

PRINCIPLES OF EQUITY IN ISLAMIC INHERITANCE: THE DOCTRINES OF AUL AND RADD

AUTHOR – KUMARAPPAN M, DEPARTMENT OF LAW, SASTRA UNIVERSITY, THANJAVUR, TAMIL NADU, INDIA

Best Citation – KUMARAPPAN M, PRINCIPLES OF EQUITY IN ISLAMIC INHERITANCE: THE DOCTRINES OF AUL AND RADD, *Indian Journal of Legal Review (IJLR)*, 4 (1) of 2024, Pg. 1-7, APIS – 3920 – 0001 & ISSN – 2583-2344.

Abstract

Islamic inheritance law is guided by principles aimed at achieving fairness and equity among heirs. Central to this legal framework are the doctrines of Aul and Radd, which address scenarios where the distribution of assets deviates from equity. The Doctrine of Aul is applied when the total sum of allotted shares exceeds unity, necessitating a redistribution to ensure proportional division among heirs. Conversely, the Doctrine of Radd comes into play when the total allotted shares are less than 1, resulting in the return of residue to the sharers in accordance with their entitlements. Understanding these doctrines is essential for upholding justice and fairness in the distribution of estates according to Islamic law.

Keywords: Islamic inheritance law, Doctrine of Aul, Doctrine of Radd, equity, redistribution, residue, heirs.

Introduction

In Islamic inheritance law, the Doctrine of Aul and the Doctrine of Radd are essential principles used to ensure equitable distribution of assets among heirs. These doctrines come into play when the allotted shares to heirs deviate from equity, addressing scenarios where the total shares exceed or fall short of unity. Understanding these doctrines is crucial for implementing fair distribution in accordance with Islamic law.

Doctrine of Aul

There may be cases where the arithmetic sum of the functional shares allotted to the heirs of the deceased is more than equity or less than equity. Where the sum of the shares is less than equity, then the doctrine of Aul or doctrine of increase is applied. When the total shares exceed unity, then the shares of each sharer is reduced by making a common denominator and increasing the denominator in order to equate it to the sum of numerators.

Let us understand with the help of an illustration.

Where the husband gets $\frac{1}{2}$ share and 2 full sisters get $\frac{2}{3}$ share, the total becomes $\frac{7}{6}$ which is greater than 1. This means that the doctrine of Aul is to be applied.

Step 1: Make a common denominator. So, the common denominator is 6.

Step 2: Increase the denominator and make it equal to the sum of the numerators. So, $\frac{3}{6} + \frac{4}{6}$ changes to $\frac{3}{7} + \frac{4}{7} = \frac{7}{7} = 1$.

Now, the shares are divided proportionately. The husband will get a $\frac{3}{7}$ share and the sisters will get $\frac{4}{7}$ share collectively.

Doctrine of Radd

After the division of shares, the total allotted shares are less than 1, and there is no residuary to inherit the residue, then the residue reverts back to the sharers in the same proportion of their shares. The only exception to this rule is that the wife or husband is not entitled to receive the return in the presence of an heir. This is the doctrine of radd or doctrine of return.



Following is an illustration for better understanding.

The Mother of the deceased has $\frac{1}{6}$ share and the daughter has $\frac{1}{2}$ share of the estate. The total is $\frac{2}{3}$, which is less than 1. Hence, the doctrine of radd will be applied.



Muslim law of Inheritance

Table of shares – Sunni Law

Sharers	Normal Share		Condition under which the normal share is inherited	This column sets out (A) Shares of Sharers Nos:3, 4, 5, 8 and 12 as varied by special circumstances; (A) Conditions under which sharers Nos:1, 2, 7, 8, 11 and 12 succeed as Residuarys
	Of one	Of Two or more collectively		
1. FATHER	1/6		When there is a child or child of a son	[When there is no child or child of a son the father inherits as a residuary]
2.TRUE GRANDFATHER	1/6		When there is a child or child of a son and no father or nearer true grandfather.	[When there is no child or child of a son. the Tr.G.F. inherits as a residuary provided there is no father or nearer Tr.G.F.]
3. HUSBAND	¼		When there is a child or child of a son	½ when no child or child of a son.
4. WIFE	1/8	1/8	When there is a child or child of a son.	¼ when no child or child of a son.
5. MOTHER	1/6		(a) When there is a child or child of a son. or (a) When there are two or more brothers or sister, or even one brother and one sister, whether full consanguine or uterine	1/3 when no child or child of a son. and not more than one brother or sister (if any); but if there is also a wife or husband and the father, then only 1/3 of what remains after deducting the wife's or husband's share.

