

Distribution of Estate in Islamic Law: A Case Study of Missing Person, Child in the Womb and Hermaphrodite

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Abstract

The law of inheritance is associated with calculation and distribution of property of the deceased person. Furthermore, the law prescribes and clarifies who is entitled to inherit; to avoid feuds over the estate of the deceased person. The primary objective of this study is to explore steps of estate distribution and calculating shares of heirs on issues pertaining cases of Mafqud (Missing person), Hamli (Child in the womb) and Hermaphrodite (Khuntha). The science of inheritance involves rules and principle governing the distribution of property using a specific calculation based on Islamic jurisprudence. Besides, the results showed that Muslim Jurists have developed Mathematical formulas on Islamic inheritance to avoid misappropriation of property and guarantees that the right person gets what is rightfully theirs, it also prevents disputes and hostility among family members. The researcher uses the descriptive research method in terms of data collection and relied on information for the literature review.

Keyword: Islamic inheritance, Missing person, Child in the womb, Hermaphrodite.

Introduction

Islamic inheritance is the injunction set up by Allah precisely on verse 7, 10, 11, 12 and 176 from Surah Nissa. The Quranic verses clarify who are entitled to inherit and their shares; (see appendix 1) therefore, ignoring of Islamic law regarding administration and distribution of an estate may lead to hell punishment. In this regard Allah said “*And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment*”. [Suratul an-nisaa, verse: 13]. Understanding the rules related to distribution of the property prevents Conflicts, fight and a split among family members, it also helps evade delays and unfair division of the property. Prophet Mohammad peace be upon him insisted on learning the knowledge of succession, he said “*learn about inheritance and teach it, for it is half of knowledge but it will be forgotten, this is the first thing that will be taken from my nation*”. [Qazwēyn, 2009:23] Muslim Jurists have mentioned conditions of inheritance as follows: (a) Deceased person (Al-Muwarith): The death can be determined whether by actual death upon issuance of burial permit issued by the death of person registrar. [Norain, 2012:11] Or by presumption of death, this is applied for the case of a missing person his/her property can't be distributed until declaration is made by the kadhis (Court). [Āswidiq, 1999:23] (b) Survival of legal heirs: the legal heirs must be alive at the time of death of the person even for short moments. [Baraĝ, 1981:168] Additionally, the legal heir must be free from any impediments such as killing, slavery and difference in religion. A quote from Prophet Mohammad s.a.w regarding this says “*a Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim*”. [Hūzēimaṭ, 2003,140] Nevertheless difference in religion is not an obstacle in taking of Wassiyah (will) which does not exceed 1/3 of the property. Also reported from prophet S.A.W said, “*The killer does not inherit*”. [Ālbēihaqī, 2003:360] Prof, Akmal hidaya commented on this by saying that: “*The public's interest requires that the killer be debarred from inheritance since, if he did inherit, killing would accelerate inheritance and lead to universal chaos*”. [Akmal Hidayah, 2015:19] (c)

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Lastly, it is to know legal heirs inherit based on blood relationship, marital relationship or enfranchisement of slavery. [Swābūn, No year:34] Furthermore, before the distribution takes place, there are certain rights associated with the property which must be settled.

Muslim jurists agree that the following rights must be settled: [Swābūn, No year: 34] (a) Burial preparation: which consists of ritual bath, dress for grave and so on. (b) Settlement of debt: the payment of debt must be taken from his/her property unless legal heir's voluntary settles the debt for the sake of deceased person. The payment must be given priority because it will affect the deceased person. Prophet Mohammad S.A.W said "*The soul of a believer hangs on his debt until it is paid on his behalf*". [Qazwēin, 2009:489] (c) Execution of Will or Bequest: this should not exceed 1/3 of the property and not in favour of any of the legal heirs. Prophet Mohammad S.A.W said "*legal heirs are not entitled to a will*". [Salman, 1994:114] Understanding the above general principles of inheritance will assist us to sought out the division of the estate for cases related to Mafqud (Missing person), Hamli (Child in the womb) and (Khuntha) Hermaphrodite. Lastly, the study is expected to enhance judicial court judge regarding the distribution of estates among Muslims.

How to find denominator and shares for legal heirs

The shares which are mentioned from the Quran is 1/2, 1/4, 1/8, 1/3, 1/6 and 2/3. Furthermore, a small number (Denominator) is needed to divide those shares without remainders. Muslim jurists have introduced the formulae to help get the denominator as follows: [‘ūtman, No year: 58]

- (1) If the legal heirs are entitled to take one shares, the denominator will become the same share, for example: a person who died and was survived by:

| Shares | Legal heirs | Denominator (2) |
|---------|-------------|-----------------|
| 1/2 | Daughter | 1 |
| Residue | Uncle | 1 |
| Total | | 2 |

- (2) If the legal heirs are entitled to obtain more than one of the shares, in this scenario denominator will become one of the following:

