



# **Justice in the Islamic Law of Inheritance and Societal Attitudes Toward Distribution of Deceased's Properties in Gashua Town of Bade L.G.A., Yobe State: A Practical Assessment**

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## **ABSTRACT**

Islam provides means doing justice to all aspects human transactions because of its well-thought-out organization. One of such transaction where the justice of Islam is demonstrated is the law of inheritance under Islamic jurisprudence. In this aspect, Allah (SWT) allots and distributes the share of almost all legal heirs of a deceased. However, in some Muslim societies, culture and traditions do influence the way in which the legal heirs get their proper and appropriate shares at the right time, that is immediately after the death of a person. Accordingly, this research examines this issue in Gashu'a town the headquarters of Bade L.G.A. of Yobe State. This is done through explaining the concept and importance of the knowledge of Islamic law of inheritance. The researcher used questionnaire and obtained data that helped identified the problems that lead to cultural and traditional influence in the society that hinder the distribution of deceased's properties. The cultural and traditional influence causes negative effects such as disunity, misunderstanding and conflict among heirs. In line with these research findings, ways to overcome such problems were suggested to maintain harmony, peaceful coexistence and good understanding among heirs in the society.

**Keywords:** law of inheritance, human transactions, Qur'an

## **INTRODUCTION**

Islam is a revealed religion of Allah that sent the Prophet Muhammad (SAW) with for the mercy of mankind, Allah sent His prophet with a Book ( the Glorious Qur'an), that contains everything concerning human life be it religious, political, social or economic. The religion of Islam touches every aspects of human life and does not leave any stone unturned. Out of His mercy on mankind, Allah (SWT) revealed the Glorious Qur'an. However, a number of different rights and restrictions were explained by the Glorious Qur'an. One of these rights as discussed in the Book of Allah is right to inherit one's close relative when he or she dies; death is inevitable as highlighted by Allah in His Book that, 'every soul shall taste death'. After the death of an individual human being, the ownership of his or her properties such as money, houses, cars, clothes, rings, jewellery, to mention but few will be transferred to his legal heirs. As regards to the distribution of the deceased left property, Qur'an (Q.4, V. 7-13 AND V. 176-177) explained in details, therefore, the deceased person or any legal heir is not allowed to distribute the totality of his or her estates or wealth according to his or her wishes. Rather, the guideline on how the legal heirs will inherit as well as how the distribution will become were all explained in the Glorious Qur'an, Hadith and consensus of the Muslim jurists.

The study area for this research is Gashu'a town which is the headquarter of Bade LGA. The town is located in the north-western part of Yobe State approximately between longitude 10° 50" to 11° 15" East of Greenwich Meridian and latitude 12° 30" to 13° 00" North to the equator. It shares borders in the north by Karasuwa local government area, in the south by Jakusko local government area, in the West by Jigawa State and in the east by Bursari Local Government Area. According to National Population Commission (NPC) Bade local government had an estimated population of about 139,782 during the 2006 population census. The major ethnic groups in the area are Bade, Manga, Hausa, Fulani and Takari. The minor ethnic groups are Igbo, Yoruba, Igala and so on. 99% of the population are Muslims with diverse culture and traditions. Cultural and traditional people of this society are influenced by their culture and traditions in almost every aspect of their Islamic religious practices. This includes inheritance system. The culture and tradition have influenced the system in not implementing Islamic inheritance at the right time. To their understanding, the distribution of the estate left behind by deceased immediately after his death will bring separation and misunderstanding among close relatives. However, the reverse is the case Islamically.

Therefore, this research work tries to identify the negative attitudes of societal culture and tradition of delaying the distribution of the deceased's estate at right time and suggest shari'ah ways of implementing the system to bring about peaceful living among close relative in any muslims society.

### **Statement of problem**

Lack of knowledge about the justice provided by Shari'ah in the Islamic law of inheritance, coupled with influence of culture and tradition in most of Muslim communities, hinder the distribution of deceased's left properties at the right time. This practice generates so many problems that lead misunderstanding conflict and disunity among close relatives in a number of Muslim societies. However, this research intends to discuss justice provided in the Islamic law of inheritance and the problems related to societal culture and tradition in Gashu'a town that hinder the distribution of the deceased's left properties immediately after his death. Finally, the research suggests ways that provide a lasting solution through exercising justice by distribution of deceased's left properties immediately after his death as stipulated by shari'ah (Islamic law) for unity and peaceful living among close relatives at the target society.

