-Qarābah</i>
		6	-
Daughter's Son	Daughter	3	*
Son's Daughter's Son	Son's Daughter	1	-
Aunt	Father	2	-

\*Note: Takes the whole estate.

## 7. CONCLUSION

Careful reading of the Book of Allah leaves no doubt that the *Qur'ān* explains everything in detail. Its depth of details leaves no one who is appointed to distribute the estate with an excuse for not mastering the knowledge of inheritance before he commences. A muslim should believe that everything that Allah decreed in this regard and all other matters is the ultimate truth based on perfect justice. Success lies in applying the laws of Allah as they are given without any modification. Failure to do this will bring nothing to the society except corruption, disintegration and disunity among the family members in the muslim society. The *Qur'ān* says (*interpretation of the meaning*):

“Do they then seek the judgement of (the days of) ignorance? And who is better in judgement than Allah for a people who have firm faith”. (*Qur'ān*, 5:50)

This concludes PART TWO which discusses the second type of inheritance, i.e. inheritance with *Ta'ṣīb*. The first type of inheritance (inheritance with *Fard*) was discussed in PART ONE which has been published in Vol 23(1), 2015.

## REFERENCES



- Akram Laldin, Mohamad. *Islamic Legal Maxims and Their Application in Islamic Finance*. Kuala Lumpur: ISRA, 2013.
- Al-Fatna, ‘Abd Al-Malik. *Khulāṣat al-Farā’id*. Dimashq: Dār al-Fikr, 1949.
- Al-Kātib, ‘Abd Al-Ṣamad ibn Muḥammad, *The Book of Farā’id*. Al-Madīnah: Islamic University of Madīnah, 1423H.
- Al-Sa’dī, ‘Abd Al-Raḥmān ibn Nāṣir. *Taisīr Al-Karīm Al-Raḥmān Fī Tafsīri Kalām Al-Mannān*. Riyadh: Maktabat al-Malik Fahd, 1424H.
- Ibn Al-Qayyim, Muḥammad ibn Abū Bakr. *Jalā’ al-Afhām fī faṣl al-Ṣalāt ‘Alā Muḥammad Khair al-Anām*. Kuwait: Dār al-‘Arūbah, 1987.
- Ibn Bāz, ‘Abd Al-Azīz ibn ‘Abd Allah. *Al-Fawā’id al-Jaliyyah fī al-Mabāḥith al-Faraḍiyyah*. Riyadh: Maktabah al-Riyāḍ al-Ḥadīthah, 1393H.
- Ibn Kathīr, Ismā’īl ibn ‘Umar. *Tafsīr al-Qur’ān al-‘Azīm*. Al-Qāhirah: Dār al-Afāq al-‘Arabiyyah, 2006.
- Ibn ‘Abd Al-Raḥmān, Abū Bakr. *Dhari’ah al-‘Āhid ilā Ta’allum ‘Ilm al-Farā’id*. Jakarta, Indonesia: Dār al-Kutub al-Islāmiyyah, 2012.
- Al-Fawzān, Ṣāliḥ ibn al-Fawzān. *Al-Taḥqīqāt al-Marḍiyyah fī al-Mabāḥith al-Faraḍiyyah*. Riyadh: Maktabah al-Ma’ārif, 1986.
- Al-Hilālī, Muḥammad Taqīuddīn and Muḥammad Khān. *The Noble Qur’ān, English Translation of the Meaning and Commentary*. Saudi Arabia: King Fahd Complex for the printing of the Holy Qur’ān, 1432.
- Al-Raḥabī, Muḥammad ibn ‘Aliyyu. *Matn al-Raḥabiyyah*. Riyadh: Ri’āsat Idārat al-Buḥūth al-‘Ilmiyyah, 2002.
- Muḥammad, ‘Imrān Muḥammad. *Inheritance in Islam: An Attempt to Simplify One of the Complex Branches of Shari’ah*. Minna, Nigeria: Sadaqatu Tayyibatun Foundation, 2012.
- Muḥammad, Sālim Muḥammad. *Takmilat Zubdah al-Ḥadīth fī Fiqh al-Mawāriḥ*. Jakarta: Dār al-Kutub al-Islāmiyyah. 2012.

