

# **The Economic Shari‘ah of Islam**

*Javed Ahmad Ghamidi*

Rendered into English by  
*Shehzad Saleem*

## **Al-Mawrid**

Institute of Islamic Sciences  
51-K Model Town Lahore, Pakistan  
Phones: 586 3408, 586 5145  
URL: [al-mawrid.org](http://al-mawrid.org)  
Email: [almawrid@brain.net.pk](mailto:almawrid@brain.net.pk)

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## **Translator's Introduction**

Ever since the industrial revolution stunned the world more than two centuries ago, the discipline of economics has grown in import. It has become a specialized field attracting the attention of several minds. Alive to the situation, Muslim scholarship set about to frame and formulate the economic teachings of Islam in a more lucid and concrete manner. In particular, the last half-century has witnessed a phenomenal amount of work being done in this regard. Without taking anything away from this endeavor, it can be said that this effort could have been more fruitful and productive had it not been marred by a grave flaw: the belief that Islam provides a complete economic system and the only thing needed is its implementation in favorable circumstances.

In spite of a tremendous amount of work and dedication, unfortunately, Muslim scholarship today appears in shambles because of this flaw. It has been unable to come to grips with this challenge, which still spitefully stares at them. This grave flaw, it seems, can only be overcome if the approach to the whole issue is completely reviewed in the light of the Qur'an and Sunnah.

It needs to be appreciated that man has been blessed with the faculty of intellect and reason and has also been blessed with innate guidance regarding good and evil. In the affairs of life, his intellect and the innate guidance are generally enough to guide him and show him the way. It is only at certain crossroads that he needs divine guidance to select the right way. Consequently, in all such affairs a detailed system of directives has not been divinely revealed to guide mankind: only a broad outline has been given in the form of a set of rules and regulations which must be adhered to. Bearing this in mind, intellect and reason must evolve a system suited to the requirements and needs of a society. Since these requirements vary with time and place, the

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resulting systems will also vary accordingly. However, these systems shall be based on the same set of rules and regulations. In other words, the *sharī'ah*, which is a set of rules and regulations is divine and, therefore, eternal, but the system evolved upon this *sharī'ah* is a human inference and, therefore, flexible. This flexibility, obviously, has been left to accommodate changing circumstances and evolutionary developments of human societies.

Therefore, instead of extracting an economic system from the Qur'ān and Sunnah which, of course, does not exist, all out efforts should be made by Muslim scholars to derive the economic *sharī'ah* of Islam. The task of formulating a system on its basis should be left to the economists and to those who understand the intricacies of this field.

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Working on the pattern outlined above, Javed Ahmad Ghāmīdī has attempted to derive the economic *sharī'ah* of Islam from the Qur'ān and Sunnah. He has shown that this law consists of six basic principles and each of these principles is based on specific verses of the Qur'ān. During the course of his research, he has shown that the issue of *ribā al-faql* (interest in transactions concluded on the spot) is a case of misinterpretation and has arisen in our *fiqh* because the narrators have mixed up the words of certain Aḥādīth. He has also derived that the establishment of a public sector in a country is an essential ingredient of this economic *sharī'ah*. His research on the law of inheritance merits separate mention keeping in view its profound nature. Approaching the whole issue through the universal principles of language and working *ab initio* on their basis, he has come up with what can be termed as a prodigious piece of research. He has demonstrated that if a person has a flair for relishing the finer aspects of a language, the verses of the Qur'ān unfold their meaning to him. There is absolutely no need to employ the "Doctrine of Increase" (*'awl*) to proportionately decrease the shares if the law of inheritance is understood on this basis. All the shares can be perfectly distributed. Similarly, the correct meaning of *kalālah* can be ascertained very easily if this

approach is adopted.

This effort is by no means the final one. However, being an original piece of research, both in approach and content, it deserves a serious reading from all those who want to understand the economic message of Islam. It needs to be weighed in the scales of reason and revelation and not in those of conventionality.

For the benefit of the English reader, in the following pages, I have attempted to translate Ghāmidī's research article from Urdu<sup>1</sup>.

Shehzad Saleem  
Al-Mawrid, Lahore  
2005



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1. The research article appears as a booklet: Ghāmidī, Javed Ahmad, *Qānūn-i Ma'īshat*, 1<sup>st</sup> ed. Lahore: Al-Mawrid Institute of Islamic Sciences, 2005.

## **The Economic *Shari'ah* of Islam**

The economic law of Islam has been revealed by the Almighty through His last Prophet (sws) for the purification of the economy. It is based on the Qur'anic philosophy of creation. According to this philosophy, the Almighty has created this world as a trial and test for man; every person has therefore been made to depend on others for his living. No one in this world can live independently as regards his needs and requirements. A person of the highest rank must turn to the most ordinary to fulfill them. In other words, every single person has an important role to play, without which this world cannot continue. This role depends upon his abilities, intelligence and inclinations as well as upon his means and resources, which vary from person to person. In fact, it is because of this variation that a society comes into being. Consequently, laborers and workers, artisans and craftsmen, tillers and peasants are as indispensable as scholars and thinkers, savants and sages, leaders and rulers. Every individual is an integral component of society and contributes to its formation according to his abilities. The Qur'an says:

( : )

We have apportioned among them their livelihood in this world [in such a manner that] We have exalted some in status above others so that they can mutually serve each other. And better is your Lord's mercy than what they are amassing. (43:32)

By creating various classes of people, the Almighty is testing whether the big and the small, the high and the low create a society

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based on co-operation and respect or create disorder in the world by disregarding the role each person has been ordained to play. The latter attitude would, of course, lead them to humiliation in this world and to a grievous doom in the Hereafter. The Qur'ān says:

( : )

We are trying you by giving you happiness and sorrow to test you, and to Us you will be returned. (21:35)

It is to salvage man in this trial that the Almighty has guided him through His Prophets and revealed this economic *sharī'ah* to cleanse and purify him.

