CHAPTER 4
RULES OF EXCLUSION

1. Rules of exclusion 1.1. Justification and necessity of rules of exclusion	1.2 Types of exclusion 1.2.1. Total exclusion 1.2.2. Partial exclusion 1.3 Rules and explanations

1. Rules of exclusion :

The objective of this chapter is not to discuss the person who will not get the property or is excluded for certain disqualification like murder, illegitimacy. Rather, the object is to focus those persons who are otherwise qualified but just for the reason of priority are being excluded either totally or partially.

Hajab is the original Arabic term which means 'exclusion'. Sometimes certain heirs are totally excluded for the presence of some other heirs; and in some other cases, they are excluded partially, which means that their shares are reduced by the presence of other heirs. The rules which determine this priority and deprivation are called the rules of exclusion. These rules are basically enumerated in the Quran. Of course, some of such rules of exclusion have been supplemented by Hadith and juristic interpretations.

1.1 Justification and necessity of rules of exclusion:

It is not possible that every one will get property at a time. So, there must be priority on different basis. Rules of exclusion are those rules by which that priority is determined. In the absence of such rules, there would be extreme chaos and conflict as every body would claim the property. Thus, the rules of

exclusion form the basis of Islamic Law of Succession. The rules of exclusion identify the heirs who are entitled to get the property of the deceased out of many surviving heirs. The rules also determine the quantum of the property to be distributed to the persons who are decided to get the property. Thus, it serves two purposes: firstly, to identify the heirs who will get the property and who will be excluded by the theory of relative priority, and secondly, to determine the exact amount of the succeeding heirs. The ultimate objective of these rules of exclusion is to determine the proper order of priority which will ensure just distribution of property of the deceased. Macnaghten commented about this system of succession which gives attention on the nearness of relationship that—

> "In these provisions we find ample attention paid to the interests of all those whom nature places in the first rank of our affection; and indeed it is difficult to conceive any system containing rules more strictly just and equitable. The obvious principle of preferring the nearer kindred to claimants whose relation to the deceased is not so proximate, seems to have been adopted as the invariable standard for fixing the portion, and the rules for the succession of several heirs and the order of preference assigned to the different degrees consanguinity seems to be exactly what would be most consonant to the general inclination of mankind."[1]

1.2 Types of exclusion:

Hajab or exclusion may be of two types:

I. Total or perfect exclusion
II. Partial or imperfect exclusion

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[1] Macnaghten, W.H., *Principles and Precedents of Muhammadan law*, Preliminary Remarks, p. 1.

1.2.1 Total or perfect exclusion: It means that an heir will be excluded totally, i.e., will not get any property in any way for the presence of another heir. For example, in presence of the father, the full sister will be excluded totally. The Arabic terminology of which this term is the translation is *Hajab Hirman.*

Illustration: Total exclusion.

Heir	**Share**	**Reasoning**
Wife	¼	Because, there is no child or son's child.
Father	Residue (3/4)	As asaba, in order of priority, since there is no son or son's son.
01 Full sister	Excluded	She is totally excluded by the father.

There are many instances of such total exclusion which will be clear while discussing different situations of the sharers and agnatic heirs.

1.2.2 Partial or imperfect exclusion: It may occur in two ways:

i) By reducing the share: In presence of an heir, another heir's share may be reduced and the incident of such reduction is one of the ways of partial or imperfect exclusion. For example, in presence of the son, husband's share is reduced from ½ to ¼.

Illustration: Partial exclusion by reducing the share.

Heir	**Share**	**Reasoning**
Wife	¼	Because, there is a son. here the son reduces her share from ¼ to 1/8.
Son	Residue	As asaba of the first grade.

ii) Exclusion as sharer only: Sometimes a particular heir may exclude another heir as a

sharer only, but still another way of getting the property remains open for him. This is also, widely speaking, one of the ways of partial exclusion. For example, in presence of the daughter, the full sister will be excluded as sharer but will succeed as residuary.

Illustration: Exclusion as sharer but succeeds as a residuary.

Heir	Share	Reasoning
Daughter	½	She is one in number and no son is present.
Consanguine sister	Residue	Being excluded as sharer by the daughter succeeds as residuary.

There are also many instances of partial exclusion which are mentioned in the chapters on sharers and *asaba*. The Arabic terminology of partial exclusion is *Hajab Nuqsan*.

1.3 Rules and explanations:

The rules of exclusion are not codified at one place in the Quran or Hadith; rather, these are deduced by the jurists from the primary sources by analysis. However, basically, there are three principles of exclusion.[2]

i) ***Hierarchy of degree: Nearer in degree excludes more remote:*** This principle of exclusion based on hierarchy of degree is applicable in the same class. Thus, the nearer grandmother excludes the remote grandmother. Or son excludes son's son, but the daughter does not exclude son's son. Whereas, a daughter excludes son's son under Shia law.

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[2] See Doi, Abdur Rahman, *Shai'ah The Islamic Law*, Ta Ha Publishers, London, UK., 1984, at p. 319. For authentic reference see also Zuhayli Wahab Dr., *Al Fiqh Al-Islami wa-Adillatuh : The Islamic Jurisprudence and Its Evidences*, Darul Fikr, Syria, 1997, 4th edition, vol. 4, at pp.7813-7814.

Illustration: Nearer grandmother excludes remote grandmother..

Heir	Share	Reasoning
Mother's mother	1/6	As sharer, because there is no excluder to her.
Mother's mother's mother	Excluded	Excluded by the nearer grandmother, i.e., mother's mother.
Son	Residue	As asaba of the first grade.

Illustration: Son excludes son's son..

Heir	Share	Reasoning
Son	Residue	As asaba of the first grade.
Son's son	Excluded	By the son of higher degree.

Illustration: Daughter does not exclude son's son, though she is of higher degree, because they do not belong to the same group of similar gender.

Heir	Share	Reasoning
Daughter	½	She is one in number, and there is no son to convert her into reisduary.
Son's son	Residue	As *asaba* of the first grade in order of priority. The daughter cannot exclude the son's son.

ii) ***Exclusion by connecting heir: A person who is related to the deceased through another is excluded by the presence of later:*** There are certain heirs who are related to the deceased directly without any link, e.g., son, daughter, father, mother, etc. They are primary heirs and are never excluded totally. But, there are some other heirs who are related to the deceased through another connecting heir, e.g., brother or sister, who are related with the deceased through father.

In such cases, the heir who is connected to the propositus through another person will be excluded by the person who has linked him. In other words, the person who is linked is excluded by the person who has linked him with the deceased. So, in presence of father both brother and sister will be excluded, or paternal uncle will be excluded by the grandfather as he is linked with deceased through the grandfather as his offspring.

Illustration: Father excludes the full brothers and sisters, as he is the connecting heir.

Heir	**Share**	**Reasoning**
Father	Residue	As *asaba* of the second grade, in order of priority, in the absence of any *asaba* from the first grade.
Full sister	Excluded	She is excluded by her connecting heir father.
Full brother	Excluded	He is excluded by his connecting heir father.

Illustration: Father excludes the consanguine brothers and sisters, as he is the connecting heir.

Heir	**Share**	**Reasoning**
Father	Residue	As *asaba* of the second grade, in order of priority, in the absence of any *asaba* from the first grade.
Consanguine sister	Excluded	Her connecting heir father excludes her.
Full brother	Excluded	His connecting heir father excludes him.

But, in an exceptional way father excludes the uterine brother and sister, though he is not their connecting heir.

Illustration: Father excludes the uterine brothers and sisters, though he is not the connecting heir.

Heir	Share	Reasoning
Father	Residue	As *asaba* of the second grade, in order of priority, in the absence of any *asaba* from the first grade.
Uterine sister	Excluded	She is excluded by father, though he is not her connecting heir.
Uterine brother	Excluded	He is excluded by father, though the father is not the connecting heir.

Anomalously and interestingly, mother does not exclude the uterine brother or sister, though she is the connecting heir. Moreover, if they are two in number, are in position to reduce even the mother's share.

Illustration: Mother does not exclude the uterine brothers and sisters, though she is the connecting heir.

Heir	Share		Reasoning
Husband	1/2	3/6	As sharer, because there is no child or son's child.
Mother	1/6	1/6	As sharer, her share has been reduced from 1/3 to 1/6 because of the presence of two siblings.
Uterine sister	1/3	1/6	As sharer, since there is no child, son's child, father or true grandfather.
Uterine brother		1/6	As sharer, since there is no child, son's child, father or true grandfather.

iii) ***Exclusion by strength of blood tie: Full blood excludes half blood with the exception of uterine blood:*** The general rule of exclusion based on blood strength among the siblings is that the

full blood excludes half blood with the exception of uterine blood. Thus, full sister or full brother excludes consanguine sister, but not the uterine. Full brother excludes consanguine brother, not the uterine brother. However, this rule is not absolute. Because, sometimes the consanguine sister even after being excluded by the full sister gets property in an alternative way.

Illustration: Full sister excludes consanguine sister, not uterine sister.

Heir	**Share**	**Reasoning**
02 Full sisters	2/3	As sharer, since she is one number, neither any excluder nor any brother to convert her into residuary is present.
Uterine sister	1/6	As sharer, since she is one in number and no excluder to her is present.
Consanguine sister	Excluded	By the full sister. Full blood excludes half blood.

Illustration: Full brother excludes consanguine sister and consanguine brother but not the uterines.

Heir	**Share**	**Reasoning**
Full Brother	Residue (2/3)	As *asaba* of third category, in the absence of any *asaba* from the 1st or 2nd category.
Uterine sister	1/3 (each gets 1/6)	As sharer, since they together are more than one in number and no excluder to them is present.
Uterine brother		
Consanguine sister	Excluded	By the full brother. Full blood excludes half blood.
Consanguine brother	Excluded	By the full brother. Full blood excludes half blood.

Illustration: Consanguine sister in a special case gets the property with the full sister in an alternative way.

Heir	Share	Reasoning
01 full sister	½	As sharer, because there is no excluder or converter and she is one in number.
01 Consanguine sister	1/6	As sharer, because there is no excluder except only one full sister who succeeds as a sharer and no converter is also there. In this case, the fill up the so-called quota of 2/3 consanguine sister gets 1/6. For such an allocation the conditions are that there must have only one full sister who gets ½ as a sharer and no other excluder to her will be present.
02 Uterine sisters	1/3	As sharers, because there is no excluder and they are more than one in number.

These are the general rules of exclusion applicable in every case of heirs in order to determine the priority both *intra* class and sometimes inter class, e.g., full brother, an asaba, excludes even a consanguine sister—who is a sharer. However apart from these rules, there are certain other rules of exclusion based on class, degree and strength of blood which are applicable in case of *asaba*.

Does full sister exclude consanguine brother?

From theoretical perspective, generally speaking, full sister excludes consanguine brother as the full blood excludes half blood with the exception of uterine blood. Thus, if full sister becomes residuary then the consanguine brother will be excluded obviously.

Illustration: Full sister excludes consanguine brother.

Heir	Share	Reasoning
02 Daughters	2/3	As sharers, because there is no son and they are more than one in number. Each gets 1/3.
02 Full sisters	Res	Because, there are daughters and no other excluder is there. Here each gets 1/6.
Consanguine brother	Excluded	Because, full blood excludes half blood.

But, if the consanguine brother have the opportunity to inherit in a different capacity than the full sister, full sister will not exclude such consanguine brother. Thus, if the full sister succeeds as a sharer, then the consanguine brother may inherit as a residuary, and in such circumstance, the full sister will not affect the consanguine brother as an excluder.

Illustration: Full sister does not exclude consanguine brother.

Heir	Share	Reasoning
02 Full Sisters	2/3	As sharer, because there is no excluder or converter, and they are more than one in number.
Consanguine brother	Residue (1/3)	As a asaba of 3rd grade in the absence of the asaba of the first two grades. Full sister does not exclude him though he is a half blood relative because she inherits in a different capacity as he inherits as a residuary and thus there is no conflict and no question of priority arises at all.

Thus, interestingly, a consanguine sister also may be rescued by a consanguine brother from the imminent danger of total exclusion by full sisters. That is another technical case, where both consanguine brother and sister get the property even with full sisters.

Illustration: Full sister may not exclude consanguine brother and consanguine sister.

<table>
<tr><th>Heir</th><th>Share</th><th>Reasoning</th></tr>
<tr><td>02 Full Sisters</td><td>2/3</td><td>As sharer, because there is no excluder or converter, and they are more than one in number.</td></tr>
<tr><td>Consanguine brother</td><td rowspan="2">Res (2:1)</td><td rowspan="2">Consanguine brother gets the property as an asaba of 3rd grade in the absence of the asaba of the first two grades. Full sister does not exclude him though he is a half blood relative because she inherits in a different capacity as he inherits as a residuary and thus there is no conflict and no question of priority arises at all. Then the consanguine brother converts his female counterpart consanguine sister into an asaba and thus she is also rescued by her brother who would otherwise had been excluded by the full sisters.</td></tr>
<tr><td>Consanguine sister</td></tr>
</table>

Again, it may happen so that though the full sister does not exclude consanguine brother, yet he is excluded *de facto* though not *de jure* in presence of full sister.

Illustration: Though the full sister does not exclude yet consanguine brother may be excluded de facto.

Heir	**Share**	**Reasoning**
02 Full sisters	2/3	As sharers, because there is no excluder or converter and they are more than one in number.
02 uterine sisters	1/3	As sharers, because there is no excluder and they are more than one in number.
Consanguine brother	Residue =Nothing (*de facto exclusion*)	As a asaba of 3rd grade in the absence of the asaba of the first two grades. Full sister does not exclude him though he is a half blood relative because she inherits in a different capacity as he inherits as a residuary and thus there is no conflict and no question of priority arises at all. But in this case, since nothing is left after distributing among the sharers so the consanguine brother is not getting anything being excluded de facto though the law in fact has not excluded him.

Illustration: Though the full sister does not exclude yet consanguine brother may be excluded de facto.

Heir	Share	Reasoning
02 Full sisters	2/3=4/6 reduced to 4/7	As sharers, because there is no excluder or converter and they are more than one in number.
Husband	½=3/6 reduced to 3/7	As sharers, because there is no child or son's child.
Consanguine brother	Residue= Nothing (*de facto exclusion*)	As a asaba of 3rd grade in the absence of the asaba of the first two grades. Full sisters do not exclude him though he is a half blood relative because they inherit in a different capacity as he inherits as a residuary and thus there is no conflict and no question of priority arises at all. But in this case, since nothing is left after distributing among the sharers so the consanguine brother is not getting anything being excluded de facto though the law in fact has not excluded him.

***De facto* exclusion:**

This is a technicality that sometimes an *asaba* though is not excluded theoretically, is excluded *de facto* as nothing remains as *residue* after distributing among the sharers. This is obvious that a sharer will never have to face this *de facto* exclusion, as in that case, there is a provision of *awl* so that all sharers get the property if not excluded by the law.

Two examples of *de facto* exclusion have been cited above already in connection with the relationship between consanguine brother and full sister. Some

other interesting scenarios of *de facto* exclusion are cited below:

Illustration: De facto exclusion of full sister and full brother.

Heir	Share	Common denominator =12	Revised common denominator =13
Husband	1/4	3/12	Reduced to 3/13
Daughters	2/3	8/12	Reduced to 8/13
Mother/ Grandmother	1/6	2/12	Reduced to 2/13
Full sister and/or full brother	Residue= 0 (case of *de facto* exclusion)		

Consanguine siblings are connected with the deceased through father, a male link; whereas uterine siblings are connected with the deceased through the mother, a female link. Yet, sometimes these maternal siblings seem to be in a better position then the paternal siblings. One interesting scenario may arise where uterine siblings get the property, while the consanguine siblings will be excluded.

Illustration: De facto exclusion of consanguine sister and consanguine brother, where uterine sister or/and uterine brother are not excluded.