### **Aim and Objectives of the study**

The aims and objectives of this research are as follows:

1. To discuss the concept of Islamic law of Inheritance.
2. To highlight on the cultural and traditional negative attitudes towards the distribution of deceased's left properties immediately.
3. To assess and adopt justice provided in the Islamic law of Inheritance that goes against the cultural and traditional negative attitude towards the distribution of deceased's left properties for bring unity, harmony and peaceful living among the Muslim Ummah of Gashu'a town.

### **Research questions**

The study was guided by the following research questions

1. Do the Muslim scholars make people aware about the knowledge and the importance of distributing the deceased's left properties immediately after his or her death?
2. Does the societal culture and tradition influence the distribution of the deceased's left properties immediately after his or her death?
3. Does denial of implementing shari'ah (Islamic law) provision of distributing deceased's left properties immediately after his or her death causes misunderstanding, conflict and disunity among close relatives?
4. Does the distribution of deceased's left properties immediately after his or her death as suggested by Shari'ah (Islamic law) provision bring unity, harmony and peaceful living among close relative?

### **Scope and limitations**

The research focused on the concept of Islamic law of inheritance and adopted the importance of distributing the deceased's left properties immediately after his or her death. That goes against the cultural and traditional negative attitudes towards the distribution of the estate at right time. The research work is limited to Gashu'a town, the headquarter of Bade local government area of Yobe State.

## METHOD OF DATA COLLECTION

This research adopted descriptive and practical assessment methods that it involves a great deal of wide reading of the relevance and related materials on the topic. On the process of conducting the research, both primary and secondary sources of data will be used, which include the Glorious Qur'an, traditions of the Prophet (S.A.W.), juristic consensus, relevance and related text-books, academic works, journals, magazines, newspapers, both from libraries and online sources will be consulted. Also questionnaires will be distributed and later on will be collected, the completed questionnaires will be analysed to establish the facts.

### 1.6. The concept of Islamic law of inheritance

#### 1.6.1. Definition of Inheritance

Two different Arabic language terms are used by Islamic Jurists for the definition of law of succession; they are *Al-Mirath* and *Al-Fara'idh*. '*Al-Mirath*' is derived from the verb '*Waratha*' which literary means to inherit anything. The word *al-Mirath* also literary connotes the handing over of a thing from one person to another.

The word *Al-Fara'idh* is the plural of *Al-Fara'idha* which is derived from the verb *Faradha* which literally means "to make an order" or "a fixed share."

Technically, the term is defined as "the transfer of ownership from a dead person to his survival heir (s). In the legal terminology, it is knowledge about some rules of *Shari'ah* which guides to know who will inherit and who will not and what shares will go to the heirs from the properties left by a deceased person.

#### 1.6.2. The Ground of Inheritance in the pre-Islamic Arabians and the early days of Islam

Among the pre-Islamic pagan Arabs, the ground of inheritance are:

- i. An-Nasab (blood relationship), the Arabs were inheriting on the basis of blood relationship, and it was only confined to the paternal male descent. Even among them only those who have ability to hold arms and had actually fought along with the deceased. Hence, those male descendants who had no ability to hold arms, such as a minor, incapable, and old people were impeded from inheritance.
- ii. At-Tabanny (adoption), adaption was another ground of claiming a share from the estate of a deceased. Arabs used to adopt the child of other persons and that adopted child inherits the person who adopted him after his death and vice versa.
- iii. Al-Hilaf (confederation), the confederation was another ground of inheritance. This confederation was used to be formed between two strangers with the condition that they will fight together against their enemies and they will help each other in the all fields of their lives. And if there is any ransom to pay to their enemies they share it. After this compact if any of them died the alive will inherit the one-sixth (1/6) of deceased's property.
- iv. Islamic brotherhood and emancipation. By the time when Muslims emigrated from *Makkah* to *Madinah* the links of brotherhood was established between some of the *Muhajerin* and *Ansar* (emigrants and helpers) in the result, they became like blood brothers and they started to inherit each other's property if one of the two died.

