

Equality of Men and Women in Succession: An Assessment of Islamic Rules

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ABSTRACT

Generally it goes that a Muslim man receives greater portion than that of a woman of the same grade and degree under classical or modern Hanafi Muslim rules of succession; e.g., where a son and a daughter survive the propositus the son receives two-thirds and the daughter one-third. So it is generally claimed that a Muslim man inherits greater share than that of a woman. But such allegation may not be the fact always. An assessment of the arrangements of succession in Hanafi School shows, in this regard, that under the School a woman receives larger amount than a man. Both primary and secondary sources are used in the study. The primary source includes the Quran or Hadith, and secondary source different books, journals, etc. Only Hanafi Islamic school rules of succession are addressed, rules of no other schools like Shafii, Hanbali, Maliki, etc. are included. Practically, the study shows that Muslim women inherit more than Muslim men. Socially, the study removes the notion of the thinking that Muslim men receive more than Muslim women in inheritance. The study is an original piece of work.

Keywords: Hanafi Muslim law of inheritance, males' and females' share, equality

INTRODUCTION

Islamic arrangement on succession, which opens on the death of the propositus, has become an issue of criticism and attack by the critiques. Such issue shows that Muslim women receive much less portion of property than Muslim men when the propositus is survived and so the system is *ultra vires* the equality principle as prescribed by Article 27 of the Constitution of Bangladesh, the supreme law of the land, Article 7 of the Universal Declaration of Human Rights of 1948 (Adopted and proclaimed by General Assembly Resolution 217(III)) and Article 26 of the International Covenant on Civil and Political Rights of 1966, (General Assembly Resolution 2200A (XXI)) an international treaty which the ratifying states are obliged to implement in the country. Many people are also found to strengthen the said allegation on the ground that on the one hand 'equality' of men and women is said to be a cardinal feature of Islamic spirit, but on the other hand, the religion discriminates against women by means of allocating them less share in succession. Such allegation is frequently said, publicized in seminars, symposiums or meetings and published in different papers, research journals or books. Professor M. Shah Alam

observed in his article "Empowerment of Women in Bangladesh" that *family laws of both Muslims and Hindus of Bangladesh do not conform to the equality principle of our Constitution and that Muslim and Hindu women do not possess equal rights in respect of marital relationship, divorce, guardianship and inheritance* (Alam, 2001). Justice K. M. Sobhan said in his speech delivered in the seminar held in Dhaka on the theme "*Narir Adhikar, Aain Sanskar and Uniform Family Code*" (*Rights of Women, Reformation of Laws and Uniform Family Code*), on 21 and 22 November 1992 organised by the Bangladesh Women's Forum, a notable feminist organization of Bangladesh, that *due to family laws Article 27 of the Constitution is not possible to be applicable everywhere. In the same line, the law of inheritance also creates discrimination among members of the family* (Uniform Family Code, 1993). Such an allegation makes Muslims think over the issue of 'equality in Islam' because 'equality' is one of the most cardinal principles of Islam and the religion keeps it at the highest stage of the relation between men and women or between citizens and administrators. The allegation seems not to be admirable by Muslim jurists who think it fictitious and lacking in the proper ground. In such circumstances, it has been felt necessary to see whether the allegation is precise and well-founded or not.

The specific objective of the study is, therefore, *to justify the sentiment in Bangladesh or any country in favor of equal share of Muslim women to Muslim men*. Other objectives, however, are: (i) to have a look on the Hanafi Muslim law of succession, which is followed in Bangladesh, India, Pakistan and some other notable Muslim countries, (ii) to make a comparison between the shares of Muslim men and women, and (iii) to make a suggestion on the validity of the prevalent sentiment for an equal share of Muslim men and women.

