

SOCIO-ECONOMIC AND RELIGIO-LEGAL IMPORTANCE OF ESTATE DISTRIBUTION IN ISLAMIC LAW

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ABSTRACT

The institution of inheritance is as old as the world itself. It occupies a vintage position in any given society whether such society is primitive, developed or developing. Therefore, because of the status of this institution, no society or legal system can afford to close its eyes to the importance of estate distribution generally and in Islamic Law in particular because it constitutes a major method of acquisition of wealth and property. This paper therefore examines the importance of estate distribution in Islamic Law upon the demise of a Muslim from economic, social, religious and legal perspectives.

Keywords: Estate distribution, Islamic law, socio-economic and religio-legal considerations

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ABSTRAK

Institusi warisan setua dunia ini. Ia menduduki kedudukan terbaik dalam mana-mana masyarakat sama ada masyarakat tersebut primitif, membangun atau sedang membangun. Dengan demikian, memandangkan status institusi ini, tiada masyarakat atau sistem perundangan boleh memejamkan matanya pada kepentingan pembahagian harta pusaka secara umumnya dan dalam undang-undang Islam secara khususnya kerana ia membentuk kaedah besar pemerolehan kekayaan dan harta. Oleh sebab itu makalah ini meneliti kepentingan pembahagian harta pusaka dalam undang-undang Islam apabila mati seorang Muslim dari perspektif ekonomi, kemasyarakatan, agama dan undang-undang.

Kata kunci: pembahagian harta pusaka, undang-undang Islam, pertimbangan sosioekonomi dan religi-legal.

INTRODUCTION

It is a truism of Islam and Islamic Law that as regards the relations of the individual and the society, Islam and indeed Islamic Law gives to the individual what belongs to the individual and to the society, what belongs to it. The individual and the society have been conceived in Islam not as antithetic but as complimentary. The individual realizing himself through the society while the society attains its goals through the individual. Indeed, in its unique system, Islam and Islamic Law have steered clear of the shortcomings of both cruel individualism¹ and brutal collectivism,² giving man and humanity a synthesis which is natural and rational.

¹ Capitalism is pre-supposed here which is an economic system in which a country's business and industry are controlled and run for profit by private owners rather than by the government. See Wehmeier, Sally et al (Ed.) *Oxford Advance Learner's Dictionary of Current English*, (Oxford: Oxford University Press, 2006) p. 210.

Distribution of estate is synonymous to inheritance and it takes place when living persons rightfully acquire the dead person's property. It exists in some form wherever the institution of private property is recognized³ as the basis of economic and social system. The actual forms of inheritance and the laws governing them, however, differ according to the ideals of different societies. In Islam, the law of inheritance is governed by Islamic Law of Inheritance.⁴ Therefore as one of the major methods or ways of acquisition cum transfer of wealth and property in Islam, Islam attaches great importance to distribution of estate which can be perceived from the following perspectives:

ECONOMIC IMPORTANCE OF DISTRIBUTION OF ESTATE

In Islamic Law, the importance of distribution of estate cannot be over-emphasized nor can it also be under-estimated because it serves as a method of re-distribution of wealth⁵ among the heirs, who invariably are

² Marxism in its brute form, with an iron regimentation bordering on slavery is being referred to here. As a theory of social Atomism, it regards the individual as the primary unit of the Social Whole. But very soon it absorbs him in the concept of class-war and filially drowns his identity in the whirlpool of Social Expediency where the loyalty to the Politbureau over-rides all other loyalties, including that to the families. See Al-Qaderi, Fazl-ur-Rahman Ansari (1954) "Islam Versus Marxism" <Marxism.RevLeft.mht pdf.www.revleft.com> accessed on 8th May, 2010.

³ This is true of Islam because it allows honest and legal acquisition and ownership of property by individuals. It does not however give recognition to Bolshevism-a system which recognizes no individual right of property. See Ali, Maulana Muhammad, *The Religion of Islam*, (New Delhi: Taj Company, 1986) p. 690. See also *Qur'an, Al-Nisa'* (4): 32.

⁴ *Qur'an, Al-Nisa'* (4): 11-12 and a host of other verse and *Hadith* of the Prophet (saw).

