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## Inheritance under Islamic Law and The Doctrine of ‘Tasib’

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*In Islamic communities, inheritance is very prominent, similar to other cultures and traditions delivering wealth across generations. Muslim Inheritance is a complex and convoluted aspect, also serving as an interesting succession system. The legal framework of this inheritance system is derived from the Holy Book of the Quran and the teachings of Prophet Muhammed maintaining careful authorization of property allocation among the Muslim family as well as looking forward to ensuring fair treatment, equality, and tranquillity. This Research Article provides a deep insight into the historical evolution of Inheritance Law and contemporary changes governing the Islamic communities. The Muslim personal law ensuring fair and just regulations among Muslims is the very aspect that represents that each share shall receive fair and equal estate as per what they are entitled to. The Article further delves into the competency of inheritance the basis and its procedures, and the comparative analysis between Shia and Sunni Law reading with legal precedents and case studies. The paper contributed to the discussion of the proto-development of the Doctrine of Tasib, the criticism and challenges faced through history, and the ramifications considering the different understandings by different states. Governing the Inheritance law of every legal system plays a crucial part or an issue that extends to every individual who is meticulous in determining their allocation of property after their death. The doctrine of Tasib under the Muslim inheritance law plays a crucial role in ensuring that the property should be inherited as per the proper guidance mentioned in the holy book of the Quran, it should be a fair distribution and righteous amongst the eligible claimants. Overall Tasib, a principle in Islamic inheritance law, guarantees that all possessions are shared fairly according to the Quran and Sunnah. Tasib maintains the fairness of inheritance, avoiding conflicts or unjust distributions of the deceased's assets.*

**Keywords:** *inheritance rights, personal law, property allocation, fair distribution, Indian succession.*

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## INTRODUCTION

Inheritance laws are a cornerstone of any legal system, meticulously defining how property is allocated after an individual's death. Historically, ancient societies adhered to predetermined rules of inheritance, ensuring community stability by allocating property to rightful heirs rather than those favoured by the deceased. This notion was rooted in the belief that a community's stability depended on a fair and predictable transfer of property rights. Islamic inheritance laws, originating from the Quran and Hadith, reflect this principle and are renowned for their strict enforcement and structured approach. Islamic inheritance law is deeply embedded in the Quran and the Hadith teachings, emphasizing fairness and clarity in the distribution of wealth. One of the key concepts within Islamic inheritance law is the Doctrine of Tasib, which ensures that any remaining or unclaimed property of a deceased person is fairly distributed among eligible claimants. 'Tasib' meaning 'to distribute,' mandates that the estate is allocated according to specific guidelines to avoid disputes and promote equitable wealth distribution. The Quran and Hadith delineate clear shares for heirs, including spouses, children, parents, and other relatives, thereby promoting family unity and preventing conflict. The origins of these laws in Islamic tradition highlight a commitment to justice and equity. They prescribe specific shares to various heirs, ensuring that everyone receives their rightful portion. This practice not only supports the fair distribution of wealth but also maintains family harmony and upholds the moral and ethical standards of the Islamic faith. However, contemporary debates have arisen regarding whether these laws are biased or oppress any groups among Muslims. While Islamic inheritance laws aim to provide a balanced and just system, some argue that they may not fully account for the diverse and evolving needs of modern Muslim societies. Critics point to potential biases in the allocation of shares, particularly concerning gender, where male heirs often receive a larger portion than female heirs. These discussions reflect broader questions about how ancient legal principles can be harmonized with contemporary values and the pursuit of equality. Overall, Islamic inheritance laws, through the Doctrine of Tasib and other principles, strive to ensure an orderly and fair distribution of property, rooted in religious teachings and aimed at preventing

disputes and maintaining social stability. As legal systems continue to evolve, the challenge remains to balance these traditional laws with modern ideals of fairness and equality.

### **PROTO-ISLAMIC INHERITANCE CUSTOM**

Unlike other inheritance systems in India, the Muslim inheritance law has special characteristics. While the Mitakshara law emphasizes birthright as a prominent basis for inheritance, this concept is absent in Muslim law. However, Muslim inheritance laws share similarities with the Daya Bhaga school of law, although they contradict certain crucial principles. The current Hindu inheritance rules established by the *Hindu Succession Act of 1956*<sup>1</sup> significantly differ from traditional Hindu systems. Somehow, these rules are similar to the Muslim law of inheritance.

Pre-Islamic traditions of inheritance law with rules established by the *Prophet*. After a Muslim has passed, any remaining assets constitute their inheritance, this property could be tangible or non-tangible, and it can be acquired through inheritance or self-acquisition. The property of a deceased Muslim is divided among their heirs, who share ownership as residents in common, with each heir having a specific portion of the property according to Islamic law. In distribution terms, Muslim law permits two methods: per capita (strip distribution), where each heir gets an equal share, or based on a specific ratio defined by the law. In Sunni Law, the inheritance is divided equally among all heirs, regardless of their connection to the deceased. Each heir's portion of the property is based on the total number of heirs. In Shia Law, the inheritance is divided among heirs based on the 'strip' (*lineage*) they belong to. Each strip gets a specific portion of the inheritance, and the share within that strip is then divided equally among the strip members. Therefore, the amount an heir inherits depends on both their lineage and the number of people in their strip.

Inheritance occurs only after a person's demise, and no one can claim inheritance rights before then, even if they are an heir. In Islamic Law, being born into a Muslim family does not impulsively grant inheritance rights. Legal heirship and inheritance rights are only established upon the death of the ancestor and the heir is eligible for a share in the property only if they

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<sup>1</sup> Hindu Succession Act, 1956

outlive their ancestor. If the apparent heir predeceases the ancestor, they lose their inheritance rights<sup>2</sup>.