- (a) **Tamathul:** is the similarity of the two numbers, the denominator should be one of them. For example: a person died and was survived by:

| Shares | Legal heirs | Denominator (2) |
|--------|----------------|-----------------|
| 1/2 | Husband | 1 |
| 1/2 | Germane sister | 1 |
| Total | | 2 |

- (b) **Tadakhul:** means that a big number can divide a smaller one without a remainder. For example: a person died and was survived by:

| Shares | Legal heirs | Denominator (4) |
|---------|----------------|-----------------|
| 1/4 | Wife | 1 |
| 1/2 | Germane sister | 2 |
| Residue | Uncle | 1 |
| Total | | 4 |

- (c) **Tawafuq:** means numbers can't divide each other; but will be dividing after obtaining the third number. To get denominator we will multiple a third number with one of the two numbers. For example: a person died and was survived by:

| Shares | Legal heirs | Denominator (12) |
|---------|--------------|------------------|
| 1/4 | Wife | 3 |
| 1/6 | Grand Mother | 2 |
| Residue | Father | 7 |
| Total | | 12 |

For this scenario between 6 and 4 it is Tawafuq, a third number which can be divide between (6 and 4) is 2, ($6 \div 2 = 3$) and ($4 \div 2 = 2$) To get denominator, we will multiple ($6 * 2 = 12$) and ($4 * 3 = 12$), The third number is 2, it divides 6 to get 3, and divides 4 to give 2. The result is cross multiplied, i.e. we multiply 6 by 2 and 4 by 3 as shown.

(d) Tabayun: means that there is no relation between two numbers and a third number can't divide too. To get a denominator we will multiple the two numbers. For example: a person died and was survived by:

| Shares | Legal heirs | Denominator (12) |
|---------------|-------------|-------------------|
| $\frac{1}{4}$ | Wife | 3 |
| $\frac{1}{3}$ | Mother | 4+5 (Return heir) |
| Total | | 12 |

Shares of legal heirs: there are so many ways to know shares of legal heirs; but the common one is: Dividing amount of estate of the property with denominator, then we multiple the result with shares of each legal heir. For example: a person died and was survived by wife, Daughter, Father and Mother. The estate amount left was : (480,000ksh)

| Shares | Legal heirs | Denominator (24) | Estate 480,000ksh | |
|---------------|-------------|------------------|-------------------|-------------|
| $\frac{1}{8}$ | Wife | 3 | 3×20000 | 60,000 Ksh |
| $\frac{1}{2}$ | Daughter | 12 | 12×20000 | 240,000 Ksh |
| Residue | Father | 5 | 5×20000 | 100,000 Ksh |
| $\frac{1}{6}$ | Mother | 4 | 4×20000 | 80,000 Ksh |
| Total | | 24 | | 480,000 Ksh |

For this case, we take the estate amount $480,000 / =$ divide by denominator (24) which will give (20,000). We multiply each heir's share with 20000 to get his/her total share.

Missing person (Mafqud)

This is in regard to a person who has disappeared and is no longer in communication with their families and there is no information on whether he is alive or dead. [Salako and others, 2013:22] A missing person will be considered alive until proven dead or declared dead by the court; therefore, his or her property will be preserved. If s/he appears alive after the distribution of estate has taken place, the remaining property will be reserved from legal heirs. [Āswidiq, No year: 187] Muslim jurist have differed on issue pertaining the period of a decree of death because there was no clear text from hadith on it. Prophet Mohammed s.a.w said "*the spouse of a lost husband remains to be his wife till she gets certain news about his death*". [Ālbēihaqī, 1344:444] based on the above hadith, Hanafi Madhab said legal heirs must wait 120, 90 and 60 years or they will wait for the passing away of his/her peers. [Sārāḥsi, 1406: 35] They support this views based on textual evidence from prophet s.a.w "*the age of my nation will be between sixty and seventy and a few will exceed that*". [Ḥibān, 1998: 247] While Malik Madhab sees that a wife who has lost her husband will remain for 4 years after which a divorce from the guardian of Missing person will be given to her followed by a period of 4 months and 10 days. [Mālk, 1994:29] And Shafy Madhab have two opinions regarding this (a) legal heir must wait for 70 years (b) must wait until he/she is declared dead by kadhis. [Āl-Nāwawī, 1991:35], Lastly, Hanbali Madhab take into consideration the situation in which the case was reported; if lost for example, in the field of battle or in a wrecked ship, heirs must wait for 4 years before distribution of the estate, if reported to have lost while out for his/her trade or seeking knowledge, heirs must wait for 90 years or until the court announces his/her death. [Mansūrēin, 1390:43]

How to inherit a missing person

If a person died and has left behind mafqud and other legal heirs, a missing person will inherit as follows.