⁵ All wealth and property belong to Allah. Man is a mere trustee of such wealth and property. This fact notwithstanding, Allah recognizes the individual right to property that one may have acquired by lawful

part and parcel of the Islamic community (*Ummah*) at large. That is, it breaks up the concentration of wealth from the hands of few individuals and spread it out in the society. In essence, distribution of estate in accordance with Islamic Law of Inheritance serves as a very powerful and effective tool in checking accumulation of wealth in a few hands as well as in spreading it out amongst the larger section of the society. In accordance with the law, the estate of the deceased is divided among many of his near relations which include his parents, sons, daughters, sisters and brothers among others. Thus, if a person dies with no relations, his or her estate will go to the State (*Baytul-Mal*) for the benefit of all citizens. The Law of inheritance is unequivocally stated in the Glorious *Qur'an* in the following words:

“There is a share for men and a share for women from what is left by parents and those nearest related, whether, the property be small or large-a legal share.”⁶

The principle enunciated in the verse above forms the basis for the distribution of estate in Islamic Law. By this verse, children and near relatives, or failing these, distant relatives, are lawful heirs, and the whole estate does not go to one⁷ or a few of the sons or daughters. The shares of son(s), daughter(s), parents, husband, wife/wives and of other members of family are clearly defined in the *Qur'an* as follows:

“Allah command you as regards your children’s (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one; her share is half.”⁸

means as He states in *Qur'an*, *Al-Nisa'*(4): 32 that: “And for men is the benefit of what they earn. And for women is the benefit of what they earn.”

⁶ *Qur'an*, *Al-Nisa'*(4): 7.

⁷ In very rare cases a heir may end up taking the whole estate. For example, where a son dies and is survived by only his father, in this situation, the father takes the whole estate as a residuary heir.

⁸ *Qur'an*, *Al-Nisa'*(4): 11.

By the term females, as used in the verse above, it is meant the female children. However, when the daughters are the sole heirs, they are entitled to a share of two-thirds. The share of two-thirds to which more than two daughters are entitled remains the same even when the daughters are only two; a single daughter being entitled to half of the total estate of the deceased.

On the other hand, parents of the deceased, if alive, are also entitled to share in the estate. Their share is described in the following words:

“For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs; the mother has a third; if the deceased left brothers or (sisters), the mother has sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise.”⁹

The portion of the verse quoted above, deals with inheritance when the deceased is survived by parents. In this case, the parents take their respective shares first, and the rest goes to the children (if there are any) failing which, the share of the parents is increased. But in case the deceased has brothers, the mother receives the same share as she would have received if the deceased had children. It is worthy at this juncture to point out that in all cases the payment of bequests and debts takes precedence over the shares of the heirs.

The wife or wives¹⁰ as (a) sharer get(s) a share from the estate of her/their deceased husband, which is expressed in the words of the Glorious *Qur'an* as follows:

⁹ *Qur'an*, above n. 8.

¹⁰ On condition that the wife or wives is/are Muslim(s) like the husband and she/they is/are not the architect of the death of the deceased husband, otherwise she/they will not be entitled to inherit the deceased husband because these two issues identified constitute the basis of total exclusion to inheritance in Islam. The Prophet (saw) is reported to

“In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts.”¹¹

The verse above deals with the share of the wife/wives when the husband dies with or without child/children). The wife/wives take(s) her/their share first, as in the case of parents and the residue goes to the child (children) as the case may be.

Like in the case of the wife/wives, the husband is also entitled to a share in the estate of his deceased wife. The law relating to this is stated thus:

“In that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts.”¹²

The purport of this verse is that when the wife leaves a husband with or without child (children), the husband takes either of his shares as the case may be, first and the residue goes to the children. All these come after payment of legacies and debts as the case may be.

After all the above categories of beneficiaries of the estate of a deceased Muslim, comes another class of beneficiaries referred to as

have said: “A Muslim does not inherit from an infidel and an infidel from a Muslim.” See Al-Asqalani, Al-Hafiz Ibn Hajar *Bulugh Al-Maram Min Adillat Al-Ahkam*, (Pt. 2), Chapter 20, Al-Fara'id (The Shares of Inheritance), (Riyadh-Saudi Arabia: Dar-us-Salam Publications, 1996/1416) *Hadith* No. 806, at 334. See also *Hadith* No. 814, at 336-337 where the Prophet(saw) is reported to have said: “One who kills a man cannot inherit anything from him.”

¹¹ *Qur'an, Al-Nisa'*(4): 12.

¹² *Ibid.* The first is the person who has no children whether he has parents or not while the second is the person who has neither parents nor children. See Zubair, ‘Abdul-Qadir ‘Al-Kalalah And Al-Mushtarakah in Islamic Law of Inheritance,” in Zubair, ‘Abdul-Qadir (Ed.) *Discourse on Islamic Law of Inheritance And Waqf*, (Kano: Department of Islamic Law, B. U. K., 1998), at 46-47.