Following is a summary of this *sharī'ah*:

**1. Sanctity of Ownership:** If a Muslim has paid his *zakāh* dues, then his rightfully owned wealth cannot be usurped or tampered with in any way, except if on account of some violation by him. So much so that an Islamic State has no authority to impose any tax other than *zakāh* on its Muslim citizens.

**2. Formation of a Public Sector:** For the just distribution of wealth, the establishment of a public sector is essential. Consequently, everything which is not, or cannot be owned by an individual should in all cases remain in the ownership of the state.

**3. Incompetence:** Since a person's way of using his wealth and property also influences the development and welfare of a society, the state, while acknowledging him to be the owner, has the right to deprive him from using them if he is proved to be incompetent.

**4. Usurpation of Wealth:** It is prohibited to devour other people's wealth and property by unjust means. Gambling and interest are some horrendous forms of usurpation. Other economic activities should also stand permissible or prohibited in the light of this principle.

**5. Documentation and Evidence:** In affairs such as various financial transactions, making a will and acquiring a loan, the parties involved should write down a document and call in witnesses to safeguard against any moral misconduct by either of the parties.

**6. Distribution of Inheritance:** The wealth of every Muslim



must necessarily be distributed after his death among his heirs in the following manner:

If the deceased has outstanding debts to his name, then first of all they should be paid off. After this, any legacies he may have bequeathed should be paid. The distribution of his inheritance should then follow.

No will can be made in favour of the heirs ordained by the Almighty except in certain cases when the circumstances of the heir call for it. Similarly, no one can be an heir to a deceased who has severed his kinship with him because of some inappropriate deed or conduct.

After giving the parents and the spouses their shares, the children are the heirs of the remaining inheritance. If the deceased does not have any male offspring and there are only two or more girls among the children, then they shall receive two-thirds of the inheritance left over, and if there is only one girl, then her share is one-half. If the deceased has only male children, then all his wealth shall be distributed among them. If he leaves behind both boys and girls, then the share of each boy shall be equal to the share of two girls and, in this case also, all his wealth shall be distributed among them.

In the absence of children, the deceased's brothers and sisters shall take their place. After giving the parents and spouses their shares, the brothers and sisters shall be his heirs. The proportion of their shares and the mode of distribution shall be the same as that of the children stated above.

If the deceased has children or if he does not have children and has brothers and sisters, then the parents shall receive a sixth each. If he does not even have brothers and sisters, then after giving the husband or wife his (or her) share, one-third of what remains shall be given to the mother and two-thirds to the father. If there is no one among the spouses, then all of the inheritance shall be distributed among the parents in this same proportion.

If the deceased is a man and he has children, then his wife shall receive one-eighth of what he leaves, and if he does not have any children, then his wife's share shall be one-fourth. If the deceased is a woman and does not have any children, then her husband shall receive one-half of what she leaves and if she has children, then the husband's share is one-fourth.

Together with these rightful heirs or in their absence or, as in

some cases, from the left over inheritance, the deceased can make a near or a distant relative, aside from his parents and children, an heir. If the relative who is made an heir has one brother or one sister, then they shall be given a sixth of his share and he himself shall receive the remaining five-sixth. However, if he has more than one brother or sister, then they shall be given a third of his share and he himself shall receive the remaining two-thirds.

If a person dies without making anyone his heir, then his remaining legacy shall be distributed among his male relatives according to the principle (al-aqrab fa al-aqrab: nearest to the next nearest).

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This is the *sharī'ah* the Almighty has revealed to us to purify our economic dealings. While following this law in letter and spirit, a person may encounter financial difficulties and he may have to sacrifice his interests. The real reward for this is the Kingdom of Heaven which the Almighty will grant him on the Day of Judgment. However, He has promised that if the Muslims in their collective capacity adhere to faith and adopt a God-fearing attitude, the Almighty shall provide them abundantly in this world as well:

( : )

Had the people of these cities accepted faith and kept from evil, We would have showered the blessings of the heavens and the earth upon them. (7:96)

After this preliminary discussion, I will now attempt to explain this *sharī'ah* in detail. (The verses of the Qur'ān on which it is primarily based are stated in bold.)

### 1. Sanctity of Ownership

( : )

**Then if they repent, are diligent in the prayer and pay *zakāh*, leave them to themselves. (9:5)**

This verse explains to the Idolaters of Makkah the conditions which they had to fulfill to become Muslim citizens of the Islamic state of Maḍīnah. If this context of the verse is kept in consideration, it follows from the words (fa khallū sabīlahum: leave them to themselves) that just as an Islamic State cannot tamper with the life, honor and freedom of expression of people who have acquired its citizenship after fulfilling the conditions stated in the verse, it also has no right to commit any excesses against their assets, wealth and property. If they accept Islam as their religion, establish the prayer and are willing to pay *zakāh*, the Almighty bids the state to leave them to themselves and not forcibly demand a single penny from them once they have paid *zakāh*. The Prophet (sws), while explaining this directive, is reported to have said:

( : )

I have been directed to fight<sup>1</sup> with these people until they testify to the oneness of Allah and the prophethood of Muhammad, are diligent in the prayer and pay *zakāh*. If they accept these conditions, their lives shall be given protection except if they are deprived of this protection on the grounds of some offence they commit<sup>2</sup>. As far as their account is concerned, it rests with Allah. (*Muslim*, No: 22)

In the sermon of the Last *hajj*, the Prophet (sws) asserted that the wealth of a Muslim has eternal sanctity. Without the permission of the Almighty no one – not even the ruler of the Muslims – has the authority to violate this sanctity. The

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1. No one should have any misconception from the words: “I have been directed to fight ...” of this Ḥaḍīth. The opponents referred to here are specifically the Idolaters of Arabia. Since the truth had been unveiled to them in its ultimate form, the law for them was to either accept faith or face death.