(a) If Missing person excludes other legal heirs from the inheritance, in this scenario; the estate will be reserved and any one will not be permitted to take anything until proven a live or death. if appears alive he/she takes the whole property, if declared dead by court, legal heirs will inherit as prescribed from Islamic law. [Āswidiq, No year: 187] For example: a person died and was survived by:

| Shares | Legal heirs |
|-----------------|----------------------|
| Residue | Son (missing person) |
| Excluded by son | Germane sister |
| | Germane brother |

According to the previous case, son(mafquod) will exclude germane brother and sister until proven dead; therefore, the estate will be reserved and will not be taken by any person.

(b) A missing person participates with other legal heirs, in this scenario; if the legal heirs take shares on the presumption of survival and death of Mafquod without changes of their shares they will be given their portions fully. If their shares have been changed they will take whatever is less. For example: a person died and was survived by:

| Presumption of life | | | | Presumption of death | | | | Combination btr presumption (24) | Distribution of suspended (17) | |
|---------------------|-----------------|---------------------|-----|----------------------|-----------------|--------------------|-------------------|-------------------------------------|--------------------------------------|----|
| Shares | Legal heirs | Denominator (24) | (1) | Shares | Legal heirs | Denominator (2) | Suspended (17) | | | |
| 1/8 | Wife | 3 | 3 | 1/4 | Wife | 3 | 6 | 3 | 0 | 3 |
| 1/6 | Mother | 4 | 4 | 1/3 | Mother | 4 | 8 | 4 | 0 | 4 |
| Excluded | Germane brother | 0 | 0 | Residue | Germane brother | 5 | 10 | 0 | 0 | 10 |
| Residue | Son-Mafquod | 17 | 17 | Death | Son-Mafquod | 0 | 0 | 0 | 17 | 0 |

According to the previous table denominator is 24 and 12, which is Tadakhul, 24 can divide 12 without remainder ($24 \div 12 = 2$), ($24 \div 24 = 1$). In the case of presumption of life we multiply shares of each legal heir with 1, and the presumption of death we multiply shares of each heir with 2, lastly when you compare the shares of legal heir based on two presumptions (survival and death) the principle applicable here is that each will take whichever is less, for example shares of wife 3 and 6, so the least share is(3), shares of mother 4 and 8, the least share is(4), shares of germane brother is 0 and 10, the least share is(0), shares of Mafquod 17 and 0, the least share is (0). To get the suspended share we add the least shares ($3+4+0+0= 7$) then subtract from the denominator ($24-7=17$), therefore suspended share is 17. distributing the suspended shares (17), in assumption of life we subtract the suspended shares from that of legal heirs, for that case, wife’s share is ($3-3= 0$), mother’s share will be ($4-4=0$), germane brothers share will be ($0-0=0$), son mafquod’s share will be ($17-0=17$). distributing the suspended shares in assumption of death, will be as follow, wife’s share will be ($6-3=3$), mother’s shares will b ($8-4=4$), germane brother’s share will be ($10-0=10$), son Mafquods shares will be ($0-0=0$).

For instance if the deceased person left behind 800,000/=, wife’s share will be $1/8 \times 800000 = 100000/=$ while mother’s share will be $1/6 \times 800000 = 133333/=$. Germane bothers will be 0.

The total share of wife and mother will be 233333/= the suspended amount will be 566667/= which will be kept until the missing person (son) is proven live or dead. In case he is proved live, then the wife’s share will be $1/8 \times 80000 = 100000$, mother’s share will be $1/6 \times 800000 = 133333/=$ while the germane brother will get 0, the remaining 566667 will be taken by the son. In case the missing person is proved dead, then the wife’s share will be $1/4 \times 800000 = 200000/=$ while mother’s share will be $1/3 \times 800000 = 266666 /=$, the germane brother’s share will be $800000 - 200000 - 266666 = 333334/=$.

Example (2) a person dies leaving:

| Presumption of life | | | | | Presumption of death | | | | Combination of two presumption | Distribution of suspended (34) | |
|---------------------|-----------------|-------------|------------|-----|----------------------|-----------------|-------------|-----|--------------------------------|--------------------------------|------|
| Shares | Legal heirs | Denominator | (24) *3=72 | (1) | Shares | Legal heirs | Denominator | (3) | | Suspended (34) | Life |
| 1/8 | Wife | 3 | 9 | 9 | 1/8 | Wife | 3 | 9 | 9 | 0 | 0 |
| 1/6 | Mother | 4 | 12 | 12 | 1/6 | Mother | 4 | 12 | 12 | 0 | 0 |
| Residue | Daughter | 17 | 17 | 17 | 1/2 | Daughter | 12 | 36 | 17 | 0 | 19 |
| | Son (missing) | | 34 | 34 | X | Son (missing) | 0 | 0 | 0 | 34 | 0 |
| Excluded | Grand daughter | 0 | 0 | 0 | 1/6 | Grand daughter | 4 | 12 | 0 | 0 | 12 |
| Excluded | Germane brother | 0 | 0 | 0 | Residue | Germane brother | 1 | 3 | 0 | 0 | 3 |