COMPARISON BETWEEN SHARES OF MUSLIM MEN AND WOMEN HEIRS

Under Hanafi Muslim law there are three classes of heirs, Quranic sharer (QS), residuary (R) and distant kindred (DK). QS comprises of some 12 persons. Residuary comprises of some 14/16 persons, as the case may be; among whom the rule of *nearer in degree excluding the more remote* operates and who inherit after satisfying the claims of the QS. DK inherits in the absence of the first two groups. The entitlement of each of the heirs is relative to the presence or absence of other heir(s). Nine of the Quranic sharers are selected by the Holy Quran They are: (1) husband, (2) wife, (3) father, (4) mother, (5) daughter, (6) full sister (7) consanguine sister, (8) uterine brother and (9) uterine sister. The rest 3 substitute heirs, added by *Quias*, i.e. analogical deductions made by renowned and recognized Muslim jurists, to the list (Coulson, 1971) are: (1) true grandfather (A male ancestor between whom and the propositus no female intervenes) as a substitute of father (when father is predeceased), (2) true grandmother (paternal and/or maternal) (A female ancestor between whom and the propositus no false grandfather intervenes; false grandfather means a male ancestor between whom and the propositus a female intervenes) as substitute of mother (when mother is predeceased) and (3) son's daughter (Rahman, 1989). Among 12 Quranic sharers a number of 4 are male and 8 are female (The number of the heirs may be given in digits in the later part of the article). Leaving the substitute 3, there remain 3 male and 6 female sharers in the list. So in both the cases, the number of female heirs is higher (double) than that of the male heirs. The placement of more female heirs than males in the first category is a matter of prestige and showing honor to the women of the Muslim world.

Persons from Whom a Male Quranic Sharer and a Female Quranic Sharer May Inherit

Table 1: Male Quranic sharers may inherit the following persons

No.	Name of the male Quranic sharers	Name of the propositus from whom the male Quranic sharer may inherit	Maximum number of class of the propositus
1.	Husband	Wife	1
2.	Father	Son and/or daughter	2
3.	True grandfather	Grandson and/or granddaughter	2
4.	Uterine brother	Uterine brother and/or sister	2
		Total =	7

It is found in table 1 that male Quranic sharers, who are 4 in number, may be entitled to inherit a maximum number of 7 classes of propositus.

Table 2: Female Quranic sharers may inherit the following persons

No.	Name of the female Quranic sharers	Name of the propositus from whom the female Quranic sharer may inherit	Maximum number of class of the propositus
1.	Wife	Husband	1
2.	Mother	Son and/or daughter	2
3.	True grandmother (paternal and/or maternal)	Son's son, son's daughter, daughter's son, daughter's daughter	4
4.	Daughter	Father and mother	2
5.	Son's daughter	Father's father and father's mother	2
6.	Full-sister	Full-brother and/or full-sister	2
7.	Consanguine sister	Consanguine brother and/or consanguine sister	2
8.	Uterine sister	Uterine brother and/or uterine sister	2
		Total number =	17

It is found in table 2 that female Quranic sharers, who are 8 in number, may be entitled to inherit a maximum number of 17 classes of propositus. Table 1 and 2 show that 4 male sharers may inherit a maximum number of 7 classes of propositus, whereas 8 female sharers may inherit a maximum number of 17 classes of propositus. So the ratio is (male) = 4:7 and (female) = 8:17. Table 1 and 2 also show that the number of classes of propositus as survived by the female Quranic sharers is much higher, not only in sum but also in ratio, than that as survived by the male Quranic sharers.

Entitlement of Male and Female Quranic Sharers

A daughter, besides being the daughter of one person, may become a wife of another, a mother of another and accordingly a true grandmother how high so ever, a son's daughter how low so ever, a full-sister, a consanguine-sister and a uterine sister of some other(s). All these may be called, for the study, her *status symbols* or *positions*, the type of which may be numbered 8 (as shown in Table 2 above). On the other hand, the *status symbols* or *positions* of a male Muslim may be numbered 4 (as shown in Table 1 above). Accordingly, entitlements of male and female Quranic sharers are as follows.

Portions of the 4 male Quranic sharers are not always the same both (a) when each of their numbers is 'one' and (b) when 'more than one'. Both the situations as well as the maximum portions received by them are mentioned as follows.

Table 3: Entitlement of Male Quranic Sharers

No.	Name of the Quranic sharers or the <i>status symbols</i>	Maximum portion when 'one'	Maximum portion collectively when 'more than one'
1.	Husband	$\frac{1}{2}$	Not applicable
2.	Father	$\frac{1}{6}$ or $\frac{1}{3}$ (in one case of <i>Omariyyatan</i> where the survivors are husband, father and mother) or $\frac{1}{2}$ (in another case of <i>Omariyyatan</i> where the survivors are wife, father, and mother)	Not applicable
3.	True grandfather	$\frac{1}{6}$	Not applicable
4.	Uterine brother	$\frac{1}{6}$	$\frac{1}{3}$