## **BASIS OF MUSLIM INHERITANCE LAW**

### *The Muslim law of inheritance is based on—*

The Quran establishes the fundamental principles for inheritance and the Prophet Muhammad's teachings and practices that provide additional rules. Traditional customs and practices from pre-Islamic Arabia apply unless it is changed by divine laws from the Quran or the Sunnah, then the Inheritance laws are also established through Ijma, Qiyas, and legal opinions. The Muslim Succession Laws Acts codify inheritance laws. Family members fall into different groups based on their relationship to the deceased in the Islamic Inheritance law. These classifications help to determine how the property is divided. Agnates: Male relatives from the same paternal line, like uncles or cousins, only inherit if there are no closer relatives (children, parents, or spouses). Cognates: Female relatives from the same maternal line, like aunts or cousins, also inherit if there are no closer relatives. How much each agnate or cognates inherit depends on how closely related they are to the deceased. The teachings of the Quran and the prophet Muhammad's guidance clarify the allocation of property among the heirs through his teachings and guidance<sup>3</sup>.

When there are no eligible descendants (such as children and grandchildren), inheritance passes to ascendants (such as parents and grandparents), with specific shares allocated according to Islamic law. Descendants have priority in inheritance, receiving pre-determined portions of the estate. If there are no ascendants or descendants, may inherit, with their entitlement discrete by their closeness to the deceased. This heir system in Islam ensures equal distribution of property. Any remaining assets are distributed to a designated residuary if no heirs within the given categories are found<sup>4</sup>.

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<sup>2</sup> Razak Uz Jama, 'Muslim Law Of Inheritance' (District E-courts, 05 January 2019) <<https://districts.ecourts.gov.in/sites/default/files/Muslim%20law%20of%20in%20Heritance-By%20Razak%20%28dated%205-1-2019%29.pdf>> accessed 4 June 2024

<sup>3</sup> *Book of Pertaining to Rules of Inheritance (Kitab Al-Faraid)* (Al-Khawarizmi Software Development and Services 2010)

<sup>4</sup> *Ibid*

## PROCEDURES AND RULES UNDER ISLAMIC LAW OF INHERITANCE

**Sharers:** The family members who possess the power to inherit the estate of a deceased person and all his leftovers are termed sharers. As per Muslim Inheritance law, 12 sharers are mentioned that includes Husband, Wife, Daughter, Daughter of a son (or son's son or son's son and so on), Father, Paternal Grandfather, Mother, Grandmother on the male line, Full Sister, Consanguine sister, Uterine sister, and Uterine brother.

*The shares that all will get will vary as per conditions.*

- If A demised son has children, then the mother of them will acquire 1/3 of the property and if the person does not have any children, then she will acquire 1/6 of the property.
- If a deceased daughter has children, then the father will acquire 1/6 of the share if not having kids, then 1/3 of the property.
- If a deceased brother has no parents and children, his sister can inherit 1/2 of his estate; if there are other heirs, she inherits 1/6.
- Demise of paternal grandfather if the grandson has no parents, the grandfather will inherit 1/6 of the estate.
- Demise of maternal grandmother if the granddaughter has no parents, the grandmother will inherit 1/6 of the share.

*In Abdul Matin v Abdul Azeez*<sup>5</sup>, it was decided that if two sisters inherited the property of their father, and one of them died leaving a son and the other died after some time and survived by her husband then the property left behind would go to the husband, and the son also as a uterine heir. The term 'uterine heir' refers to an individual who inherits property from a maternal relative, specifically a sibling who shares the same mother but not necessarily the same father. In legal and historical contexts, a uterine heir is distinguished from other types of heirs based on maternal lineage.

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<sup>5</sup> *Abdul Matin and Ors v Abdul Aziz and Ors* (1989) 1 GAU LR 479

*In Rukmini Bai v Bismilla Bia*<sup>6</sup>, if a man passes away and leaves behind his property, and has a daughter, the daughter is entitled to receive the residuary as well as the deceased property.

*In Ali Saheb v Hazara*<sup>7</sup>, the concept of return in ancient times did not apply to the spouse. The concept of 'return' in inheritance law refers to the principle that property should ideally revert to the original family or bloodline from which it originated, especially if there are no direct descendants or specific heirs designated. This concept aims to keep property within the family lineage, maintaining continuity and honouring familial ties. But later it was said that in India the spouse is entitled to the entire estate if there is only one survivor.

*In Syed Shah Muhammad Kazim v Syed Abi Saghir and Ors*<sup>8</sup>, the heir is obliged to pay all debts regarding the property he inherited, before using any part of it.

*In Mahomedally Tyebally v Safiabai*<sup>9</sup>, the council governing this case held that the remained estate of the demised person through upholding the validity of the agreement permitted the members of the fa family to inherit the estate.

### **Birthright:**

*In Alima Bee v District Collector*<sup>10</sup>, It was held that the heir from the Muslim family did not have the birthright to inherit the property of the ancestor.

Muslim law recognizes property inheritance only after demise. Therefore, any Muslim is not having a birthright. An heir who outlives an ancestor is considered a legal successor and hence has a right to inheritance. But if the apparent heir dies before the ancestor, there will be no such right of succession or title over the property<sup>11</sup>.

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<sup>6</sup> *Rukmini Bai v Bismilla Bia* (1993) 1 MP LJ 338

<sup>7</sup> *Ali Saheb v Hazara Begaum* (1968) 2 MYS LJ 14

<sup>8</sup> *Syed Shah Muhammad Kazim v Syed Abi Saghir and Ors* (1932) SCC OnLine Pat 97

<sup>9</sup> *Mahomedally Tyebally v Safiabai* (1941) 43 BOMLR 388

<sup>10</sup> *Alima Bee v District Collector* (2019) SCC OnLine Mad 14373

<sup>11</sup> Yusuf Shahab, 'Basic Rules Of Inheritance Law In Muslim Law' (*Legal Service India*)

<<https://www.legalserviceindia.com/legal/article-13618-basic-rules-of-inheritance-law-in-muslim-law.html>>

accessed 06 June 2024

**Non-Testamentary and Testamentary succession under Muslim law:** The Shariat Application Act<sup>12</sup> affects Non-testamentary Succession. When a person dies one who had made the testament the death, then the Shariat law governs the property as the provisions including both Shia and Sunni<sup>13</sup> non-testamentary succession, or intestate succession, occurs when a person dies without a valid will. In this case, the estate is distributed according to statutory intestacy laws, which prioritize close family members like spouses, children, and parents. Testamentary succession, on the other hand, happens when a person dies with a valid will, outlining their wishes for property distribution and appointing executors. This process involves probate to validate the will. The main differences are that non-testamentary succession follows strict legal rules and is less flexible, while testamentary succession allows for personalized asset distribution according to the deceased's wishes. Understanding these differences is important for effective estate planning.