According to the previous case denominator is 72 and 24, which is Tadakhul, 72 can divide 24 without remainder ($72 \div 24 = 3$), ($72 \div 72 = 1$). In the case of presumption of life we multiply shares of each legal heir with 1, and the presumption of death we multiply shares of each heir with 3, lastly when you compare the shares of legal heir based on two presumptions (survival and death) the principle applicable here is that heirs will take whichever is less, if the shares do not change, they will take full portions. for example shares of wife 9 and 9, so her share is (9), shares of mother 12 and 12, her share is (12), shares of daughter is 17 and 36, the least share is (17), shares of son mafquod 34 and 0, the least share is (0). Shares granddaughter 0 and 12, the least share is (0). Shares of germane brother 0 and 3, the least share is (0), To get the suspended share we add the least shares ($9+12+17+0+0=38$) then subtract from the denominator ($72-38=34$), therefore suspended share is (34). Distributing the suspended shares (34), in assumption of life we subtract the suspended shares from that of legal heirs, for that case, wife's share is ($9-9=0$), mother's share will be ($12-12=0$), daughter share will be ($17-17=0$), son mafquod's share will be ($34-0=34$), granddaughter share will be ($0-0=0$), germane brother share will be ($0-0=0$). Distributing the suspended shares in assumption of death, will be as follow, wife's share will be ($9-9=0$), mother's shares will be ($12-12=0$), daughter share will be ($36-17=19$), son mafquod's share will be ($0-0=0$), granddaughter share will be ($12-0=12$), germane brother share will be ($3-0=3$). In this case wife and mother they will take full shares based on two presumption life and death; therefore they will take their shares in advance.

Inheritance of a Child in the womb (Hamli)

Fetus is entitled to inherit based on the hadith of the Prophet Mohammad (s.a.w) who said: "when a newly born makes some noises then the baby inherit". [Āl-aṣāṭ, 2009: 545] Another hadith narrated from jabir said the messenger of Allah peace be upon Him said "No child inherits until he raises his voices or cries". [Qazwēyn, 2009: 49] Muslim jurists said that the fetus has the right to inherit if there is no impediments and complied two conditions. (1) Existence of the fetus at the time of the deceased person. In this regard, it's important to know the gestation period from conception to delivery.

There is a different opinion regarding gestation period. Muslim Majority jurist said the shortest period of gestation is six months and support this idea based on verses from Qur'an "*and we have enjoined upon man, to his parents, good treatment. His mother carried him with hardship and gave birth to him with hardship, and his gestation and weaning [period] is thirty months*". [Al-ahqaf verse: 15]. Another verses from Quran "*And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two year*".[Luqman verse: 14]. The first verses indicates that the period of pregnancy and breastfeeding is two years while the second verses dictates that the period of breastfeeding is two years; so they concluded that the shortest period between conceptions to delivery is six months; This is after subtracting two years from 30 months. [Āswidiq, No year: 117] While Hanbali jurist with ibn Taymiyyah set the shortest period at nine-month. [Barağ,1981: 685]There was a different opinion regarding the longest gestation period, Hanafi jurist said it is two years. [Āl-bābātī, 1406: 35] While Malik jurist set it at five years. [Āl-zārqaṇī, 2002:288] Shafi's and Hambali jurists said it is four years. [Muḥāmād bin Ḥajar, 1983:254] Furthermore, there are several rules applicable pertaining gestation period, they include (a) If a deceased person (Muwarith) left a wife with pregnancy and there was marital status between them, therefore fetus will be considered as a son/daughter of a Muwarith. He/she entitled to inherit if it was born not more than the longest gestation period depending on Madhab. If it was born after longest gestation period this will mean the fetus was not existing at the time of death of the deceased person. (b) if someone gives his wife irrevocable divorce (Talaq Bain) and died when she was in waiting period (Idda). The fetus is entitled to inherit if the period between occurring of irrevocable divorce and delivery does not exceed the longest gestation period. If the fetus was born after the gestation period that means it was not existing; the pregnancy occurred after irrevocable divorce. (2) The child should be born alive; in order to take what was preserved, Majority of Muslim jurists like Malik, Shaḥ's, and Hanbali said a newly born must be alive for three days, while Hanafi said that fetus must be alive after delivery has been completed. [Norain, 2012:131]