Heir	Share	Common denominator = 6
Husband	1/2	3/6
2 Uterine Sisters /& 2 Uterine Brothers	1/3	2/6
Mother/Grandmother	1/6	1/6
Consanguine sister and consanguine brother	Residue= 0 (case of *de facto* exclusion)	

In the above case, if there would have been only consanguine sister, but not any consanguine brother, then such a consanguine sister would not have been excluded, as she could succeed in that case as a sharer. For example:

Heir	Share	Common denominator = 6	Revised common denominator = 9
Husband	1/2	3/6	Reduced to 3/9
2 US/& 2UB	1/3	2/6	Reduced to 2/9
Mother/ Grandmother	1/6	1/6	Reduced to 1/9
Consanguine sister	1/2	3/6	Reduced to 3/9

Thus, it appears that in the first of the above two cases, consanguine sister got nothing only due to the application of the rule of *Tasib*, otherwise she could get the property as sharer as appears in the second example.

But, in such a case if consanguine sister is substituted by consanguine brother then he will be the victim of de facto exclusion. For example:

Heir	Share	Common denominator = 6
Husband	1/2	3/6
2 Uterine Sisters /& 2 UB	1/3	2/6
Mother/Grandmother	1/6	1/6
Consanguine brother	Residue = 0 (*de facto* exclusion)	

Thus, it appears that sometimes a consanguine sister remains in a more secured position than her male counterpart consanguine brother. But full sister does not have any such privileged position that secures her more than full brother.

Sons of the pre-deceased son may also have to face de facto exclusion.

Illustration: De facto exclusion of son's son.

Heir	Share	Common denominator =12	Revised common denominator =13
Husband	1/4	3/12	Reduced to 3/13
02 Daughters	2/3	8/12	Reduced to 8/13
Mother/ Grandmother	1/6	2/12	Reduced to 2/13
Son's son	Residue= 0 (case of *de facto* exclusion)		

In such a peculiar situation every *asaba* will be excluded *de facto* except father and grandfather.

Heir	Share	Common denominator =12	Revised common denominator =13
Husband	1/4	3/12	Reduced to 3/13
2 Daughters	2/3	8/12	Reduced to 8/13
Mother/ Grandmother	1/6	2/12	Reduced to 2/13
SS/FB/CB/PU/PU'S S/FB'S S/CB'S S		Residue= 0 (*de facto* exclusion)	

Table 1: Sharers and total exclusion

Sharers who are never totally excluded
1. Husband 2. Wife 3. Mother 4. Father 5. Daughter

Sharers who may be totally excluded	**Heirs who cause total exclusion**
1. True grandfather	Father, nearer true grandfather.
2. True grandmother	Father, mother, nearer true grandfather, intermediate true grandfather, nearer grandmother.
3. Son's daughter	Son or higher son's son.
4. Full sister	Son, son's son, father, true grandfather.
5. Consanguine sister	Son, son's son, father, true grandfather, full brother, 2 or more full sisters if they succeed as asaba.
6. Uterine sister	Child or son's child, father or true grandfather.
7. Uterine brother	

Table 2: Sharers and partial exclusion

Sharers whose shares are partially reduced	
Husband → ½ to ¼	Child or son's child.
Wife → ¼ to 1/8	Child or son's child.
Mother → 1/3 to 1/6	Child or son's child or more than one brother or sister.

CHAPTER 5
DOCTRINE OF *AWL* AND *RADD*

1. Doctrine of *Awl* or Increase
   - 1.1. Meaning
   - 1.2. Origin and Justification
   - 1.3. Different opinions about Awl
   - 1.4. Rules governing *Awl*
   - 1.5. Cases of Awl
   - 1.6. Application

2. Doctrine of *Radd* or Return Back
   - 2.1. Meaning
   - 2.2. Rules governing Radd and non-applicability of Radd
   - 2.3. Methodologies of *Radd*
   - 2.4. Different opinions about *Radd*.
   - 2.5. Application

1. Doctrine of *Awl* or Increase:

The sharers always get fractional shares. The sum total of the fractions sometimes may exceed the unity. The individual circumstances of the heirs may permit them to get certain shares which may not be compatible as a whole with the total unit of the property. Doctrine of awl comes into operation to cure such anomaly in distribution and calculation of the property.

1.1 Meaning:

The term *awl* literally means 'increase' or 'excess'. If the sum total of the fractions exceeds the unity then that situation is technically termed as the case of *awl*. The methodology by which such *awl* case is solved is known as the doctrine of *awl*. In such circumstance, the fraction of each share is reduced proportionately to adjust the sum total of fractions with the unity.

1.2 Rules governing *Awl*:

Just one rule governs the case of *awl*, that is, to reduce the shares of all heirs proportionately. Thus, the total excess portion is to be reduced proportionately from the shares of all heirs. For example, if some one dies leaving her husband, mother and full sister, then the husband will get ½,

mother gets 1/3 and full sister gets ½ --this is a case of awl.

Illustration: Husband, mother and full sister—an awl case.

Heir	Share and reasoning	Common denominator=6
Husband	½ *As sharer since there is no child son's child.*	=3/6
Full sister	½ *As sharer since she is one in number and no excluder or converter to her is present.*	=3/6
Mother	1/3 *As sharer since there is no child or son's child or even not more than one brother or one sister.*	=2/6
Sum total of the fractions		**8/6**

Thus, in the above example, sum total of the fractions exceeded the unity. The exceeding portion is 8/6-1= 2/6. So we have to cut off this 2/6 portion proportionately from each of the above heirs. It can be done in either of the following two ways:

1. Elaborate mathematical methodology
2. Shortcut methodology

1. ***Elaborate mathematical methodology:***

Step 1:

At first we have to calculate the ratio of the existing shares of the heirs—

Husband : Full sister : Mother = 3/6 : 3/6 : 2/6
=3 : 3 : 2
=3/8 : 3/8 : 2/8

Step 2:

Thus, in accordance with the above ratio the portion of each of them in the total exceeding portion (2/6) is shown below:

Husband	3/8 of 2/6	6/48=1/8
Full sister	3/8 of 2/6	6/48=1/8
Mother	2/8 of 2/6	4/48=1/12

Step 3:
These excess portions in their shares are to be excluded from their original shares—

Heir	**Original share**	**Final share after reduction**
Husband	3/6	3/6-1/8=9/24=3/8
Full sister	3/6	3/6-1/8=9/24=3/8
Mother	2/6	2/6-1/12=3/12=1/4=2/8
Sum total of the fractions		8/8

2. ***Shortcut methodology:*** To avoid the above complicated and long mathematical process there is a shortcut methodology to reduce the shares of the heirs proportionately. If the sum total of the fractions is made the new common denominator for each fractional share, then the property will be reduced automatically in proportion to their shares.

Heir	**Original share**	**Final share after reduction**
Husband	3/6	3/8
Full sister	3/6	3/8
Mother	2/6	2/8

1.1 Origin and Justification of the doctrine of *'awl'*:

The doctrine of *'awl'* by which the problems of *awl* cases are solved is found neither in the *Qur'an* nor in Hadith. This doctrine was established by an *ijtihad* done by a companion of the prophet Muhammad

(S.A.W.), which later on was turned into an *ijma of the companions*, the highest grade of *ijma*, an important source of Islamic law.

'*Awl*' was totally unknown during the lifetime of the Prophet (S.A.W.) and even during the time of Hazrat Abu Bakr (R.A.), the first Caliph of Islam. In fact, the anomaly of '*awl*' first arose for discussion during the reign of Hazrat Umar Bin khattab (R.A.), the second Caliph of Islam.[1] The first case came before Umar (R.A.) was of a woman who died leaving her husband and two full sisters. Umar (R.A.) promptly replied, 'By Allah, I do not know which of you Allah has put first and which comes next'. Umar (R.A.) said that if the full sister's full share (2/3) is given then the husband does not get his specified share (½) and vice versa. Then he asked to the Companions present to give their opinion about this problem. In response to Umar's (RA) open invitation for a solution, Al-Abbas or Ali or Zaid bin Thabit[2] (R.A.) proposed the above solution of '*awl*', i.e., to reduce the shares of each heir proportionately. Abdur Rahman Doi described this history in the following words:

> "The case of 'Awl' is suggested in a hypothetical proposition that if a man died leaving six dirhams, and there were two people claiming their debt from the estate, one of them is claiming three dirhams and the other is claiming four dirhams, we have to adopt the rule of bankruptcy and divide it proportionally. Sayyidna 'Umar then agreed to this proposition. Then Al-Abbas said: 'This is then the rule to be applied here'.

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[1] For an authentic reference see Prof. Dr. Al-Zuhayli Wahab, *Al-Fiqh Al-Islami wa-Adillatuhu : The Islamic Jurisprudence and Its Evidences*, Darul Fikr Bi Dameshq, Syria, 4th ed., 1997, Vol. 10, pp. 7820-7821. See also Doi Abdur Rahman I, *Shari'ah The Islamic Law*, Ta Ha Publishers, London, UK, 1997 pp. 314-316.

[2] There are differences of opinion as to the fact who really among these three proposed *awl*. Doi named these three persons, while Professor Zuhaili omitted the name of Ali, see *supra note* 1.

Husband will get ½ and the two full sisters will get 2/3: ... Therefore, the husband gets 3/7 and the two full sisters 4/7."[3]

With this, Professor Zuhaili added the example of a 'Will' made in excess of 1/3, and then opined that Umar (R.A.) accepted the correct solution.[4] He also added that the correctness of this solution is proved by the acceptance of this solution by all four Schools (Madhhabs) and *Jamhur*.

Illustration: First case of 'Awl'.

Heir	Share	Common denominator=6	Revised common denominator =7
Husband	½	3/6 *Reduced to*	3/7
2 F. sisters	2/3	4/6 *Reduced to*	4/7

Coulson mentioned with reference to 'some Arab authorities' that the following case is the first instance of 'Awl' and 'Abbas b. Abi Talib is alleged to have proposed this solution when summoned as one of a group of scholars by the Caliph Umar (R.A.) to advise upon the case.'[5]

Illustration: First case of 'Awl'.

Heir	Share	Common denominator=6	Revised common denominator =7
Husband	¼	3/12 *Reduced to*	3/13
Father	1/6+R	2/12 *Reduced to*	2/13
Daughters	2/3	8/12 *Reduced to*	8/13

Coulson further added that '[o]ther writers, however, assert that the doctrine originated in rather more picturesque circumstances, in the Pulpit case—al-

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[3] Wahab, supra note 1, p. 315.
[4] Wahab, Supra note 1, p. 7821.
[5] N.J. Coulson, *Succession in the Muslim Family*, Cambridge University Press, 1971, UK, at p.47.

Mimbariyya'[6] where Hazrat Ali (R) gave the following judgment:

Illustration : Al-Mimbariyyah case : First case of 'awl.

Heir	Share	Common denominator=24	Revised CD =27
Wife	1/8	3/24 *Reduced to*	3/27 (1/9)
Mother	1/6	4/24 *Reduced to*	4/27
Father	1/6+R	4/24 *Reduced to*	4/27
2 Daughters	2/3	16/24 *Reduced to*	16/27

However, Doi mentioned without referring to any name specifically, that "some said the first case of 'awl' was that of H, FS, US and others said H, FS, M" (Doi, 315). Arithmetic of these two cases is shown below:

Illustration: First case of 'Awl'.

Heir	Share	Common denominator =6	Revised common denominator =7
Husband	½	3/6 *Reduced to*	3/7
FS	½	3/6 *Reduced to*	3/7
US	1/6	1/6 *Reduced to*	1/7

Illustration: First case of 'Awl'.

Heir	Share	Common denominator =6	Revised common denominator =7
Husband	½	3/6 *Reduced to*	3/7
FS	½	3/6 *Reduced to*	3/7
Mother	1/6	1/6 *Reduced to*	1/7

1.2 Different opinions about Awl: Suggested alternative solution

All Companions of the Prophet (S.A.W.) accepted the above solution given by Umar (RA) regarding '*awl*' case except Ibn Abbas (R.A.). But interestingly, Ibn Abbas did not raise his objection towards Umar's (R.A.)one

[6] Ibid.

during the life time of Umar (R.A.). After the death of Umar (R.A.), he said that for the strong personality of Umar (R.A.), and his high respect to him he could not sound his differing opinion during the life time of Umar (R.A.). However, Ibn Abbas's (R.A.) solution has been explained by Abdur Rahman Doi in the following words:

> "... sometime some of the heirs inherit as *Ashab al faraid* like mother, husband and wife. They will be given priority in the matter of inheritance. Sometimes, sisters too inherit as *Ashab al faraid* and sometimes as *asaba* and sometimes they are excluded totally. He then said, I swear by Allah, if Umar had given priority to those whom Allah had given priority, and delayed those whom Allah has delayed, there would not arise any problem of *'Awl'* at all. Ibn Abbas said, those whom Allah has given priority are those who inherit as *ashab al faraid*. If they shift from a specific share, they will go to a specific share, and those who will be transferred from a specific share to something less than that i.e. to *asaba*, they are those who are delayed."[7]

Coulson[8] in fact explained the whole position in a more convincing manner:

> Natural and equitable though the principle of proportionate abatement may appear, it is not the only possible solution where the Quranic portions exceed unity. In the early days opposition to the principle was voiced by Ibn Abbas on the ground that it reduced the share of certain heirs below the portion expressly and specifically prescribed by the Qur'an as their minimum entitlement. Ibn Abbas maintained that in this context a

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[7] Doi Abdur Rahman I, *Shari'ah The Islamic Law*, Ta Ha Publishers, London, UK, 1997 pp. 315. For an authentic reference of the whole opinion see also Prof. Dr. Al-Zuhayli Wahab, *Al-Fiqh Al-Islami wa-Adillatuhu : The Islamic Jurisprudence and Its Evidences*, Darul Fikr Bi Dameshq, Syria, 4th ed., 1997, Vol. 10, pp. 7820-7821.

[8] Coulson, supra note 5, p.48.

distinction should be drawn between two types of Qur'anic heir. On the one hand, there were those relatives who were allotted a Qur'anic portion solely in order to assure them of a minimum share of inheritance in any circumstances. This group comprised the spouse relict, mother, grandmother, uterine sister, uterine brother, father and grandfather (assuming, of course, in the case of the last two relatives, the presence of lineal descendant of the praepositus). To hold that their minimum prescribed portions could be further reduced, argued Ibn Abbas, was to contradict the very purpose and the express terms of the Qur'an itself. On the other hand, the allotted portions of the remaining four Qur'anic relatives—the daughter, granddaughter, germane sister and consanguine sister (who are all entitled, subject to the rules of exclusion, to a basic portion of one-half) –did not in the same way represent their minimum entitlement. For, according to the terms of the Qur'an itself, these females were to inherit as residuaries in the presence of their respective brothers, in which case their share in the estate would be considerably less than the Qur'anic portion. Since, therefore, the fixed portions of this latter group were not guaranteed to the same extent as those of the first group, they could properly be reduced where necessary. Ibn Abbas accordingly maintained that where an estate was over-subscribed the burden of the necessary reduction should fall exclusively upon the daughters, granddaughters or agnatic sisters.

Thus, according to the alternative solution of Ibn Abbas (R.A.), the exceeding property will be deducted only from the shares of the sisters or daughters or son's daughters, as the case may be, instead of proportional deduction. It is worth mentioning here that in each and every case of awl, among the sister, daughter and son's daughter—at least one of them must remain present. Ibn Abbas (R.A.) set his view on logic of different status of the heirs made by the Quran itself. But, his view has not been accepted by any school except Shia. The comment made by Ibn

Shihab al-Zuhri is also worth mentioning here that 'if the decision of Ibn Abbas was not preceded by judicial authority of Sayyidna Umar, nobody will differ with Ibn Abbas'.[9]

Coulson made the following analysis about the justification of Sunni opinion of general abatement:

> Although the arguments of Ibn Abbas were endorsed by Shia law, under which, as will be seen, only the portions of daughters or sisters are subject to reduction, Sunni jurisprudence rejected them and has consistently maintained that the burden of reduction is to be borne rateably by all entitled Qur'anic heirs. 'Awl' rests on the view that a Qur'anic portion does not represent an entitlement which is 'fixed' in an absolute sense, but one which is 'fixed' only in its ratio to other allotted portions. Thus, whether an estate is over-subscribed or not, a daughter's share will be twice that of a husband, three times that of a mother and four times that of a wife. 'Equity is equality' seems to be the guiding principle here, just as it is in the doctrine of the proportionate abatement of creditors' claims in cases of bankruptcy.[10]

1.3 Cases of Awl

Name of heirs in whose presence awl may happen:
The interesting point is that, the sum total of the fractions will never exceed the unity in a case where no daughter or son's daughter or sister of any type is not present. Thus, though the presence of either of them does not necessarily lead towards *awl*, the presence of either of them is essential for *awl* to arise.