#### 1.6.3. The importance of the Law of Inheritance in Islam

The Islamic law of inheritance is one of the most importance areas of Islamic jurisprudence. Its rules and regulations have been specifically mentioned both in the Glorious *Qur'an* and the *Sunnah* of the Prophet (S.A.W.). However, in the Glorious Qur'an *surah Al-Nisa'a* verse 11, 12 and 176 clearly explained the share of almost all the legal heirs of the deceased. And the *Sunnah* has taken care of the explanation of the share of those heirs whose entitlements have not been explained by the Glorious *Qur'an*. During the time of the Prophet (S.A.W.) this subject was taught by himself. Also there is a number of prophetic tradition encouraging upon the seeking for knowledge in the field. It is reported by Abu Hurairah (R.A.) that the Prophet (S.A.W.) said: "Learn inheritance (*Al-Fara'idh*) and teach it. Indeed it is the half of the knowledge. And it would be forgotten. And it (inheritance) will be the first thing which will be raised up from my *Ummah* (the followers)." Also another hadith says: It is also reported that the companion of the Prophet (S.A.W.) used to have a lot of debates among themselves especially regarding issues concerning inheritance. And the Prophet (S.A.W.) used to praise them for this as it is reported by Anas (R.A.) that He

(S.A.W.) said: “Zaid Ibn Thabit (R.A.) is an expert on the subject of inheritance among my companions.” It is reported by Abdullah bin Amr bin Al-A’as (R.A.) that there are only three necessary branches of knowledge which must be learnt, while the other subjects are not necessary. They are to learn those Qur’anic verses which have bearing on the practical life, to learn the *sunnah* and to learn the laws of inheritance which are all just and fair.”

#### *1.6.4. Rationale behind the Law of Succession*

Looking upon the pre-Islamic pagan Arabs systems of inheritance, it can be concluded with an open mind that there was a need for revolutionary changes in the world to protect the weaker Saxes and orphans. As it has been earlier observed that the almost all the pre-Islamic legal systems had rules for the distribution of wealth only to the strong males relatives and the weaker ones were neglected. Nevertheless, these inequalities vanished by the magic touch of Islam through the Prophet bin Abdullah (S.A.W.). Hence, more equitable and just principles of distribution of wealth were adopted. Islam did justice where justice was supposed to be done. Consequently, the weaker Saxes and infants were allowed to inherit. In Islamic system of inheritance no distinction was made between father and mother, first born and last born, children from free mothers and those slave mothers, married daughters and unmarried daughters etc.

#### *1.6.5. Grounds or Reasons of Inheritance in Islam*

There are three reasons or grounds of inheritance in Islamic Law. Anyone claiming a share must establish that he or she possesses one of the following reasons of inheritance:

##### *i. Al-Nasab (Blood Relationship)*

Blood relations are the descendants and the ascendants of the deceased person. They include upspring, both male and female, parents, brother and uncles.

##### *ii. Al-zawaj (valid marriage)*

A valid marriage contract also makes one of the spouses eligible to inherit the other.

##### *iii. Al-wala’a (Emancipation)*

That is if a master emancipates his slave in the absence of any other heir inherits his deceased (free slave), but not vice versa. It is reported in the *Hadith* of *Barirah* (R.A.H.) that Prophet (S.A.W.) said: “*Al-wala’a* is for those who set him free”. In another *Hadith*, the Prophet (S.A.W.) said “*Al-wala’a* has a relationship similar to that of blood relationship.”

#### *1.6.6. Conditions for Inheritance*

There are three conditions for inheritance that must be satisfied before one can get a share in the estate, these conditions are

##### 1. Death of the testator (*mwarrith*)

The death of the testator must be actual and clear. It should be either actual death, or by the court pronounce in a case of a missing person.

##### 2. The survival of the heir (*warith*) at the time of death

Before an heir can inherit the deceased, it must be proved that he was alive at the time of the death of the testator.

#### *1.6.7. There must be one of the grounds of inheritance*

That is before a person can claim a share from the estate of the deceased; he must show that he falls under one of the grounds of inheritance. That is, he is related to the deceased either because of *Nasab*, *Zawaj* or *Wala’a*.

#### *1.6.8. Impediment to Inheritance*

The Impediments are those factors that are recognized by *Shari’ah* as those acts if committed by an heir, or he found himself in without his own act, would bar him from inheriting his deceased relative. There are three impediments to inheritance, which have been unanimously agreed upon by the four Sunni schools, they are: killing, difference of religion and slavery.

#### *1.6.9. Exclusion (Hajb)*

*Hajb* is an Arabic word literally meaning ‘to prevent.’ Legally, is an exclusion of a person from inheritance either totally or partially in the presence of another person, if the latter is not alive then he may inherit, like son of son in the presence of the son. There are two kinds of exclusion, total and partial exclusion

*i. Hajb al-hirman (total exclusion)*

It is a total exclusion of heir from the inheritance. However, there are six legal heirs who can never be excluded totally from inheritance. They are son, mother, daughter, husband and wife. All other heirs can be totally being excluded sometimes. For instance, a daughter of son is totally being excluded in the presence of a son. In his absence she may inherit though.