Kalala.¹³ For ease of explanation, their share is determined from two perspectives of either *Kalala* Sister or *Kalala* Brother. Thus, if *Kalala* has one or two sisters, their share will be determined like this:

“They ask you for a legal verdict, Say: “Allah direct (thus) about Al-Kalalah (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.”¹⁴

The purport of this verse is that if the *Kalala* leaves behind only one sister, she will inherit half of the estate of the deceased but if there are two sisters, they will inherit two-thirds of the estate of the deceased. On the other hand, if the *Kalala* has a brother or a sister, each will get one sixth of the estate left behind by the deceased as directed in the *Qur'an* in the following words:

“If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.”¹⁵

In this situation, a brother or a sister of the deceased will each receive one-sixth but if there are more than two persons to share the estate, then they will all share in one-third of the estate of the deceased.

The list of beneficiaries of the estate of a Muslim in Islamic Law is long and the above list and their shares are not exhaustive. The

¹³ *Kalala* is one who has neither parents (hhs) nor children (hls). The term is ascribed two meanings.

¹⁴ *Qur'an, Al-Nisa'* (4): 176.

¹⁵ *Qur'an, Al-Nisa'* (4): 12.

brief overview provided here is just to substantiate the assertion that distribution of estate in accordance with Islamic Law of Inheritance helps to prevent concentration of wealth in a few hands or individuals. In a nutshell, from the above analysis, one can authoritatively assert that estate distribution in accordance with Islamic Law of Inheritance does not allow wealth to accumulate in a few hands. Rather, it helps in increasing the circulation and distribution of wealth amongst the largest numbers of any given Muslim community. Therefore, distribution of estate in accordance with Islamic Law helps to uproot the very basis of capitalist system in a few generations by distributing the wealth of the deceased among his near and distant relatives and poor neighbours.

Discussion on the economic importance of distribution of estate in Islamic Law would not be complete without reference to the *Hadith* which provides for quantum of estate that one can dispose through bequest. The relevance of this *Hadith* here is not to serve as a basis for making a will but to depict that Islamic Inheritance is tilted towards economic buoyancy of heirs. The *Hadith* in question provides that:

“Sa’d b. Abi Waqqas reported that: “The Prophet came to visit me in the year of the farewell pilgrimage when I was afflicted with a severe illness.” I said to him: “O Prophet, you see how ill I am. I have property and no heir except my daughter. Shall I then give away two-thirds of my property as alms?” He replied “No,” I said: “A half then?” He still said “No.” I then asked “A third?” He replied: “A third. And a third is much. It is better that you leave your heirs rich than that you should leave them destitute, begging from their neighbours.”¹⁶

One of the purports, among others, of this *Hadith* is that it is better for a deceased person to leave a substantial part of his estate for his heirs to share in order to live a comfortable life than leaving them with nothing or little to share. The last sentence of the *Hadith* under

¹⁶ Al-Asqalani, Al-Hafiz Ibn Hajar *Bulugh Al-Maram Min Adillat Al Ahkam*, (Pt. 2), Chapter 21, Al-Wasaya (The Wills And Testaments), (Riyadh-Saudi Arabia: Dar-us-Salam Publications, 1996/1416), *Hadith* No. 819, at 339.

examination which is in bold for emphasis, shows that the more the estate available for distribution, the more the heirs' economic buoyancy since two-thirds of the estate is always available as of right to all the entitled heirs for distribution and utilization.

SOCIAL IMPORTANCE OF DISTRIBUTION OF ESTATE

Individuals make up a family and through legal and legitimate means of procreation,¹⁷ man establishes a family which metamorphoses into chains of families which culminates into communities, societies and nations as a result of inter-familial marriages. The economic buoyancy of a majority of families in any given community or society translates into enhanced social well-being of a given community or society while the poverty status of a majority of families in any given community or society would certainly affect the social status of such a given society.¹⁸ In other words, the social well-being of a community is dependent on the economic buoyancy of members of such community.

The social importance of distribution of estate in Islamic Law therefore lies in the fact that it fosters the collective social spirit because it favours the distribution of property among many heirs and checks the concentration of wealth in a few hands.¹⁹ The Islamic system of distribution of estate or inheritance is not confined to either the male children alone nor does it exclude the female. Rather, it confers the right of inheritance on a larger number of heirs among both males and the females, thereby creating a broad based pattern of distribution.

A comparison of the number of those qualified to inherit the estate of a deceased person prior to the advent of Islam with the number

¹⁷ The Prophet (saw) is reported to have said: "Marry and procreate for I shall be proud of you on the Day of Judgment." Recorded in Ibn Majah.

¹⁸ This scenario probably accounts for the Yoruba adage that says *Olowo kan ninu otosi mefa, otosi di meje* meaning one rich person out of six poor persons produces seven poor persons because the demands of the other six poor persons would weigh the only rich person down to make seven poor persons.