2. For example, they shall be executed or be liable to pay *diyat* for murder.

following subtle words allude to this:

( : )

Indeed, your blood and your wealth are as sacred and inviolable as this day<sup>3</sup> of yours, this month<sup>4</sup> of yours in this city<sup>5</sup> of yours. (*Muslim*, No: 1218)

It is evident from this discussion that an Islamic state has no right to impose any sort of tax on its Muslim citizens except *zakāh*, the rates of which have been fixed in their wealth by the Almighty through His Prophets.

This is an unimpeachable directive of Islam. It is this very directive through which Islam not only ends once and for all a great tussle between a state and its citizens in financial matters, but also eliminates the possibility of a state creating imbalance in the national economy by exceeding the resources available to it.

## 2. Formation of a Public Sector

( : )

**Whatever the Almighty has bestowed on His Prophet from the people of the cities, it is reserved for Allah and His Prophet and the relatives of the Prophet and the orphans and the needy and the wayfarers so that it may not circulate in only the rich among you. (59:7)**

The context of this verse is that in the Prophet's times when people demanded that the wealth, land and assets obtained from the enemy against whom no war had been waged be distributed among them, the Qur'ān refused this demand; it asserted that they belonged to Allah and the Prophet (sws) and were reserved for the collective requirements of the state and religion, and for the

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3. ie, the day of sacrifice.

4. ie, the month of *dhū al-hajj*.

5. ie, the city of Makkah.

poor and needy. This, according to the Qur'ān, was necessary so that wealth should not get concentrated among the rich and that it be directed to those sectors of the society who, because of their natural disabilities and lack of resources, are unable to struggle for their livelihood or for some reason are left far behind others in earning for themselves.

Since the wealth and assets referred to in the above mentioned verse were obtained without any real assistance from the believers merely through the Almighty's help in accordance with His law regarding His Messengers, all of these were reserved for collective purposes. The spoils of war obtained in the times of the Prophet (sws) in various battles fought in Arabia were also owned by Allah and the Prophet (sws)<sup>6</sup> because of the peculiar nature of these armed offensives. However, since the believers had also assisted in acquiring them by using their personal weapons, camels and horses as well as food, camps and various other items needed during these wars, it was necessary that the spoils be distributed among them. Nevertheless, even in these spoils the Qur'ān reserved 1/5<sup>th</sup> of the share for these collective purposes:

( : )

And you should know that a fifth of the spoils you get hold of are for Allah and the Prophet and his near relatives and the orphans and the needy and the wayfarer. (8:41)

If the terminology of modern times is used, we can say that it is the purport of the Qur'ān that in the economy of a country a public sector should come into being parallel to the private sector. The reason is that at the state level this is the only way through which a balance can be achieved in the circulation of wealth, and the problem of concentration of wealth in certain sections of the society as a result of the development of private sector can be resolved in an organized and planned manner.

As far as the way in which this public wealth and property are to be organized is concerned, the *sharī'ah* has left the matter to

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6. They ask you [O Prophet!] about the spoils of war. Say: "The spoils belong to Allah and the Prophet." (8:1)

the circumstances which prevail in a society and upon the general well-being of the Muslims. Therefore, the ruler of an Islamic state in consultation with the elected representatives can adopt whatever measures he deems appropriate in this regard. Consequently, it is known that the Prophet (sws), in his times, gave the lands of Khaybar for crop sharing<sup>7</sup>, left certain lands under the permanent control of certain people for whom these lands had been reserved<sup>8</sup>, regarded certain lands as *himā*<sup>9</sup>, left certain things to be shared equally by every one<sup>10</sup>, fixed the principle of *al-aqrab fa al-aqrab* (nearest to the next nearest) for using the water of certain springs and canals<sup>11</sup> or the way the Caliph 'Umar (rta) imposed a fixed amount of tribute (*khirāj*) on the state owned lands of Syria and Iraq conquered in his times, according to the extent of their produce while leaving them in the hands of their owners<sup>12</sup>.

### 3. Incompetence

( : )

**And do not give to the naïve the wealth and property which the Almighty has made a means for your support and development. But feed and clothe them with magnanimity, and speak to them with kindness. (4:5)**

It is clear from the context of this verse that it pertains to orphans and their guardians. The Almighty has directed us that since wealth has been made a means of subsistence and survival for man, therefore if an orphan is imprudent and naïve, then his guardians while acknowledging his personal right must also take into consideration the welfare of the family and that of the

7. *Muslim*, No: 1551.

8. *Abū Dā'ūd*, No: 3058.

9. *Bukhārī*, No: 2370.

10. *Ibn Mājah*, Nos: 2502, 2503.

11. *Bukhārī*, No: 3261.

12. *Abū Yūsuf, Kitāb al-Khirāj, Faṣl fī al-Fay wa al-Khirāj*, (n.p.: 1302 AH), 26-29.

collectivity, and during the time he is unable to properly discharge his responsibilities, they must not return his wealth to him and should themselves take care of this wealth.

This is the context of the verse. However, a further reflection on this verse shows that the basis of the directive is their incompetence and not their status as orphans. Therefore, it can be concluded that if the basis of the directive exists, the above right granted to the guardians with regard to the orphans, by analogy, should also be granted to a state with regard to its citizens. This measure takes care of the welfare and well-being of the society, which must always be kept in consideration. So, if a person because of his foolishness and carelessness squanders away or ruins his wealth and resources, then it is the duty of the state to strip him from their control and management and take charge of them. However, in this case, it has been directed that the state must generously cater for his requirements from his wealth and wholeheartedly adjust all matters. The Arabic words used are (feed them in it) and not (feed them from it), and these words, according to Arabic usage, clearly point to the generosity with which he must be looked after.