*ii. Hajb al-nuqsan (partial exclusion)*

This is a situation in which a legal heir will be entitled to a lesser share instead of higher, because of the presence of another legal heir. For example, a husband is prevented from taking  $\frac{1}{2}$  which is his higher share, to  $\frac{1}{4}$  in the presence of the deceased's children etc. There are only five persons who are subject to partial exclusion from inheritance. They are husband, wife, father, mother, daughter of son and half-sister

**1.6.10. Rights and liabilities related to the property of the deceased**

Generally, there are four rights that are related to the estate. It is required that they must be settled by the survived relations of the deceased before distributing the estate among his heirs. They must be settled in the following order: Funeral expenses, the settlement of debts of the deceased, Payment of *wasiyyah* (will), and distribution of the residue to the heirs.

**1.6.11. The Legal Heirs**

The heir(s) is defined as a person whose relation to the deceased legally entitled him to inherit part of deceased's property depending on factors such as his relation to the deceased and presence of other(s). All heirs are not equal. Some of them have priority over the others. The total numbers of heirs are twenty five. There are fifteen male heirs and ten female. The male heirs are: son, son of son (how low so ever), father, grandfather, (father of father how high so ever), full brother (germane brother), half-brother (consanguine brother), uterine brother, son of full brother (hls), son of half-brother (hls), full paternal uncle, half paternal uncle, son of full paternal uncle (hls), son of half paternal uncle (hls), husband and Male emancipator (who freed his slave). The female heirs are: daughter, daughter of son (how low so ever), mother, grandmother (mother of father), grandmother (mother of mother), full sister (germane sister), half-sister (consanguine sister), uterine sister, wife, female emancipator (who freed her slave). However, it should be noted that the shares allocated to the both male female heirs are specified in *Surah al-Nisa'a* verses 11, 12, and 176. They are  $\frac{1}{2}$ ,  $\frac{1}{4}$ ,  $\frac{1}{8}$ ,  $\frac{2}{3}$ ,  $\frac{1}{3}$ , and  $\frac{1}{6}$ . And there is another share which is one-third of the remaining ( $\frac{1}{3R}$ ) given to mother in *umariyyatain* cases and also to grandfather inheriting with the collateral according to majority of *Sahabah*.

**ANALYSIS AND PRESENTATION OF DATA**

This section deals with the analysis and presentation of data obtained and gathered from different respondents. The researcher employs questionnaire method throughout his investigation. He designed and administered one hundred (100) questionnaires. The questionnaires were administered within Gashu'a town and fortunately all the questionnaires were completed and returned to the researcher. Yes or No has been used as options in the questionnaires, yes indicates positive response while No indicates negative response.

The Tables and analysis of Data obtained

The followings are the tables containing data obtained from different respondents in the questionnaires and each question is mainly analysed based on the percentage of the respondents.

**Research question 1:** Do the Muslim scholars make people aware about the knowledge and importance of distributing the deceased's properties immediately after his or her death as provided by *shari'ah* (Islamic law)?

Variable	Responses	Percentage
Yes	25	25%
No	75	75%
Total	100	100%

The above table highlights that out of 100 respondents, 25 responded Yes which represents 25% that, the Muslim scholars do make people aware about the knowledge and importance of distributing the

deceased's left properties immediately after his or her death as provided by *shari'ah* (Islamic law). On the other hand, 75 respondents responded No which represents 75% that the Muslim scholars do not make people aware about the knowledge and importance of distributing the deceased's left properties immediately after his or her death as provided by *shari'ah* (Islamic law). The analysis obviously reveals that, most of the people of Gashu'a town are ignorant on the knowledge and important of distributing the deceased's left properties immediately after his or her death. However, the Islamic scholars should take their time to educate people on the knowledge of the law of inheritance and the importance of its implementation when needs be, for the economic progress and social benefit of the Muslims society. Research question 2, Does the societal culture and traditions of Gashu'a people influence the distribution of the deceased's left properties immediately after his or her death?

Variable	Responses	Percentage
Yes	80	80%
No	20	20%
Total	100	100%

The above table shows that, 80 respondents which represents 80%, responded yes that, the societal culture and traditions of Gashu'a people do influence the distribution of deceased's left properties at the right time. While 20 respondents, responded no this represent 20%, that the societal culture and tradition do not influence distribution of the deceased's left properties at the right time. However, the analysis reveals that the societal culture and tradition of Gashu'a people have been greatly influencing the distribution of deceased's left properties at the right time.

