

## ISLAMIC TEACHINGS ON INHERITANCE

Inheritance is the passing of title to an estate up on death or what a person is entitled by sharia to receive from the estate of his/her deceased person.

Death is inevitable. As a result, Islam being a complete way of life has spelt out how the deceased's estate should be shared among his heirs.

Allah says in Q (2:180);

*“It is decreed that when death approaches, those of you that leave wealth shall bequeath it equitably to parents and kindred. This is a duty incumbent on the righteous. He that alters that (the will) after hearing it shall be accountable for his crime. Allah is hearing and knowing.”*

He also says in Q (4:7);

*“Men shall have a share in what their parents and kinsmen leave, and women shall have a share in what their parents and kinsmen leave; whether it be little or much, it is legally theirs.”*

### TERMINOLOGIES APPLIED IN THE LAW OF INHERITANCE

1. **Estate**; this is the entire property a deceased leaves behind such as houses, cars, clothes, furniture, land, farm, jewelry, cash (at hand and in bank), shares, bonds, and so on including socks and underwear; everything.
2. **Bequests or Legacy** - These are specific grants made, viz, grants made to the particular members of the family or allotments made to the poor or for the advancement of religion, etc.
3. **Mirath - Gross Inheritance**: This is all movable or immovable property left behind by the deceased whether the deceased earned it, inherited it or was gifted this property.
4. **Warith - Heir**: This is a relative who may potentially inherit from the wealth of the deceased.
5. **Wassiya – Will (Testament)**: An order for allocation of certain amount of property of the deceased after death based on his/her order. This is not allocated during the person's lifetime rather is asked to be allocated after death.

A will of up to  $\frac{1}{3}$  of the property is allowed. If a will is made in excess to this proportion then only  $\frac{1}{3}$  will be spent on it. A will cannot be made for a person who is already entitled to receive a share as heir (Warith).

6. **Testator (Musi)** - He is the person making a Will.
7. **Executors (Wasi)** - Persons appointed by the testator, to execute, administer and distribute the estate in accordance with the Will. They are also known as Administrators or Trustees.

8. **Beneficiaries (Musa Lahu)** - These are persons with the right to inheritance. They are also as heirs or legatees.
9. **Walad (awlaad)** - Children: This include any one of the following: son, daughter, son's son, son's daughter, son's son's son, son's son's daughter.
10. **Ikhwa - Siblings:** A total of 2 or more persons alive from real, paternal or maternal brothers and sisters, irrespective of their type or gender
11. **Real brother and Real sister:** siblings who have same parents as the deceased.
12. **Paternal brother and Paternal sister:** siblings who have same father as the deceased but have different mothers (step-siblings with a common father)
13. **Maternal brother and Maternal sister:** siblings who have same mother as the deceased but have different fathers (step-siblings with a common mother)
14. **Dhil – Furoodh** - 1st tier of heirs who have a prescribed proportion of share under different circumstances.
15. **Asbah - Residuary:** 2nd tier of heirs. Their proportion is not fixed, rather after applicable distribution among Dhil-Furoodh, the rest is entitled to the closest relation among Asbah. Asbah are male relatives related through a chain of males (exception: real sister and paternal sister)
16. **Dhil-irham:** 3rd tier of heirs after Dhil-Furooz and Asbah. If there is still left over property after distribution to Dhil-Furooz, and there are no Asbah then Dhil-irham may be entitled to have a share. The closest in relationship will get all the remaining share.
17. **Kalala** - A person who at time of death does not have any living child or grandchildren or living father or grandfather.

It should be noted that when a Muslim dies, the obligations to be taken out of his estate (in order of priority) are:

- a) Kafn (shroud) and other basic expenses relating to the funeral like grave digger's wage, transportation to cemetery, e.t.c if they are to be paid for. A surviving husband is responsible for the shroud and burial expenses of his deceased wife if she is not endowed.

There is difference of opinion in respect of a wealthy woman. Some scholars said that the husband is still responsible while others are of the view that they should be paid from her estate.

- b) Repayment of his outstanding debt. The Messenger of Allah (Peace Be upon Him) said:  
*“A believer's soul remains in suspense (cannot enter Paradise) until all his debts are paid off.”*

He also said: *“By Him in whose hand Muhammad's soul is, if a man were to be killed in Allah's path then come to life, be killed again in Allah's*

*path then come to life, and be killed once more in Allah's path then come to life owing a debt, he would not enter Paradise till his debt was paid." Bukhari.*

Generally, a debt can be owed to fellow humans or to Allah e.g. unpaid *Zakat*. The former has to be repaid, no questions about that.

Scholars differ as regards repayment of debt due to Allah. Some are of the view that it should be repaid while others are in support of non-repayment.

A third view is that it should be repaid if and only if the deceased instructs the same.

- c) Fulfilment of his will: Provided it does not exceed one-third (1/3) of the entire estate and it is not in favour of an heir. If any or both of these conditions are not satisfied, the validity of the will is subject to approval of all the heirs, otherwise, its void.

The rightful heirs then inherit the remaining estate.