According to table 3, a Muslim male may, as a 'single' man, inherit under all 4 *status symbols*, a quantum of $(\frac{1}{2}+\frac{1}{6}+\frac{1}{6}+\frac{1}{6})= \frac{6}{6}$ or $(\frac{1}{2}+\frac{1}{3}+\frac{1}{6}+\frac{1}{6})=\frac{7}{6}$ or $(\frac{1}{2}+\frac{1}{2}+\frac{1}{6}+\frac{1}{6})= \frac{8}{6}$. So the maximum entitlement of 'one' male *status symbol* is $\frac{8}{6}$ (or $\frac{16}{12}$). When the number of any male *status symbol* increases to 'more than one' the entitlement of the same *status symbols* would be $(\frac{1}{2}+\frac{1}{6}+\frac{1}{6}+\frac{1}{3})= \frac{7}{6}$ or $(\frac{1}{2}+\frac{1}{3}+\frac{1}{6}+\frac{1}{3})=\frac{8}{6}$ or $\frac{1}{2}+\frac{1}{2}+\frac{1}{6}+\frac{1}{3})=\frac{9}{6}$. So, the maximum entitlement of 'more than one' male *status symbols* is $\frac{9}{6}$ (or $\frac{18}{12}$).

Portions of 8 female Quranic sharers are not also always the same both when each of their numbers is 'one' and when 'more than one'. Both the situations as well as the maximum portions received by them are mentioned as follows:

Table 4: Entitlement of female Quranic Sharers

No.	Name of the Quranic sharers or the <i>status symbols</i>	Maximum portion when 'one'	Maximum portion collectively when 'more than one'
1.	Wife	$\frac{1}{4}$	$\frac{1}{4}$
2.	Mother	$\frac{1}{3}$	Not applicable
3.	True grandmother (paternal and/or maternal)	$\frac{1}{6}$	$\frac{1}{6}$
4.	Daughter	$\frac{1}{2}$	$\frac{2}{3}$
5.	Son's daughter	$\frac{1}{2}$	$\frac{2}{3}$
6.	Full-sister	$\frac{1}{2}$	$\frac{2}{3}$
7.	Consanguine sister	$\frac{1}{2}$	$\frac{2}{3}$
8.	Uterine sister	$\frac{1}{6}$	$\frac{1}{3}$

According to table 4 a Muslim female may, as a 'single' woman, inherit under all 8 *status symbols* a maximum quantum of $(\frac{1}{4}+\frac{1}{3}+\frac{1}{6}+\frac{1}{2}+\frac{1}{2}+\frac{1}{2}+\frac{1}{2}+\frac{1}{6})=\frac{35}{12}$. When the number of any *status symbol* increases to 'more than one' the maximum entitlement of the same 8 *status symbols* would be $(\frac{1}{4}+\frac{1}{3}+\frac{1}{6}+\frac{2}{3}+\frac{2}{3}+\frac{2}{3}+\frac{2}{3}+\frac{1}{3})=\frac{45}{12}$. Two comparisons may be made between the portions of 4 male *status symbols* with those of 8 female *status symbols*.

Comparison (i): 4 male *status symbols* receive as 'single' Quranic sharers a maximum entitlement of $\frac{8}{6}=\frac{16}{12}$ (as per Table 3). But 8 female *status symbols* receive, when 'single' or 'one', $\frac{35}{12}$ (as per table 4). So table 3 and 4 show that 'single' female *status symbols* receive more $(\frac{35}{12}-\frac{16}{12} = \frac{19}{12})$ than 'single' male *status symbols*. The

collective portions of 'single' or 'one' female *status symbols* i.e., female Quranic sharers is much more than that of 4 'single' or 'one' male *status symbols* as Quranic sharers.

Comparison (ii): Accordingly table 3 and 4 show that 'more than one' female *status symbols* receive more ($45/12 - 18/12 = 27/12$) than 'more than one' male *status symbols*. Therefore, the collective portion of 'more than one' 8 female Quranic sharers is also much more than that of 'more than one' 4 male Quranic sharers.

The Residuaries (agnatic heirs or *asabat*)

There is no portion fixed for a residuary. Under Hanafi law, there are 14 residuaries (Fyzee, 1964). They are: (1) son, (2) son's son h.l.s., (means how low so ever) (3) father, (4) true grandfather h. h. s., (5) full-brother, (6) full-sister, (7) consanguine brother, (8) consanguine sister (9) full-brother's son, (10) consanguine brother's son, (11) full-paternal uncle (12) consanguine paternal uncle, (13) full-paternal uncle's son and (14) consanguine paternal uncle's son. The residuary who ranks first in the list excludes number 2 and the rest. Accordingly, number 2 excludes 3 and the rest and so on. That means a residuary may take the residue only in the absence of the previous one(s). So there is the possibility of any residuary to receive or lose.