**Rights of Females:** Muslims do not make a difference between the rights of males and females. When an ancestor dies, either sex is entitled to inherit immovable property as a legal heir. On the other hand, it is usually found that the share of female heirs in such cases would be  $\frac{1}{2}$  of that of male heirs. All such occurs because, under Muslim law, any married woman will get mehr while only males have their ancestors' estate. In addition, males are under obligation to maintain their wives and children<sup>14</sup>. *In the case of Sahara Kalyan Samiti v Union of India*<sup>15</sup>, PIL was filed to amend the personal law of Muslims on Inheritance stating that women are being discriminated against on issues regarding the sharing of property, which ultimately sought equal inheritance rights for Muslim women. Traditionally, Islamic inheritance laws allocated unequal shares to women compared to men: daughters received half the share of sons, widows were entitled to one-eighth or one-fourth of their husband's estate depending on circumstances, mothers received lesser shares than fathers, and sisters received half the share of brothers. The PIL sought amendments to these laws to ensure equal inheritance rights for Muslim women. The reforms aimed to grant daughters equal shares as sons, provide widows with fair and equitable shares comparable to other heirs, equalize inheritance shares for mothers with fathers, and grant sisters

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<sup>12</sup> The Shariat Application Act 1937

<sup>13</sup> *Ibid*

<sup>14</sup> *Ibid*

<sup>15</sup> *Sahara Kalyan Samiti v Union of India* (2019) 167 DLT 368

the same shares as brothers. This legal challenge underscored the broader societal push for gender equality within personal laws, prompting discussions on reforming inheritance practices to align with principles of justice and non-discrimination.

**Distribution of the property:** There are two ways through which property distribution can be made under Muslim law – per capita or stripe distribution methods. Hence, the quantum will depend on how many persons are online claiming for it. The per-strip distribution method is identified in Shia law (Ja'afari). Under this method of property inheritance, properties are distributed among the claimants according to the stripe they belong to. Consequently, the part relies on people belonging thereto<sup>16</sup>.

**Per capita and stripe distribution are methods used in inheritance law to determine how an estate is divided among heirs. Here's a description of each method:**

**Per Capita Distribution:** 'Per capita distribution', which means 'by head' in Latin, divides an estate equally among all living descendants, regardless of their generation. Each individual receives an equal share of the estate.

**Key Points:**

- **Equal Distribution:** The estate is divided equally among all living beneficiaries.
- **No Generation Preference:** There is no preference given to descendants of an older generation over those of a younger generation.
- **Simple Application:** It simplifies the distribution process by ensuring an equal division among all heirs.

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<sup>16</sup> Chikirsha Mohanty, 'Inheritance Under Muslim Law' (*Law Rato*, 12 May 2024)  
<<https://lawrato.com/indian-kanoon/muslim-law-law/inheritance-under-muslim-law-599>>  
accessed 06 June 2024



**Example:** Suppose a person dies leaving an estate to be divided among their three children. Under per capita distribution, each child would receive one-third of the estate, regardless of whether they have children (the deceased person's grandchildren).

### **Stripe Distribution:**

**Definition:** ‘Stripe distribution’, also known as per stirpes (meaning ‘by branch’ in Latin), divides an estate among the branches of a family according to their respective shares. Each branch (line of descendants) inherits equally, and if a member of a branch has deceased, their share is divided equally among their own descendants.

### **Key Points:**

- **Family Branches:** The estate is distributed among branches of the family, not just individuals.
- **Equal Branch Shares:** Each branch receives an equal share, regardless of the number of individuals within that branch.
- **Representation:** If a member of a branch has died, their share is passed down to their descendants in equal parts.

**Example:** Let's say a person dies leaving their estate to be divided among their three children, but one child has predeceased them, leaving behind two grandchildren. Under stripe distribution, the estate would be divided into equal parts—one part for each child (living or deceased) and then divided equally among each deceased child's children (grandchildren).

### **Comparison between the two -**

- **Per Capita:** Ensures equal distribution among all living beneficiaries, regardless of their generational representation.
- **Stripe Distribution:** Distributes shares according to family branches, ensuring representation for descendants of deceased beneficiaries.

Both methods aim to provide fair distribution of assets among family members while addressing situations where some heirs may have predeceased the deceased person. The choice between per capita and stripe distribution often depends on family dynamics, the number of beneficiaries, and the deceased person's preferences or applicable legal provisions.

**Escheat:** If a Person dies and has no heir, his property will go directly to the government.

**A Child in the Womb:** In this case, a foetus is considered capable of inheriting property but only after it is born alive. At any stage of its life in the womb, it is viewed as a living being with all rights and obligations coming along. If such a foetus fails to be born alive, then what had been vested in it will be nullified hence it would be deemed that there was never an unborn heir at all<sup>17</sup>.

According to Islam, women are not removed from inheriting. A widow with no children receives a quarter of their deceased husband's property after expenses and debts are paid. A widow with children or grandchildren receives a 1/8 of her husband's property. A person who marries while he is ill and consequently dies without recovering, then she as a widow has no inheritance rights. But, if a man divorces his wife and then succumbs to the illness, the widow's inheritance rights remain until she remarries<sup>18</sup>.

**Marriage under the Special Marriage Act 1954:** When a Muslim gets married as per the Special Marriage Act, of 1954<sup>19</sup>, his property would not be inherited under the Muslim Inheritance Law as it is considered that he ceases to be Muslim. Rather his property would be dealt with under the Indian Succession Act, 1925<sup>20</sup>. The Muslim inheritance law is not enforceable here in such cases<sup>21</sup>.

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<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> Special Marriage Act 1954

<sup>20</sup> Indian Succession Act 1925

<sup>21</sup> *Ibid*

## COMPETENCY UNDER MUSLIM INHERITANCE LAW

All the heirs dealing with Inheritance should comply with the fundamental requirements of the Muslim Inheritance Law as stated above:

- a) The expenses of the deceased are to be taken care of at the time of the Funeral.
- b) If the demised person is having Debt, it should be paid off.
- c) Bequests, made by the deceased are to be enforced.