### 5. Usurpation of Wealth

( : )

**O believers! Do not devour one another's wealth by evil means except through trading by mutual consent. (4:29)**

This verse prohibits a person from devouring other people's wealth through means which are against justice, honesty, fairness and against the good conventions of a society. It is this directive of the Qur'an which forms the basis of all prohibitions in Islam that pertain to economic matters. Obtaining money through illegal gratification, theft, extortion, lying, co-operation with evil, embezzlement, misappropriation, consuming unclaimed items without publicizing them, all come under it. These evils require no further discussion since they are universally acknowledged sins in every society and in every religion.

Transactions and activities which become a source of deceit or damage for the parties involved are also corollaries of this directive. Their various forms which the Prophet forbade (sws) in his own times are:

Selling something before its possession is taken.<sup>13</sup>

Selling grain bought in mounds before bringing it to the place where it is sold.<sup>14</sup>

Selling and purchasing done by a city dweller for a villager.<sup>15</sup>

Increasing one's bid in an auction just for deception.<sup>16</sup>

Bargaining when someone else is bargaining.<sup>17</sup>

*Muḥāqalah*: Selling crop when it is still in the spikes.<sup>18</sup>

*Muzābanah*: Selling the dates which are on a date-tree in exchange for plucked dates.<sup>19</sup>

*Mu'awamah*: Selling the fruits of trees for many years.<sup>20</sup>

*Thaniyā*: Leaving an unspecified exception in a bargain. One of its forms, for example was that the seller would say: "I sell my grain to you, but I will take something out of it".<sup>21</sup>

*Mulāmasah*: A deal in which a person, without thinking, just touches the other person's cloth and a deal is made in this manner.<sup>22</sup>

*Munābadhah*: A deal in which people throw something towards one another and, in this way, a bargain is made.<sup>23</sup>

*Bay' ilā Ḥabl al-Ḥablah*: A deal in which people sell camels by saying: "Whatever offspring this camel gives birth to and when that offspring gets pregnant, whatever it gives birth to, then the [last] offspring is bought by me".<sup>24</sup>

13. *Bukhārī*, No: 2131.

14. *Bukhārī*, No: 2167.

15. *Bukhārī*, No: 1240.

16. *Bukhārī*, No: 2140.

17. *Bukhārī*, No: 2140.

18. *Muslim*, No: 1536.

19. *Muslim*, No: 1542.

20. *Muslim*, No: 1536.

21. *Muslim*, No: 1536.

22. *Muslim*, No: 1511.

23. *Bukhārī*, No: 2037.

24. *Bukhārī*, No: 2036.



*Bay' al-Hiṣāh*: In pre-Islamic times, such a bargain existed generally in two forms: (a) people would make a deal about a piece of land and then the buyer would throw a pebble; the distance covered by the pebble would be regarded as the length of the sold land, and (b) people would throw a pebble and say that whatever thing it touched would be considered as sold.<sup>25</sup>

Selling fruits of a tree before their quality and characteristics become evident.<sup>26</sup>

Selling spikes before they turn white and become safe from calamities.<sup>27</sup>

Selling a commodity which is defective, except when the buyer is informed of its defects.<sup>28</sup>

Holding the milk of camels and goats in their udders before selling it.<sup>29</sup>

Intercepting tradesmen and buying their merchandise before they reach the markets.<sup>30</sup>

Making a deal by giving money in advance such that a person obtains the item after it is ready except if this transaction is carried out for a fixed measure, a specified weight and a definite period of time.<sup>31</sup>

*Mukhābarah*: Adopting methods of crop-sharing in which the profit of the landlord is fixed before hand.<sup>32</sup>

Adopting methods of crop-sharing in which the production of a particular area of land is regarded as the right of the landlord.<sup>33</sup>

Selling jointly owned properties without giving the shareholders a chance to buy them except if the ownership divisions are determined and the paths are separated.<sup>34</sup>

Selling property which lies on a pathway that is common with a

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25. *Muslim*, No: 1513.

26. *Muslim*, No: 1534.

27. *Muslim*, No: 1535.

28. *Ibn Mājah*, No: 2246.

29. *Bukhārī*, No: 2148.

30. *Muslim*, No: 1517.

31. *Bukhārī*, No: 2135.

32. *Muslim*, No: 1536.

33. *Bukhārī*, No: 2202.

34. *Bukhārī*, No: 2138.

neighbor's house without giving him the chance to purchase it.<sup>35</sup>

Storing commodities of general use to create a shortage and thereby increase their prices in the market. The Prophet (sws) utterly forbade this and is reported to have said:

( : ).

Anyone who interfered in the markets of Muslims merely to increase the rates [of the commodities], then the Almighty has the right to make a big fire his abode on the Day of Judgment. (*Musnad Ahmad*, No: 20328)

These are the various forms of sale and purchase and crop-sharing which the Prophet (sws) prohibited in his times. Since all the above mentioned directives are based on the underlying bases of deceit and damage, the directive of prohibition will stand dissolved in circumstances in which these bases no longer exist, just as if, as a result of evolution and development of civilizations, these bases emerge in some new economic activity, then that activity will also stand prohibited.

Gambling and interest also belong to this category of devouring wealth through evil means. This writer will now venture to elaborate the view of the Qur'ān in detail on these two hideous crimes.

### *Gambling*

Gambling, everyone knows, is merely chancing one's luck. The Qur'ān has called it "from among the filthy works of Satan". Obviously, this expression has been employed because gambling gives rise to moral misconduct in a person which gradually encompasses his personality. The reason is that if an economic activity is based on rights and services and rational decisions, it develops a high moral character, and if an economic activity is based on mere chance, fortune and fortuity, it produces an attitude which is based on avoidance of hard work and service. This gives rise to such mean qualities as cowardice and faint-

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35. *Tirmadhī*, No: 1369.

heartedness which subsequently eliminate the innate qualities of honor, integrity, sincerity and self-respect. As a result, a person becomes unmindful to the remembrance of the Almighty and to the prayer, and instead of having love and affection for his fellow beings, he has nothing but enmity and hatred for them. The Qur'ān says:

( - : )