Distant Kindred (*dhawu'l arham*)

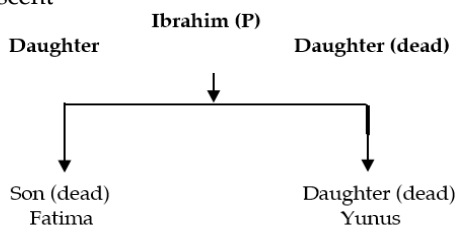
DKs are those relations who are the blood relations but neither Quranic nor agnatic heirs; obviously female agnates and cognates, male or female. But the extension of the discussion on the entitlement of the DKs may not be desired for A. A. A. Fyzee in his *Outlines of Muhammadan Law* reasonably observed: Class III of the Sunnite heirs, the *dhawu'l-arham*, is a vast and complicated class, and it is, therefore, proposed to confine our discussion to a few salient principles and typical examples and the reason is that the ordinary student should not be expected to digest (much) more. Cases relating to Uterine Heirs of Group III arise but rarely and it has been thought advisable not to increase the students' burden by a full treatment of the subject. The allotment of shares among the distant kindreds may be examined. In all the cases stated below examples may be taken from *Outlines of Muhammadan Law* (Fyzee, 1964) and *Succession in the Muslim Family* (Coulson, 1971), for these are the two leading authorities studied with a great tribute in the Muslim world.

GROUP I, Descendants:

(i) Two claimants, two lines of descent

The simplest case is where there are only two claimants, one claiming through one line of ancestors and the other claiming through another line. A Muslim, Ibrahim, dies leaving a daughter's son's daughter, Fatima, and a daughter's daughter's son, Yunus. It follows:

Table 5: two lines of descent



According to Abu Yusuf
(not followed in India):

1/3

2/3

According to Shaybani
(Followed in India):

2/3

1/3

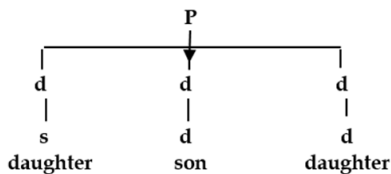
In this example, according to Shybbani (whose rule is followed in India and by the scholars as the rule of decision), males get 1/3 and females 2/3.

In all the cases stated hereinafter the doctrine of Imam Ash-Shaybani is followed, because his doctrine is followed in India and Bangladesh and lawyers, habitually accustomed to subtle distinctions and legal refinements, have adopted it as the rule of decision.

(ii) Three claimants, three lines of descent

In this case, there are three heirs, claiming through three different lines of descent. The rule is to stop at the first line in which the sexes of the intermediate ancestors differ, and to assign to each male ancestor a double portion. But the individual share of each ancestor does not descend to his or her descendants as in the preceding case, but the collective share of all the male ancestors will be divided among all the descendants claiming through them, and the collective share of all the female ancestors will be divided among their descendants. In these two groups, the division will be in accordance with the rule of a double share to the male. For example, a Muslim dies leaving a dsd., a dds., and a ddd., (dsd = daughter’s son’s daughter, dds = daughter’s daughter’s son and ddd = daughter’s daughter’s daughter). As shown below:

Table 6: Three lines of descent



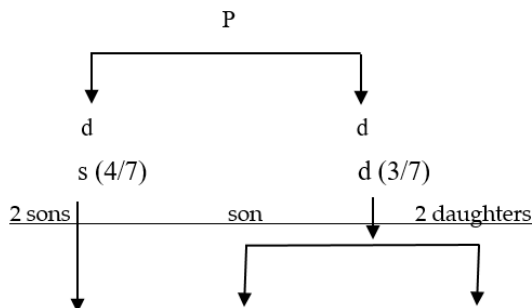
In this case, two steps are to be taken: (i) the notional collection of shares, and (ii) the actual distribution. The ancestors differ in sex in the second line of descent, therefore ds = 1/2, dd = 1/4 and dd = 1/4 and the collective share of females is 1/2.

