An Introduction to the Science of Islamic Inheritance

1. Definition of the Shares of Inheritance (al-Farāʾiḍ)

Linguistic meaning

The word farḍ derives from the verb faraḍa (to prescribe or determine). It has several meanings, including cutting or allotting something, and what God has made obligatory upon His servants. It may also refer to a clearly defined limit or measure. The term farḍī refers to a person knowledgeable in the prescribed shares of inheritance. In the Prophetic report, "The most knowledgeable of them concerning the prescribed shares is Zayd ibn Thābit."

Al-farāʾiḍ is the plural of farīḍah, meaning something prescribed or determined. The term is used because inheritance law contains specified and quantified shares. The Qur'anic expression, "If you divorce them before you have touched them, but after you have appointed a dowry for them, then [give them] half of what you appointed" (Qur'an 2:237), means half of the dowry whose amount you determined and named.

Technical meaning

Farāʾiḍ is the name given to the branch of jurisprudence concerned with inheritance. It is the science by which one knows who is entitled to inherit, who is not entitled to inherit, and the amount due to each heir.

Subject matter: estates left by deceased persons.

Purpose: to give every person entitled to a right the portion due to them from the deceased's estate.

Its merit and importance

The science of inheritance is among the noblest and most important branches of knowledge. Numerous reports have been transmitted concerning it. Among them is the report attributed to Ibn Masʿūd that the Messenger of God (peace and blessings be upon him) said: "Learn knowledge and teach it to people; learn the prescribed shares and teach them to people; learn the Qur'an and teach it to people, for I am a person who will be taken away, and knowledge will be taken away, and tribulations will appear until two people disagree concerning an inheritance share and find no one to settle it between them."

Another report, transmitted from Abū Hurayrah, states that the Messenger of God (peace and blessings be upon him) said: "Learn the prescribed shares and teach them, for they are half of knowledge, and they will be forgotten; they are the first thing to be taken away from my community." It is said that inheritance constitutes half of knowledge because a person has two states: life and death. Matters such as prayer and zakāh relate to the state of life, while the division of estates and bequests relate to the state after death. Other explanations have also been offered.

The Companions of the Prophet (peace and blessings be upon him) frequently studied and discussed the science of inheritance together.

2. Definition of Inheritance (al-Mawārīth)

Linguistic meaning

Mawārīth is the plural of mīrāth, one of the verbal nouns of the verb wariṯa (to inherit). It is said, for example, "Aḥmad inherited from his father," meaning that he received his father's estate by inheritance. The word has two meanings:

a. Permanence and survival. One of the names of God is al-Wārith (the Inheritor), meaning the One who remains after His creation passes away. In the supplication, "O God, grant me the enjoyment of my hearing and my sight, and make them the inheritors of me," the meaning is: let them remain sound and healthy with me until I die.

b. The transfer of something from one group to another, either literally, as in the transfer of property, or figuratively, as in the transmission of knowledge. The Prophet's saying, "The scholars are the heirs of the prophets," is an example of the figurative sense. The term may also be used in a legal or presumptive sense, such as the transfer of property to a fetus. The deceased's property is called an inheritance because it passes to another by reason of kinship, a legally recognized cause, or marriage.

Technical meaning

Inheritance is a divisible right that passes to a person entitled to it after the death of the person who held it, on account of kinship, marriage, or clientage (walāʾ).

The word "right" includes property and other rights, such as the option to rescind a transaction, pre-emption, retaliation (qiṣāṣ), clientage, and guardianship. It may also include rights of a financial nature, such as copyright and intellectual-property rights in the modern era.

An example of the option to rescind: if Zayd purchases an item with an option period and dies before that period expires, the option passes to his heirs.

An example of pre-emption: if a house is jointly owned by Zayd and ʿAmr, and Zayd sells his share, the right of pre-emption belongs to ʿAmr. If ʿAmr dies before exercising that right, it passes to his heirs.

An example of retaliation: if Zayd kills Bakr, who is ʿAmr's brother, and ʿAmr dies before retaliation is carried out, the right passes to ʿAmr's heirs.