Common denominator (aslul mas'ala) from which awl may happen:

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[9] Doi Abdur Rahman I, *Shari'ah The Islamic Law*, Ta Ha Publishers, London, UK, 1997, at p. 316.
[10] Coulson, supra note 5, p.49.

There may be in total 07 common denominators. From among them in cases of three, there may be cases of *awl*.

In total there are seven common denominators	2	3	4	6	8	12	24
Common denominators which may give rise to awl	**6**			**12**		**24**	
Common denominators from which there will never be awl	2		3		4		8

Again, common denominators in which cases there may be *awl*, the revised common denominators by the application of the doctrine of *awl* are shown in the following table:

Original common denominators	Revised common denominators			
6 ⟶	7	8	9	10
12 ⟶	13	15	17	
24 ⟶	27			

1.4 Application of the doctrine of 'Awl' in different cases:

Illustration: 1.1.1: 6 increases to 7

Heir	**Share**	**Common denominator =6**	**Revised CD =7**
Husband	½	3/6 *Reduced to*	3/7
2 Full sisters	2/3	4/6 *Reduced to*	4/7

Illustration: 1.1.2: 6 increases to 7

Heir	**Share**	**Common denominator =6**	**Revised CD =7**
Husband	½	3/6 *Reduced to*	3/7
2 Consanguine sisters	2/3	4/6 *Reduced to*	4/7

Illustration: 1.1.3: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Full sister	½	3/6 *Reduced to*	3/7
Consanguine sister	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.4: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Full sister	½	3/6 *Reduced to*	3/7
Uterine sister	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.5: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Consanguine sister	½	3/6 *Reduced to*	3/7
Uterine sister	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.6: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Consanguine sister	½	3/6 *Reduced to*	3/7
Uterine brother	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.7: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Full sister	½	3/6 *Reduced to*	3/7
Uterine brother	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.8: 6 increases to 7

Heir	Share	Common denominator=6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Full sister	½	3/6 *Reduced to*	3/7
Mother/ Grandmother	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.9: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Husband	½	3/6 *Reduced to*	3/7
Consanguine sister	½	3/6 *Reduced to*	3/7
Mother/ Grandmother	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.10: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
2 Full sisters	2/3	4/6 *Reduced to*	4/7
2 Uterine sisters	1/3	2/6 *Reduced to*	2/7
Mother / Grandmother	1/6	1/6 *Reduced to*	1/7

Illustration: 1.1.11: 6 increases to 7

Heir	Share	Common denominator =6	Revised CD =7
Full sister	½	3/6 *Reduced to*	3/7
CS	1/6	1/6 *Reduced to*	1/7
2 US/ 2 UB	1/3	2/6 *Reduced to*	2/7
Mother/TGM	1/6	1/6 *Reduced to*	1/7

Illustration: 1.2.1: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
2 Full sisters	2/3	4/6 *Reduced to*	4/8
Mother/TGM	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.2: 6 increases to 8

Heir	Share	Common denominator=6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
2 CS	2/3	4/6 *Reduced to*	4/8
Mother/TGM	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.3: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
Full sister	½	3/6 *Reduced to*	3/8
Mother/TGM	1/3	2/6 *Reduced to*	2/8

Illustration: 1.2.4: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
CS	½	3/6 *Reduced to*	3/8
Mother/GM	1/3	2/6 *Reduced to*	2/8

Illustration: 1.2.5: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
Full sister	½	3/6 *Reduced to*	3/8
C. Sister	1/6	1/6 *Reduced to*	1/8
Mother/GM	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.6: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
Full sister	½	3/6 *Reduced to*	3/8
US/UB	1/6	1/6 *Reduced to*	1/8
Mother/GM	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.7: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
C. Sister	½	3/6 *Reduced to*	3/8
US/UB	1/6	1/6 *Reduced to*	1/8
Mother	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.8: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
2 Full sister	2/3	4/6 *Reduced to*	4/8
U. sister	1/6	1/6 *Reduced to*	1/8

Illustration: 1.2.9: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
Full sister	½	3/6 *Reduced to*	3/8
2 US/ 2UB	1/3	2/6 *Reduced to*	2/8

Illustration: 1.2.10: 6 increases to 8

Heir	Share	Common denominator =6	Revised CD =8
Husband	½	3/6 *Reduced to*	3/8
Full sister	½	3/6 *Reduced to*	3/8
C. Sister	1/6	1/6 *Reduced to*	1/8
UB/ US	1/6	1/6 *Reduced to*	1/8

Illustration: 1.3.1: 6 increases to 9

Heir	Share	Common denominator =6	Revised CD =9
Husband	½	3/6 *Reduced to*	3/9
2 Full sister	2/3	4/6 *Reduced to*	4/9
2 US/ 2UB	1/3	2/6 *Reduced to*	2/9

Illustration: 1.3.2: 6 increases to 9

Heir	Share	Common denominator =6	Revised CD =9
Husband	½	3/6 *Reduced to*	3/9
Full sister	½	3/6 *Reduced to*	3/9
C. Sister	1/6	1/6 *Reduced to*	1/9
2 US/ 2UB	1/3	2/6 *Reduced to*	2/9

Illustration: 1.3.3: 6 increases to 9

Heir	Share	Common denominator =6	Revised CD =9
Husband	½	3/6 *Reduced to*	3/9
2 Full sister	2/3	4/6 *Reduced to*	4/9
US/UB	1/6	1/6 *Reduced to*	1/9
Mother/TGM	1/6	1/6 *Reduced to*	1/9

Illustration: 1.3.4: 6 increases to 9

Heir	Share	Common denominator =6	Revised CD =9
Husband	½	3/6 *Reduced to*	3/9
Full sister	½	3/6 *Reduced to*	3/9
C. Sister	1/6	1/6 *Reduced to*	1/9
US/UB	1/6	1/6 *Reduced to*	1/9
Mother/TGM	1/6	1/6 *Reduced to*	1/9

Illustration: 1.3.5: 6 increases to 9

Heir	Share	Common denominator =6	Revised CD =9
Husband	½	3/6 *Reduced to*	3/9
Full sister	½	3/6 *Reduced to*	3/9
2 US/ 2UB	1/3	2/6 *Reduced to*	2/9
Mother/TGM	1/6	1/6 *Reduced to*	1/9

Illustration: 1.4.1: 6 increases to 10: Al-shuraihiyyah case.[11]

Heir	Share	Common denominator =6	Revised CD =10
Husband	½	3/6 *Reduced to*	3/10
2 F. sisters	2/3	4/6 *Reduced to*	4/10
2 US/ 2UB	1/3	2/6 *Reduced to*	2/10
Mother/TGM	1/6	1/6 *Reduced to*	1/10

[11] For the history of this case see Prof. Dr. Al-Zuhayli Wahab, *Al-Fiqh Al-Islami wa-Adillatuhu : The Islamic Jurisprudence and Its Evidences*, Darul Fikr Bi Dameshq, Syria, 4th ed., 1997, Vol. 10, pp. 7823.

Illustration: 1.4.2: 6 increases to 10

Heir	Share	Common denominator =6	Revised CD =10
Husband	½	3/6 *Reduced to*	3/10
2 C. sisters	2/3	4/6 *Reduced to*	4/10
2 US/ 2UB	1/3	2/6 *Reduced to*	2/10
Mother/TGM	1/6	1/6 *Reduced to*	1/10

Illustration: 1.4.3: 6 increases to 10

Heir	Share	Common denominator =6	Revised CD =10
Husband	½	3/6 *Reduced to*	3/10
Full sister	½	3/6 *Reduced to*	3/10
2 C. sisters	1/6	1/6 *Reduced to*	1/10
2 US/ 2UB	1/3	2/6 *Reduced to*	2/10
Mother/TGM	1/6	1/6 *Reduced to*	1/10

Illustration: 2.1.1: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Husband	1/4	3/12 *Reduced to*	3/13
2 daughters	2/3	8/12 *Reduced to*	8/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.2: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Husband	1/4	3/12 *Reduced to*	3/13
Daughter	½	6/12 *Reduced to*	6/13
SD	1/6	2/12 *Reduced to*	2/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.3: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
2 Full sisters	2/3	8/12 *Reduced to*	8/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.4: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
Full sister	½	6/12 *Reduced to*	6/13
Mother	1/3	4/12 *Reduced to*	4/13

Illustration: 2.1.5: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
2 CS	2/3	8/12 *Reduced to*	8/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.6: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
C. Sister	½	6/12 *Reduced to*	6/13
Mother	1/3	4/12 *Reduced to*	4/13

Illustration: 2.1.7: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
Full sister	½	6/12 *Reduced to*	6/13
C. Sister	1/6	2/12 *Reduced to*	2/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.8: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
Full sister	½	6/12 *Reduced to*	6/13
US/UB	1/6	2/12 *Reduced to*	2/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.1.9: 12 increases to 13

Heir	Share	Common denominator=12	Revised CD =13
Widow	1/4	3/12 *Reduced to*	3/13
C. Sister	½	6/12 *Reduced to*	6/13
US/UB	1/6	2/12 *Reduced to*	2/13
Mother/TGM	1/6	2/12 *Reduced to*	2/13

Illustration: 2.2.1: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
2 Full sisters	2/3	8/12 *Reduced to*	8/15
2 US/2UB	1/3	4/12 *Reduced to*	4/15

Illustration: 2.2.2: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
2 C. sisters	2/3	8/12 *Reduced to*	8/15
2 US/2UB	1/3	4/12 *Reduced to*	4/15

Illustration: 2.2.3: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
Full sister	½	6/12 *Reduced to*	6/15
2C. sister	1/6	2/12 *Reduced to*	2/15
2 US/2UB	1/3	4/12 *Reduced to*	4/15

Illustration: 2.2.4: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
Full sister	½	6/12 *Reduced to*	6/15
2 US/2UB	1/3	4/12 *Reduced to*	4/15
Mother/GM	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.5: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
2 Full sisters	2/3	8/12 *Reduced to*	8/15
U. Sister	1/6	2/12 *Reduced to*	2/15
Mother	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.6: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
2 C. sisters	2/3	8/12 *Reduced to*	8/15
Uterine sister	1/6	2/12 *Reduced to*	2/15
Mother/TGM	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.7: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Widow	1/4	3/12 *Reduced to*	3/15
C. sister	½	6/12 *Reduced to*	6/15
2 US/2UB	1/3	4/12 *Reduced to*	4/15
Mother/TGM	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.8: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Husband	1/4	3/12 *Reduced to*	3/15
2 Daughters	2/3	8/12 *Reduced to*	8/15
Father	1/6+R	2/12 *Reduced to*	2/15
Mother	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.9: 12 increases to 15

Heir	Share	Common denominator =12	Revised CD =15
Husband	1/4	3/12 *Reduced to*	3/15
2 SD	2/3	8/12 *Reduced to*	8/15
Father	1/6+R	2/12 *Reduced to*	2/15
Mother	1/6	2/12 *Reduced to*	2/15

Illustration: 2.2.10: 12 increases to 15 (Under MFLO it will be different)

Heir	Share	Common denominator =12	Revised CD =15
Husband	1/4	3/12 *Reduced to*	3/15
Daughter	½	6/12 *Reduced to*	6/15
SD	1/6	2/12 *Reduced to*	2/15
Father	1/6+R	2/12 *Reduced to*	2/15
Mother	1/6	2/12 *Reduced to*	2/15

Illustration: 2.3.1: 12 increases to 17

Heir	Share	Common denominator =12	Revised CD =17
Widow	1/4	3/12 *Reduced to*	3/17
2 F. Sisters	2/3	8/12 *Reduced to*	8/17
2 U. sisters	1/3	4/12 *Reduced to*	4/17
Mother	1/6	2/12 *Reduced to*	2/17

Illustration: 2.3.2: 12 increases to 17

Heir	Share	Common denominator =12	Revised CD =17
Widow	1/4	3/12 *Reduced to*	3/17
2 C. sisters	2/3	8/12 *Reduced to*	8/17
2 U. sisters	1/3	4/12 *Reduced to*	4/17
Mother	1/6	2/12 *Reduced to*	2/17

Illustration: 2.3.3: 12 increases to 17

Heir	Share	Common denominator =12	Revised CD =17
Widow	1/4	3/12 *Reduced to*	3/17
Full sister	½	6/12 *Reduced to*	6/17
C. sister	1/6	2/12 *Reduced to*	2/17
2 U. sisters	1/3	4/12 *Reduced to*	4/17
Mother	1/6	2/12 *Reduced to*	2/17

Illustration: 3.1.1: 24 increases to 27

Heir	Share	Common denominator =24	Revised CD =27
Widow	1/8	3/24 *Reduced to*	3/27
2 Daughters	2/3	16/24 *Reduced to*	16/27
Father	1/6+R	4/24 *Reduced to*	4/27
Mother	1/6	4/24 *Reduced to*	4/27

Illustration: 3.1.2: 24 increases to 27 (Under MFLO it will be different)

Heir	Share	Common denominator =24	Revised CD =27
Widow	1/8	3/24 *Reduced to*	3/27
Daughter	½	12/24 *Reduced to*	12/27
SD	1/6	4/24 *Reduced to*	4/27
Father	1/6+R	4/24 *Reduced to*	4/27
Mother	1/6	4/24 *Reduced to*	4/27

2. Doctrine of *Radd* or Return Back:

The sharers get different shares, so sometimes the sum total of the shares may become less than the unity. Obviously, in presence of *asaba*, no such problem will arise, since the residue property will go to *asaba*. But, what will happen if there is no *asaba* and the whole property is not exhausted by the sharers? After distribution of the regular shares to the sharers, if any property is left undistributed according to their regular shares—such anomaly is solved by the doctrine of *Radd* or 'return back'. Thus, there may be any of the following five different types of situations at the end of any calculation. The last (5th) illustration shows the case of *Radd*.

Illustration: 1: Whole property is exhausted by the sharers only—no anomaly.

Heir	Share	Common denominator =6
Mother	1/6	1/6
2 Full sisters	2/3	4/6
Uterine sister	1/6	1/6

Illustration: 2: Whole property is exhausted by the asaba only—no anomaly.

Heir	Share	Common denominator=1
Son	Res	1/1 = Whole property
Brother	X (excluded by son)	0

Illustration: 3: Whole property is exhausted by the sharers and asaba together—no anomaly.

Heir	Share	Common denominator =12
Husband	1/4	3/12
Son	Res	7/12
Father	1/6	2/12

Illustration: 4: Sum total of fractions is more than unity—case of Awl.

Heir	Share	Common denominator =12	
Widow	1/4	3/12	
2 Full sisters	2/3	8/12	
2 Uterine sisters	1/3	4/12	
Mother	1/6	2/12	
Sum total of the fractions		**=17**	**17/12**

Illustration: 5: Sum total of fractions is less than unity—case of Radd.

Heir	Share	Common denominator =6	
Daughter	½	3/6	
Mother	1/6	1/6	
Sum total of the fractions		**4**	**4/6**

2.1 Meaning

The Arabic term '*Radd*' literally means 'return back'. If the sum total of the fractions in a case becomes less than unity, then the residue property comes back proportionately to the sharers again in excess of their original shares. This process is technically termed as '*Radd*' or 'return back'. This is an opposite case of '*Awl*'.