Now comes the second step. The daughter’s son stands alone, and his share descends to his daughter. The collective share of the two daughter’s daughters is equal to a moiety of the estate, and it is distributed among their descendants, male and female taking in the proportion of 2 to 1. Thus dds = 2/3 × 1/2 = 1/3 and ddd = 1/3 × 1/2 = 1/6. Hence the final result is dsd = 1/2, dds = 1/2 and ddd = 1/6. So the allotment to males is 1/3 and to females is 1/2 + 1/6 = 2/3.

(iii) More than two claimants, two lines

A more complicated case must now be considered, and it may be illustrated by the following genealogical tree:

Table 7: More than two claimants



Here the ancestors differ in the second generation. The peculiarity in the case above is that the daughter's son counts as two males because three of her descendants are among the surviving heirs. Thus we have $ds = 4/7$ and $dd = 3/7$. The $4/7$ of ds goes to his two sons equally so that each dss obtains $2/7$. The $3/7$ of dd goes to her son and 2 daughter's the son taking twice the share of the daughter, thus dds gets $2/4 \times 3/7 = 6/28$, and each ddd gets $1/4 \times 3/7 = 3/28$. The final distribution is: $dss = 8/28$, $dss = 8/28$, $dds = 6/28$, $ddd = 3/28$, $ddd = 3/28$. Here males receive $8/28+8/28+6/28 = 22/28$, and females receive $3/28+3/28 = 6/28$.

GROUP II, Ascendants: The rules of distribution among the heirs of group II are succinctly summarized by Mulla, a leading authority on Muslim law, by three rules: **Rule 1:** The nearer in degree excludes the more remote. **Rule 2:** Among claimants in the same degree, those connected with the deceased through Koranic heirs are preferred to those connected through uterine heirs. **Rule 3:** Where there are claimants both on the paternal and on the maternal side, $2/3$ is assigned to the paternal side and $1/3$ to the maternal side. The portion assigned to the paternal side is then divided among the ancestors of the father, and the portion assigned to the maternal side among the ancestors of the mother.

GROUP III, Collaterals: The third group consists of collaterals, sub-group (A) comprising nephews and nieces, and their descendants, and sub-group (B) comprising uncles and aunts and their descendants.

Sub-group (A) (i):

Table 8: Nephews and nieces

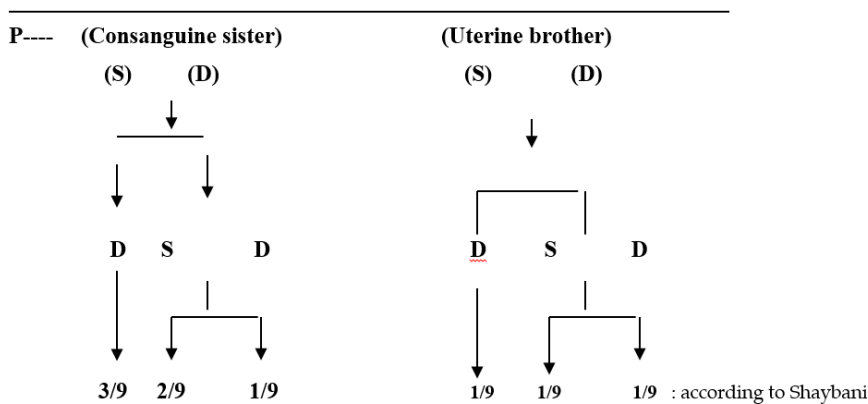
	P----- (Germane sister)	(Consanguine sister)	(Uterine brother)
	S	D	D
According to Shaybani:	3/9	1/5	1/5

Here, male's portion = $3/5$ and females' portion = $2/5$.

According to Shaybani, there is a notional distribution between the brothers and sisters of the praepositus (Quranic portions augmented by *radd*), (Fyzee, 1964) whose respective shares then descend to their issue.