O you who believe! This liquor and gambling and idols and these divining arrows are abominations devised by Satan. Avoid them that you may succeed. Satan seeks to stir up enmity and hatred among you by means of liquor and gambling and to keep you from the remembrance of Allah and from the prayer. Will you not then abstain from them? (5:90-1)

An important point to note is that gambling in pre-Islamic times was a means through which the rich showed their generosity and helped the poor and needy. In winters, when cold winds blew in and caused conditions akin to drought, the courageous would gather at various places, drink liquor and in their state of inebriation would slaughter any camels they could get hold of. They would pay the owner of the camels whatever price he demanded. They would then gamble on the meat of the slaughtered camels. Whatever parts of meat a person won in this gambling, he would generously distribute them among the poor who would gather around them on such occasions. In pre-Islamic Arabia, this was a matter of great honor and people who took part in this activity were considered very philanthropic and generous. The poets would narrate the accounts of their benevolence in their odes. On the other hand, people who stayed away from this activity would be called *barm* (stingy).

It was this very utility of liquor and gambling which prompted people to inquire when they were regarded as prohibited items. The Qur'ān asserted in its reply that in spite of possessing this

benefit, they were instrumental in producing moral misconduct in an individual, which in no case can be allowed:

( : )

They ask you about liquor and gambling. Tell them: "There is great sin in them and some profits as well for people; But their sin is greater than their profit". (2:219)

### *Interest*

Interest is also a similar sin that morally pollutes a person as well as the institutions involved in its transactions. Those who lend on interest totally safeguard their capital by not risking it in any way and extort profit from the poor borrower. In Arabic, it is called *ribā* and the Qur'ān has used this very word for it. Everyone who understands Arabic, knows that it implies a fixed increase which a lender demands from the borrower just because he has given him the permission to use his money for a certain period. The Qur'ān has vehemently prohibited it in the following words:

( : )

Those who devour interest will rise up on the Day of Judgment like the man whom Satan has driven to madness by his touch because they claim that trading is like interest and how strange it is that Allah has permitted trading and forbidden interest. Consequently, he who received this warning from the Almighty and desisted [in obedience thereto], then whatever he has taken in the past belongs to him and his fate is in the hands of Allah. And those who repeat [the offence] will be companions of the Fire and will abide therein forever. (2:275)

It is further stated:

( - : )

O you who believe! Fear Allah and give up what remains of your demand for interest. If you do it not, beware of war from Allah and His Prophet. And if you repent, then you can have your principal amount. Neither will you be allowed to deal unjustly nor will you be dealt with unjustly. (2:278-9)

The reason why devourers of interest will be raised up on the Day of Judgment as madmen owes itself to their expression of amazement on the fact that the Almighty has not prohibited trading while He has prohibited interest, whereas there is no difference between the two. They maintain that if a trader can demand profit on his capital, why can't a lender on interest demand profit on his capital. According to the Qur'ān, only a madman can give such an insane statement and such insanity demands that its reward be no different than insanity itself. So in accordance with the law of similarity between the deed and its reward, such people would be raised up as madmen on the Day of Judgment.

Imām Amīn Aḥsan Iṣlāḥī, while commenting on this expression of amazement of interest-devourers, remarks:

It is evident from the objection raised by the interest devourers that the breed of people who regard interest and trading as analogous to one another is not very rare after all. It was found even in olden times. The Qur'ān has not even commented on this foolish objection since its baseless nature is self-evident and only sheds light on the insanity of those who raise it. A trader invests his capital in a trade which is in demand from the people. He makes his merchandise available to people through hard work and by taking a lot of risk. These people, in the first place, were not in a position to produce this merchandise themselves, and if they were able to then it was only at a heavy cost. Moreover, a trader spews his capital in the open market for competition and his profit is determined by the low and high trends of the market itself. He may end up losing all his

money due to these trends and he may be able to make some profit. So his hands are tied in this enterprise as he cannot earn a single penny of profit in selling his merchandise until his invested capital enters the market after being exposed to the risks and fluctuations of the market forces and after once again providing service to society.

So how can the enterprise of a trader, who takes risk and provides service to the society when he invests his capital, be compared to that of an interest devourer whose enterprise is mean, callous, cowardly and hostile to humanity in its very nature. He is a person who is not willing to take the slightest risk with his capital but is very eager to extort profit.<sup>36</sup>

It is because of this fiendish nature of interest that the Prophet (sws) is reported to have said:

( : )

So great a sin is interest that if it is divided into seventy parts, then the lightest of these parts is equal in its extent to fornication with one's mother. (*Ibn Mājah*, No: 2274)

Here it should be kept in mind that the Qur'ān has prohibited only the charging of interest; it has not prohibited the giving of interest. However, as a natural consequence of this prohibition, a person who, without any genuine reason, acts as an agent of an interest-devourer or writes down its transaction or bears witness to it, must be regarded as an equal criminal on the principle of (co-operation with evil). It is narrated by Jābir (rta):

( : )

The Prophet has severely condemned the devourer of interest and the one acts as an agent of the interest-devourer and those who write an agreement [for such lending] and the two who

36. Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'ān*, 2<sup>nd</sup> ed., vol. 1 (Lahore: Faran Foundation, 1986), 632-633.

are the witnesses to this document and has said: "All of them are equal". (*Muslim*, No: 1598)

The Prophet (sws) has emphatically directed people to refrain from the slightest possible trace of interest while borrowing in barter as well:

( : )

If you lend gold, then take back the same type and the same amount of gold; and if you lend silver, then take back the same type and the same amount of silver; for he who gave more or desired more, then this is precisely what interest is. (*Muslim*, No: 1588)

( : )

If you lend gold in exchange for silver, then there is a possibility of interest in this.<sup>37</sup> Similarly, for wheat in exchange for another type of wheat<sup>38</sup>, barley in exchange for another type of barley, date for another type of date. Indeed if the exchange is done on the spot, then there is no harm. (*Muslim*, No: 1586)

This is the correct meaning of the above quoted *Aḥādīth*. If all the *Aḥādīth* on this topic had remained intact, the scholars of our *ummah* would not have faltered in interpreting them. However,

37. This directive is meant to put a stop, at the very outset, to ways which lead to the door of interest. Since dissimilar commodities are given on credit, there is all the probability of some increase or decrease in such barter transactions; the Prophet (sws) therefore prohibited them.