How to inherit a child in the womb

If fetus is entitled to inherit, and legal heirs agree to preserved the estate until the fetus is born, the distribution will not be made, if legal heirs are not willing to preserve the estate, they will take whichever is less of their portions based on six presumption of a baby being born (a) death (b) male (c) female (d) twin male (e) twin female (f) and (g) twin male and female. There are different approaches towards the distribution as follows: [‘uṭman, No year: 73] (a) If the fetus is not entitled to inherit whether it's male or female, distribution will be made without delaying. Eg someone left behind wife, two germane sister, mother and wife of the father who is pregnant the fetus will become either consanguine brother (His share is residue and nothing will remain; because Quranic heirs will complete all shares). or consanguine sister to the deceased person. And here it will be excluded with two germane sisters.(b) If the fetus is alone or exclude other legal heirs, the distribution of estate will be suspended. If born a live he/she will take all the property, if was born dead other legal heirs will inherit. Eg someone died and left behind wife of the father who is pregnant fetus will become either consanguine brother or consanguine sister. He will become residue (consanguine brother) and will take all property or consanguine sister and will take 1/2 of the estate.(c) Shares of fetus are same in both presumptions of male and female the distribution of estate will take the place immediately. Example someone died and left behind wife and his mother who is pregnant with another person. The fetus will become uterine brother or sister. And his/her share will be same.(d) Share of fetus is changed based on presumption will be suspended his/her shares while other legal heirs will take their portions whichever is less based on six presumptions. Example a person dies leaving:

| Presumption of Death | | | | Presumption of male | | | | Presumption of female | | | | Presumption of Twin Male | | | |
|----------------------|-------------|------------------|----|---------------------|-------------|------------------|----|-----------------------|-------------|------------------|----|--------------------------|-------------|-----------------------------|----|
| Shares | Legal heirs | Denominators (4) | 12 | Shares | Legal heirs | Denominators (6) | 6 | Shares | Legal heirs | Denominators (6) | 6 | Shares | Legal heirs | Denominators (8) * 2 = (16) | 3 |
| 1/4 | Wife | 1 | 12 | 1/8 | Wife | 1 | 6 | 1/8 | Wife | 1 | 6 | 1/8 | Wife | 1+1=2 | 6 |
| 0 | fetus | 0 | 0 | Residue | fetus | 7 | 42 | 1/2 | fetus | 4 | 24 | Residue | fetus | 7+7=14 | 42 |
| Residue | p-uncle | 3 | 36 | Excluded | p-uncle | 0 | 0 | Residue | p-uncle | 3 | 18 | Excluded | p-uncle | 0 | 0 |

| Presumption of Twin Female | | | | Presumption of Twin male & female | | | | Combination of six presumption | Distribution of (42) Suspended | | | | | |
|----------------------------|-------------|------------------|----|-----------------------------------|-------------|-----------------------|----|--------------------------------|--------------------------------|-------|------|--------|-----------|-------------|
| Shares | Legal heirs | Denominator (24) | 2 | Shares | Legal heirs | Denominator (8) *3=24 | 2 | | 48-6=42 Suspended | Death | Male | Female | Twin Male | Twin Female |
| 1/8 | Wife | 3 | 6 | 1/8 | Wife | 3 | 6 | 6 | 6 | 0 | 0 | 0 | 0 | 0 |
| 2/3 | Fetus | 16/8 | 32 | Residue | Fetus | 21 | 42 | 0 | 0 | 42 | 24 | 42 | 32 | 42 |
| Residue | p-uncle | 5 | 10 | Excluded | p-uncle | 0 | 0 | 0 | 36 | 0 | 18 | 0 | 10 | 0 |

In this case denominators are 4,8,8, 16, 24 and 24. 24 can divide 8 and 4 without a remainder, we remain with two numbers which are (24 and 16) between the two numbers is Tawafuq, a third number which can divide between them is (8) to get denominator we will multiple $16*3=48$, and $24*2=48$. So will we divide $48 \div 4=12$ in the presumption of death, moreover, we multiply shares of each heir with 12, (wife $12*1=12$), (fetus $12*0=0$), (paternal uncle $12*3=36$). In the presumption of male, we divide $48 \div 8=6$ then we multiply shares of each heir with 6, (wife $1*6=6$), (fetus $7*6=42$), (paternal uncle $0*6=0$). In the presumption of female, we divide $48 \div 8=6$ then we multiply shares of each heir with 6 (Wife $1*6=6$), (Fetus $4*6=24$), (paternal uncle $3*6=18$). In the presumption of twin male $48 \div 16=3$ then we multiply shares of each heir with 3, (wife $2*3=6$), (fetus $14*3=42$), (paternal uncle $0*3=0$). In the presumption of twin male we divide $48 \div 24=2$ then we multiply shares of each heir with 2 (wife $3*2=6$), (fetus $16*2=32$), (paternal uncle $5*2=10$). In the presumption of twin male and female we divide $48 \div 24=2$ then we multiply shares of each heir with 2 (wife $3*2=6$), (fetus $21*2=42$), (paternal uncle $0*2=0$)., lastly when you compare the shares of legal heir based on six presumptions, the principle applicable here is that each heir takes whichever is less, for example shares of wife is 12,6,6,6,6 and 6 so least shares is (6). Shares of fetus is 0, 42, 24, 42, 32 and 42 so the least shares is (0). Shares of paternal uncle is 36,0,18,0,10 and 0 so the least shares is (0). To get the suspended share we have add the least shares ($6+0+0=6$) then subtract from the denominator ($48-6=42$), therefore suspended share is (42). Distributing the suspended shares (42), in assumption of death we subtract the suspended shares from that of legal heirs, for that case, wife's share is ($12-6=6$), fetus share will be ($0-0=0$), paternal uncle share will be ($36-0=36$). Distributing the suspended shares in assumption of male, will be as follow, wife's share will be ($6-6=0$), fetus share will be ($42-0=42$), paternal uncle ($0-0=0$). Distributing the suspended shares in assumption of female, will be as follow, wife's share will be ($6-6=0$), fetus share will be ($24-0=24$), paternal uncle ($18-0=18$). Distributing the suspended shares in assumption of twin male, will be as follow, wife's share will be ($6-6=0$), fetus share will be ($42-0=42$), paternal uncle ($0-0=0$). Distributing the suspended shares in assumption of twin female, will be as follow, wife's share will be ($6-6=0$), fetus share will be ($32-0=32$), paternal uncle ($10-0=10$). Distributing the suspended shares in assumption of twin male and female, will be as follow, wife's share will be ($6-6=0$), fetus share will be ($42-0=42$), paternal uncle ($0-0=0$).

