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ISLAMIC LAW OF INHERITANCE — Can able to stand the test of Time

By

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The Islamic Law of Inheritance is a most ingeniously contrived system, which deserves admiration by its effectiveness in dealing with the most complicated problems of Succession.

The first object of the Islamic Law of Inheritance is to ensure that the relations who are dear and near to the deceased owner gets a substantial part of estate of the deceased. The object is achieved by imposing a restriction upon testamentary power. No Mohammedan can dispose of by will his entire property. He can execute will only one third of the property. The result is that at least 2/3rds of the net property of the propositus will be available for distribution among the heirs this object is mainly to avoid the setting up of the forged wills by the legatees after the death of the testator.

The second object is that the scheme of distribution among the heirs should not be distorted by the exercise of testamentary power. This is achieved by forbidding benefits to others. A Mohammedan cannot bequeath the property by will to any of his

heirs. Such a bequest would be void unless the other heirs consent to it. This is because no one can have an heir while alive, who are the heirs will be ascertained only on the death of the owner.

The third object is that the heirs should be properly classified according to the degree of relationship to the deceased. There are three classes of heirs as per Holy Quran. (1) Sharers, (2) residuaries; (3) Distant kindred. The sharers and the residuaries are nearer than the distant kindred so the distant kindred do not inherit if there are either sharers or residuaries. So, the distant kindred would be excluded by sharers and residuaries. There is one exception to this. Distant kindred can take when there are no residuaries, though there is husband (or wife) as sharer. It is the sharers and residuaries that are most proximate to the owner and the scheme of inheritance concentrates upon distribution amongst them in a manner fair to all the parties concerned.

The elaborate system of inheritance constructed by Islamic Law is as mere

perfection as possible. There is only criticism against it. The criticism is that it leads to fragmentation of estate. When the property is broken up into the fractions and distributed amongst several sharers and residuaries there is fragmentation and agricultural holdings became uneconomical. When they are split up in this way. It may be pointed out that Islamic Law found one device in "PRE-EMPTION" to counteract the evils of fragmentation, when one heir sells his share the co-heirs as co-sharers can exercise a right of pre-emption. That is, they can successfully assert a claim to purchase a property themselves. This prior claim which they have serves to check the introduction of as co-owners and mitigates the evils incidental and fragmentation.

If this criticism is correct, the Andhra Pradesh Land Ceiling (On Agrl. Holdings) Act, and Andhra Pradesh Assignment Act will solve no purpose, to assign the agricultural lands to poor in small holdings.

In India, Islamic Law of Property and Inheritance is not codified like other laws, the Mohammedans all over the globe and also in India follows inheritance as per the verses and dictums of the Holy Quran which is believed to be message of Almighty Allah to Prophet Mohammed (P.b.u.h.) through Angel Gabriel. The Holy Quran reveal more than 14 centuries ago still the property rights of heirs holds good.

Heritable Property :

The property which is the subject-matter of inheritance should be one owned by the propositus at the time of his death. There is no distinction in the Islamic Law of Inheritance between movable and immovable property or between ancestral and self acquired property of the propositus. Every property is recognized as self acquired property. Every Mohammedan of sound mind not a minor may dispose his property by gift even whole property without anybody's consent.

Birth Right not recognised :

The right of an heir apparent or presumptive comes into existence for the first time on the death of ancestor, and he is not entitled until then any interest in the property to which he would succeed as a heir if he survived the ancestor.

This object of non-recognition of birth right to an heir because to avoid dissimilarity to heirs.

*Eg :—*If an younger son born after the elder son partitioned from his father, the younger son gets lesser share than his elder brother (*i.e.*, elder son).

In Islamic Law men as well as women have shares in their ancestors.

"There is a share for men and share for women from what is left by parents and those nearest related, whether the property be small or large — a legal share"

.....Surah An-Nisa 4:7 of Holy Quran.

Apart from the sharers the relatives and orphans will get moral right in the property of others.

"And when the relatives and Orphans and Al-Masakin (the needy) are present at the time of division give them out of the property"

.....Surah An-Nisa 4:8 of Holy Quran.

The shares of heirs fixed in the Holy Quran itself.

"Allah commands you as regards your childrens' (inheritance) : : to the male, a portion equal to that of two females, if there are only daughters two or more their share is two — third's of the inheritance. If only one her share is half, for parents, a sixth share of inheritance, to each if the deceased left children; if no children and the parents are (only) heirs, the mother has a third, if the deceased left brothers (or sisters), the mother

has a sixth, (the distribution in all cases) after the payment of legacies, he may have bequeathed or debts. You know not which of them whether your parents or your children, or nearest to you in benefit, (these fixed shares) ordained by Allah"

.....Surah An-Nisa 4:11 of Holy Quran.

The share of spouse to inherit from other.
The Holy Quran says:

"In that which your wives leave, your share is half, if they have no child; but if they have a child you get a fourth, of that which they leave after payment of legacies and they may have bequeathed or debts. 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. If the men or women whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of them gets a sixth, if more than two they share in third, after payment of legacies he (or she) may have bequeathed her debts. So that no loss is caused (to any one).