¹⁹ 'Abdal 'Ati, Hammudah, *The Family Structure in Islam*, (Lagos: Islamic Publications Bureau, 1982), at 252.

of those now qualified to be heirs after the advent of Islam in accordance with Islamic Law of Inheritance, would enable us to properly appreciate the social importance of distribution of estate in Islamic Law. All over the world,²⁰ prior to the advent of Islam and Islamic Law, heirs were determined by either the whims and caprices of the individual or the society or a combination of the whims and caprices of man and man-made law resulting in limiting inheritance rights to a very limited number of persons.

In order to bring to the fore the social importance of distribution of estate in Islamic Law, one needs to state the conditions in existence prior to the advent of Islam in Arabia. Before the era of Islam, the Arabian Peninsula had been populated predominantly by nomads operating as traders between Asia, Africa and the Middle East. The pre-Islamic Society of Arabia then was based on kinship. The clan was an extension of the family and most importantly, an individual's legal rights were vested in the family and the clan. Each could, and did, represent the individual in legal matters such as claiming his rights, avenging his wrongs, inheriting his property, and answering for his crimes. All these practices, coupled with the Arabs' hobby-like custom of a particular clan waging war against another in order to avenge or claim the rights of a member, necessitated the application of agnatic or patrilineal rule of inheritance with ability to wield the sword as the chief qualification. So in the pre-Islamic Arabia, like in other parts of the world, the system of inheritance was not far from being referred to or described as a system controlled by human whims and caprices because the system of inheritance then, is summarily described as:

²⁰

Even in modern societies, the laws of inheritance have so many evils inherent in them. For instance in English Common Law, all the real property held by a woman at the time of her marriage became the property of her husband. He was entitled to the rent from the land and any profit that might be made from managing it. This was the position in Europe up till late 1870s when married women achieved the right to enter contracts and own property. In France too, this right was not recognized until 1938 whereas as far back as 670th C.E., Islam had recognized property right for women. See Ara, Anjuam "Inheritance Law in Islam and Women," <<http://www.e:/jimediaDigestInheritanceLawinIslamandWomen.htm>> accessed on 18th March, 2010.

“Inheritance was based on the principle of comradeship “in arm.” The chief criterion of eligibility was the ability to contribute to the strength of the individual tribe through effective participation in the popular sport of tribal warfare. This resulted among other things, in the exclusion from inheritance of women, minors of both sexes, and invalids as well as in the preference of the paternal to the maternal lines.”²¹

From the above summary description of the practice of the law of inheritance in Arabia before the advent of Islam and Islamic Law, one could deduce that the female sex had been cut-off completely from the scheme of inheritance. The female was not only excluded from the scheme of inheritance, but regarded as part of the distributable chattel of the deceased.²²

Even among the males, only able-bodied men who were capable of participating in tribal wars qualified to inherit. The male minor, the old and the infirm, the weak and the sick persons were all ineligible to inherit. The sole criterion was that “he alone is entitled to inherit who wields the sword.”²³ The end result of all these eliminations is that only a very few persons are actually left to inherit the estate of a deceased person thereby producing a narrow base distribution system.²⁴

²¹ ‘Abdal ‘Ati, note 19 at 250. See also Hitti, Philips K. *History of the Arabs*, (London: Macmillan Press Ltd; 1970), at 3.

²² Siddiqui, Abdul Hamid “The System of Inheritance in Islam,” <<http://www.readingIslam.com.htm>> accessed on 27th February, 2010. See also Hussain, Abid “Islamic Laws of Inheritance,” <<http://www.islam101.com/Sociology/inheritance.htm>> accessed on 15th February, 2010.

²³ *Ibid.*

²⁴ This narrow based distribution system is not peculiar to Arabian people, it is also being practiced by other people and communities of the World. In Nigeria for instance, in some communities, primogeniture rule apply in Bini in respect of the house which a deceased person makes his permanent home before his death, known among the Binis of Edo State as *Igiogbe*, passes to his eldest surviving son under Bini Native Law and Custom upon the eldest son completing the customary burial rites of his deceased father. See *William Agidigbi Vs. Danaha Agidigbi & Ors* (1996) 6 S.C.N.J. 105 at 120. See also Elias, T.O., *Nigerian Land*

On the other hand, upon the birth of Islam and the coming into operation of Islamic Law,²⁵ all those persons²⁶ who had been precluded from the scheme of inheritance, became eligible and entitled to inherit. The *Qur'an*, through its verses on inheritance, introduced new set of heirs. These heirs, as provided by the *Qur'an* mentioned nine relatives specifically, of which six were female²⁷ and three were male. *Qur'an* also included other male relatives like husband and half-brothers from mother's side.