An example of clientage: if a person emancipates a slave, the bond of clientage is established between them. When the emancipator dies, the clientage passes to the emancipator's children.

An example of guardianship: if a woman has a brother who acts as her marriage guardian, and the brother dies, guardianship passes to his son.

The expression "capable of division" means that a right may be established in fractional portions—for example, one-half or one-sixth. This qualification excludes clientage and guardianship in marriage, since these pass at death to the person next entitled to them under the rules governing the order of agnatic heirs, even if that person is distant.

The expression "passes to a person entitled to it after the death of its holder" excludes rights that arise for their beneficiaries during the holder's lifetime, such as rights acquired through gifts or purchases.

The phrase “on account of kinship” excludes a bequest, which takes effect after the death of the person making it but does not arise on the basis of kinship.

3. Causes of Inheritance

There are three causes of inheritance agreed upon by the jurists: marriage, clientage (walāʾ), and kinship. A fourth cause—the public treasury (Bayt al-Māl)—is disputed. Clientage is no longer a practically existing cause, and therefore it is not discussed further in this summary.

First: Marriage

Marriage means a valid marital contract, whether or not it is followed by consummation or seclusion with the wife. By consensus, inheritance is established between the spouses in both directions. The general meaning of the Qur’anic verse, “And for you is half of what your wives leave, if they have no child” (Qur’an 4:12), establishes the husband’s right to inherit from his wife. The verse, “And for them is one-fourth of what you leave” (Qur’an 4:12), establishes the wife’s right to inherit from her husband.

This is also supported by the report that the Prophet (peace and blessings be upon him) awarded inheritance to Barwaʿ bint Wāshiq from her husband, who had died before consummating the marriage and before a dowry had been fixed for her.

The requirement of a marriage contract excludes intercourse under a mistaken presumption of legality, even if a child is attributed to the man, as well as fornication. The requirement that the contract be valid excludes a marriage unanimously considered invalid, such as a man’s marriage to a fifth wife; no inheritance arises from it, because its existence is treated as legally void.

As for a marriage whose invalidity is disputed, the Mālikīs treat it like a valid marriage for inheritance purposes if either spouse dies before the marriage is annulled, whether consummation has taken place or not. Examples include a marriage contracted without a guardian, a marriage by a person in a state of iḥrām for ḥajj or ʿumrah, and a shighār marriage; the latter is annulled without divorce.

Two cases are excluded from this rule: a marriage concluded during a terminal illness and a conditional or option-based marriage (nikāḥ al-khiyār). In the latter case, inheritance does not arise because the first arrangement is dissolved; in the former, the rule prevents the introduction of an heir. Thus, if a man contracts a marriage while suffering from the illness in which he dies, neither spouse inherits from the other.

Divorce and inheritance between spouses

If divorce takes place while the husband is in good health, the wife inherits from him subject to two conditions: the divorce must be revocable, and his death must occur during the waiting period (ʿiddah), since the marital bond remains in force throughout that period.

If divorce takes place during the illness leading to death, inheritance between the spouses is established absolutely, whether the divorce is revocable or irrevocable, and whether or not the wife’s waiting period has expired—even if she has remarried. This is an application of the rule that the husband is treated contrary to his intention. However, if the divorce was caused by the wife, for example by an act that made divorcing her necessary, she does not inherit from him.

Second: Lineage

Lineage is actual kinship arising from birth. It includes the deceased's ascendants, descendants, and the descendants of the deceased's ascendants, whether near or distant.

Third: The Public Treasury (Bayt al-Māl)

The public treasury is the institution in which the property of Muslims is kept under the control of the ruler or his deputy. According to the Mālikīs, it inherits from a person who has no heir, based on the Prophet's statement: "I am the heir of one who has no heir; I pay the blood-money on his behalf and inherit from him." The Prophet (peace and blessings be upon him) does not retain the property for himself; rather, it is spent for the benefit of the Muslims.