2.2 Rules governing *Radd and* non-applicability of *Radd*:

1) ***Proportional increase of the shares:*** The residue property will come back to the sharers proportionately. In other words, the share of each heir will be increased in proportion to their original shares till the unity.
2) ***Special rule for husband and wife:*** Husband and wife will not get any property by *Radd*. But, if any of them becomes the sole heir, then he/she will get the property by *Radd*. Even a distant kindred gets the property with the husband or wife, though he is excluded by all other sharers and *asaba*.

Illustration: 1: Proportional increase of the shares by Radd.

Heir	Share	Common denominator =6	Revised CD = 4
Daughter	½	3/6 *Increased to*	3/4
Mother	1/6	1/6 *Increased to*	1/4

Illustration: 2: Wife's share does not increase by Radd.

Heir	Share	Common denominator=8	Revised CD = 8
Widow	1/8	1/8 (does not increase)	1/8
Daughter	½	4/8 *Increased to*	7/8

Illustration: 3: Husband's share does not increase by radd.

Heir	Share	Common denominator =4	Revised CD = 4
Husband	¼	¼ (does not increase)	¼
Daughter	½	2/4 *Increased to*	3/4

Illustration: 4: Husband or widow's share may increase by radd if the spouse is the only surviving heir..

Heir	Share	Common denominator =2	Revised common denominator = 2
Husband	½	½ *Increased to*	2/2 (whole Property)

Illustration: 4: Husband or widow's share does not increase by Radd even with the distant kindred, as the distant kindred gets the residue with husband or widow in the absence of al other sharers and asaba—so no Radd in such a case.

Heir	Share	Common denominator =2
Husband	½	½
Daughter's son	Residue	½

2.3 Methodologies of '*Radd*'.

The shares of the sharers can be increased proportionately in accordance with the principles of *Radd* in different methodologies:

1. **Elaborate mathematical methodology**
2. **Short cut methodology**

1. ***Elaborate mathematical methodology:***

Step 1:

After distributing the regular shares to the sharers at first we have to define the undistributed residue property.

Heir	**Share**	**Common denominator= 6**
Daughter	½	3/6
Mother	1/6	1/6
Sum total of the fractions		4/6
Undistributed residue property		1-4/6=2/6

Step 2:

Then we have to calculate the ratio of the existing shares of the heirs—

Daughter : Mother	= ½ : 1/6
	= 3/6 : 1/6
	=3 : 1
	=3/4 : 1/4

Step 3:

Thus, in accordance with the above ratio the portion of each of them in the residue property (2/6) have to be sorted out:

Daughter	3/4 of 2/6	6/24
Mother	1/4 of 2/6	2/24

Step 4:

The shares sorted out by step 3 are the additional shares of the sharers. These additional shares are to be added with their original shares and thus we will get the final shares of the sharers after increasing it by '*Radd*'.

Heir	**Original share**	**Final share after increase**
Daughter	3/6	3/6+6/24=18/24=3/4
Mother	1/6	1/6+2/24=6/24=1/4
Sum total of the fractions		4/4

2. ***Shortcut methodology:*** To avoid the above complicated and long mathematical process, as was also in case of awl, there is a shortcut methodology to increase the shares of the heirs proportionately. If the sum total of the fractions is made the new common denominator for each fractional share, then the property will be increased automatically in proportion to their shares.

Heir	Original share	Final share after increase
Daughter	½=3/6	3/4
Mother	1/6	1/4

Methodology where the husband or widow is present with other sharers in case of 'Radd':

It has already been mentioned that neither husband nor the widow gets additional property with any other heir by way of *Radd*, so in such cases their shares will never increase by '*Radd*'. How will the property be distributed in a *Radd* case while husband or wife exists with other heirs? The methodologies are mentioned below under different circumstances:

1. *Husband or widow with only one other sharer:* If the husband or widow exists with only one other sharer, then the calculation will be simple. After distributing the husband or widow's share, the remaining property will go to the other sharer.

Heir	Original share	Final share after increase
Wife	1/8	1/8 (has not increased)
Daughter	½=4/8	Increases to 7/8

That means, in the above case daughter's original share was ½ which subsequently has been increased to 7/8 by way of *Radd*. Thus the daughter's additional property by *Radd* added with her original share is

7/8-4/8=3/8 which was left as residue after distributing the regular shares among the sharers.

2. *Husband or widow with more than one other sharers:* If the husband or widow exists with more than one other sharers, then the process of *Radd* will be a little bit more complicated than the above case. To solve such problems, we can follow any of the following two methodologies, second of which is much easier then the first one.

Methodology 1:

This is the traditional way of distribution of property, where the additional property is to be added with original share that requires distribution in two phases. The whole methodology is shown step by step:

Step 1:

After distributing the shares of all sharers we have to define the residue property which causes 'Radd'. .

Heir	**Share**	**Common denominator = 12**
Husband	1/4	3/12
Daughter	½	6/12
Mother	1/6	2/12
Sum total of the fractions		11/12
The residue property that causes Radd		1 – 11/12 = 1/12

Step 2:

This residue property 1/12 will return back to the daughter and mother in proportion of their original shares. For that purpose we have to sort out the proportion of their original shares.

Daughter : Mother = ½ : 1/6 = 3/6 : 1/6 = 3 : 1 = ¾ : 1/4

Step 3:

Now, the residue property (1/12) will go to the daughter and mother in accordance with the above ratio, which will be added with their original shares.

Heir	Share	CD=12	Share after increase	Final share with new CD (48)
Husband	1/4	3/12	3/12 (have not increased)	12/48
Daughter	½	6/12	{6/12+(3/4 of 1/12)} =6/12+3/48 =27/48	27/48
Mother	1/6	2/12	{2/12+(1/4 of 1/12)} =2/12+1/48 = 9/48	9/48

Methodology 2:

This is an alternative easier methodology in which the property will be distributed once, instead of dividing it into two stages. Even in this methodology there is no need to sort out the exact residue property after distribution among all sharers for the purpose of returning it back to the heirs except the spouse. Here After distributing the property to the spouse other heirs will get the increased share directly in proportion of their original shares.

Step 1:

After distributing the husband or widow's share at first we have to define the residue property.

Heir	Share	Common denominator = 12
Husband	1/4	3/12
Daughter	½	6/12
Mother	1/6	2/12
Sum total of the fractions		11/12

Heir	Share	
Husband	1/4	
Daughter		
Mother		
Undistributed residue property		1-1/4=3/4

Step 2:

This residue property (3/4) will go to the daughter and mother in proportion of their original shares. For that purpose we have to sort out their original shares, then we will get their ratio.

Heir	**Share**
Husband	1/4
Daughter	½
Mother	1/6

So—

Daughter:Mother = ½ : 1/6 = 3/6 : 1/6 = 3 : 1 = ¾ : ¼

Step 3:

Now, the residue property (3/4) will go to the daughter and mother in accordance with the above ratio.

Heir	**Share**	**Share after increase**	**Common denominator = 16**
Husband	¼	¼	4/16
Daughter	½	¾ of ¾ = 9/16	9/16
Mother	1/6	¼ of ¾ = 3/16	3/16

2.4 Different opinions about Radd:

The jurists are clearly divided on the issue of *Radd*. Some jurists think that the share cannot be increased in the name of *Radd*, and in that case the surplus should go to the *bait al-Mal (Government Treasury)*, whereas some others supported it though differed in methodology and the issue of the spouses. Abdur Rahman Doi has mentioned clearly different opinions of the jurists regarding the *Radd*, which are as follows:

1. Zaid bin Thabit was of the opinion that where the *Radd* is applied the residue will go to the public treasury. Imam Malik has adopted this opinion. Imam Shafi and Ibn Hazm also agree with the same view. They have said that Allah has specified for every heir his specific share in the Qur'an. If we add anything to it, we

are exceeding the laws of Allah. Imam Shafi said that in the verses of the Qur'an, Allah has mentioned sister and ahs given her a maximum of ½ if she is alone. If she is given the total share by applying *Radd*, we are in fact acting completely against the clear rule of the Qur'an.

2. The majority of the Companions of the Prophet and the *Tabiun* and Imams Abu Hanifa and Ahmad bin Hanbal as well as the Shi'ites have adopted the principle of *Radd*. ... Jurists who adopted *Radd* said that the remainder will go to Qur'anic heirs excluding spouses. The Hanafi Jurists take a different view and say that if we don't find anybody other than the spouses, it is better to give them the remainder, rather than giving it away to the Bait an-Mal. *Sayyidna Uthman bin Affan and Jabir ibn Zaid are of the opinion that we should apply Radd* to all the Qur'anic heirs including the spouses. Abdallah bin Masud says that we should apply Radd but should exclude spouses, daughter of the son in the presence of proper daughter, Uterine sisters and brothers in the presence of mother. Consanguine sister in the presence of full sister and the grandmother. Abdallah bin Abbas, on the contrary, excluded spouses and the grandmother.

However, the later views of Maliki and Shafi are in line with the Hanafi view in the event that the proper *Bait al-Mal* is not available.[12]

2.5 Application

Illustration 1

Heir	Original share	Final share after increase
Wife	1/8	1/8 *(has not increased)*
D/SD	½=4/8	Increased to 7/8

Illustration 2

Heir	Original share	Final share after increase
Wife	1/4	1/4 *(has not increased)*
FS/CS	½ = 2/4	Increased to 3/4

[12] Wahab, supra note 1, at p. 7826.

Illustration 3

Heir	Original share	Final share after increase
Wife	1/4	1/4 *(has not increased)*
Mother	1/3	Increases to 3/4

Illustration 4

Heir	Original share	Final share after increase
Husband	½	½ *(has not increased)*
Mother	1/3	Increased to ½

Illustration 5

Heir	Original share	Final share after increase
Husband	½	½ *(has not increased)*
2 US/+2 UB	1/3	Increased to ½

Illustration 6

Heir	Original share	Final share after increase
Husband	½	½ *(has not increased)*
2 FS/2 CS	2/3	Increased to ½

Illustration 7

Heir	Original share	Final share after increase
Husband	1/4	¼ *(has not increased)*
2D/2SD	2/3	Increased to ½

Illustration 8

Heir	Original share	Final share after increase
Husband	½	½ *(has not increased)*
TGM/UB/US	1/6	Increased to ½

Illustration 9

Heir	Original share	Common Denominator=6	Final share after increase
Mother/ True GM	1/6	1/6 *Increased to* →	1/4
Daughter	½	3/6 *Increased to* →	3/4

Illustration 10

Heir	Original share	Common Denominator=6	Final share after increase
Mother	1/3	2/6 *Increased to*	2/5
FS/CS	½	3/6 *Increased to*	3/5

Illustration 11

Heir	Original share	Common Denominator=6	Final share after increase
Mother	1/6	1/6 *Increased to*	1/5
2D/2SD/ 2FS/ 2 CS	2/3	4/6 *Increased to*	4/5

Illustration 12

Heir	Original share	Common Denominator=6	Final share after increase
Full sister	½	3/6 *Increased to*	3/4
C. Sister	1/6	1/6 *Increased to*	1/4

Illustration 13

Heir	Original share	Common Denominator=6	Final share after increase
FS/CS	½	3/6 *Increased to*	3/4
U. Sister	1/6	1/6 *Increased to*	1/4

Illustration 14

Heir	Original Share	Common Denominator=6	Final share after increase
2 US	1/3	2/6 *Increased to*	2/5
FS/CS	½	3/6 *Increased to*	3/5

CHAPTER 6
ASABA OR AGNATIC HEIRS

1. ***Asaba***
   - 1.1. Who are *Asaba*
   - 1.2. What does *Asaba* get?
   - 1.3. Classification of *Asaba*
     - 1.3.1. *Asaba* bi nafsihi
       - 1.3.1.1. Jihatul bunuwah
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       - 1.3.1.4. Jihatul umumah
     - 1.3.2. *Asaba* bi ghairihi
     - 1.3.3. *Asaba* ma'a ghairihi
   - 1.4. Rules of distribution and order of priority
     - 1.4.1. Rules of priority
       - 1.4.1.1. Class
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       - 1.4.1.3. Strength of blood tie
2. ***Doctrine of Tasib***
   - 2.1. Meaning
   - 2.2. Application of Tasib
   - 2.3. Impact of Tasib

1. Asaba:

In order of priority *asaba* is the group of heirs of second grade, who will get property after the distribution among the sharers. Though from the perspective of order of distribution of property it apparently seems that they are inferior in status in comparison to the sharers, the impression will be changed when the quantum of the property allocated to them is looked into. Because, in most of the cases a major portion of the property goes to the *asaba* after distribution of the property among the sharers, due to the existence of different rules of total and partial exclusion. In pre-Islamic Arab society, the persons who are now termed as *asaba* had got the whole property excluding all other claimants. But after the advent of Islam, rights of certain other close relatives are established who are grouped as sharer. However, still major portion of the property goes to the *asaba* after satisfying the claims of the sharers or Quranic heirs. *Fyzee* rightly commented that 'Class 1 is given precedence owing to the respect paid to the Koran;

else, the rule may be reversed and stated: Keep the *bulk* of the property for the Agnatic Heirs (*'asabat*), the persons whose rights were always recognized by tribal law, and respect the Koranic provisions by giving *specific* shares to the persons mentioned in the Koran (*dhawul-furud*)'[1].

1.1 Who are *asaba* :

They are those heirs who are related with the deceased person without any female intervention. Thus, the son's son is an *asaba*, though not the daughter's son. Likewise, a full brother or consanguine brother is an *asaba*, but not a uterine brother, because uterine brother is connected with the deceased through a female intervention that is mother. They are also termed as agnatic heirs as they are related with the deceased through male links. But the term 'residuaries' which is also used to mean them by certain jurists is misleading and confusing. Because, a distant kindred also under circumstances may get the residue, hence he may be termed also literally as residuary as he gets the residue property.

1.2 What does *asaba* get?

An heir gets the property either what is fixed by the Qur'an or the residue that is left after exhausting the sharers' claims. The heirs who are *asaba* they get the property that is left after distributing among the Quranic heirs which is popularly known as residue; and if incidentally nothing is left, then the *asaba* will get nothing. When an *asaba* does not get anything only due to the fact that no property remained, that is

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[1] Fyzee Asaf A. A., *Outlines of Muhammadan Law*, Oxford University Press, Delhi, 4th ed., p. 399.

a case of *de facto* exclusion, as he does not get anything though the law has not excluded him. If there no sharer exists in a given case, then the whole property will go to the *asaba*. Sometimes an *asaba* may get the entire property even in presence of a sharer, if that sharer is excluded by the rules of exclusion. For example, if some one dies leaving a son and a uterine brother, then the son will get the entire property, because the uterine brother though is a sharer, is technically totally excluded by the son by application of the rules of exclusion. In case of *asaba* there may be following four situations:

1. *Agnatic heir is the only heir:* If an agnatic heir becomes the sole surviving heir, then he will get the entire property.
2. *More than one agnatic heir are the only heirs:* If there is no sharer, but there are more than one *asaba* of different groups and degree, then any one group of *asaba* of same degree among them will succeed.
3. *Asaba with sharer:* If *asaba* stays with any sharer, one or more, then the property will go to the sharers at first, according to the rules of exclusion; then there may be two situations—
    i. If anything remains that residue will be for the *asaba* according to the order of priority among them.
    ii. But if the whole property is exhausted among the sharers only and nothing if left as residue, then the *asaba* will get nothing and that is termed as a case of *de facto* exclusion, as the *asaba* get nothing though the law does not bar them to get anything.

However, the amount of residue, entitlement of an *asaba*, is always uncertain. Its quantum is a question of fact, as it depends mainly on the sharers present.

Illustration 1: Full brother is an asaba, gets residue, here ½ .

Heir	Share	Reasoning
Mother	1/6	As sharer, because there is a child.
Daughter	½	As sharer, because, she is the only daughter and there is no son.
Brother	R	As asba.