Until the child is born the wife and paternal uncle will take the least share from six presumption, If someone left behind 120,000/=, wife's share will be $1/8 \times 120,000 = 15,000/=$ while paternal uncle share will be $0 \times 120,000 = 0/=$ unborn baby will be 0. Suspended shares 105,0000/= if a baby boy born a live paternal uncle will be excluded, shares of wife will be $1/4 \times 120,000 = 30,000$ and previously she earn 15,000/= here we will top for her 15,000 the remaining estate go to fetus which is 90,000/=.

Inheritance of Hermaphrodite (Khuntha)

The word hermaphrodite is also known as khuntha and refers to a person born with two reproductive organs and cannot be distinguished whether he is male or female. Nevertheless, the male gender will be with the following signs (a) He has sexual associations with his male reproductive organ. b) His capabilities of nocturnal discharge like men. c) He is inclined to women. d) He produces facial hair. e)

His testimony of his inner self. The female gender will be ascertained by (a) She has sexual affairs with her female reproductive organ. b) She becomes pregnant. c) She practices menstruation. d) She experiences the growth of breasts like women. e) She lactates. [Mohi Uddin, 2017:230] Moreover another way to determine the gender is observing the pathway of urine. In this regard Ali bin Abi Twalib said: “look at urine how it will pass it on; then inherit based on it”. [Ālbēihaqī, 1344:261] We suspended some shares until khuntha is categorized as male or female then inherit as a male or female in all cases. Example someone left behind Husband, Mother and Consanguine khuntha

| Presumption of male | | | | Presumption of female | | | | Combination btn presumption (24) | Distribution of suspended (5) | |
|---------------------|---------------------|-----------------|-----|-----------------------|--------------------|-----------------------|-----|----------------------------------|-------------------------------|------|
| Shares | Legal heirs | Denominator (6) | (4) | Shares | Legal heirs | Denominator (6) – (8) | (3) | | Suspended (5) | male |
| 1/2 | husband | 3 | 12 | 1/2 | husband | 3 | 9 | 9 | 3 | 0 |
| 1/3 | Mother | 2 | 8 | 1/3 | Mother | 2 | 6 | 6 | 2 | 0 |
| Residue | Consanguine brother | 1 | 4 | 1/2 | Consanguine sister | 3 | 9 | 4 | 0 | 5 |

Sometime the gender could not be ascertained for khuntha mushkil in this scenario, Hanafy jurist said Khuntha Mushkil will take the shares whichever is less based on the two presumptions male or female. [Sārāḥsi, 1993:92] Example someone died and left behind wife, mother, two uterine sister, germane sister and khuntha mushkil (consanguine brother or sister)

| Shares | Legal heirs | Denominator or 12/15 | Shares | Legal heirs | Denominator 12/17 |
|---------------------|---------------------------|----------------------|-----------------------|--------------------------|-------------------|
| 1/4 | wife | 3 | 1/4 | Wife | 3 |
| 1/6 | mother | 2 | 1/6 | Mother | 2 |
| 1/3 | uterine sister | 4 | 1/3 | uterine sister | 4 |
| 1/2 | germane sister | 6 | 1/2 | germane sister | 6 |
| Residue | khuntha mushkil (brother) | 0 | 1/6 | khuntha mushkil (sister) | 2 |
| Presumption of Male | | | Presumption of Female | | |

Based on two presumption khuntha Mushkil will receive nothing.

Conclusion

The study concluded that Muslim Jurists introduced Mathematical formula on how to inherit Mafqud (Missing person), Hamli (Child in the womb) and Hermaphrodite (Khutha). Nevertheless, they design some numbers which are known as Tamathul, Tawafuq, Tabayun and Tadakhul to get a denominator which can divide shares of legal heirs without a remainder. On issue relating to Missing person, a mathematical formula applied is working out on two cases: the presumption of survival and death then merge using (Tamathul, Tawafuq, Tabayun and Tadakhul) lastly reserve some portion until Mafqud appears alive or declared dead. On the case of a child in the womb legal heirs will take their shares whichever is less based on six presumptions until the child is born then the suspended shares will be distributed. Moreover, on the issue relating to khuntha Mushkil, he will take whichever is less of the shares based on two presumptions of male or female.