According to the apparent meaning of the statements of Ibn al-Ḥājib and Khalīl, the public treasury inherits whether or not it is administered in an orderly manner. Al-Ḥaṭṭāb, however, cites explicit statements requiring proper administration. This is also the position adopted by al-Shāfiʿī in his later opinion: he stipulated that the public treasury must be properly administered in order to inherit. The Ḥanafīs and Ḥanbalīs do not recognize it as an heir at all, relying on the Qur'anic verse: "Those related by blood are more entitled to one another in the Book of God" (Qur'an 8:75).

4. The Pillars and Conditions of Inheritance

First: The pillars of inheritance

1. The deceased (al-muwarriṯ): the person who has departed from life and owned the estate.
2. The heir (al-wāriṯ): a living person connected to the deceased through one of the recognized causes of inheritance.
3. The inherited estate (al-mawrūṯ): the estate left by the deceased.

Second: The conditions of inheritance

1. The death of the deceased, whether actual, judicially established, or presumed.

a. Actual death: death that is physically observed and witnessed.

b. Judicial death: this occurs when a judge rules that a missing person, whose whereabouts and state of life or death are unknown, is legally dead. In such a case, the missing person is treated as dead by judicial ruling, and his property is distributed among the heirs who are alive at the time of the ruling, although he may in reality still be alive. The ruling is based on indications and circumstantial evidence, even if these are not conclusive.

Before a ruling of death is issued, the Ḥanafīs and Mālikīs do not recognize for the missing person rights that had not already accrued to him; consequently, he does not inherit from relatives who die while he is missing. The Shāfiʿīs and Ḥanbalīs, while applying the presumption of continuity of the existing state, hold that all rights are established without distinction. Accordingly, during the period of absence and before a judicial declaration of death, the missing person may acquire rights and inherit from relatives who die before him.

c. Presumed death: this is the legal treatment applied to a fetus that is delivered dead as a result of an assault on its pregnant mother, such as a blow inflicted by an aggressor. Ordinarily, a fetus delivered dead would not inherit. However, because its death resulted from an offence committed against its mother, the case gives rise to a distinct legal issue: the offence entails a financial penalty under Islamic law known as a ghurrah. The

ghurrah is fixed at one-twentieth of the full blood-money (diyah), and is so named because it is the smallest of the prescribed amounts of blood-money.

Although jurists agree that the ghurrah is due, they disagree as to who owns it: the fetus or its mother. According to the Ḥanafīs, it belongs to the fetus and is inherited from it like any other property it owns. They therefore presume that the fetus was alive and possessed of legal ownership at the time of the deceased's death; for, in their view, property cannot be owned on behalf of someone who is not an owner. They thus treat the fetus's life as wholly separate from its mother's: it inherits, is inherited from, owns property, and property may be owned on its behalf.

The Mālikīs and the majority of jurists, by contrast, grant the fetus ownership of the ghurrah alone. It does not inherit anything else, because its life sufficient for ownership has not been established.

Rabīʿah ibn ʿAbd al-Raḥmān and al-Layth ibn Saʿd hold that the ghurrah belongs to the mother, because the fetus is part of her and the offence is, in reality, an offence against the mother: an injury to a part is an injury to the whole.

2. The Heir Must Be Alive, Actually or Legally, at the Time of the Deceased's Death

a. Actual life: Actual life is established by observing the person alive in a stable and certain condition. A missing person whose death has not been judicially declared does not inherit from the deceased, because that person's survival after the deceased's death has not been established. The same applies where several people die in the same incident—for example, drowning, a fire, or the collapse of a building—and it is not known who died first. In such cases, the survival of any one of them at the time of the other's death cannot be established.

b. Legal life: This includes a fetus being delivered alive, even if it survives for only a moment, provided that its separation from its mother occurs within six months or less after the death of the person from whom it would inherit.

3. Knowledge of the Relationship Giving Rise to Inheritance

It must be known whether the basis of inheritance is kinship, marriage, or clientage (walāʾ), and whether the particular relationship is one of descent, brotherhood, or parenthood.