In summary, the lists of major beneficiaries of the estate of a deceased Muslim in Islamic Law of Inheritance are: the males as well as the females, the husband, the wife, the parents (father and mother), the sons, the daughters, the sisters, the brothers, the uncles and a host of other distant relations. From the above brief analysis, it is obvious that the number of beneficiaries of the estate of a deceased Muslim outnumber the beneficiaries prior to the advent of Islam and operation of Islamic Law. Therefore, distribution of estate in accordance with Islamic Law qualifies to be described as a system of inheritance that confers rights of

Law, (4th Edn.), (London: Sweet & Maxwell, 1971), p. 120. See also *Gbadamosi Rabi'u Vs. Silifatu Abasi* (1996) 7 S.C.N.J. 53 where the Supreme Court held that in accordance with Yoruba Customary Law, real property is to be inherited by surviving child or children of deceased person who survive him or her to the exclusion of all other blood relations. As opposed to the rule of primogeniture, the rule of ultimo geniture applies among the *Markis* group of the Verbe of Northern Nigeria. By this rule, inheritance is by the youngest son and the rule bars other heirs of the deceased land owner. See Onuoha, Reginald Akujobi "Discriminatory Property Inheritance Under Customary Law in Nigeria: NGOs to the Rescue," *The International Journal of Not-for-Profit Law*, Vol. 10, Issue 2, (A Quarterly Publication of the International Centre for Not-for-Profit Law, April, 2005), at 25.

²⁵ See the provisions of *Qur'an* Chapter 4 verses 11, 12 and 176.

²⁶ These are the females, the minors, the weak and sick adults and the infirm.

²⁷ Within the class of females are daughters, wife/ves, mothers and sisters. They are not only entitled to inheritance, their shares are specifically stated. By this, the *Qur'an* has elevated the status of women and provided them security and safeguard in the society. See <<http://www.learndeen.com/jm/deen-islam/.../106-inheritance-law-in-islam.html>> accessed on, 15th February, 2010.

inheritance on a larger number of heirs without discrimination between males and females and with a broad based pattern of distribution which fosters collective social spirit within the community.

In terms of utility, sociologically, distribution of estate in Islamic Law permeates the entire Muslim *Ummah* in general and individual families in particular.²⁸ That is, it caters to the needs of members of a bereaved family and the society in general. For instance, where a person dies and leaves behind a “fat estate” with very few or no heirs at all, the excess or the whole estate as the case may be, goes to *Baytul-Mal* (Islamic Public Treasury) for the general use and benefit of the entire community. In other words, it could be said that distribution of estate in Islamic Law reflects the structure of family ties and the accepted social values and responsibilities within the Muslim community. Macnaghtan, in appreciation of *Qur’anic* provision on inheritance, observes that:

“In these provisions we find ample attention paid to the interests of all those whom nature places in the rank of our affection; and indeed it is difficult to conceive any system containing rules more strictly just and equitable. The obvious principle of preferring the nearer kindred to claimants whose relation to the deceased is not so proximate, seems to have been adopted as the invariable standard for fixing the portion; and the rules for the Succession of several heirs and the order of preference assigned to the different degrees of consanguinity seem to be exactly what would be most consonant to the general inclination of mankind.”²⁹

RELIGIOUS IMPORTANCE OF DISTRIBUTION OF ESTATE

The word religion is somehow difficult to define. The difficulty is not as a result of being an abstract word but lies in the fact that it can be

²⁸ Gurin, A.M., *An Introduction To Islamic Law of Succession* (Testate Intestate), (Zaria: Jodda Press Ltd; 1405 A.H. /1998), at 4 -5.

²⁹ Macnaghten, Sir William H., *Principles of Muhammadan Law*, (Lahore: Premier Book House, n. d.), at V.

defined from numerous perspectives such as theological, philosophical, anthropological, sociological and psychological phenomenon of human being. This leads to a variety of definitions which focus on a very narrow picture of religion that matches the individual's own religion.

Therefore, since no single definition will suffice to encompass the varied sets of traditions, practices and ideas which constitute different religions, for the purpose of discussing the subject matter under consideration, reliance would be placed on the narrow based method of definition of religion by defining Islam from the perspective of statement credited to the Prophet (s.a.w). It was reported that the Messenger of Allah (s.a.w) said:

“Islam is to testify that there is no god but Allah and Muhammad is the Messenger of Allah, to perform the prayers, to pay the zakat, to fast in Ramadhan, and make the Pilgrimage to the House if you are able to do so.”
He said: “You have spoken rightly,” Jibrael (Gabriel).³⁰

On a close analysis of the above *hadith*, it would be seen that Islam has been defined from its five major pillars. These five pillars form Islam and its basis. As a complete way of life, it touches upon the primary purpose of man on earth, his relationship with His Creator, his relationship with other creatures, his individual affairs and trans-communal activities. All these are found in the *Qur'an* and other sources of Islamic Law.