The leftover portion of the estate is allocated to the legal heirs after all the liabilities stated above are fulfilled. In proto-Islamic Arabia, a man had an advantage and immense power of disposing of his estate by will. Islam gradually reformed the system made changes by implementing new rules for the administration and allocation of property<sup>22</sup>.

### *Qualifications required by a Muslim to be subject to make a will:*

**In regards to a non-existing and to-be heir a will cannot be made:** In inheritance law, the rule against perpetuities dictates that a will cannot create property interests that will vest more than a specified period after the death of a person who was alive when the interest was created. This rule aims to prevent property from being tied up indefinitely. Specifically, it invalidates provisions in wills that depend on the existence of heirs who are not yet born or are non-existent at the time of the will's creation, ensuring that property interests are determinable within a reasonable timeframe for efficient administration and legal certainty. Compliance with this rule is essential when drafting wills to avoid potential challenges to the validity of property distributions.

**Exceeding 1/3 of the property is not allowed:** The consent of future heirs becomes compulsory when the above requirements do not comply. Shias follow a bit-altered rule, an individual can make a will for his heir for its benefit if it does not cross the 1/3 of the property allotment. This

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<sup>22</sup> Gurneet Singh Budhiraja, 'Inheritance under Shia Law: Principles and its Analysis' (2022) 2(1) Indian Journal of Integrated Research in Law <<https://ijirl.com/wp-content/uploads/2022/01/INHERITANCE-UNDER-SHIA-LAW-PRINCIPLES-AND-ITS-ANALYSIS.pdf>> accessed 07 June 2024

bequest is allowed and valid even without the existence of the other heirs, but if it exceeds 1/3, it is invalid provided all heirs' consent. And the consent should be given before or immediately after the death of the testator. But as per the Sunni law, validation must always happen after death; acceptance before death has no effect at all.

**Competence to Inherit:** Heirs are entitled to inheritance, and Blood and marriage relationships have an impact on distribution. The beneficiaries are required to prove the succession, and there should be no obstacles to inheritance based on a close connection, like giving preference to the existing heir.

## RULE OF EXCLUSION

There are two types of exclusions:

1. Perfect or Absolute Exclusion and;
2. Imperfect or Partial Exclusion.

**1. Perfect or Absolute Exclusion:** One of these two types is not excluded at all, but the other inherits under certain situations but is excluded under others. In inheritance law, certain heirs have guaranteed rights to inherit under all circumstances. These include the mother, widow, father, son, widower, and daughter – they are never excluded from inheriting. However, other heirs, like siblings, can inherit under specific conditions but may lose their inheritance rights in certain situations. For example, if there is a surviving son or father, they can prevent a sibling from inheriting. But if there is no son or father, the sibling may then be eligible to inherit. This distinction ensures that inheritance laws are applied fairly and take into account various familial relationships and conditions. If the demised person did not leave a son or father, only the brother can inherit<sup>23</sup>.

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<sup>23</sup> Prof. Muhammad Zubair et. al., 'The Laws of Inheritance in Islam' (2014) 4(8) Journal of Basic and Applied Scientific Research <<https://iirc.org.in/wp-content/uploads/2023/05/The-Laws-of-Inheritance-in-Islam.pdf>> accessed 07 June 2024

## Illustrations

- 'A' died, leaving back his daughter, father, brother, and widow, The brother cannot inherit as the father excludes the brother.
- 'A' died leaving behind a daughter, widow, and brother. Brother, daughter, and widow are all entitled to inherit.
- 'A' dies, leaving a widow, son, and brother. A brother cannot inherit. The son excludes his brother.

The concept behind this rule is that the closer removes the more distant. The perfect exclusion also applies in cases when despite being connected to the deceased and otherwise eligible to inherit, there is a legal institution that prevents him from inheriting his share of the property. Religious disagreements, violence, illegitimacy, and slavery are among instances.

**Imperfect or Partial Exclusion:** Imperfect or partial exclusion refers to being barred from one share but admitted to another. If a daughter gives birth to a son, she may be disqualified as a Quranic teaching practice, removed from heirs, and considered a residuary<sup>24</sup>.

## Illustration

- 'A' dies, leaving behind his widow, son, father, and daughter. The widow and father shall receive their proportionate portions as Quranic heirs. The daughter, being a Quranic heir, would be eliminated as a Quranic heir relying on the presence of a son and admitted as an Agnatic heir.
- 'A' died, leaving behind his mother, widow, brother, and sister. As Quranic heirs, the mother and widow will receive proportionate amounts. The sister, who is a Quranic heir, will be disqualified as an heir due to the brother's coexistence and considered an agnatic heir.

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<sup>24</sup> *Ibid*

**Religious Diversity:** According to Islamic law, a non-Muslim cannot inherit from a Muslim. A born Muslim who becomes a dissenter cannot inherit. 'dissenter' refers to someone who was born Muslim but has renounced or abandoned Islam. Traditionally, according to Islamic principles, dissenters were disqualified from inheriting from Muslim relatives due to their change in religious status. In India, the Caste Disabilities Removal Act of 1850<sup>25</sup> abolished this prohibition, and the dissenter has no bearing on the right to inheritance. This legal reform aimed to ensure equal inheritance rights without discrimination based on religious beliefs, marking a significant change in Indian inheritance law.

**Homicide:** Hanafi Law states that an applicant who causes the death of someone, which can be done intentionally or unintentionally, is ineligible to inherit from the deceased. Homicide forbids the murderer from inheriting any of the killer's property, regardless of their relationship. Shia Law only prohibits inheritance for wilful murder<sup>26</sup>.

**Females as Heirs:** Women were not allowed to inherit in pre-Islamic Arabia because they were seen as second-class citizens for not participating in fighting. Islam recognizes their right to inherit, and Islamic law states that people inherit in many capacities. She gains the titles of mother, widow, daughter, sister, granddaughter, grandmother, aunt, and female collaterals<sup>27</sup>.

**Principal Classes:** Several family members of the dead are entitled to inherit. The main categories are Quranic heirs (sharers), Agnatic heirs (residuary), and Uterine heirs (distant kindred).