38. This translation is in accordance with the copulative relation of this sentence to the previous one. The words (if you lend silver in exchange for gold) in which two different commodities are mentioned entail that the wheat mentioned in this expression be of two different categories also.

owing to the misinterpretation of the narrators in some chains of narration, the words (on the spot), or similar words in the second Ḥadīth quoted above, were incorporated in the first one; similarly, the word (gold in exchange for gold) of the Ḥadīth quoted first were put in place of (if you lend silver in exchange for gold) of the second. It is because of this intermingling of words that our jurists have erroneously derived the concept of *ribā al-faḍl* from such Aḥādīth, whereas the correct concept in this regard is what the following words of the Prophet (sws) say:

( : )

*Ribā* is only in transactions of loan. (*Muslim*, No: 1596)

It should be borne in mind that interest pertains only to those transactions in which a commodity is borrowed for the purpose of “using it up” whereby the borrower would be burdened to recreate it in order to return it to the lender. If any additional amount is demanded over and above it, then this no doubt is injustice as affirmed both by reason and revelation. On the contrary, transactions in which the commodities and items in question are “used” rather than being “used up” relate to lease, and the money demanded by the owner on providing this service, which is termed as rent, can in no way be objected to.

Similarly, it should also remain clear that whether a loan is acquired for personal, business or welfare purposes, the real meaning of *ribā* is not ascertained on these bases. It is an indisputable fact that in the Arabic language the word *ribā*, irrespective of the aim of the lender and the condition of the borrower, just implies a pre-determined increase acquired on a loan. Consequently, the Qur’ān itself has clarified this fact: during its own period of revelation, lending on interest for business purposes was quite rampant and these loans were given with the intention of prospering through the wealth of others. The Qur’ān says:

( : )



That which you give as loan on interest that it may increase on [other] people's wealth, it has no increase with Allah; but that which you give as *zakāh* seeking Allah's countenance, it is these people who shall get manifold [in the Hereafter] of what they gave. (30:39)

The expression "...that it may increase on [other] people's wealth" is not only inappropriate for application to interest-based loans given to the poor for their personal use, but is also clearly indicative of the fact that interest based loans were generally given for business purposes and in this way they "increased on other people's wealth" according to the Qur'ān.

It is to this fact that the following verse also points:

( : )

And if the borrower is in difficulty grant him respite until it is easy for him to repay and if you write off [the debt], it is better for you, if you only knew. (2:280)

Imām Amīn Aḥsān Iṣlāḥī comments on this verse in the following words:

Today some naive people claim that the type of interest which prevailed in Arabia before the advent of Islam was usury. The poor and the destitute had no option but to borrow money from a few rich money-lenders to fulfill their personal needs. These money-lenders exploited the poor and would lend them money at high interest rates. It is only this type of interest which the Qur'ān has termed as *ribā* and forbidden. As far as commercial interest is concerned, it neither existed at that time nor did the Qur'ān prohibit it.

The verse categorically refutes this view. When the Qur'ān says that if the borrower is in difficulty, he should be given respite until he is able to pay back his debt, it clearly points out that in those times even the rich used to acquire loans. In fact, if the style and stress of the verse are correctly

understood, it becomes clear that it was mostly the rich who used to procure loans. Indeed, there was a strong chance that the borrower would find himself in difficulty even to pay the original amount. The money-lender, therefore, is directed to give him more time and if he forgoes the original amount it would be better for him. The words of this verse strongly indicate this meaning. The actual words of the verse are:

. The particle of condition (if) is not used for general circumstances, but, in fact, is used for rare and unusual circumstances. For general circumstances the particle (if) is used. In the light of this, it is clear that the borrower in those times was generally affluent ( ), but in some cases was poor or had become poor after acquiring the loan and in that case, the Qur'ān has directed the money-lenders to give them a time rebate.<sup>39</sup>

He has concluded this discussion by saying:

Obviously, the affluent would have turned to the money-lenders not to fulfill their personal needs, but, of course, their business needs. So what is the difference between these loans and the commercial loans of today.<sup>40</sup>

## 5. Documentation and Evidence

### I

39. Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'ān*, 2<sup>nd</sup> ed., vol. 1 (Lahore: Faran Foundation, 1986), 638-639.

40. Ibid., 639.

( - : )

O you who believe! When you acquire a loan for a fixed period, record it in writing, and let a scribe write it down between you with fairness; he who can write should not refuse to write, and just as Allah has taught him to write, he also should write for others; the one who has acquired the loan should have [the document] written down and fearing Allah his Lord, he should not make any reduction in it. If he on whom rests the responsibility of writing is indiscreet or feeble or unable to have it written, then let his guardian do so with justice. And call in two male witnesses from among your men, but if two men cannot be found, then one man and two women from among your likable people so that if one of them gets confused, the other reminds her. And witnesses must not refuse when they are summoned. And whether the loan is big or small, be not negligent in documenting the deal up to its period. This is more just in the sight of Allah, it ensures accuracy in testifying and is the most appropriate way for you to safeguard against doubts. But if it be an everyday transaction, it does not matter if you do not write it down. And call in witnesses also if you sell or purchase anything. And let no harm be done to the scribe or the witness. If you do so, then this will be a transgression which will cling to you. And fear Allah. Allah is teaching you. He has knowledge of all things. If you are in a journey and a scribe is not available, a loan can be taken by placing something in possession of the lender against the loan. Then when circumstances are such that people can trust one another, the lender should return the thing entrusted to him and he should keep fearing Allah his Lord [and should call in people to bear