By analogy, Islamic Law presupposes the law culminating from the religion of Islam. As a religious law, it is said to be unique among all other religious laws because it is not predicated on either a particular tribal structure or on a specific state format. It is a universal religious law applicable universally. Therefore, anybody who professes to be a Muslim is expected to accept, observe and practice all the five pillars of Islam and live an Islamic way of life as provided for by the religion. So, one is either a Muslim or a non-Muslim because there is no “half-religion” in Islam. A Muslim cannot say ‘I shall observe the five daily prayers but

³⁰ Abdul, M.O. A, *The Selected Traditions of AL-NAWAWI* (Arabic Text, Transliteration & Commentary) (Book 4), (Lagos: Islamic Publications Bureau, 1974), *Hadith* No. 2, at 20-23. See also Bin Sharaf Ul-Deen, Yahya An-Nawawi, *An-Nawawi's Forty Hadiths*, *Hadith* No. 2. <<http://www.dartmouth.edu/>> accessed on 12th April, 2010.

I will not observe other pillars of Islam.’ Likewise, as a Muslim, one cannot say ‘I am a Muslim but I am not bound by its laws.’ This is not possible because the two go together and they are inseparable. So, needless to say, Muslims must follow all the commandments of Allah (s.w.t) as He, the Almighty says:

“It is not for a believer, man or woman, when Allah and His Messenger have decreed a matter that they should have any option in their decision. And whoever disobeys Allah and His Messenger, he has indeed strayed in a plain error.”³¹

As a Muslim therefore, man’s sojourn in life begins with one’s birth³² and ends with one’s death.³³ Upon man’s death, his estate becomes due for distribution in accordance with the rules of Islamic Law of estate distribution. In order to achieve this, man requires the knowledge of the rules and principles guiding estate distribution in Islam. In this regard, the Prophet (s.a.w) is reported, in a number of *Hadiths*,³⁴ to have said:

³¹ *Qur’an, al Ahzab* (33): 36.

³² *Qur’an, Al-Nisa’* (4): 1. See also part of *Hadith* No. 4 of *An-Nawawi’s Forty Hadiths* where creation of man is described thus: “Verily the creation of any one of you takes place when he is assembled in his mother’s womb; for forty days (he is) a drop, then he becomes a clot, in the same way, and then in the same way a mass...” <http://www.livingislam.org/n/hfhl_e.html#1>accessed 13th June, 2010.

³³ “We have ordained death among you...” *Qur’an, al Waqi’ah* (56): 60. The Prophet (s.a.w) is reported to have said: “Be in this world as a stranger or as a wayfarer” to show that death is eminent. See Abdul, M.O. A. *The Selected Traditions of AL-NAWAWI (The Forty Traditions of AL-NAWAWI Arabic Text, Transliteration, Translation & Commentary)* (Book 4), (Lagos: Islamic Publications Bureau, 1974) at 86-87.

³⁴ These *hadiths* are said to have been verified and described as weak. See Al-Jibaly, Muhammad, *Inheritance Regulations & Exhortations* (2nd Ed.), (London: Al-Kitaab & As-Sunnah Publishing, n. d.), pp. 27-29. Apart from being described as weak, it is also argued that Islamic injunction on acquisition of knowledge is not specifically limited to the field of Inheritance and its rules alone but is rather generally broad and wide. In support of this contention, are the provisions of the

“Learn the knowledge of inheritance and teach it to people, because it amounts to half of all knowledge. It will be forgotten, and it is the first thing that will be taken away from my Ummah.”³⁵

The Prophet (s.a.w) is equally reported to have stated that: “Learn the Qur’an and the rules of inheritance and teach them to people, because I will surely be taken away (by death).”³⁶ In yet another *Hadith*, the Prophet (s.a.w) was reported to have said: “Knowledge is of three types, and anything beyond that is unnecessary: a clear ayah, an established sunnah, or a just rule (of inheritance)”³⁷ while according to another *Hadith*, the Prophet (s.a.w) said:

“Learn the rules of inheritance and teach them to the people. Indeed, I will be taken away (by death); and indeed, the knowledge will be taken away and tribulations will become paramount- so that when two people differ about a rule of inheritance, they will not find anyone to arbitrate between them.”³⁸

Qur’an and Hadith. From the *Qur’anic* perspective, the *Qur’an* provides in Chapter 9 verse 122 that: “And it is not (proper) for the believers to go out to fight (Jihad) all together. Of every troop of them, a party only should go forth, that they (who are left behind) may get instructions in (Islamic) religion, and that they may warn their people when they return to them, so that they may beware (of evil).” While on the one hand, the Prophet (s.a.w) said: “Seek knowledge even if it is in China,” in another *hadith*, he was reported to have said: “To acquire knowledge is the duty of every Muslim man and woman.” For a more detailed discussion, see “An Islamic Perspective on Seeking Knowledge,” <<http://www.AnIslamicPerspectiveonseekingknowledge.htm>>accessed on 22nd April, 2010.