**Quranic Heirs (Sharers):** Class I are Quranic heirs and are 12 in number. They are sometimes referred to as sharers. The Qur'an has determined its shares. They take their shares in a particular manner of preference. Quranic heirs include- the widow, father's father, widower, father, mother, grandmother (mother's mother and father's mother), daughter, son's daughter, full

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<sup>25</sup> Caste disabilities Removal Act 1850

<sup>26</sup> Muhd Farhan, 'All Murderers Can Not Inherit' (*Mufti of Federal Territory's Office*, 17 March 2020) <<https://muftiwp.gov.my/en/artikel/al-kafi-li-al-fatawi/4333-al-kafi-1664-all-murderers-cannot-inherit>> accessed 08 June 2024

<sup>27</sup> Kazi Arshadul Hoque et. al., 'Inheritance rights of women in Islamic law: An assessment' (2013) 2 *International Journal of Islamic Thoughts* <[https://www.researchgate.net/publication/335395805\\_Inheritance\\_rights\\_of\\_women\\_in\\_Islamic\\_law\\_An\\_assessment](https://www.researchgate.net/publication/335395805_Inheritance_rights_of_women_in_Islamic_law_An_assessment)> accessed 09 June 2024

sister, consanguine sister, uterine brother, and uterine sister. The five Quranic heirs are invariably the recipients of inheritance. They consist of a father, widow, widower, mother, and daughter. Others may or may not inherit, depending on the presence or absence of key heirs, most notably father and son<sup>28</sup>.

### **Agnatic Heirs (Residuary) -**

**Agnatic heirs are classified as Class II heirs and are divided into three groups based on their relationship:**

- 1) Asserts their rights.
- 2) Infringes on others' rights.
- 3) Relates to another

### **Uterine Heir's (Distant kindred) -**

**The third significant category comprises uterine heirs or distant relatives. There are four categories of distant kindred:**

- 1) Deceased's descendants;
- 2) Ascendants;
- 3) Parents' descendants.
- 4) The grandchildren of his maternal and paternal grandparents.

**Subsidiary Heirs:** If the above-mentioned heirs do not exist, then the deceased's estate will be split among the subsidiary heirs, with each class excluding the next.

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<sup>28</sup> Naivedhya Kumar, 'Succession Of Sharer And Residuary Under Muslim Succession Law' (*Legal Service India E-Journal*) <<https://www.legalserviceindia.com/legal/article-9219-succession-of-sharer-and-residuary-under-muslim-succession-law.html>> accessed 10 June 2024

In *Mohd Afzal v Abdul Rahman AIR 1932 PC 235*<sup>29</sup>, it was decided that where one of two or more co-sharers mortgages his undivided share in some of the properties held jointly, the mortgagee takes the security subject to the right of the other co-sharers to enforce a partition, if the mortgage is followed by partition, and the mortgaged properties are allotted to a co-sharer or co-sharers other than the mortgagor.

## COMPARATIVE ANALYSIS BETWEEN SHIA AND SUNNI LAW OF INHERITANCE

### *Scheme of inheritance*

The Inheritance law of Shia is comparatively easier than the Sunni law.

The bifurcation is based on Class I, II, and III Heirs.

a) Class I gives for fixed fractional shares relying upon the Quranic teachings, similar to Sunni Law, with the leftover, regulation or situation applicable to Class II.

b) In Class III, predetermined and decided shares among heirs, therefore the property is administered according to the regulations, after class I and II the property would be allocated to the Class III heirs.

### *Class I:(Quranic Teachings)*

**Heirs are allotted property as per the Quranic teachings:**

- Mother - 1/6th or 1/3rd.
- Child and decedent at lower-level absence, the father receives a 1/6 share, 2/3 or 5/6
- In the absence of sons, daughters get a set of portions of 1/2 for single applicants and 2/3 for multiple applicants.

Remarkably, in the Sunni law, the son's daughters, and grandchildren are not included in this class.

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<sup>29</sup> *Mohd Afzal v Abdul Rahman* (1933) 35 BOM LR 1



***Class II: (Residuaries)***

In this Classification, the above-mentioned relatives can only acquire the property:

- In the absence of such brother the full or half-blood sisters- their fixed portions are half for a single applicant and 2/3rd for two or more applicants;
- Brothers and sisters connected through uterine- 1/6 for single and 1/4 for two and more.

Unlike in Sunni law, grandparents are not allowed to take set portions and cannot inherit with their siblings.

***Class III: (Distant)***

When uncles and aunts inherit together, the property is first bifurcated into two parts: 2/3 to the paternal side and 1/3 to the maternal side. The paternal side is then divided further, with males acquiring double shares and females acquiring equal shares. The maternal side is divided equally among all heirs. If only paternal or maternal uncles and aunts inherit, they receive the entire property, divided according to the same rules.

The inheritance laws of Sunni and Shia Muslims, based on holy Quranic guidance, differ significantly. While Sunni scholars consider this guidance as an alteration to pre-Islamic traditions, Shia scholars view them as a complete replacement, repudiating all former practices. There are cases when the Shia and Sunni laws contradict each other and directly oppose each other<sup>30</sup>.

*In Newannes v Shaikh Mohamad*,<sup>31</sup> It was observed that the SC said 'equal respective shares' of widow and daughter are being mentioned in the list of Class II heirs.

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<sup>30</sup> Shah Ahmad Cheema, 'Shia and Sunni Laws of Inheritance: A Comparative Analysis' (2012) 10 Pakistan Journal of Islamic Research <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2388741](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2388741)> accessed 11 June 2024

<sup>31</sup> *Newannes Alias Mewajannessa v Shaikh Mohamad Alias & ors* (1995) 21 MARRI LJ 238

*In Jahandarunnissa Begum v Mohd. Moinuddin and Ors*,<sup>32</sup> Muslim Law strictly prohibits customs that contradict its fundamental principles. The deep connection between religion and law in Islam means that altering or modifying Quranic law is generally forbidden.