**evidence on this matter], and do not conceal evidence [in whatever form it is], and [remember that] whoever conceals it his heart will become sinful, [and remember that] God knows whatever you do. (2:282-283)**

This verse directs the Muslims to document monetary transactions whether in cash or in credit to safeguard against any dispute that may arise. Imām Amīn Aḥsan Iṣlāḥī has summarized the directives mentioned in this verse in his *Tadabbur-i Qur'ān* in the following words:

1. Whenever a loan is acquired for a certain period, the transaction should be written down in the form of a document.
2. This document should be written down in a just manner by some scribe in the presence of both the parties. He should not be fraudulent in writing this down. A person who knows how to write should not refuse if he is called upon to do so. The skill of writing is a blessing of Allah, and, in gratitude to this, a person should help others whenever the need arises. The need for this piece of advice arose because in those times very few people knew how to write. Formal and legal documentation and registration had not begun and neither was its inception an easy affair.
3. The responsibility of writing down the document rests on the borrower. The document should state the name of the person from whom he has borrowed, and like the person who has been entrusted with the responsibility of writing down, he too should uphold the virtue of piety in this affair, and in no way try to damage the parties involved.
4. If the borrower is naïve, feeble or is not in a position to write down the document, then his guardian or attorney should have it written down on his behalf with justice and fairness.
5. Two male witnesses should testify over this document. The words used are (from among your men), which imply two things simultaneously: firstly, the witnesses should be Muslims and known to the parties involved. The second thing which is specified in this regard is that the witnesses

should be honest and trustworthy and of sound character.

6. If two male Muslims having the said qualities are not available, then one man and two women can be selected to fulfill this responsibility. The requirement for two women is because if one of them commits an error the other may correct her. This is not because women are inferior, but because this responsibility is not very suited to their temperament and general sphere of interests and the environment they are used to. Consequently, the *sharī'ah* has given them some relief and assistance in it. This topic is discussed in detail in *Sūrah Nisā*.

7. People who have borne witness to a document should not desist from giving their testimony when they are called upon to do so because bearing witness to a truth is a great social service also, and as witnesses to the truth, it is a responsibility of the *ummah* imposed on it by the Qur'an.

8. If the loan, whether it be small in amount or large, is acquired for a period and is not an everyday loan, one must not show aversion to writing it down. People who ignore this by considering it a burden, sometimes get involved in severe disputes which produce far reaching results merely because of this slackness.

9. All these directives are in accordance with justice, and they safeguard testimonies and protect people from doubts and disputes. So it is necessary to follow them for the general well-being of the society.

10. Everyday loans and transactions are not required to be written down.

11. Witnesses, however, should be called upon important deals and transactions to resolve any disputes that may arise.

12. It is not proper for a party to harm the scribe or the witness if a dispute arises. Scribes and witnesses do a great social service, and if they are harmed, honest and cautious

people will start avoiding these responsibilities and, except for professional witnesses, people will have difficulty in finding witnesses who are reliable. In present times, the reason honest and serious minded people avoid these responsibilities is that whenever some dispute arises in such an affair, the witnesses have to face a lot of trouble and discomfort. They become the targets of defamation, suffer monetary losses and even get killed. The Qur'ān has stopped people from such excesses and warned that this is not a small offence that may be forgiven. It is a transgression which will cling on to them, and they will not be able to save themselves from its evil consequences. This is nothing but an effort to raze down the foundation of the pillar of bearing witness to the truth – the very objective of this *ummah*.<sup>41</sup>

At the end of the verse, the Almighty has given His guidance on the issue of pledging something to acquire a loan. As per this guidance, if a person is on a journey and no scribe is available to document the transaction of loan then the borrower can place something in possession of the lender as a security. However, this permission to the lender to accept such pledges is strictly dependent on the fact that the lender does not find himself in a trustworthy situation. As soon such a situation arises, the Almighty has directed the lender to return the pledged item and call in witnesses over the transaction of loan. Imām Amīn Aḥsan Iṣlāḥī writes:

When circumstances arise that people can start trusting one another and the lender does not have a valid reason to distrust the borrower, he should return the pledged item and if he wants, for his own satisfaction, he can adopt the method on which he has been guided earlier in the verse. Examples of these circumstances are that his journey ends, scribes become available to document the transaction and in the presence of people known to him the loan becomes a verifiable transaction. Here the pledged items are called “a trust” from which it is evident that these items lie with the

41. Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'ān*, 2<sup>nd</sup> ed., vol. 1 (Lahore: Faran Foundation, 1986), 640-642.

lender as a trust which he must safeguard, and it is prohibited to gain any benefit from them.<sup>42</sup>

The nature of calling in two male witnesses and, in their absence, one male and two female witnesses though is absolutely specific; however, the way our jurists have interpreted it requires that the following two aspects be kept in consideration:

Firstly, the verse has nothing to do with the bearing of witness over an incident. It explicitly relates to testifying over a document. It is very evident that in the second case witnesses are selected by an external agency, while in the first case the presence of a witness at the site of an incidence is an accidental affair. If we have written a document or signed an agreement, then the selection of witnesses rests upon our discretion, while in the case of adultery, theft, robbery and other similar crimes whoever is present at the site must be regarded as a witness. The difference between the two cases is so pronounced that no law about one can be deduced on the basis of the other.