³⁵ Abi Abdullah Muhammad bin Yazid al-Rab ‘l Ibn Majah al-Quzwayni (2000), *al-Sunan*, Abwab al-Fara’id, Bab al-Hathu’ala l’alimi al-Fara’id, Hadith 2719. See also At Tirmidhi in *as-Sunan*, Vol. 4, Hadith No. 2091, at 413, an-Nasa’i in *as-Sunan*, Vol. 4, Hadith No. 6306, at 63. See further Majah Shaukani, Muhammad Bin Ali Bin Muhammad (1978), *Nail al-Awtar*, Vol. 6, Cairo, at 57.

³⁶ Ibn Majah, Abu Abdullah Muhammad b. Yazid, *Sunan Ibn Majah*, (Cairo, 1372H/1952), at 63.

³⁷ Isma’il b. Kathir Ad-damasqi, *Tafsir Ibn Kathir*, Vol. 1, (Cairo: Issa Al-babi Al-Halabiyy and Co; n.d.), at 457.

³⁸ Shaukani, Muhammad Bin Ali Bin Muhammad, *Nail al-Awtar*, Vol. 6, (Cairo, 1978), at 58.

Notwithstanding the fact that these aforementioned *Hadiths* have been labelled weak (*da'if*), there is no doubt that they stress the importance of the field of inheritance and acquisition of its knowledge. The particular religious importance of distribution of estate in Islamic Law is therefore obvious from the verses immediately following those verses giving specific details on inheritance shares.³⁹ Allah (swt), in the Glorious *Qur'an* states that:

“These are limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and His Messenger will be admitted to Gardens under which rivers flow (in Paradise), to abide therein, and that will be great success.” “And whosoever disobeys Allah and His Messenger, and transgresses His limits, He will cast him into the Fire, to abide therein; and he shall have a disgraceful torment.”⁴⁰

From the combined effect of these verses and the Prophetic *Hadith*, though classified as weak, coupled with the analysis flowing therefrom, one can postulate that the religious importance of estate distribution lies in acquiring its knowledge because without a thorough knowledge of same, there can be no proper and correct distribution. Without proper and correct distribution, a Muslim cannot be said to have complied with the commandments of Allah to avoid the serious consequence of disobedience categorically and clearly stated in *Qur'an* chapter 4, verses 13 and 14. Therefore, from religious stand point, the importance of the subject lies in the strong belief of Muslims that it consists of half of useful knowledge and the faith Muslims have in this statement explains why we have always followed it tenaciously to the extent that inspite of operations carried out on other aspects or branches of Islamic Law as a result of colonization, most countries till today have refused to liberalize and rationalize this aspect of Islamic Law.

³⁹ These are the verses prescribing the shares of heirs. They are verses 11-12 of *Qur'an Al-Nisa'* (4).

⁴⁰ *Qur'an, Al-Nisa'* (4): 13-14.

LEGAL IMPORTANCE OF DISTRIBUTION OF ESTATE

Generally, Law, including Islamic Law, is said to be a system of rules a society sets or adopts to maintain order and prevent harm to persons and property. Law is ancient, dating as far back to the code of Hammurabi, written by an ancient Babylonian King around 1760 BC. Today, most countries have tens or hundreds of thousands of pages of Law. These laws are enforceable through the legal process. Laws are passed by Legislators, such as senators and congressmen. In America and many other countries, laws must uphold and not contradict the Constitution, a document outlining the most basic rules of the country.

Unlike the picture of law painted above, there is no iota of doubt that Islamic Law is a religious law. It is not only a religious law, but a complete legal system which has its peculiarities. Hence, it is not written by human legislators, senators or congressmen. It is divine, written by the ultimate Legislator- Allah (swt) Himself who knows what is good and bad for man. Its provisions do not need to uphold nor conform to man-made law. In Islamic Law, the constitution is the Glorious *Qur'an* which has not left out the minutest aspect of human life.

The law that applies to the distribution of estate in Islamic Law is therefore a segment of Islamic Law within the Islamic Legal system. Therefore as a microcosm of Islamic Legal system, juristically, the system of distribution of estate in Islamic Law is adjudged very important because it has no match amongst other systems. It is a system that has succeeded in solving every question relating to inheritance. Every possible and likely problem relating to inheritance is adequately catered for. It is the only legal system that provides for the unborn⁴¹ child in the womb and the hermaphrodite.⁴² It has allotted to them shares in spite of uncertainty of

⁴¹ The right of the unborn child (foetus, *hmal*) to inherit is subject to being born alive-even if for a brief moment. Thus, as soon "as a baby cries (at birth), it inherits." For a more detail discussion on this, see Ibn Rushd, Abu al-waleed Ahmad Bin Muhammad *al-Hafeed Bidayat al-Mujtahid*, Vol. 2, (Cairo, 1966), at 361.