- If a woman is survived by her (a) mother, (b) daughter, and (c) brother. They had the right to take 1/6, 3/6, and 2/6 of the property by the Sunni law - 1/4, 1/3, and no inheritance by the Shia law.
- If a man is survived by his (a) widow, (b) paternal uncle, and (c) brother's daughter. They had the right to take 1/4 and 3/4 of the property and no inheritance by the Sunni law - 1/4, nil, and 3/4 by the Shia law.
- If a man is survived by his (a) paternal grandmother, (b) full brother, and (c) daughter's son. They had the right to take 1/6, 5/6, and nothing by the Sunni law - the daughter's son takes the entire by the Shia law.
- If a woman is survived by her (a) husband, (b) two daughters, and (c) full sister. They had the right to take 3/12, 8/12, and 1/12 by the Sunni law - 1/4 and 3/4 and nothing by the Shia law.
- A man is survived by (a) two sons of one predeceased son and (b) one 16 sons of another such son. The transfer is 1/3 each by the Sunni law - 1/4, 1/4, and 1/2 by the Shia law.
- A woman is survived by her (a) husband (b) mother and (c) father. The entire property is taken as 3/6, 1/6, and 2/6 by the Sunni law - 3/6, 2/6, and 1/6 by the Shia law.
- A man is survived by her (a) mother, (b) father, and (c) father. The property then is taken as 1/3, 2/3, and nothing by the Sunni law - 1/6, 1/6, and 4/6 by the Shia law.

Shia and Sunni inheritance laws, both grounded in Islamic principles, exhibit notable differences in their approach to distributing an estate. Sunni law, adhering strictly to the fixed shares outlined in the Quran, includes a broader range of heirs. This system ensures that even distant relatives, such as cousins or uncles, can inherit if closer relatives are not present. Sunni law also emphasizes the principle of agnatic succession, prioritizing male relatives.

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<sup>32</sup> *Jahandarunnissa Begum v Mohd. Moinuddin and Ors* (1951) SCC OnLine Hyd 24

In contrast, Shia inheritance law prioritizes immediate family members and closer relatives, often excluding more distant kin. This approach tends to keep the inheritance within the nuclear family. Shia law also differs in its treatment of grandparents and siblings, giving precedence to immediate family members like children and parents over more distant relatives. Additionally, Shia law has specific provisions for the inheritance rights of grandparents, siblings, and descendants, which may differ from those in Sunni law.

These distinctions reflect the diverse interpretations and applications of Islamic inheritance principles within the two major sects, illustrating how cultural and theological differences influence legal practices.

#### **RAMIFICATION INTRODUCED BY ISLAM:**

- Spouses became each other's inheritors.
- Women and relatives on both sides of the family could now inherit.
- Parents and ancestors could inherit, regardless of whether there were male descendants.
- Women generally received half the inheritance of their male counterparts.

The changes introduced by Islamic inheritance laws brought significant improvements in terms of fairness and inclusivity. By making spouses each other's inheritors and allowing women and relatives on both sides of the family to inherit, these laws fostered a more equitable distribution of wealth. This inclusivity extended to parents and ancestors, who could inherit even if there were male descendants, ensuring that all family members had a stake in the deceased's estate. The stipulation that women generally received half the inheritance of their male counterparts, while reflective of the socio-economic context of the time, nonetheless marked a substantial step towards recognizing women's rights to property. These reforms benefited widows, daughters, and female relatives who previously might have been excluded entirely. They also supported elderly parents and ancestors, providing them with financial security. In my opinion, while the half-share rule for women may seem inequitable by modern standards, the overall framework represented a progressive leap for its time, embedding principles of responsibility and care within family structures and laying a foundation for further advancements in gender equality and inheritance rights.

## DOCTRINE OF TASIB

Tasib, a philosophy rooted in Islamic law, has undergone many changes. Emerging in early Islam from Quranic interpretations and the Prophet's teachings, Tasib has been refined and applied by scholars like Imam Abu Hanifa and Imam Shafi'i. Islamic teachings have guided legal formulations, establishing rules for managing natural resources in various sectors, including agriculture and trade. Tasib has also influenced Islamic finance, shaping profit-sharing systems and investment agreements. Nowadays, Tasib remains valid, with the inspiring description of its application in contemporary financial contexts while uplifting Islamic principles.

## PRINCIPLE GOVERNING THE DOCTRINE

There are various Doctrine Under Islamic Inheritance Law one of which is the *Doctrine of Tasib*. In Islamic inheritance law, the Tasib rule governs the distribution of a deceased person's (called the propositus) estate among their children, As compared to a daughter son can inherit twice, meaning receives two parts of the remaining assets while daughters inherit one part. This rule gives the preference for male heirs. If a son opts to tend to his sister as a residuary heir, she inherits under the category of 'residuary by another,' which prioritizes male heirs. Preferably, the thesis is not bound to the propositus's children but can also apply to other relatives. Specific female relatives with designated inheritance rights under the Quran, such as the wife, grandmother, and full sister, are not subject to the concept of 'tasib'. This legal framework reflects the priority given to male relatives as inheritors. When it comes to children and inheritance, tasib can be seen in the following scenario: If a parent passes away, leaving behind both sons and daughters, the inheritance is bifurcated according to the mentioned rules, with sons receiving a larger share than daughters.

- Husband-  $1/4$  (Quranic portion)
- Father -  $1/6$  (Quranic portion)
- Mother -  $1/6$  (Quranic portion)
- Two sons -  $4/5$  of  $5/12 = 4/12$  (Residuary)
- Daughter -  $1/5$  of  $5/12 = 1/12$  (Residuary)

- Daughter(S) has been provided by the Quran quite a handsome share (1/2 OR 2/3) in the property left by the deceased parents (F and M)

*Effects of Tasib*

The principle of tasib always adversely the daughter and full sister(s) of the propositus. But it may help the other two females namely granddaughter and consanguine sister(s) in certain circumstances, though generally they are adversely affected. The effects on them may be discussed separately.

Agnatic Granddaughters- These granddaughters are secondary heirs so sometimes they inherit and sometimes they are excluded, depending on the presence of other heirs. The principle of tasib adversely affects their rights and entitlement when it takes place where she can inherit as a quranic heir but tasib may benefit her when she is removed, as a quranic heir, entitled to take her fixed share in her original capacity as a class I member.