Illustration 2: Full brother is an asaba, gets residue, here 2/6 or 1/3.

Heir	Share	Reasoning
Mother	1/6	As sharer, because there is a child.
Daughter	½ =3/6	As sharer, because, she is the only daughter and there is no son.
Brother	R=2/6	As asba.

Thus, a brother as an *asaba* got ½ in the first case and in the second case he got 1/3 in the same capacity.

1.3 Classification of *Asaba*:

Except four females, all other *asaba* are male agnates of the deceased person. The male agnates become *asaba* irrespective of another's presence or absence. But the female agnates' becoming *asaba* is dependent on the presence of others. From this dimension of the nature of *asaba*, they have been classified in the following three groups in *Sirajiyyah*:[2]

1. Agnate in his own right (*Asaba bi nafsihi*)
2. Agnate in another's right (*Asaba bi ghairihi*)

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[2] See *Sirajiyyah*, Chapter on Agnatic Heirs (*Bab-ul-Asabat*), at paragraph 18. Dr. Zuhaili has made this same classification though he has used a little bit different Arabic terminology, Al-*Asaba* Bin-nafs, Al-*Asaba* Bil-ghair & Al-*Asaba* Ma`al-ghair—see for reference Prof. Dr. Al-Zuhayli Wwahab, *Al-Fiqh Al-Islami wa-Adillatuhu : The Islamic Jurisprudence and Its Evidences*, Darul Fikr Bi Dameshq, Syria, 4th ed., 1997, Vol. 10, pp. 7798-7804

3. Agnate with others (*Asaba ma`a ghairihi*)

The first group consists of male agnates only, and the rest two consist of four female agnates from different perspectives. The male agnates are in fact the heirs who are given top priority as regards the quantum of the property at the time of distribution. Second group of *asaba*— they are converted as such by their male counterparts. The third group gives rise to two anomalous cases, where the two specific female heirs get the property as *asaba* for the presence of daughter or son's daughter and the absence of their male counterparts.

1.3.1 **Agnate in his own right (Asaba bi-nafsihi) or 'Independent asaba':** This is the main class of agnatic heirs each of whom is a male agnate. *Asaba bi nafsihi*—this group has been translated by some writers as 'Independent Asaba' which seems to be more convincing, as their status of *Asaba* is not dependant on any condition whatsoever, unlike other two classes of *asaba*, who become *asaba* either jointly within their male counterparts or for the reason of presence and absence of other heirs. Thus, the main feature of this group of *asaba* is that they are *asaba* in their own rights and this is their original and only status except of the father and grandfather among them.

They may be classified into the following four categories:

1.3.1.1 *Jihatul bunuwah*: It literally means the son's side which includes sons and son's son h.l.s. *Sirajiyyah* used the term *'juzh`ul maiyet'* which literally means the descendants of the deceased and he further explained it to mean

only male descendants.[3] It seems that the term *'jihatul bunuwah'* meaning son's son is more convincing as that gives the clear impression about the heirs who are included by this term.

1.3.1.2 *Jihatul ubuwah*: It literally means father's side which includes father and father's father h.h.s. Father and grandfathers belong to this group.

1.3.1.3 *Jihatul ukhuwah*: It literally means brother's side. They are also termed as descendants of the father. It includes full and consanguine brothers and theirs sons h.l.s., but not the uterine brothers, as they are not the descendants of the father. Thus, it appears that the term male descendants of the father is more appropriate than the term brother's side, since this group does not include every type of brother rather that includes all male descendants of the father.

1.3.1.4 *Jihatul umumah*: It literally means uncle's side that includes the descendants of the grandfather, i.e. uncles and then the sons of uncles how low so ever. Obviously, it covers only full and consanguine paternal uncles and their son's how low so ever. All maternal uncles and uterine paternal uncles are excluded from this category.

Accordingly, we can show the list of *asaba bi nafsihi* in the following manner:

Group 1

1. Son
2. Son's son h.l.s.

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[3] See *Sirajiyyah*, Chapter on Agnatic Heirs (*Bab-ul-Asabat*), at paragraph 19.

Group 2

1. Father
2. Father's father or true grandfather h.h.s.

Group 3

1. Full brother
2. Consanguine brother
3. Full brother's son h.l.s.
4. Consanguine brother's son h.l.s.

Group 4

1. Full paternal uncle.
2. Consanguine paternal uncle
3. Full paternal uncle's son h.l.s. in like order.
4. Consanguine paternal uncle's son h.l.s. in like order.

1.3.2. Agnate in another's right (*Asaba bi ghairihi*):

They are the four female heirs each of whom becomes *asaba* with her male counter-part. They do not become *asaba* in their own; rather their male counterparts convert them into *asaba* with themselves. That's why they are also known as 'Tasib by Association'. For example, daughter becomes *asaba* with the son. Thus the condiiion for these heirs to be *asaba* is their co-existence with their male counterparts. Since they can not become *asaba* in their own right, rather this is possible to be so only by the existence of the other in the right of the later, they are technically termed as *asaba bi gairihi* or agnates in another's right. They are—

1. Daughter (with son)
2. Son's daughter h.l.s. (with son's son of equal grade and even with son's son of lower grade in a special situation)
3. Full sister (with full brother)

4. Consanguine sister (with consanguine brother)

Asaba	***Condition***
Daughter	The deceased must leave son.
Son's daughter	The deceased must leave son's son.
Full Sister	The deceased must leave full brother.
Consanguine Sister	The deceased must leave consanguine brother.

Illustration 1: Daughter becomes residuary with the son.

Heir	**Share**	**Reasoning**
Son	They will get the **residue** (here the entire property) together to be distributed among them in proportion of *Male: female=2:1.*	Son gets the property only as residuary, whereas, daughter is a sharer originally. But the daughter is always converted into residuary with the son.
Daughter		

Illustration 2: Daughter becomes residuary with the son, never with the son's son.

Heir	**Share**	**Reasoning**
Daughter	½	As sharer, she is one in number and no son is present.
Son's son	R=1/2	As asaba .

Illustration 3: Son's daughter becomes residuary with the son's son..

Heir	**Share**	**Reasoning**
Son's son	They will get the **residue** (here the entire property) together to be distributed among them in proportion of *Male: female = 2:1.*	Son's son gets the property only as residuary, whereas, son's daughter is originally a sharer. But the son's daughter is always converted into residuary with the son subject to not being excluded otherwise.
Son's Daughter		

Illustration 4: Son's daughter becomes residuary even with the son's son of lower degree.

Heir	Share	Reasoning
2 daughters	2/3	As sharers, they are more than one in number and no son is there.
Son's Daughter	**R**	Son's daughter here is converted into residuary even with the son's son of lower grade, because, otherwise she does not get any property whereas son's son and son's daughter even of lower degree than her get the property.
Son's son's son		
Son's son's Daughter		

Illustration 5: Son's daughter becomes residuary even with the son's son of lower degree.

Heir	Share	Reasoning
2 son's daughters	2/3	As sharers, they are more than one in number and no son's son is there.
SSD	**R**	Son's daughter here is converted into residuary even with the son's son of lower grade, because, otherwise she does not get any property whereas son's son even of lower degree than her gets the property.
SSSS		

Illustration 6: Son's daughter becomes residuary even with the son's son of lower degree.

Heir	Share	Reasoning
SD	½	As sharer, she is one in number and no son's son is there.
SSD	1/6	As sharer, to fulfill the quota of 2/3.
SSSD	**R**	Son's daughter here is converted into residuary even with the son's son of lower grade, because, otherwise she does not get any property whereas son's son even of lower degree than her gets the property.
SSSSS		

Illustration 7: Sister becomes residuary with the full brother:

Heir	Share	Reasoning
FS	They will get the **residue** (here the entire property) together to be distributed among them in proportion of *Male: female = 2:1.*	Full brother gets the property only as residuary, whereas, full sister is a sharer originally. But the full sister always is converted into residuary with the full brother subject to not being excluded otherwise.
FB		

Illustration 8: Both sister and brother are excluded by the son:

Heir	Share	Reasoning
Son	R=1	As asaba of the top class.
Full sister	x	Son excludes them totally.
Full brother		

Illustration 9: Sister becomes residuary with the full brother:

Heir	Share	Reasoning
CS	R	Consanguine brother gets the property only as residuary, whereas, consanguine sister is originally a sharer. The consanguine brother converts into consanguine sister residuary in the absence of other excluders.
CB		

Illustration 10: All sisters and brothers are excluded by the son:

Heir	Share	Reasoning
Son	R=1	As asaba of the top class.
Full sister	x	Son excludes them totally.
Full brother		
C. Sister		
C. Brother		

1.3.3. Agnate with others (*Asaba ma`a ghairihi*):

No new heir is included in this group; rather, this consists of two anomalous cases of full and consanguine sisters. Full sister or consanguine sister

gets residue as *asaba* if the daughter or son's daughter h.l.s. becomes present with her, provided no nearer male agnatic heir is present there. Thus, originally, full and consanguine sisters are sharers and they may be converted into *asaba* by their male counterparts. Such sisters do not have the capacity to become *asaba* in their own, but they can become so if there is any daughter or son's daughter present with them. That is why they are technically termed in these cases as agnates with others. In other words, this includes two anomalous cases where two female heirs acquire the right to be *asaba* just for the presence of others though those others do not become partners with them in residue as in the case of *asaba bi gairihi* or *asaba* in another's right. However, some Egyptian writers have translated this term as 'joint tasib' since they become *asaba* only in presence of daughter or son's daughter, but they are not joint *asaba* unlike son and daughter; rather, they become *asaba* independently, which is of course dependant on the presence of either daughter or son's daughter. However, in such a case, daughter or son's daughter gets their shares irrespective of the presence of full or consanguine sisters.

Asaba	***Condition***
Full Sister	The deceased must leave daughter or son's daughter, one or more.
Consanguine Sister	

Illustration 1: Full sister becomes residuary in her own with the daughter even without full brother:

Heir	**Share**	**Reasoning**
01 Daughter	½	As sharer, because there is no son and she is one in number.
FS one or more	Res	Because, there is a daughter and no other excluder is there.

Illustration 2: Consanguine sister becomes residuary in her own with the daughter even without consanguine brother:

Heir	Share	Reasoning
2 Daughters	2/3	As sharer, because there is no son and she is one in number.
CS one or more.	Res	Because, there is a daughter and no other excluder is there.

1.4 **Rules of distribution and order of priority** :

For the purpose of determining the order of priority, it is convenient to divide all agnates, males and females, into the following four broad and combined classes:[4]

Class 1: Offspring of the deceased (juzhu'l maiyit)

i. Sons and son's sons h.l.s. in their own rights.
ii. Daughters and son's daughters in another's right when they are not sharers.

Class 2: Root of the deceased (Aslul maiyit)

i. Father
ii. True grandfather h.h.s.

Class 3: Offspring of the father (Juzhu' abil maiyit)

i. Full and consanguine brothers
ii. Male descendants of full and consanguine brothers in the male line.
iii. Full and consanguine sisters, sometimes as agnates in another's right, and sometimes as agnates with another, when they are not sharers.

Class 4: Offspring of the grandfather (Juzhu' jaddil maiyit)

i. Full and consanguine paternal uncles

[4] The thematic concept of this classification is in fact originally f0ound in Sir7ajiyyah though he made this classification only for male agnates.

ii. Male descendants of full and consanguine paternal uncles in the male line.

1.4.1 **Rules of priority** :

Allama Ja'bari innovated a three stages' formula of priority which is the most convenient one to distribute the property among the agnates in the proper order of priority.[5] Accordingly—

1) The first priority is to be given to the order or class;
2) Then, to the degree; and
3) Lastly, to the strength of blood tie.

1.4.1.1 ***Priority 1: Order or class :***

The above mentioned four classes are set in order of priority. Thus, the offspring of the deceased or descendants have the top most priority over every other type of agnates. In the absence of this category, root of the deceased or the ascendants enjoy the right to get the residue excluding two other types of agnates. In the absence of both these categories, residue will go to the third category, i.e., collaterals of the first grade who are the offspring of the father. Lastly, in absence of all these three categories, collaterals of the second grade, i.e., offspring of the true grand father will succeed.

It is worth mentioning here that this hierarchy of preference of one class over the other even prevails irrespective of the degree. Thus, if there is any son's

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[5] For an authentic reference of this formula of Allama Ja'bari see Prof. Dr. Al-Zuhayli Wwahab, *Al-Fiqh Al-Islami wa-Adillatuhu : The Islamic Jurisprudence and Its Evidences*, Darul Fikr Bi Dameshq, Syria, 4th ed., 1997, Vol. 10, p. 7798. This formula has been later on popularly known as *The Rule of al-Jabari* which has been used by many jurists and writers including Fitzgerald, Anderson, Coulson, Fyzee.

son with the father, then the son's son will be given priority over the father, and the father will be excluded here as an *asaba* though he will succeed as a sharer, and the son's son will get the residue as *asaba*, though son's son stands two degrees away from the deceased, while the father is just one degree away. This superiority as *asaba* enjoyed by the son's son excluding the father is for the obvious reason of class or order which is superior to which he belongs, and that is why even an heir of a superior class of more remote degree will be given preference over the heir of an inferior class or order though he is nearer in degree. Likewise, brother's son will exclude uncle. Even a female heir of a superior order or class will exclude any male agnate of an inferior class. Thus, if the full sister remains with daughter and uncle, then the full sister will succeed as *asaba* and gets the residue excluding the uncle who belongs to the class 4 above.

1.4.1.2 Priority 2: Degree :

If two heirs belong to the same class or order then the degree of the competing parties will be looked into and preference will be given to the heir who is nearer to the deceased in degree. Thus, if the brother and brother's son stay together, then the brother will be given preference over the brother's son. In determining this hierarchy of degree, two established fundamental principles of exclusion will be useful. One is based on the link that says that he who is connected with the deceased through another is excluded by the later, and the other principle is about the remoteness of relationship, which says that nearer in degree excludes more remote. Thus, the brother will exclude his son as he is the connecting heir, son's son will exclude son's son's son, etc.

1.4.1.3 Priority 3: Strength of blood tie :

This is the preference based on an obvious principle of exclusion that full blood excludes half blood. Thus, the full brother excludes consanguine brother and the full paternal uncle excludes the consanguine paternal uncle. This preference based on the strength of blood tie is applicable only in the last two classes of heirs of above four categories of agnates made for the purpose of priority. However, one thing must be remembered carefully that the question of preference based on strength of blood tie arises only between the persons who are of equal class and degree. Thus, a consanguine brother will exclude a full brother's son though he has one sided blood tie, because of the obvious reason that consanguine is higher in degree and that is why strength of blood tie even failed to rescue full brother's son from exclusion. It is worth mentioning here that a full brother excludes both consanguine brother and sister, but a full sister cannot exclude consanguine brother, and she even does not exclude totally the consanguine sister. But if the full sister succeeds as an *asaba*, then the consanguine sister, if any, will be totally excluded in every case.

Illustrations: preference given on the basis of order

Illustration 1.1: Superior class excludes inferior class

Heir	**Share**	**Reasoning**
Son	Residue	As *asaba* of the first class or order.
Father	1/6	As sharer and as *asaba* he is excluded by the son.
Full brother	X	Excluded by both son and father.
Uncle	X	Son, father, uncle—excluded by each of them

Illustration 1.2: Superior class excludes inferior class

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child or even not more than one sister or brother.
Father	R	As *asaba* of the 2nd class, in the absence of *asaba* from the 1st class.
Full brother	X	Excluded by father, an *asaba* of superior class.
Uncle	X	Excluded both by father and full brother.

Illustration 1.3: Superior class excludes inferior class

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child or even not more than one sister or brother.
Uterine brother	1/6	As sharer, because he is 01 in number and no excluder to him is present.
Full brother	R	As *asaba* of the third class or order, in the absence of any *asaba* from the first or second class.
Uncle	X	Excluded both by father and full brother.