⁴² All Muslim jurists agree that if a hermaphrodite (*khunsa*) urinates through the male organ, then he is considered to be a male and inherits as such while he inherits as a female if he urinates through the female organ and is therefore considered a female. See Bin Haider Ali Lakhvi, Salah-Uddin, *Al-Mirath: Justice of Islam in the Rules of Inheritance*,

sex and number, characteristics associated with the unborn child (children) and the hermaphrodite. These shares are not simply allotted but defined and meticulously calculated to precision.

It is therefore, no exaggeration to say that it is the only developed and comprehensive system that caters for both foreseen and unforeseen problems with the highest degree of precision. This singular quality has compelled nearly all modern writers (Muslims and non-Muslims alike) on the subject to concede to its importance not only because of the logical perfection and precision with which all situations are dealt with, but also for its formal excellence in putting such situations under perfect control. In order to substantiate the legal importance and superiority of estate distribution in accordance with Islamic Law over all other forms of estate distribution, the following remarks of some writers on the subject expressing their admiration for the system, even though they are non-Muslims, become handy. Foremost among these writers is the observation of Coulson when he states that:

“Juristically, the law of Succession is a solid technical achievement, and Muslim Scholarship takes a justifiable pride in the Mathematical precision with which the right of the various heirs in any given situation can be calculated.”⁴³

Another writer, Rumsey, writing in appreciation of estate devolution in accordance with Islamic Law, says: “The Mohammedan Law of inheritance comprises beyond question the most refined and elaborate system of rules for the devolution of property that is known to the civilized world.”⁴⁴ Anderson, writing on the excellent nature of estate distribution in accordance with Islamic Law, observes that: “There is no aspect of (Muslim) Law in which the logical and technical excellencies

(Renala Khurd Okara: Al-Maktabah Al-Muhammedia, 1424H/2003), p. 168. See also Ibn Qudamah Abdullah Bin Ahmad Bin Muhammad, *Al-Mughni*, Vol. 6, (Cairo, 1969) at 253-258.

⁴³ Coulson, N. J., *Succession in the Muslim Family*, (Cambridge: Cambridge University Press, 1971) at 3.

⁴⁴ Rumsey, Almaric, *The Muslim Law of Inheritance*, (London: W. Allen & Co; 1980), Preface, at 1.

of the Islamic system are more advantageously displayed than in the law of inheritance.”⁴⁵

Still on legal importance of estate distribution in accordance with Islamic Law, Jones, in appreciating the system observes that: “I am strongly disposed to believe that no possible question could occur on the Muhammadan Law of Succession which might not be rapidly and correctly answered.”⁴⁶ Fitzgerald, another non-Muslim writer on the subject, observes that:

“To Muslims, the Sharia Law of inheritance is ideally perfect, founded on the sure rock of divine revelation and worked out in the utmost detail by that mental ingenuity which God gave man for the purpose of understanding revelation. The logical strength of the system is beyond question...”⁴⁷

On the whole, the above observations and comments do not only appraise the importance of estate distribution in accordance with Islamic Law but also helps to demonstrate the superiority of Islamic Law as a divine law over and above any other laws. Therefore, the legal importance of Islamic Law of Inheritance, alone or in comparison with other systems, is forever invaluable for its precision, perfection, and excellence and utility.

CONCLUSION

This paper has emphasized the socio-economic and religio-legal importance of estate distribution in Islamic Law. From the discussion, it can be deduced summarily that distribution of estate in accordance with Islamic Law of Inheritance is based on the following considerations: to break up concentration of wealth in individuals and spread it out in society,

⁴⁵ Tyabji, F.B., *Muslim Law*, (Bombay: N.M. Tripathi Private Ltd; 1969), at 69.

⁴⁶ *Ibid.* at 98.

⁴⁷ Rasheed Syed K., *Muslim Law*, (Lalbagh: Eastern Book Co; 1979), at 229.

to consolidate the family system which is the social unit of an Islamic society, to give incentive to work and encourage economic activity as sanctioned by Islam, to respect the property right of ownership of an individual earned through honest means; and to hammer in the consciousness of man the fact that he is not the absolute owner of wealth he produces but he is merely its trustee and is not, therefore, authorized to pass it on to others as he likes. The paper, though, not a comparative analysis, has re-enforced the superiority of the rules and principles of estate distribution in accordance with Islamic Law over all other forms of estate distribution that is known to mankind.