References

- Ābū ‘bdallah Muḥāmād bin Yazīd Qazwēin, (2009). Sūnanu bin Mağah, Beyrūt: Darul Risalā‘ ‘lmiyāh, 1st ed, , Vol 3, pg 489, No of ḥadīth 2413
- Ābu bakrī Muḥāmād Sārāḥsi, (1993). Āl-Mabsūt, , Beyrūt: Darul Āl-Ma‘rifā.
- Āḥmad bin Ālḥusēin bin ‘li Ālbēihaqī, (2003). Āl-sūnanul Ālkubrā, Beyrūt: Darul Ālktubu Āl‘imiyah, 3rd ed, vol 6, pg 360, No of ḥadīth 12236
- Āḥmad bin Ālḥusēin bin ‘li Ālbēihaqī, (1344). Āl-sūnanul Ālkubrā, Hindi Mağlis Dairatul Ma‘arīf Al-Nizāmiyā, 1st, vol 7, pp 444, No of ḥadīth 15973
- Āḥmad bin Ḥibān, (1988). Āl-iḥsān fi Tāqrib Ṣāḥih Ḥīban, Beyrūt: Darul Risalā‘, 1st ed, vol 7, pp 247, No of ḥadīth 2980
- Āḥmad bin Muḥāmād bin Hajar Āl-Hetām, (1983). Tūḥfatu Āl-Mūhtağ fi Šarḥi Minḥağ, eğypt: Maktābah Āl-tijarā‘ Āl-kubrā, No: Edition, vol 8.
- Āswidiq Muḥāmād Dārīr, (1999). Ālmīraḥ fī Ālšhar‘ Ālislamiyā‘, Sūdan Darul Ğāmīat Ālka‘rḥ, 3rd ed.
- ‘bdulbākī bin yusūf Āl-zārqaṇī, (2002). Šarḥū Āl-zārqaṇī ‘lā Mūḥtas Ḥalīl, Beyrūt: Darul Ālktubu Āl‘imiyah, 1st ed, vol 8.
- Akmal Hidayahashim, (2015) Islamic law of Succession, Department of Legal practice AIKOL-IIUM, Malaysia
- Ğūm‘ī Muḥāmād Barağ, (1981). Āḥkam Mirāḥ Fi Šarḥ‘t Ālislamiyā‘, ‘Ūman: Darul Fikr, 1st ed.
- Mālk bin Ānas bin Āmir Āl-asbaḥī, (1944). Ālmūdawa‘, Beyrūt: Darul Ālktubu Āl‘imiyah, 1st ed, vol 2.
- Mansūrēin Yunūs bin Idrīs (1390). Āl-bahūtī Āl-rāwḍ Āl-Muraba‘ Rīyaḍ: Maktaba‘ Āl-Rīyaḍ Ālḥadīṭā, 1st ed, vol 3.
- Muḥāmād bin Ḥibān, (1988). Āl-iḥsān fi Tāqrib Ṣwāḥih bin Ḥibān, Beyrūt: Darul Risalā‘, 1st ed, vol 7, No of Hadith 2980
- Muḥāmād Bin Ishaq bin ḥūzēima‘, (3rd ed, 2003). ṣāḥih Bin ḥūzēima‘, Beyrūt: Ālmaktab Ālislamiy, , vol 2.
- Muḥāmād bin Māḥmūd Āl-bābārtl, (1st ed, No year). Āl‘nayā Šarḥu Hidayā‘, eğypt: Darul Fikr, vol 5.
- Muḥāmād bin Sahal Al-Sarāḥsī, (1st ed, 1406). Ālmābsut, Beyrūt: Darul Ma‘rifā, vol 1.
- Muḥāmād bin yāzīd qazwēyn, (1st ed, 2009). Sunan ibn mağah, Beyrūt: Darul Risalā‘ ‘lamiyāh, , Vol 5, pg 23, No of ḥadīth 2719
- Muḥāmād ‘li Swābūn, (1st ed, No year). Ālmawarīḥ fi Šarāf Al-islamiyā‘ Ālā Āldḥai Ālkitab wa Sunā‘, Qāhiro: Darul Āl- ḥadīth,
- Muḥyī Din Yāḥyā bin Šāraf Āl-nāwawī (3rd ed, 1991). Rāwḍā Ṭalībyn wā ‘mdatu Muftēn, Beyrūt: Ālmaktab Ālislamiy, vol 6.
- Mohi Uddin, Inheritance of Hermaphrodite (Khuntha) under the Muslim Law: An Overview, Beijing Law Review, 2017, 8, 226-237, ISSN Online: 2159-4635, pp 230
- Salako Taofiki Ajani and others, (2013). The Value of Islamic Inheritance In Consolidation Of The Family Financial Stability, IOSR Journal Of Humanities And Social Science, Volume 8, Issue 3.
- Salman bin Āḥmād bin Āyub, (2nd ed, 1994). Ālmūğam Āl-kabīr, Qāhiro: Maktaba‘ bin Taymiyā‘, , vol 8, No of ḥadīth 7531
- Sulēimān bin Āl-ašāṭ bin ‘mru Al-azadl, (1st ed, 2009). Sunanu Ābī Daud, Beyrūt: Darul Risalā‘, vol 4, pp 545, No of ḥadīth 2920
- ‘ūṭman Āḥmād Muḥāmād, (No year). Ālmawarīḥ fi Šarāf Al-islamiyā‘ Waqanūn Ālāḥwal Āšḥaḥsiyā‘ lli-Muslimiyna, Ğamiyā‘ ūmdurmān Āl-islamiyāh.
- Wan Norain Mohd Salim, (2012). Islamic law of succession: a practical guide to the laws of faraidh, Printmate Sdn Bhd- Malaysia.