Full sister- the case of sister full is similar to that of a daughter. She never benefits from the presence of the brother full (bF) because she stands converted on the principle of *tasib*, and shares the residue with BF which she would have taken alone in the absence of Bf. She can never be provided an opportunity to inherit by Tasib where she is already excluded as a quranic heir because the factors which exclude her also exclude Bf himself so he cannot help her.

For instance,

1 .H=1/2

1. H=1/2

Sf=1/6

Sf=1/2 HER QURANIC SHARE

Residue 1/2 is

divided in a 1:2 ratio

Bf = 2/6

In this scenario, after distributing the Quranic shares, the remaining estate (5/12) is the minimum portion that the sons and daughters will inherit as a collective unit.

In Islamic inheritance, *tasib* is how property is divided when there are no direct heirs (like sons or grandsons). It includes giving inheritance to specified relatives, such as daughters, sisters, or paternal uncles. Under Sunni law, if the person who died had at least two daughters but no sons, or if they had no children but one or more sisters and a paternal uncle, the uncle would be considered an heir along with the daughters. In such a case, the uncle will receive 1/2 of the inheritance if there's only one daughter and a third if there are two or more daughters. Like sisters, the paternal uncle is also seen as an heir, with his portion decided by Sunni legal principles. The difference between Sunni and Shia legal stems from a tradition attributed to Tawus. Sunnis follow this tradition, but Shias reject it. This variation in interpretations affects inheritance distribution in these legal systems, highlighting the differing views on Islamic legal sources or tradition<sup>33</sup>.

## UNDERSTANDING OF DOCTRINE OF TASIB IN THE ISLAMIC INSTITUTION

The institution of *Muhtasib* and the broader aspect of *hisba* are linked to the Islamic doctrine of '*amr bil maruf wa nahi anil munkar*', which signifies '*enjoying what is right and forbidding what is wrong*'. This concept is based on Quranic verses and hadith, encompassing the liability and responsibility of Muslims to encourage good and stand against evil. This ideology of *Tasib* reflects a broader obligation amongst the Islamic culture to embrace societal welfare and moral values as the basic principle of Islam focuses on the promotion of justice, equity, and righteousness among all. The procedure of *Muhtasib* relates to *Tasib*'s targeting to highly foster social welfare, and harmony, eliminate violence, and maintain ethical behavior. The theory of *tasib* emphasizes the Islamic obligation to maintain and provide pragmatic manifestations of this doctrine through the enforcement of rules and regulations and looking into public affairs.

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<sup>33</sup> Muhammad Jawad Mughniyya, 'Inheritance According To The Five Schools Of Islamic Law' (*Al-Islam.org*) <<https://www.al-islam.org/inheritance-according-five-schools-islamic-law-muhammad-jawad-mughniyya/al-taib>> accessed 10 June 2024

They reflect the Islamic dedication to inculcating a just and ethical community based on the principle of *amr bil maruf wa nahi anil munkar*<sup>34</sup>.

Muslim Countries like Iraq, Turkey, Indonesia, and Bangladesh, have enhanced Islamic inheritance laws to provide daughters more power and rights regarding inheritance rights. The *Iraq* law was modified in 1963 and gave more powers to descendants which includes children and grandchildren over distant relatives. This modification first impacted the Shia people as they formed the basis of the revised law. But, the traditional principle of Hanafi can be applied to the conditions not covered by Shia law.

The different interpretations and thoughts of inheritance law enforce varying outcomes, especially for the people who inherit directly from the demised person. Descendants are given more priorities as compared to the distant family according to the Shia Family, while Hanafi follows different inheritances to administer the distribution of property giving more validation to male heirs. This variation leads to gender inequality and highlights the difficulty in maintaining the legal aspects of inheritance law compared with contemporary expectations of tranquillity and fairness.

Despite being a secular nation in *Bangladesh*, Muslim personal laws ruled the Islamic majority, taking into account various aspects like divorce, Inheritance, and marriage. Under the Sunni Hanafi interpretation of Islamic law, women mostly face discriminative inheritance rights compared to male heirs, getting a lesser share. These disparities in the distribution of property remain a significant issue and reflect Bangladesh's dedication to the traditional Islamic concept<sup>35</sup>. Although the country has a secular status, there are no ramifications to the traditional Inheritance laws to protect and safeguard the daughter's rights, leading to the disadvantaged women's position when it comes to inheriting property.

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<sup>34</sup> Jonathan P. Berkey, 'The Muhtasibs of Cairo under the Mamluks: Toward an Understanding of an Islamic Institution' in Michael Winter and Amalia Levanoni (eds), *The Mamluks in Egyptian and Syrian Politics and Society* (vol 51, Brill 2004)

<sup>35</sup> Sorowar Ziami and Md. Nayem Alimul Hyder, 'The status of daughter in Muslim law of succession: Bangladesh Perspective' (2018) 3(2) BiLd Law Journal  
<[https://www.academia.edu/40470197/BiLD\\_Law\\_Journal\\_3\\_2](https://www.academia.edu/40470197/BiLD_Law_Journal_3_2)> accessed 13 June 2024

Turkey has been through a drastic alteration in 1926 in the inheritance laws, with the Turkish civil code. Formerly to this, the Islamic inheritance law shows the discriminative partition of property for females and males. The adoption of the new code reflected an interstate and enhanced succession system after the Swiss civil code. The system ensures equal treatment for both men and women. Restricting the previous Islamic culture of providing males with a double share of the inheritance<sup>36</sup>.

In *Indonesia*, there is a prominent ruling by the Supreme Court again and again interpreting the Quranic verses regarding Inheritance. The Arabic phrase '*Al-Khalala*' specified by the court involves both male and female children, contrary to traditional Muslim interpretations that only favour males. This discretion gave both the male and female children equal inherit rights and shares in the property excluding the parents and spouses. With all such indulgence by the court, they wanted to ensure gender equality and foster a just inheritance in the Islamic community in *Indonesia*<sup>37</sup>.

The way fairness in Islamic inheritance law is looked at and interpreted and applied in the different cultural aspects of Women's power to Inherit. It has been already clarified by the Islamic institution how the property would be allocated or inherited after death, where it is evident that women receive fewer shares than men<sup>38</sup>. This kind of discrimination is mostly seen in concepts like *Tasib*, which allocates double shares to male heirs. reflecting old traditional aspects of inheritance and gender biases. Various factors formed the fairness in women's treatment, including different understandings of religious teachings, societal norms and beliefs, legal reformation, and cultural ideas about gender equality<sup>39</sup>.