Illustration 1.4: Superior class excludes inferior class

Heir	Share	Reasoning
Wife	1/4	As sharer, because there is no child or son's child.
UB	1/6	As sharer, because he is one in number and no excluder to him is present.
Uncle	R	As *asaba* of the last class, in the absence of any *asaba* from higher class.

Illustration 1.5: Superior class excludes inferior class: Full sister excludes uncle

Heir	Share	Reasoning
Daughter	1/2	As sharer, because there is no son and she is one in number.
F. Sister	R	Because, there is a daughter and no other excluder is there.
Uncle	X	Excluded by full sister, a superior agnate than him.

Illustration 1.6: Superior class excludes inferior class: Full sister does not exclude uncle

Heir	Share	Reasoning
Full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
Uncle	R	Though theoretically the full sister is *asaba* (*Asaba ma'a ghairihi*) of superior class than him, but in this case she is succeeding as a sharer which is a different capacity than the *asaba*, so she does not exclude him as *asaba*. Thus full sister really does not exclude uncle if there is no conflict of interest between them.

Illustration 1.7: Superior class excludes inferior class: Full sister does not exclude uncle de jure but exclusion de facto

Heir	Share	Reasoning
Husband	1/2	As sharer, because there is no child or son's child.
Full sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
Uncle	R=0	Though theoretically the full sister is *asaba* (*Asaba ma'a ghairihi*) of superior class than him, but in this case she is succeeding as a sharer which is a different capacity than the *asaba*, so she does not exclude him as *asaba*. Though legally speaking, full sister here has not excluded uncle as *asaba*, yet uncle is technically getting nothing as *asaba* because nothing is left after distribution among the sharers. Thus, this is a case of *de facto* exclusion, though not *de jure*.

Illustration 1.8: Superior class excludes inferior class: Consanguine sister excludes uncle

Heir	Share	Reasoning
Daughter	½	As sharer, because there is no son and she is one in number.
C. Sister	Residue	Because, there is a daughter and no other excluder is there.
Uncle	X	Excluded by consanguine sister, a superior agnate than him.

Illustration 1.9: Superior class excludes inferior class: Consanguine sister does not exclude uncle

Heir	Share	Reasoning
C. Sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
Uncle	Res	Though theoretically the consanguine sister is *asaba* (*Asaba ma'a ghairihi*) of superior class than him, but in this case she is succeeding as a sharer which is a different capacity than the *asaba*, so she does not exclude him as *asaba*.

Illustration 1.10: Superior class excludes inferior class: Consanguine sister does not exclude uncle de jure, but de facto

Heir	Share	Reasoning
Husband	1/2	As sharer, because there is no child or son's child.
C. Sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
Uncle	R= 0	Though theoretically the Consanguine sister is *asaba* (*Asaba ma'a ghairihi*) of superior class than him, but in this case she is succeeding as a sharer which is a different capacity than the *asaba*, so she does not exclude him as *asaba*. Though legally speaking, full sister here has not excluded uncle as *asaba*, yet uncle is technically getting nothing as *asaba* because nothing is left after distribution among the sharers. Thus, this is a case of *de facto* exclusion, though not *de jure*.

Illustration 1.11: Superior class excludes inferior class: Full and consanguine sister together may not exclude uncle

Heir	Share	Reasoning
F. Sister	1/2	As sharer, because there is no excluder or converter and she is one in number.
C. Sister	1/6	As sharer to fulfill the quota of two-third.
Uncle	R	Though theoretically both full and consanguine sisters are *asaba* of superior class than him, but in this case they are succeeding as a sharer which is a different capacity than the *asaba*, so none of them excludes him as *asaba*.

Illustration 2.1: Even a lower degree heir of superior class excludes heirs of higher degree of inferior class.

Heir	Share	Reasoning
Son' son	R	As *asaba* of the first class or order.
Father	1/6	As sharer and as *asaba* he is excluded by the son's son. In degree he is closer to the deceased than the son's son, yet he failed to succeed as *asaba* as he is inferior in order than the son's son.
F. Brother	X	Excluded by both son's son and father.
Uncle	X	Son's son, father, uncle—excluded by each of them

Illustration 2.2: Even a lower degree heir of superior class excludes heirs of higher degree of inferior class.

Heir	Share	Reasoning
Husband	½	As sharer, because there is no child or son's child.
Father's father	Residue	As *asaba* in the absence of any *asaba* of superior class than he belongs to.
Full brother	X	Excluded .
Uncle	X	Excluded .
Consanguine brother's son	X	Excluded .

Illustration 2.3: Even a lower degree heir of superior class excludes heirs of higher degree of inferior class.

Heir	Share	Reasoning
Uterine sister	1/6	As sharer, because she is one in number and no excluder to her is present.
F. brother's son	R	As *asaba* in the absence of any *asaba* of superior class than him.
Uncle	X	Excluded .

Illustration 2.4: Even a lower degree heir of superior class excludes heirs of higher degree of inferior class.

Heir	Share	Reasoning
Uterine sister	1/6	As sharer, because she is one in number and no excluder to her is present.
CB's son	R	As *asaba* in the absence of any *asaba* of superior class than he belongs to.
Uncle	X	Excluded .

Illustrations: preference given on the basis of degree

Illustration 3.1: Nearer in degree excludes more remote in the same class

Heir	Share	Reasoning
Wife	1/8	As sharer since there are sons.
Son	R	As *asaba* of the first class or order.
Son's son	X	Excluded by son.
FB's son	X	Excluded both by son and son' son.

Illustration 3.2: Nearer in degree excludes more remote in the same class

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child or even not two or more sisters or brothers.
Full brother's son	R	As *asaba*.
Full brother's son's son	X	Excluded by full brother's son.
Uncle	X	Excluded by both full brother's son and full brother's son's son.

Illustration 3.3: Nearer in degree excludes more remote in the same class

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child or even not two or more sisters or brothers.
Uncle	Residue	As *asaba* and no superior *asaba* than him is present.
Uncle's son	X	Excluded by uncle.

Illustration 3.4: Nearer in degree excludes more remote in the same class

Heir	Share	Reasoning
Mother	1/3	As sharer, because there is no child or son's child or even not two or more sisters or brothers.
Father's father	R	As *asaba* since there is no son or son's son and no other superior *asaba* than him is present.
FFF	X	Excluded by father's father.

Illustrations: preference given on the basis of strength of blood tie: Full blood excludes half blood.

Illustration 4.1: Full brother excludes consanguine brother

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are two brothers.
U. Brother	1/6	As sharer, because he is one in number and no excluder to him is present.
F. Brother	R	As *asaba* of the third class or order, in the absence of any *asaba* from the first or second class.
C. Brother	X	Though he also belongs to the third class of *asaba* like the full brother and they are even of same degree yet he is excluded by that full brother because of strength of blood tie.

Illustration 4.2: Consanguine brother excludes full brother's son: degree dominates over the blood tie.

Heir	Share	Reasoning
Uterine brother	1/6	As sharer, because he is one in number and no excluder to him is present.
Full Brother's Son	X	Though he is of stronger blood tie than the consanguine brother yet he is excluded by that consanguine brother because of hierarchy of degree. Thus, the degree dominates over the strength of blood tie.
C. Brother	Res	As *asaba* of third class in the absence of any *asaba* from the 1st or 2nd class. Though full brother's son belongs to the same class and stronger blood tie. In spite of this fact consanguine brother is given priority over the full brother's son because of prior priority of the hierarchy of degree.

Illustration 4.3: Full brother excludes consanguine sister

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are two brothers.
UB	1/6	As sharer, because he is one in number and no excluder to him is present.
FB	R	As *asaba* of the third class or order, in the absence of any *asaba* from the first or second class.
CS	X	Full blood excludes half blood, so she cannot take her share as a sharer. Thus a full blood male agnate exclude all half blood heirs.

Illustration 4.4: Full sister cannot exclude consanguine brother.

Heir	Share	Reasoning
Mother	1/6	As sharer, because there are two brothers.
UB	1/6	As sharer, because he is one in number and no excluder to him is present.
FS	½ =3/6	As sharer, because he is one in number and no excluder to her is present.
CB	R =1/6	As asaba, since no superior asaba than him is present. Full sister cannot exclude him though she is of full blood and he is a half blood relative, because, full sister inherits here as a sharer whereas he inherits as an asaba. Thus, unlike male full blood agnates, female full blood agnate cannot exclude all half blood heirs.

Inheritance of the offspring or descendants of the deceased:

Illustration: 1

Heir	Share	Reasoning
Son	R	As *asaba* of the first class or order.
Mother	1/6	As sharer since there is a child.
Uncle's son	X	Son excludes him.

Illustration: 2

Heir	Share	Reasoning
Son Daughter	R	Son is an *asaba* of the first class or order and he converts daughter into residuary.
Mother	1/6	As sharer since there are children.
Brother's son	X	Son excludes him in order of priority.

Inheritance of the root or ascendants of the deceased:

Illustration: 1

Heir	Share	Reasoning
Father	R =5/6	As *asaba* since there is no child or son's child.
Mother	1/6	As sharer since there is no child or son's child or more than one brother or one sister.
Uncle	X	Father excludes him in order of priority.

Illustration: 2

Heir	Share	Reasoning
TGF	R= ½	As *asaba* since there is no child or son's child.
Husband	½	As sharer since there is no child or son's child.
Uncle	X	TGF excludes him in order of priority.

Inheritance of the offspring of the father:

Illustration: 1

Heir	Share	Reasoning
F. Brother	R=2/3	As *asaba* in order of priority.
Mother	1/3	As sharer since there is no child or son's child or more than one brother or one sister.
Uncle	X	Brother excludes him in order of priority.

Illustration: 2

Heir	Share	Reasoning
CB	R=2/3	As *asaba* in order of priority.
Mother	1/3	As sharer since there is no child or son's child or more than one brother or one sister.
Uncle	X	Brother excludes him in order of priority.

Illustration: 3

Heir	Share	Reasoning
Mother	1/6	As sharer since there are more than one brother/sister.
CB	X	Full blood excludes half blood.
CS		
FB	R =5/6	As *asaba* in order of priority.
FS		
Uncle	X	Brother excludes him in order of priority.

Inheritance of the offspring of the true grandfather:

Illustration: 1

Heir	Share	Reasoning
Mother	1/3	As sharer since there is no child or son's child or more than one brother or one sister.
P. Uncle	R=2/3	As *asaba* in order of priority.

Illustration: 2

Heir	Share	Reasoning
Daughter	½	As sharer since she is one in number and there is no son.
PU's son	R= ½	As *asaba* in order of priority.

Illustration: 3

Heir	Share	Reasoning
2 D	2/3	As sharer since they are more than one in number and there is no son.
PU's son	R=1/3	As *asaba* in order of priority.

Inheritance of son's son h.l.s.:

Interestingly, though son's son is a substitute heir of the son, i.e., gets the property according to the same principles of a son as his substitute, there are some significant differences between son and son's son. That is, a son will never be excluded either *de jure* or *de facto*, whereas, son's son in the absence of a son may face *de facto* exclusion though is not excluded *de jure* in any case. Under certain circumstances,

property may be exhausted among the sharers, then the son's son, even in the absence of any son, gets nothing since nothing remains as 'residue', and thus he is excluded *de facto*. Following are some examples where a son's son, a substitute heir of son, is excluded de facto:

Illustration 1: de facto exclusion of son's son.

Heir	Share	Reasoning
02 Daughters	2/3	As sharer since they are more than one in number and there is no son.
Father	1/6	As sharer, because, there is a son's son.
Mother	1/6	As sharer, because, there is a son's son.
Son's son	R=0	As *asaba* in order of priority.

Illustration 2: de facto exclusion of son's son.

Heir	Share	Reasoning
02 Son's daughters	2/3 =4/6	As sharer since they are more than one in number and there is no son.
Father	1/6	As sharer, because, there is a son's son.
Mother	1/6	As sharer, because, there is a son's son.
SSS	R=0	As *asaba* in order of priority.

Illustration 3 : de facto exclusion of son's son.

Heir	Share	Reasoning
Daughter	½ =3/6	As sharer since she is one in number and there is no son.
Son's daughter	1/6	As sharer to fulfill the quota of 2/3.
Father	1/6	As sharer, because, there is a son's son.
Mother	1/6	As sharer, because, there is a son's son.
SSS	R=0	As *asaba* in order of priority.

Illustration 4: de facto exclusion of son's son.

Heir	Share	Reasoning
2 D	2/3 =4/6	As sharer since they are more than one in number and there is no son.
TGF	1/6	As sharer, because, there is a son's son.
Mother	1/6	As sharer, because, there is a son's son.
SS	R=0	As *asaba* in order of priority.

Illustration 5: de facto exclusion of son's son.

Heir	Share	Reasoning
2 D	2/3 =4/6	As sharer since they are more than one in number and there is no son.
Father	1/6	As sharer, because, there is a son's son.
MM	1/6	As sharer, because, she has no excluder.
SS	R=0	As *asaba* in order of priority.

Illustration 6: de facto exclusion of son's son.

Heir	Share	Reasoning
2 D	2/3 =4/6	As sharer since they are more than one in number and there is no son.
TGF	1/6	As sharer, because, there is a son's son.
TGM	1/6	As sharer, because, she has no excluder.
SS	R=0	As *asaba* in order of priority.

Illustration 7: de facto exclusion of son's son.

Heir	Share	Reasoning
2 D	2/3 =8/13	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/13	As sharer, because, there is a son's son.
Mother	1/6 =2/13	As sharer, because, there is a son's son.
SS	R=0	As *asaba* in order of priority.

Illustration 8: de facto exclusion of son's son.

Heir	Share	Reasoning
2 D	2/3 =8/13	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/13	As sharer, because, there is a son's son.
Father	1/6 =2/13	As sharer, because, there is a son's son.
SS	R=0	As *asaba* in order of priority.

Illustration 9: de facto exclusion of son's son.

Heir	Share	Reasoning
02 Daughters	2/3 =8/13	As sharer since they are more than one in number and there is no son.

Husband	¼ =3/13	As sharer, because, there is a son's son.
Grand mother	1/6 =2/13	As sharer, because, there is no excluder to her.
Son's son	R=0	As *asaba* in order of priority.

Illustration 10: de facto exclusion of son's son.

Heir	**Share**	**Reasoning**
02 Daughters	2/3 =8/13	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/13	As sharer, because, there is a son's son.
Grand Father	1/6 =2/13	As sharer, because, there is a son' son.
Son's son	R=0	As *asaba* in order of priority.

Illustration 11: de facto exclusion of son's son.

Heir	**Share**	**Reasoning**
02 Daughters	2/3 =8/15	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/15	As sharer, because, there is a son's son.
Father	1/6 =2/15	As sharer, because, there is a son's son.
Mother	1/6 =2/15	As sharer, because, there is a son's son.
Son's son	R=0	As *asaba* in order of priority.

Illustration 12: de facto exclusion of son's son.

Heir	**Share**	**Reasoning**
02 Daughters	2/3 =8/15	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/15	As sharer, because, there is a son's son.
Grand father	1/6 =2/15	As sharer, because, there is a son's son.
Mother	1/6 =2/15	As sharer, because, there is a son's son.
Son's son	R=0	As *asaba* in order of priority.

Illustration 13: de facto exclusion of son's son.

Heir	Share	Reasoning
02 Daughters	2/3 =8/15	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/15	As sharer, because, there is a son's son.
Father	1/6 =2/15	As sharer, because, there is a son's son.
Mother's mother	1/6 =2/15	As sharer, because, there is no excluder to her.
Son's son	R=0	As *asaba* in order of priority.

Illustration 13: de facto exclusion of son's son.

Heir	Share	Reasoning
02 Daughters	2/3 =8/15	As sharer since they are more than one in number and there is no son.
Husband	¼ =3/15	As sharer, because, there is a son's son.
Grand Father	1/6 =2/15	As sharer, because, there is a son's son.
Mother's mother	1/6 =2/15	As sharer, because, there is no excluder to her.
Son's son	R=0	As *asaba* in order of priority.