Appendix 1

| No | Heirs | Shares | Situations |
|----|----------------------------|---------------------------------------|--|
| 1 | Husband | 1/2 | No offspring |
| | | 1/4 | Presence of offspring |
| 2 | Wife | 1/4 | No offspring |
| | | 1/8 | Any offspring |
| 3 | father | 1/6 | Presence of male offspring |
| | | 1/6 + Residue | Presence of female offspring |
| | | Residue | No male or female offspring |
| 4 | Mother | 1/6 | Presence of any offspring (male or female) or presence of two or more collaterals (brothers or sisters or mixture of them; germane or consanguine or uterine or mixture of them) |
| | | 1/3 of the whole estate | Absence of any offspring or in the presence of only one collateral (germane or consanguine or uterine) |
| | | 1/3 of the remaining estate | This case is known as gharawaynlgharibataynl orumaryatayn. It happens when the only entitled legal heir is the husband, wife, father or mother. |
| 5 | Daughter | 1/2 | Alone and absence of male offspring. |
| | | 2/3 | Two or more daughters and absence of son. They share the portion equally. |
| | | Residue | Presence of son; she is converted into a residuary heir the by son. She inherits in her capacity of an `asabah. |
| 6 | Son | No specific share always he is asabah | He is never excluded from inheritance. |
| 7 | Uterine brother and Sister | 1/6 | Alone |
| | | 1/3 | More than one, either male or female or mixture. |
| | | Excluded | By any offspring of the deceased or any male agnatic ascendant. |
| 8 | Germane sister | 1/2 | Alone |
| | | 2/3 | More than one |
| | | Principle of double share | Converted by her/their male counterpart i. e germane brother |
| | | Accompanying residuary | Converted by daughter or agnatic grand daughter |
| | | al-Musyarakah | Share the portion equally with the uterine brothers and sisters in the case of al-hajariyyah. |
| | | Excluded | By son or agnatic grandson, or father (not by agnatic grandfather) |

| | | | |
|----|--------------------|---------------------------|--|
| 9 | Consanguine sister | 1/2 | alone |
| | | 2/3 | More than one |
| | | 1/6 | Presence of one germane sister; the rule of the completion of the maximum 2/3 |
| | | Principle of double share | Converted by her/their male counterpart into an `asabah |
| | | Accompanying residuary | Converted by daughter or agnatic grand daughter |
| | | Excluded | (a) Son or agnatic grandson (b) father (c) Two germane sisters because the maximum portion of 2/3 has been exhausted by the germane sisters (d) Germane sister/s who is/are converted into `asabah by daughter or agnatic granddaughter (e) germane brother |
| 10 | Grand daughter | 1.2 | Alone in the absence of any daughter and those who |
| | | | may convert her into an `asabah. |
| | | 2/3 | More than one in the absence of any daughter and those who may convert them into `asabah. |
| | | Principle of double share | Presence of agnatic grands on they become `asabah and inherit in their capacity of `asabah, not as Qur'anic heirs |
| | | 1/6 | Presence of one daughter This is the principle of the completion of the maximum portion 2/3 of the female offspring. |
| | | Excluded | (a) Son (b) more daughters because the maximum portion of 2/3 has been exhausted by the daughters |
| 11 | Grand mother | 1/6 | Alone or regardless of the side whether maternal or paternal |
| | | Excluded | (a) Mother (maternal and paternal grandmother (b) Father (paternal grandmother only) |
| 12 | Grand father | 1/6 | Presence of male offspring |
| | | 1/6 + Residue | Presence of female offspring |
| | | | he is excluded by father. This is based on the principle of the nearer in degree . There are different opinions among Muslim jurists pertaining to the issue whether agnatic grandfather may exclude collateral as father (Abu bakr) , another principle of exclusion does not apply (Ali &Zayd) |