Sub-group (A) (ii):

Table 9: Issue of nephews and nieces



It is importantly seen in the example that males receive $2/9+1/9 = 3/9$ and females $3/9+1/9+1/9+1/9 = 6/9$

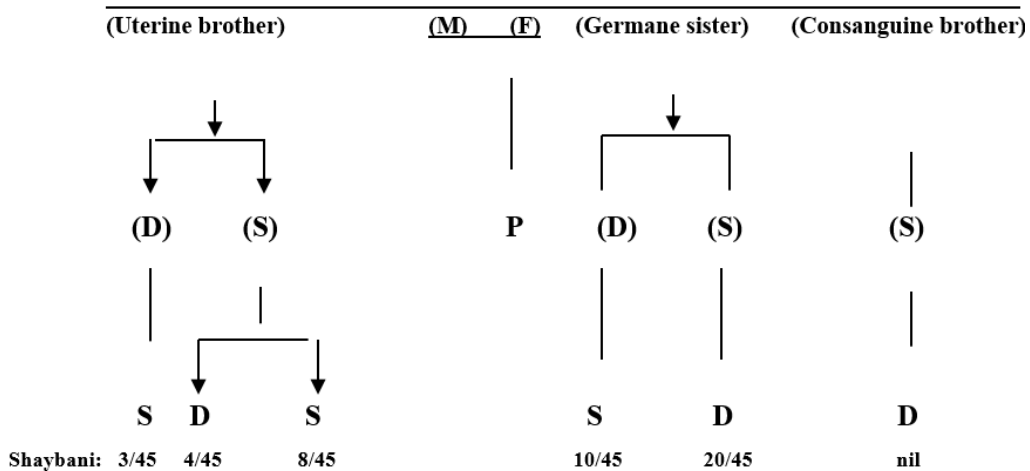
According to Shaybani, the notional distribution is between three consanguine sisters (two-thirds) and three uterine brothers (one-third). The consanguine sister's portion is then further notionally distributed among her children, the daughter counting as two daughters, and the shares then descend to their children, the male taking double the share of the female. Among the issue of the uterine brother, the difference of sex between the claimants and their intermediate links is disregarded.

Sub-Group (B):

Germane relatives or the issue thereof exclude consanguines who in turn exclude uterine, and then children of male agnates exclude others. Abu Yusuf and Shaybani recognize a common basic principle of apportionment. Paternal relatives take two-thirds and maternal relatives one-third of the inheritance, the rule of double share to males being applied to all cases.

Between the two jurists, different schemes of apportionment can only occur where the entitled relatives are the children of cousins or a lower generation. Then, Shaybani's rule and the number of claimants in each line apply, and grandchildren of an aunt or uncle are treated in exact way as grandchildren of the daughter of the praepositus. In the following case a notional distribution is to be made to praepositus' cousin, and the rule relating to the difference of sex, number of claimants and lines of connection applies, both on the paternal and maternal sides and to uterine as well as to germanes and consanguines.

Table 10: Uncles and aunts and their descendants i.e., the descendants of the praepositus' grandparents



From this figure it comes to light that the total amount of estate as received by the male DKs is always, at least the tables prove it, less than that received by the female DKs.

CONCLUSION

It is found in this comparative study that Muslim women receive in most cases, taking particularly into consideration their entitlement as Quranic heirs, residuary and distant kindred, as shown in the given examples, a larger amount of estate of the propositus than that Muslim men receive. Such arrangement of succession never can be assumed to be discriminatory against Muslim women in or outside Bangladesh. It is not also *ultra vires* the equality principles of the Constitution or the Universal Declaration of Human Rights of 1948 or the International Covenant on Civil and Political Rights of 1966. On the contrary, the arrangement is found to be women-friendly. Therefore, there is no reason for the feminists to claim an equal share in succession for Muslim women to Muslim men, because such an attempt may lessen women's portion. Mahmood J. may be remembered here who observes in *Gobind Dayal v. Inayatullha* (1885):

(Muhammadan law of inheritance) was founded by the Prophet (SM) upon republican principles at a time when the modern democratic conception of equality and division of property was unknown even in the most advanced countries of Europe.

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GLOSSARY

QS	Quranic sharer
R	residuary
DK	distant kindred
Quias	analogical deduction, application of self-reason
Omariyyatan	two decisions of Hazrat Omar (<i>Radi Allahu Ta`lahu Anhu</i> , he with whom Allah has become pleased)
True grandfather	a male ancestor between whom and the propositus no female intervenes
True grandmother	a female ancestor between whom and the propositus no false grandfather intervenes; false grandfather means a male ancestor between whom and the propositus a female intervenes
Propositus	the person whose property is administered after his demise
<i>asabat</i>	agnatic heir
<i>dhawu'l arham</i>	distant kindred
<i>radd</i>	residuary, where the sum, in case of succession, total of the fractions is less than unity and there are no heirs of class II to take the residue, the residue returns to the Quranic heirs in proportion to their shares. This is called the principle of. (<i>Rerurn</i>)

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