.....Surah An-Nisa 4:12 of Holy Quran.

As per the above referred text of a Holy Quran the property of the person will succeed as per the table mentioned below.

Sharers	<u>Normal Share</u> of one of two or more collectively	Conditions under which the normal share is inherited	This claim sets out (A) Shares of Sharer Nos.3, 4, 5, 8 and 12 as varied by special circumstances; (B) Conditions under which sharer Nos.1, 2, 7, 8, 11and 12 succeed as residuaries.
1. Father	1/6	When there is a child or child of a son h.l.s.	[when there is no child or child of a son h.l.s., the father inherits as a residuary;
2. True Grand- father.....	1/6	when there is a child or child of son h.l.s. and no father or nearer true grandfather.	[when there is no child or child of a son h.l.s., the Tr. G.F. inherits as a residuary, provided there is no father or nearer Tr.G.F.
3. Husband	1/4	When there is a child or child of a son h.l.s.	½ when no child or child of a son h.l.s.
4. Wife (c)	1/8 1/8	When there is a child or child of a son h.l.s.	¼ when no child or child of a son h.l.s.
5. Mother	1/6	(a) when there is a child or child of a son h.l.s., or (b) when there are two or more brothers or sisters, or even one brother and one sister, whether full, consanguine or uterine	1/3 when no child or child of a son h.l.s., and not more than one brother or sister (if any); but if there is also wife or husband and father, then only 1/3 of what remains after deducting the wife's or husband's share.

6. True Grand-mother.....	1/6	1/6	(A.) Maternal – when no mother, and no nearer true grandmother either paternal or maternal. (B) Paternal – when no mother, no father, no nearer true grandmother either paternal or maternal, and no intermediate true grandfather.	
7. Daughter	1/2	2/3	When no son.	[with the son she becomes a residuary :
8. Son's daughter h.l.s.	1/2	2/3	When no (1) son (2) daughter, (3) higher son's son (4) higher son's daughter, or (5) equal son's son(d)	when there is only daughter, or higher son's daughter but no (1) son, (2) higher son's son, or (3) equal son's son, the daughter or higher son's daughter will take 1/2 and the son's daughter h.l.s. (whether one or more) will Take 1/6, <i>i.e.</i> , [2/3-1/2] [with an equal son's son she becomes a residuary :
(i) Son's daughter	1/2	2/3	when no (1) son (2) daughter or (3) son's son daughter	when there is only one daughter the son's (whether one or more) will take 1/6 if there be no son, or son's son [with the son's son she becomes a residuary
(ii) Son's son's daughter	1/2	2/3	when no (1) son (2) daughter, (3) Son's son, (4) Son's daughter, or (5) Son's son's son.	when there is only one daughter or son's daughter, the son's son's daughter (whether one or more) will take 1/6, If there be no (1) son, (2) son's son (3) son's son's son.[with the son's son's son she becomes a residuary :
9. Uterine brother... ..	1/6	2/3	When no (1) child (2) child of son h.l.s.,	
10. Or sister...			(3) father or (4) true grandfather.	
11. Full sister	1/2	2/3	When no (1) child (2) child of son h.l.s.,	[with the full brother she becomes a residuary :

			(3) father or (4) true grandfather. or (5) full brother.	
12. Consanguine sister	1/2	2/3	When no (1) child (2) child of son h.l.s., (3) father or (4) true grandfather. (5) full brother, (6) full sister, or (7) consanguine brother.	but if there is only one full sister and she succeeds as a sharer, the consanguine sister (whether one or more) will take 1/6 provided she is not otherwise excluded from inheritance. [with consanguine brother she becomes a residuary.

In Islamic Law, woman gets her right from her parents as well as from her husband and also from her children, as discussed above. Thus, this elaborate system of inheritance has been able to stand to the test of time and remained to this day in its original form.

RESTORATION OF COURT HOLIDAYS

By

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The High Court of Andhra Pradesh has been pleased to notify reducing the holidays for Summer, Sankranti and Dasara with effect from 1st January, 2007. In addition the Saturdays are made working days save second Saturday. Also the working hours are extended from 10.00 a.m. to 6.00 p.m. These changes are obviously made to help speedy disposal of cases and reduce the pendency in Mofussil Courts.

While the object is laudable, but these measures will certainly cause considerable trouble and inconvenience to the members of the legal profession. About twenty-five years back, the High Court has dispensed with Saturday as holiday and made it a working day. There was resentment over the move from the advocates. A State Level

meeting was held by the lawyers and the matter was represented to the then Chief Justice. His Lordship was pleased to appreciate the grievance and made Saturday as holiday only to the extent of Court work and made it working day for all other purposes.

It is submitted with great respect that the profession of law is a demanding job. The advocate has to spend a great deal of time in the study of records, prepare the brief and present it to Court. In Mofussil Court, where grass root justice is delivered, the lawyer has to deal with the parties and witnesses and take instructions in the preparation of the brief. It is an onerous job requiring a lot of time and brainwork. In addition he has to study the legal aspects and the rulings of