As such, there may be many examples where son's son will be excluded. But in none of these cases son would be excluded. Here lies the practical difference between son and son's son, though son's son is treated as the substitute to son. Thus, it appears that though the son's son is treated as *asaba* of the top most grade in the absence of son, yet his share will be guaranteed if daughters and son's daughters of higher grade also remain absent along with the son. Thus, Coulson has rightly commented that '[i]n the presence of daughters and granddaughters, however, the position of the grandson differs from that of the son because of his degree of removal from the praepositus'.[6]

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[6] Coulson, N.J., *Succession in the Muslim Family Law*, Cambridge University Press, 1971, p.52.

Doctrine of Tasib

Meaning:

Tasib literally means 'to make *asaba*'. Legally speaking, this is the process of conversion of a sharer into an *asaba* by another *asaba*. For example, daughter is originally a sharer, but she is converted into an *asaba* by the son, the process of such conversion is technically known in Arabic as '*Tasib*'. Thus, a doctrine has been evolved, which is termed as 'the doctrine of *tasib*' which translates as 'the doctrine of conversion'. It is termed as 'conversion', because it speaks about conversion of a sharer into an *asaba*. Son becomes *asaba*, and daughter also becomes *asaba* with son. But, there is a difference in the sense that the son is originally an '*asaba*' who is always '*asaba*'; whereas the daughter is originally a sharer, and thus she becomes a 'converted' *asaba* under the circumstance where deceased leaves any son.

Application of Tasib:

This process of conversion is applied in cases of the following four female sharers who are converted into residuary by their respective male counterparts:

1. Daughter: Daughter is converted into *asaba* by her male counterpart son.
2. Son's daughter: Son's daughter is converted into *asaba* by her male counterpart son's son.
3. Full sister: Full sister is converted into *asaba* by her male counterpart full brother.
4. Consanguine sister: Consanguine sister is converted into *asaba* by her male counterpart consanguine brother.

Thus, it appears that each of the above female heirs is converted into *asaba* by her male counterpart. In presence of her male counterpart, she cannot succeed any more as a sharer; rather, if she gets any property in that case, then that will be as *asaba*.

This principle of exclusion by male counterpart has only one exception where even a lower degree *asaba* also converts a higher degree sharer into an *asaba*. For example:

Illustration 1: Son's daughter may be converted into asaba even by a male asaba of lower degree than her.

Heir	Share	Reasoning
2 D	2/3	As sharer since they more than one in number and there is no son.
SD	R =1/3	Converted into residuary by sss of lower grade, because otherwise she will be excluded as sharer.
SSS		As *asaba* in order of priority.

Illustration 2: Son's daughter may be converted into asaba even by a male asaba of lower degree than her.

Heir	Share	Reasoning
Daughter	½	As sharer since she is one in number and there is no son.
SD	1/6	To fulfill the so-called quota of 2/3.
SSD	Res	Converted into residuary by sss of lower grade, because otherwise she will be excluded as sharer.
SSSS		As *asaba* in order of priority.

In each of the above two illustrations, son's daughter has been converted into *asaba* by son's son of lower grade. This is against the general rule of *tasib* by male counterpart of equal grade. This exception is made in the interest of the son's daughter who otherwise would be excluded. However, if this exception would not have been recognized, then that would create an anomaly of

exclusion of a higher degree heir, while a lower one would get the property. To remove such an anomaly, this exception has been recognized that a SD may be converted into *asaba* even if there is no male counterpart (son's son of equal degree) by the son's son of lower degree.

Impact of Tasib:

By application of this doctrine, the shares of those four female heirs are reduced. For example, a daughter without son always gets ½ of the total property, but with the son she can get 1/3 of residue while 2/3 of residue goes to son. Thus, the jurists identified this '*tasib*' as a rule that is generally detrimental to the interest of women, as it in practice reduces the female heir's share. In one peculiar case, a consanguine sister also gets nothing facing the problem of *de facto* exclusion just for this *tasib*, because, otherwise she could get the property in her own as a sharer. It happens when Husband, full sister and consanguine sister remain alive in a case. Here consanguine sister gets 1/6 and the math is corrected by '*Awl*'. But, if there be any consanguine brother with her in the same case, then consanguine brother converts her into an *asaba* according to the rule of *tasib*, and both of them become victim of *de facto* exclusion as nothing remains as residue for them since the entire property becomes exhausted just between husband and full sister. Again following is the example[7], where son's daughter has got nothing just for *tasib*, i.e., conversion made by her male counterpart.

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[7] supra note 6, 56.

Illustration: son's daughter is excluded de facto as a consequence of tasib.

Heir	Share	Reasoning
Husband	¼ =3/12 *Reduced to* 3/13	As sharer since there are child and grandchildren.
Father	1/6=2/12 *Reduced to* 2/13	As sharer since there is a son's son.
Mother	1/6=2/12 *Reduced to* 2/13	As sharer since there are child and grandchildren.
Daughter	½ =6/12 *Reduced to* 6/13	As sharer since there is no son.
Son's son SD	R=0	As asaba of the first grade.

In the above case, son's daughter could succeed as a sharer in the absence of son's son and consequential *tasib*, for example:

Heir	Share	Reasoning
Husband	¼ =3/12 *Reduced to* 3/15	As sharer since there are child and grandchildren.
Father	1/6=2/12 *Reduced to* 2/15	As sharer since there is a son's son.
Mother	1/6=2/12 *Reduced to* 2/15	As sharer since there are child and grandchildren.
Daughter	½ =6/12 *Reduced to* 6/15	As sharer since there is no son.
Son's daughter	1/6=2/12 *Reduced to* 2/15	To fulfill the so-called quota of 2/3.

However, apart from these disadvantages of female heirs due to *tasib*, there are other instances where it becomes advantageous for the female heirs as well, where their male counterparts rescue them from total exclusion by the application of the doctrine of '*tasib*'.

Benefit of consanguine sister:

In one case, a consanguine sister could be excluded totally, but in that case her male counterpart consanguine brother rescues her from total exclusion by converting her into *asaba* along with him. Thus, '*tasib*' sometimes becomes even beneficial for consanguine sister.

Illustration: Consanguine sister is excluded totally by 02 full sisters.

Heir	Share	Reasoning
2 FS	2/3	As sharer since they are more than one in number and there is no excluder or converter.
CS	x	She has been excluded by full sister, because, full blood excludes half blood.

In the above case, if any consanguine brother remains alive with them, then the consanguine sister will not be totally excluded; rather, she will be rescued from total exclusion by her male counterpart being converted into residuary.

Illustration: Consanguine sister is rescued from total exclusion by consanguine brother.

Heir	Share	Reasoning
2 FS	2/3	As sharer since they are more than one in number and there is no excluder or converter.
CS	Res	She is converted into asaba by her male counterpart consanguine brother according to the doctrine of 'Tasib'.
CB		As asaba of the third category in the absence of first two categories asaba or any superior full blood asaba of third category.

Benefit of son's daughter:

The doctrine of *tasib* also sometimes rescues the son's daughter from total exclusion.

Illustration: Son's daughter is excluded by 02 daughters.

Heir	Share	Reasoning
2 D	2/3	As sharer since they are more than one in number and there is no son.
SD	x	She has been excluded by 02 daughters because of hierarchy of degree.

Son's daughter in the above case has been excluded, but if a son's son would exist her, then she would be saved from total exclusion being converted into *asaba* by him.

Illustration: Son's son saves son's daughter from total exclusion converting her into residuary along with him.

Heir	Share	Reasoning
2 D	2/3	As sharer since they are more than one in number and there is no son.
SD	Res	She is converted into *asaba* by her male counterpart son's son according to the doctrine of *'Tasib'*.
SS		As *asaba* of the first category in the absence of any superior *asaba* in degree in the same class (son).

There may be some other illustrations.

Illustration: Son's daughter is excluded by 02 superior son's daughters.

Heir	Share	Reasoning
02 SD	2/3	As sharer since they are more than one in number and there is no excluder or converter.
SSD	x	She has been excluded by 02 son's daughters because of hierarchy of degree.

Illustration: Son's son's son saves son's son's daughter from total exclusion converting her into residuary along with him.

Heir	Share	Reasoning
2 SD	2/3	As sharer since they are more than one in number and there is no excluder or converter.
SSD	Res	She is converted into *asaba* by her male counterpart son's son's son according to the doctrine of *'Tasib'*.
SSS		As *asaba* of the first category in the absence of any superior *asaba* in degree in the same class (son).

However, according to Ibn Masud, 'where a daughter or daughters of the praepositus survived, the principle of *ta'sib* could not operate to the benefit of granddaughters so as to give the female descendants as a whole a collective entitlement exceeding two-thirds of the inheritance'.[8]

[8] Supra note 6, 71.

CHAPTER 7
DISTANT KINDRED OR ZAVIL ARHAM

1. Who are distant kindred?	5. Condition of inheritance
2. Rules of distribution	6. Rules of distribution for class **I** distant kindred
3. Rules of distribution for class **II** distant kindred	7. Rules of distribution for class **III** distant kindred
4. Rules of distribution for class **IV** distant kindred	8. Different opinions about distant kindred

Who are distant kindred?

Distant kindred or remote relatives are popularly believed to include the relatives who are connected with the deceased through female link. This popular identification of distant kindred seems to be erroneous, as this group in fact consists of both female agnates and cognates from both gender. They are also known as 'remote heirs', this is also not true in the sense that there may be some 'distant kindred' who are even nearer to the deceased than some other sharers and *asaba*. For example, full brother's daughter, a distant kindred heir, is obviously closer to the deceased in comparison with full brother's son's son, an *asaba* heir. However, 'remote' in the sense of priority may be an appropriate use, but it is not popularly used from this dimension.

The distant kindred are the following heirs who have been grouped as under to determine the order of priority conveniently:

Class I: Descendants of the deceased:

1. Children of daughter's and their descendants
2. Children of son's daughters h.l.s. and their descendants

Class II: Ascendants of the deceased:

1. False grandfather h.h.s., a male ancestor who is connected to the deceased through any

female intervention, e.g., mother's father and h.h.s., father's mother's father.

2. False grandmother, a female ancestor who is connected to the deceased through intervention of any false grandfather, e.g., mother's father's mother and h.h.s.

Class III: Descendants of parents of the deceased:

1. Full brother's daughters and their descendants
2. Consanguine brother's daughters and their descendants
3. Uterine brother's children and their descendants
4. Daughters of full brother's son h.l.s. and their descendants
5. Daughters of consanguine brother's son h.l.s. and their descendants
6. Children of full sisters and their descendants
7. Children of consanguine sisters and their descendants
8. Children of uterine sisters and their descendants

Class IV: Descendants of grandparents of the deceased:

1. Daughters of full paternal uncle and their descendants
2. Daughters of consanguine paternal uncle and their descendants
3. Uterine paternal uncles and their children and their descendants
4. Daughters of full paternal uncle's sons h.l.s. and their descendants
5. Daughters of consanguine paternal uncle's sons h.l.s. and their descendants
6. Full paternal aunts and their descendants
7. Consanguine paternal aunts and their descendants

8. Uterine paternal aunts and their descendants
9. Maternal uncles and their descendants
10. Maternal aunts and their descendants
11. Other remote blood relations, as the Qur'an says that everyone who is connected through blood with deceased has a share in the property of that person on the basis of nearness of the relationship.

Conditions of inheritance

Distant kindred will get property in the absence of all sharers and *asaba*. Thus, the sharers and *asaba* exclude distant kindred as a class. There is only one exception: husband or wife does not exclude distant kindred. Thus, if husband or wife solely is alive from among the sharers and *asaba*, the distant kindred will succeed. However, distant kindred in the absence of first two classes of heirs get the residue on the basis of nearness of the relationship with the deceased.

Rules of distribution

Among distant kindred of different groups, the above order of grouping is the order of priority. Thus, class 1 excludes all three inferior classes. Class 2 succeeds only in the absence of class 1 and this class 2 in turn excludes classes 3 and 4. Class 3 succeeds if none from classes 1 and 2 is present, and class 3 excludes obviously only class 4. Class 4 is the last group in order of priority among the distant kindred themselves, who succeeds only in the absence of all superior three groups. It must be remembered that all these rules are subject to the fundamental rule of condition of inheritance of distant kindred, that is, absence of sharers and *asaba* except husband or wife.

Including the rule of exclusion based on the above order of priority, there are in fact four fundamental rules that govern the inheritance among the distant

kindred themselves determining the priority. They are—

1. Exclusion based on order of priority among different groups of distant kindred.
2. Nearer in degree excludes more remote.
3. If there are more than one distant kindred of equal degree then the children of sharers and *asaba* will be given priority over those of distant kindred.
4. The rule 'double share to male' (*male:female =2:1*) is generally applicable.

These are the fundamental rules of distribution that are generally applicable in cases of all groups of distant kindred.

Illustration: Order of priority among distant kindred.

Heir	Share	Reasoning
Daughter's daughter	Res	As sharer, neither child or son's child nor any brother or sister is present.
Mother's father	Excluded	By daughter's daughter, superior distant kindred.
Full brother's daughter	Excluded	By both daughter's daughter and mother's father, superior distant kindred.
Full paternal aunt	Excluded	By each of the above superior distant kindred.

Illustration: After determining order of priority nearer in degree excludes more remote to determine priority among the heirs of the same class.

Heir	Share	Reasoning
Daughter's daughter	Res	As sharer, neither child or son's child nor any brother or sister is present.
Son's daughter's daughter	Excluded	By daughter's daughter. Though they belong to the same class but among themselves nearer in degree excludes more remote.

Mother's father	Excluded	By daughter's daughter, superior distant kindred.
Full brother's daughter	Excluded	By both daughter's daughter and mother's father, superior distant kindred.
Full paternal aunt	Excluded	By each of the above superior distant kindred.

Illustration: Among distant kindred of same class and same degree, descendants of sharers are given priority over those of distant kindred.

Heir	Share	Reasoning
Husband	½	As sharer, no child or son's child is present.
SDD	Res	As the superior distant kindred.
DDS	Excluded	By Son's daughter's daughter (SDD), descendant of sharer SD, has been given priority over DDS, a descendant of distant kindred DD.
Brother's daughter	Excluded	By each of the above distant kindred of superior class.

Illustration: Among distant kindred of same class and same degree, descendants of sharers are given priority over those of distant kindred.

Heir	Share		Reasoning
SDD	Res	1/3	They inherit together as both of them belong to the same class of distant kindred of same degree. The general rule 'double share to male' has been applied here.
SDS		2/3	
MF	Excluded		By each of the above distant kindred of superior class.

However, there are some additional rules of different types, which are applicable only for different groups of above distant kindred. For the convenience of discussion, such additional rules of distribution have been discussed separately that are applicable in cases of the respective groups.

Additional rules for class I distant kindred:

Among different heirs belonging to group 1 of distant kindred, following is the order of priority[1]:

1. Daughter's children
2. Son's daughter's children.
3. Daughter's grandchildren
4. Son's son's daughter's children and remoter heirs.

Among these four sub-groups, each excludes entirely that follows.

In cases of more than one claimant of the same class and degree, if each of them is the descendant of sharer or distant kindred, that no priority can be given based on status of their ancestors, then all will inherit together. For example:

Heir	Share	Reasoning
Wife	¼	As sharer, since there is no child or son's child.
SDSD	Res	They inherit together as both of them belong to the same class of distant kindred of same degree.
DDDS		
MA	Excluded	By each of the above distant kindred of superior class.

In cases of more than one claimant from the same class, same degree and same ancestors (sharer/asaba/distant kindred), the following additional rules will be applied, where the jurists also differed. For a convenient discussion of these types of cases, such cases may at first be divided into two categories based on the gender of the intermediate ancestors:

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[1] Fyzee Asaf A. A., *Outlines of Muhammadan Law*, Oxford University Press, Delhi, 4th ed., p.432.