6. TRUE GRANDMOTHER	1/6	1/6	(a) Maternal – when no mother, and no nearer true grandmother either paternal or maternal. Paternal – when no (a) mother, no father no nearer true grandmother either paternal or maternal, and immediate true	
---------------------	-----	-----	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

			grandmother.	
7. DAUGHTER	1/2	1/2	When no son	[With the son she becomes a residuary]



8. SON'S DAUGHTER h.l.s. [Sec.62 cl. (a)]	$\frac{1}{2}$	$\frac{2}{3}$	When no (1) son, (2) daughter, (3) higher son's son (4) higher son's daughter or (5) equal son's son	When 'there is only one daughter or higher son's daughter but no(1) son, (2) higher son's son, (3) equal son's son, the daughter or higher son's daughter will take $\frac{1}{2}$ and the son's daughter h.l.s. (whether one or more) will take $\frac{1}{6}$ i.e. $\frac{2}{3} - \frac{1}{2}$] [with an equal son's son she becomes a residuary]
e.g. (i) Son's Daughter	$\frac{1}{2}$	$\frac{2}{3}$	When no(1) son, (2) daughter; or (3) son's son	When there is only one daughter the son's son daughter (whether one or more) will take $\frac{1}{6}$, if there be no son or son's son. (With the son's son she becomes a residuary)
(ii) Son's son's daughter	$\frac{1}{2}$	$\frac{2}{3}$	When no(1) son, (2) daughter; or (3) son's son, (4) son's daughter, or (5) son's son's son	When there is only one daughter or the son's daughter, the son's son's daughter (whether one or more) will take $\frac{1}{6}$, if there be no (1) son, (2) son's son, or son's son's son (With the son's son's son she becomes a residuary]
9. UTRINE BROTHER or 10. SISTER	$\frac{1}{6}$	$\frac{1}{3}$	When no(1) child, (2) child of a son h.l.s (3) father of (4) True grandfather	
11. FULL SISTER	$\frac{1}{2}$	$\frac{2}{3}$	When no(1) child, (2) child of a son h.l.s (3) father of (4) True grandfather, or (5) full brother	[With the full brother she becomes a residuary]

12. CONSANGUI NE SISTER	½	2/3	When no(1) child, (2) child of a son h.l.s (3) father of (4) True grandfather, or (5) full brother, (6) full sister, or (7) consanguine brother	But if there is only one full sister and she succeeds as a sharer, the consanguine sister (whether one or more) will take 1/6, provided she is not otherwise excluded from inheritance. [With the consanguine brother she becomes a residuary]
-------------------------------	---	-----	-------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Table of sharers – Shia Law

Sharers	Normal Share		Conditions under which the share is inherited	Share as varied by special circumstances
	Of one	Of two or more collectively		
1. Husband	¼		Whether there is a lineal descendant	½ when no such descendant
2. Wife	1/8	1/8	Whether there is a lineal descendant	¼ when no such descendant
3. Father	1/6		Whether there is a lineal descendant	[If there is no lineal descendant the father inherits as a residuary]
4. Mother	1/6		(a) When there is a lineal descendant: or (a) When there are two or more full or consanguine brothers, or one such brother and two such sisters or four such sister, with the father.	
5. Daughters	½	2/3	When no son	[With the son she takes as residuary]
6. Uterine Brother or 7. Sister	1/6	1/3	When no parent or lineal descendant	[With the son she takes as residuary]
8. Full sister	½	2/3	When no parent or lineal descendant or full brother or father's father	[The full sister takes as a residuary with the full brother and also with the father's father.

9. Consanguine Sister	½	2/3	When no parent or lineal descendant or full brother or sister or consanguine brother or father's father.	[The consanguine sister takes as a residuary with the consanguine brother and also with the father's father.
-----------------------	---	-----	----------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------

Conclusion

The tables outlining the Muslim law of inheritance, both according to Sunni and Shia laws, provide a comprehensive overview of the distribution of shares among heirs based on specific familial relationships and circumstances. These tables serve as practical guides for understanding the intricate rules governing inheritance in Islamic jurisprudence. Through these tables, it is evident that Islamic inheritance law emphasizes equitable distribution among heirs while also considering various familial ties and the presence of lineal descendants. The distribution of shares is meticulously structured to ensure fairness and justice in accordance with Islamic principles. Furthermore, the doctrines of Aul and Radd discussed alongside the inheritance tables offer additional insight into how the distribution of shares is adjusted in cases where the arithmetic sum of allotted shares exceeds or falls short of equity. These doctrines provide mechanisms to maintain balance and fairness in inheritance distribution, reinforcing the underlying principles of Islamic jurisprudence. In conclusion, the tables and doctrines presented collectively offer a comprehensive framework for understanding and implementing Islamic inheritance law, ensuring the equitable distribution of wealth among heirs while adhering to the principles of fairness and justice.

Reference

- Books
 1. Principles of Islamic Jurisprudence by Mohammad Hashim Kamali.
 2. The Islamic Law of Personal Status by Jamal J. Nasir.
 - Website
 1. Legal zoom
 2. Find law
 3. Islamcity
- Al-Islam