*In recent years, there has been an increasing struggle for women's rights in Islamic Inheritance Law, which aimed and resulted in the discretion and reforms aimed at fostering more equal treatment to all in*

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<sup>36</sup> *Ibid*

<sup>37</sup> *Ibid*

<sup>38</sup> Ahmad Ali, 'Do Women Receive Fair Treatment under the Islamic Law of Inheritance?' (1994) 13(22) *Journal of Law and Society* (University of Peshawar) <[https://heinonline.org/HOL/Page?handle=hein.journals/jlsup13&div=10&g\\_sent=1&casa\\_token=&collection=journals](https://heinonline.org/HOL/Page?handle=hein.journals/jlsup13&div=10&g_sent=1&casa_token=&collection=journals)> accessed 13 June 2024

<sup>39</sup> Sartaj Ahmad Bhat, 'Status and Rights of Women in Islam' (2023) 12 5(4) *International Journal of Multidisciplinary Educational Research* <<http://dx.doi.org/10.2023/ijmer>> accessed 14 June 2024



*the distribution legacy.* All such efforts held to the convoluted convergence negotiations of sacramental teachings, cultural importance, and legal interpretation to ensure that women are treated justifiably in case of inheritance or not.

### **CALCULATION UNDER DOCTRINE OF TASIB**

There are three types of *TASIB*:

1. Tasib through Self (Inheritance within Immediate Family) - Inherits to male heirs apart from the husband and brothers from the mother.
2. Tasib through Derivative of Another (Extended Inheritance) - Inherits to sons, grandsons, full brothers, and paternal brothers, who then extend inheritance rights to their sisters.
3. Tasib with Another (Shared Inheritance)- Inherits to full sisters and paternal sisters if they share the inheritance with daughters or granddaughters.

- Mother: Prescribed share of  $1/6$
- Daughter: Prescribed share of  $1/2$
- Full brother: Residuary heir, inheriting the remaining  $1/3$  of the estate.
- Father: Prescribed share of  $1/6$
- Wife: Prescribed share of  $1/8$
- Son: Residuary heir
- Daughter: Residuary heir

The calculations under this doctrine are convoluted but the laws governing the Islamic Inheritance Law meticulously observe the deserving heir and administer and allocate the property likewise.

## **CRITICISM AND CHALLENGES**

The concept of Tasib has received a lot of criticism. The most prominent was that of gender bias, favouring male heirs over women in estate disputes. The critics recommend that these types of practices and ideologies are very violative to society. Further, the difficulty and issues leading to inflexibility in the Doctrine may fail to sustain the changing nature of family and individual perspectives, in which the outcome was insufficient allowances for relying parties such as widows and orphans. The most effecting part is the interpretations of Islamic jurisprudence which impacts its principle, and the result is irregularities. India being a legal secular regime, the tendency of religious legislation like the Doctrine of Tasib to deal with constitutional validity, equality, and secularism is doubtful. Reformers are recommending to eliminate gender inequality and to give flexibility and assure proper justice regarding Inheritance. This criticism enlightens the need for more discretion and reformation to improve the religious values and principles with contemporary societal needs and legal values.

## **CONTEMPORARY APPLICATION AND FUTURE DIRECTION TO WEALTH ARRANGEMENTS**

Tasib as a significant component of Islamic finance, guides the various purposes. The Islamic banks through profit-sharing arrangements offer interest-free services and assets-backed loans. The investment products aim at shariah-complaint options, focussing on ethical as well as societal impacts. Investment products are financial instruments or assets that people buy with the expectation of generating income or profit over time. Examples include stocks, bonds, mutual funds, real estate, commodities like gold, and other assets traded in financial markets. Each type of investment product carries different risks and potential returns, allowing individuals and organizations to allocate their funds based on their financial goals and risk tolerance. To manage the fair distribution, the principle of tasib constructed wealth management measures, advocating transparency, and responsibility among the Muslims. Islamic finance is inclusive emphasizing both the shared risk and profit-sharing arrangements. The rules and regulations aim to adhere to Shariah principles, through governance and oversight practices in the Tasib. Tasib encourages Islamic finances toward equitable, ethical, and sustainable practices relating to Islamic teachings. In a short period, Tasib formed a banking and broad financial

industry. This was one of the strong directions toward the integration of Islamic Banking into international financial Institutions. As it is evident that the society and global pace demand ethical and sustainable finance, Islamic finance prioritizes fair Wealth distribution and shared risk, and can offer valuable insights and practices to highlight financial organizations ready to connect with those values. All the modifications and ramifications would help to understand what the economy and society can do to be innovative and would help in understanding the Doctrine of Tasib. As society is changing there is a growing need to be more insightful in promoting fairness and economic development for all and protecting the environment. *This can inspire the experts who are putting these ideologies into real-life practices and exploring how the Tasib principle can be made applicable to address current issues.*

## CONCLUSION

The Islamic Inheritance law acts as a shield to the very concept of diligent sanction and equality in the distribution of wealth among the heirs as followed by the governance of the Quran and Prophet Muhammad's guidance. The doctrine of Tasib has a deep and impactful contribution to inheritance as it has traditional emergence, that still ensures fair and equitable wealth allocation and distribution. This doctrine faced a lot of challenges and criticism as sometimes it becomes gender biased and inflexible but still it stands as a pillar to all the other inheritance doctrines. There are inequalities and disparities in the inheritance law as evident through the comparative analysis between the Shia and Sunni law, which reflected different perceptions of Interpretation. Although, there are loopholes efforts towards ramifications and modernization are encouraged aiming to address all the problems prevailing in society. The convoluted mathematical calculation under the doctrine of Tasib and Islamic law highlights the significance of Islamic provisions and adherence to the allocation of wealth. Ultimately, the approach followed throughout the research work shed light on the ongoing religious intersection discussion, and legal application. Societal requirements, focus on the importance of justice and equity in the inheritance of property and its practices under Islamic law.