1. Intermediate ancestors are of same sex.
2. Intermediate ancestors differ in their sexes.

Rule of distribution where intermediate ancestors are of same sex:

If there are more than one claimant from the same class and degree from ancestors of same status, and if the ancestors are of the same gender, then the property will be distributed *per capita* following the principle of 'double share to male'. For example:

Praepositus			
Son1	Son2	Son3	Intermediate ancestors are of same gender
SD	SD	SD	Intermediate ancestors are of same gender
SDS	SDD	SDD	Actual claimants are of different gender
R e s i d u e			
2/4	¼	¼	'Double share to male' has been applied

Another example applying the same above rule:

Praepositus			
D	D	D	Intermediate ancestors of same gender
DD	DD	DD	Intermediate ancestors of same gender
DDD	DDS	DDS	Actual claimants are of different gender
R e s i d u e			
1/5	2/5	2/5	'Double share to male' has been applied

Rules of distribution where intermediate ancestors are of different sexes:

If there is more than one claimant from same class and degree from ancestors of same status, but the ancestors differ in their gender, then the jurists differed in their opinions:

1. According to Imam Abu Yusuf, the elder disciple of Imam Abu Hanifa, gender of the ancestors is to be disregarded absolutely and property will be distributed among the claimants coming from whatever ancestors

following the rule of 'double share to male' based on the gender of the actual claimants only. Thus, he adopted a simple mode of distribution. For example:

Praepositus			
D	D	D	Ancestors at 1st level are of same gender
DD	**D**S	**D**D	Ancestors at 2nd level differ in their gender
DD**D**	DS**S**	DD**S**	Actual claimants are of different gender
R e s i d u e			
1/5	2/5	2/5	'Double share to male' has been applied based on the gender of the actual claimants only.

Another example applying the solution of Abu Yusuf:

Praepositus			
D	D	D	Ancestors at 1st level are of same gender
DD	**D**S	**D**D	Ancestors at 2nd level differ in their gender
DD**S**	DS**D**	DD**D**	Ancestors at 3rd level differ in their gender
DDS**D**	DSD **S**	DDD**D**	Actual claimants are of different gender
R e s i d u e			
¼	2/4	¼	'Double share to male' has been applied based on the gender of the actual claimants only.

2. But Imam Muhammad, younger disciple of Imam Abu Hanifa, adopted a complicated process of distribution of property in the above such cases where the ancestors are of different sexes. According to him, following are the rules of distribution:

i. Two claimants, two lines of descent:

Property is to be distributed notionally following the rule of 'double share to male' at the first stage of difference of gender, and that will pass to the next descendant disregarding the gender of the actual claimants. Thus, while Abu Yusuf

disregarded gender of the intermediate ancestors, Muhammad distributed the property based on it and disregarded the gender of the actual claimants. For example:

Praepositus		
D	D	Ancestors at 1st level are of same gender
DS	DD	Ancestors at 2nd level differ in their gender. So the property is to be distributed notionally at this stage following the rule 'double share to male' which will pass to the next line of descent irrespective of their gender.
DSD	DDS	Actual claimants are of different gender. But their gender will be disregarded, as they will get the property in proportion to the gender of their intermediate ancestors.
R e s i d u e		
2/3	1/3	Daughter gets double to the son as she gets the property which was notionally distributed to her male ancestor DS. Son gets half as gets the property which was notionally distributed to his female ancestor DD.

Imam Abu Yusuf would solve this problem in the following simple way:

Praepositus		
D	D	Ancestors at 1st level are of same gender
DS	DD	Ancestors at 2nd level differ in their gender. But, their gender is immaterial, as the property will be distributed based on gender of the actual claimants.
DSD	DDS	Actual claimants differ in gender and property will be distributed based on their gender.
R e s i d u e		
1/3	2/3	'Double share to male' has been applied based on the gender of the actual claimants only.

ii. <u>*Three claimants, three lines of descent:*</u>

If there are three claimants from three different lines of descent, then property is to be distributed following the two steps as under:

Step 1:

Property is to be distributed, following the rule of 'double share to male' notionally at first level where difference of sexes is found.

Step 2:

Then, the collective shares of female ancestors will be distributed among their descendants, male and female, following the formula of 'double share to male'. And, likewise, collective shares of the male ancestors will be divided among their descendants, male and female, following the rule 'double share to male'. However, if there is sole descendant from the only one intermediate ancestor of same gender, the property will pass directly to the claimant irrespective of his/her gender.
For example:

<table>
<tr><td colspan="4">Praepositus</td></tr>
<tr><td>D</td><td>D</td><td>D</td><td>Ancestors do not differ in their gender, so no distribution at this stage.</td></tr>
<tr><td>DS</td><td>DD</td><td>DD</td><td rowspan="3">Step:1: Ancestors differ in their gender, so notional distribution is to take place at this stage following the rule 'double share to male'.</td></tr>
<tr><td>2/4=
½</td><td>¼</td><td>¼</td></tr>
<tr><td colspan="2">½</td></tr>
<tr><td>DSD</td><td>DDS</td><td>DDD</td><td rowspan="2">Step: 2: Collective shares of the female intermediate ancestors are to be distributed among their descendants following the rule 'double share to male'. And the share of male ancestor will go to his sloe descendant irrespective of gender of the claimant.</td></tr>
<tr><td>½
=3/6</td><td>2/3 of
½=2/6</td><td>1/3 of
½=1/6</td></tr>
</table>

However, Imam Abu Yusuf would solve this problem in the following simple way:

Praepositus			
D	D	D	Ancestors do not differ in their gender. It does not have any significance, as their gender is immaterial in distributing the property among the actual claimants.
DS	DD	DD	Ancestors differ in their gender and this difference of gender also does not have any significance for the same above reason.
DSD	DDS	DDD	These actual claimants differ in their gender and the property will be distributed based on their gender following the rule 'double share to male', disregarding the gender of all intermediate ancestors.
1/5	2/5	1/5	

iii. *More than two claimants, two lines:*

According to Imam Muhammd, it becomes more complicated when there are more than two claimants from two lines of descent, i.e., more than one claimants become there from one line of descent. Such types of problems will be solved following the two steps as under:

Step 1:

The level where the ancestors differ, the share of each of them is to be counted notionally at that stage. How will the share be determined? A peculiar rule has been provided by Imam Muhammad based on the total number of descendants, irrespective of male and female, of an intermediate ancestor. They will be counted by that number of ancestor either as male or female according to the gender of the respective ancestor. Thus, if an intermediate female ancestor has two sons and one daughter then this ancestor will be

counted as three females. Again, if a male ancestor has three sons then this ancestor will be counted as three males.

Step 2:

The share thus calculated at the step 1 will be distributed among the descendants of the respective ancestors following the rule 'double share to male'.

For example:

Praepositus					
D			D		
Ancestors do not differ in gender, so no distribution at this stage					
DS			DD		
Step 1: Above Ancestors differ in their gender, so notional distribution is to take place at this stage					
6/9			3/9		
DS is a male ancestor who has 3 descendants, so he has been counted as 3 males			DD is a female ancestor who has 3descendants, so she has been counted as 3 females		
Step 2: Above collective shares are distributed according to the rule 'double share to male'.					
DSS	DSS	DSS	DDS	DDS	DDD
1/3 of 6/9=6/27	1/3 of 6/9=6/27	1/3 of 6/9=6/27	2/5 of 3/9=6/45	2/5 of 3/9=6/45	1/5 of 3/9=3/45

However, Imam Abu Yusuf would distribute the property just based on the gender of the actual claimants disregarding gender of all intermediate ancestors following the rule 'double share to male' as under:

Distribution ***per capita*** based on gender of the actual claimants following the rule 'double share to male'.					
DSS	DSS	DSS	DDS	DDS	DDD
2/11	2/11	2/11	2/11	2/11	1/11

However, according to Imam Muhammad, if such differences of sexes of intermediate ancestors occur in

a number of stages, then same process will be applied repeatedly in each of those stages.

What is the Hanafi view?

It appears that two disciples of Imam Abu Hanifa differ, and now question arises: which one will be recognized as the view of Hanafi School? Any one of these two may be termed as Hanafi view. However, the Courts in the Indian sub-continent preferred the opinion of Imam Muhammad as Hanafi view[2]; though the opinion of Abu Yusuf seems to be more accurate, convenient and in conformity with other principles, as Muhammad's view recognized doctrine of representation though to a limited extent.

Additional rules for class II distant kindred:

Apart from the above general rules of distribution, following additional rules will also be applicable:

1. The nearer excludes the more remote: Mother's father is the nearest false grandfather and he excludes all other false grandfathers both on the paternal and maternal side and takes the whole subject to the share of the spouse, if any.[3]
2. Among more than one claimant of the same degree, the persons who are connected with the deceased through the sharers will be given preference over those who are connected through the uterine heirs.
3. If the grandparents of same degree and type (regarding the connecting heir) from both paternal and maternal sides remain together, then the paternal grandparents will get 2/3 while 1/3 will be assigned to the maternal grandparents. Then, 2/3 allotted for paternal side will be distributed among the ancestors of the father, and the rest 1/3 that

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[2] Fyzee, supra note 1, p.434.

[3] Quoted by Mohammad Mustafa Ali Khan , *Islamic Law of Inheritance*, Kitab Bhavan, New Delhi, 1989, p. 90, with reference to Fatawa Alamgiri, Tyabji and Ameer Ali.

was allotted for maternal side will be distributed among the ancestors of the mother.

4. Again, if the grandparents of the same side differ in their gender, then property will be distributed among them following the rule 'double share to the male'. According to Imam Abu Yusuf, in the same group, if male and female heirs remain together, then male gets double of the female, while Imam Muhammad follows the complicated process as has been mentioned in the preceding discussion on class 1 distant kindred.

Illustration: Mother's father excludes all.

Heir	Share	Reasoning
MF	Residue	As the nearest one.
MFF	Excluded	On the principle that nearer excludes the more remote.
FMMF	Excluded	
FMFF	Excluded	

Illustration: descendants of sharers exclude descendants of distant kindred.

Heir	Share	Reasoning
MMF	Residue	MMF, is distant kindred who is the descendant of a sharer (MM), excludes MFF, a distant kindred who is the descendant of a distant kindred (MF).
MFF	Excluded	

Illustration: descendants of sharers exclude descendants of distant kindred.

Heir	Share	Reasoning
FMFF	2/3	MMFF and FMFF both of them are of same degree and are connected through distant kindred (MMF and FMF). So both will inherit and he gets 2/3 as the heir of paternal side.
MMFF	1/3	He gets 1/3 as the heir of maternal side.

Illustration: descendants of sharers exclude descendants of distant kindred.

Heir	Share	Reasoning
FFMF	Residue	FFMF, is distant kindred who is the descendant of a sharer (FFM), excludes FMFM, a distant kindred who is the descendant of a distant kindred (FMF).
FMFM	Excluded	

Illustration: If the grandparents of the same side differ in their gender, then property will be distributed among them following the rule 'double share to the male'.

Heir	Share	Reasoning
MMFF	2/3	Both of them are of same side and same degree, so property will be distributed following the rule 'Double to the male'.
MMFM	1/3	

Additional rules for class III distant kindred:

Apart from the general rules applicable, if the degrees are equal in case of more than one claimant, then the descendants of sharer and *asaba* will be preferred over the descendants of distant kindred. In this case, also above conflict between Abu Yusuf and Muhammad remains effective.[4]

Illustration: descendants of asaba are preferred over descendants of distant kindred.

Heir	Share	Reasoning
Full Brother's son's daughter	Residue	FBSD excludes FBDD, because the former is descendant of *asaba* (FBS), while the later is the descendant of the distant kindred (FBD). So, the former excludes the later.
Full Brother's daughter's daughter	Excluded	

[4] Considering its less practical utility elaborate discussion has been omitted deliberately.

Illustration: nearer in degree excludes more remote.

Heir	Share	Reasoning
Full Brother's son's daughter	Excluded	FBD excludes FBSD, because nearer in degree excludes more remote.
Full Brother's daughter	Residue	

Additional rules for class IV distant kindred:

Apart from above general rules of distribution following additional rules will also be applicable:

1. In case of co-existence of the claimants from both paternal and maternal sides, 2/3 will be assigned for paternal side and the maternal side will get the rest 1/3. Again, that 2/3 or 1/3 in the respective groups are to be distributed following the rule 'double share to the male'.
2. Blood strength will be used as a ground for exclusion to determine the priority in the same side. Thus, full blood excludes consanguine and uterine, and consanguine also excludes uterine. However, heirs of paternal side with stronger blood tie will not exclude the heir of weaker blood tie of the maternal side and vice versa.

Illustration:

Heir	Share	Reasoning
Full paternal aunt	2/3	As the distant kindred of paternal side. None is present stronger than him.
Uterine maternal aunt	1/3	As the distant kindred of maternal side. Because, full blood of one side does not affect the weaker blood of another side.
Consanguine paternal aunt	Excluded	By FPA, because, full blood excludes consanguine blood in the same side.

Different opinions about distant kindred:

All Sunni schools recognize distant kindred as a separate class except the Maliki law that says instead of passing the property to the distant kindred it will be deposited in the Public Treasury (*Baitul-mal*).[5] 'The Shafi and Hanbali schools adopt the doctrine of *tanzil*, under which the rights of these relatives are basically determined by reference to the link of the ordinary heir ... that a relative of the outer family steps into the shoes of that relative of the inner family, or ordinary legal heir, through whom he or she is connected with the praepositus and inherits what that relative would have inherited had he or she survived the praepositus'.[6] 'The Hanafi school, on the other hand, adopts the principle of *qaraba*'[7] that means the principle based on the nearness of the relationship. But, among the Hanafis, Abu Yusuf preferred *per capita* distribution, whereas Shaybani followed *per stirpes* principle of distribution. However, Coulson has shown the difference between *tanzil* and *qaraba* citing the following examples[8]:

Illustration: (a): Under Hanafi law the rule of superior class applies, and under Shafi and Hanbali law the rule of representational succession as by a mother and two germane sisters.

	Hanafi	Shafi	Hanbali
Mother's father	All		
Full sister's son	X		
Full sister's daughter	X		

Illustration: (b): This is the result in Hanafi law of the rule of degree among the relatives of the same class, and in Shafi and Hanbali law of the rule of representational succession as by a daughter and a son's daughter.

	Hanafi	Shafi	Hanbali
Daughter's daughter	All		
Son's daughter's daughter	X		

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[5] Coulson, N.J., *Succession in the Muslim Family Law*, Cambridge University Press, 1971, 91.

[6] Ibid.

[7] Ibid, 92.

[8] Ibid, 105-107. The notes attached with following examples are also of Coulson.

Illustration: (c): This is the result in Hanafi law of the rule of superior class, and in Shafi and Hanbali law opf Rule 1 of the doctrine of tanzil.

	Hanafi	Shafi	Hanbali
Mother's father's mother	All	X	X
Uterine maternal aunt	X	All	All

Illustration: (d): Under Hanafi law, the rule of superior class applies. In Shafi and Hanbali law, the father,the heir represented by the aunt, excludes the germane brother, the heir represented by the niece.

	Hanafi	Shafi	Hanbali
Uterine paternal aunt	X	All	All
Germane brother's daughter	All	X	X

Illustration: (e):

	Hanafi	Shafi	Hanbali
Uterine paternal aunt	All	X	
Germane sister's daughter	X		
CB's daughter	X		X

Illustration: (f):

	Hanafi	Shafi	Hanbali
Uterine maternal aunt's daughter	1/3	X	1/3
Consanguine paternal uncle's daughter	X	All	2/3
Germane paternal aunt's son	2/3	X	X

Illustration: (g):

	Hanafi	Shafi	Hanbali
Uterine sister's daughter	All	1/6	1/6
Consanguine paternal uncle's son's daughter	X	5/6	5/6
Germane maternal aunt's son	X	X	X

Illustration: (h):

	Hanafi	Shafi	Hanbali
Germane paternal aunt's son	X	X	
Uterine sister's daughter	All	1/3	X
Uterine maternal uncle	X	2/3	