Research question 3. Does denial of implementing *shari'ah* (Islamic law) provision of distributing deceased's left properties immediately after his or her death causes misunderstanding, conflict and disunity among close relatives?

Variable	Responses	Percentage
Yes	90	90%
No	10	20%
Total	100	100%

The above table displays that 90 respondents responded yes, which represents 90% of the respondents that denial of implementing *shari'ah* (Islamic law) provision of distributing deceased's left properties immediately after his or her death causes misunderstanding, conflict and disunity among close relatives, while 10 responded no, which represent 10% of the respondents as the denial of implementing *shari'ah* (Islamic law) provision of distributing deceased's left properties immediately after his or her death do not causes misunderstanding, conflict and disunity among close relatives. By indication the analysis of data obtained show that, the denial of implementing justice in the law of Islamic inheritance appropriately as provided by *Shari'ah* will cause misunderstanding, conflict as well as disunity among close relatives at the target Muslims communities.

Research question 4. Does the distribution of deceased's left properties immediately after his or her death as suggested by *Shari'ah* (Islamic law) provision bring unity, harmony and peaceful living among close relative?

5. Variable	Responses	Percentage
Yes	95	95%
No	05	5%
Total	100	100%

The table above shows that 95 responded yes that represent 95% of the respondents are of the view that, distribution of deceased's left properties should be done immediately after his or her death as suggested by *Shari'ah* (Islamic law) provision, that bring unity, harmony and peaceful living among close relatives. While on the other hand, only 5 responded no, which represent only 5% of the respondents. Therefore, the

analysis here indicate that most of the people need the distribution of deceased's properties to be done at the right time, immediately of the death of an individual, to avoid cheating of the weak , minors and another entitled legal heirs.

### **CONCLUSION**

This research discusses justice in the Islamic law of inheritance as provided in the primary and secondary sources of Islamic law (*shari'ah*). The researcher considers Gashu'a town the headquarters of Bade L.G.A. in Yobe State, as a case study. The study however, explains the concept of Islamic law of inheritance in some details, in the process the work uses questionnaires in the target society, and identify some cultural and traditional negative attitudes of the society towards the distribution of deceased's left properties at the right time. The researcher collected and analysed obtained data concerning the issue on ground. After analysing the data obtained the study reveals that most of the people of study area are ignorant of the importance of distributing the deceased's left properties immediately after his or her death. On the other hand the study realised that denial of distributing the estate left by a deceased immediately after his or her death will cause disunity, conflict and misunderstanding among close relatives. But distributing such properties will bring peaceful living, harmony and good understanding of one another among the close relatives, it also uplift the economic ability of some heirs that living in abject poverty. Thus, based on the research findings, the researcher suggests that, the Islamic scholars should do their best to teach people the knowledge of inheritance in such a society. This will make them aware to understand its importance as well as the importance of the distribution of the deceased's left properties immediately after his or her death. By acquiring the knowledge, they also understand that denial of distributing of the deceased's left properties at the right will cause misunderstand, disunity, and conflict among legal heirs. This knowledge also make them to understand that the deceased's left properties have to be distributed immediately for this will bring harmony, peaceful living as well as good understanding of one another among legal heirs of the same family, Allah knows best.

### **REFERENCES**

- Yusuf A. A., *The Holy Qur'an English Translation and Commentary*, New York. 1977.  
Ibn Al-Arabi, M. Bn. A., *Ahkam Al-Qur'an*, Cairo. 1967  
Ibn Kathir I. Bn. U. *Tafsir Al-Qur'an Al-Azim*. Cairo 1967  
Al-Tabari Abu A. J. M., *Jami' Al- Bayan fi Tafsir Al- Qur'an*, Cairo. ND  
Abu A. M. Bn I. *Sahih Al- Bukhari*, Cairo. 1939  
Abu Al-H. *Al- Jami' Al-Sahih*, Cairo. 1339 A.H.  
Ali Bn M. J. *Sharhu Al-Sarjiyyah*. Cairo 1944.  
Jawad A. *Tareekh Al-Arab Qbl Al-Islam*, Baghdad. 1956  
Muhammad M. Bn Y., *Al-Tarkh wa Al-Mirath Fi Al- Islam*, Cairo N.D.  
Salah-Uddin Bn. H. *Al-Mirath Justice of Islam in the Rules of Inheritance*, Kano. 2003  
Wahbah Z. *Al-fiqh Al-Islamy*, Damascus. 1985  
Yaseen Bn A. *Al-Mirath Fi Al-Shari'a Al-Islamiyyah*, Alexandria. N.D.