Secondly, the context and style of the verse is such that it cannot relate to law or the judicial forums of a state. It is not that after addressing a court of law that it has been said that if such a law suit is presented before them by a claimant, then they should call in witnesses in this prescribed manner. On the contrary, this verse directly addresses people who borrow and lend money over a fixed period. It urges them that if they are involved in such dealings, then an agreement between the two parties must be written down, and to avoid disputes and financial losses only witnesses who are honest, reliable and morally sound should be appointed. At the same time, their personal involvement and occupations should be suited to fulfill this responsibility in a befitting manner. Precisely for this reason, Muslims are directed to primarily appoint two male witnesses and in their absence one male and two female witnesses so that if a lady used to the serene surroundings of her house finds herself overwhelmed in the hostile atmosphere of a court room, another lady is present alongside her to protect the evidence from doubt and ambiguity. The verse does not mean and should not be taken to mean that a law-suit will only stand proven in court if at least two men or one man and two women bear witness to it. It is merely a

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42. Ibid., 643.

guidance for the general masses in their social affairs and counsels them to abide by it so that any dispute can be avoided. It is for their own benefit and welfare that this procedure should be undertaken. In no way should this bearing of witness be taken to mean that it is a statutory count for a testimony which a court must follow. Consequently, about all similar directives the Almighty says that this procedure is nearer to justice, protects the testimony and safeguards people from doubts.

## II

( - : )

**Believers! When death approaches someone among you, and he is making a bequest, the testimony will take place in a way that two just men from among you will act as witnesses, or if you are traveling and the calamity of death overtakes you, then two just men from outside you should discharge this responsibility. Detain them [ – the two just Muslims –] after the prayer, and then if you have any doubts, they should swear by Allah: “We will not accept any price for this testimony even if some kinsman offers it, neither will we hide this testimony of Allah. If we do this, then we would be among the sinners”. But if it becomes known that they have proved dishonest, then let two others stand forth in their places from among the people who have been deprived of their right by these two witnesses; then they should swear by Allah, saying: Our testimony is truer than theirs and that we have not trespassed [beyond the truth] in our testimony. If we do this, then we indeed should be among the wrongdoers. In this way, it is more likely that they will bear**



**true witness or at least they will fear that their testimony may get refuted by that of the others. [Do this], and fear Allah and listen and [remember that] Allah never guides the evil-doers. (5:106-8)**

In these verses, believers are directed about their wills and bequests with the same stress and emphasis as they are in matters of loan and other transactions. A summary of these directives is presented below:

1. If death stares a person in his face and he has to make a will regarding his wealth, then he should call in two just witnesses from among his Muslim brethren.

2. If death approaches him during a journey, and two Muslim witnesses are not available there, then as a last resort he can call in two non-Muslim witnesses.

3. If there is a possibility that those selected from among the Muslims as witnesses might show some bias to someone by altering their testimony, then as a precautionary measure, they can be held back after a congregational prayer in the mosque and be asked to swear by Allah that they will not alter their testimony for some worldly gain or in partiality of someone even if he be their close relative, and, if they do some alteration, then they will be sinners.

4. The witnesses should know that this testimony is (the testimony of Allah). So even if they are dishonest in the slightest way, it would mean that they are dishonest not only to their brethren but also to the Almighty.

5. In spite of this, if it comes to surface that these witnesses have shown bias to someone contrary to the will made by the deceased, then two people from among the brethren of the person who has become the victim of this injustice should stand up and swear that they are truer than the previous witnesses; that they have not committed any excess in this regard and that they will be wrongdoers before the eyes of Allah if they do so.

6. It is likely that after this further measure, the witnesses will not give a false testimony for they will have the fear hovering over them that if they commit any wrong, others will negate their oaths and in spite of being given preference, their oaths will be refuted.

## 6. Distribution of Inheritance

### I

( - : )

**When death approaches any one of you and you are leaving behind some wealth, it is incumbent upon you to make a will in favour of your parents and relatives according to the conventions [of society]. This is an obligation imposed upon the God-fearing. Then if anyone changes the will after hearing it, then its sin shall rest on those who change it. Indeed, God hears and knows [all things]. But anyone who fears partiality or wrongdoing on the part of the person who has made the will, and he makes peace between them, then there is nothing sinful in this. For Allah is Forgiving, Ever-Merciful. (2:180-2)**

The verses of *Sūrah Nisā* (quoted below) which ascertain a specific share for each heir and their placement in the Qur'ān clearly show that the above mentioned directive of making a will for the parents and relatives according to the conventions of society was revealed earlier. These verses of *Sūrah Nisā* also explain that the reason the Almighty has ascertained the shares of parents and relatives in the legacy of a deceased is that man cannot know who among his relations is near to him in benefit. Also, in these verses, the Almighty has called this ascertaining of shares as His will, against which no Muslim, it is evident, should dare make his own will. The following verse also corroborates this fact:

( : )

From what is left by parents and those nearest related, there is a share for men and a share for women whether small or large – a fixed share. (4:7)

In view of this, it is clear that, in general circumstances, the verses of *Sūrah Nisā* abrogate the above quoted directive of *Sūrah Baqarah*. However, the purpose of this abrogated directive in the words of Imām Amīn Aḥsan Iṣlāḥī was:

The directive of making a will in favour of one's parents and relatives mentioned in this verse was contingent upon the conventions of the society, and was given in the interim period when the Islamic society had not become stable enough to be given the directives which were later revealed in *Sūrah Nisā*. It was revealed as a temporary directive before circumstances became conducive for detailed directives in this regard. It had two basic objectives: first, to immediately safeguard the rights of those relatives which were being usurped by influential relatives and second to revive once again the conventions of the society in this regard which had existed in the nobility of Arabia but were engulfed in the dust of the age of ignorance (*jāhiliyyah*); this revival would pave the way for the detailed law that was to be revealed later.<sup>43</sup>

## II (i)

( : )

**God enjoins you about your children that a boy's share is equal to that of two girls'. And, if there are only girls among the children and they are more than two, then they shall receive two-thirds of the inheritance, and, if there is only one girl, then her share is half. (4:11)**

It is this directive of the *sūrah* which, in general circumstances, abrogates the verse of *Sūrah Baqarah* quoted before. It first of all mentions the share of the children:

The sentence (God enjoins you about your children) acts as a prelude to (a boy's share is equal to that of two girls'). The word (*awlād*) denotes both

43. Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'an*, 2<sup>nd</sup> ed., vol. 1 (Lahore: Faran Foundation, 1986), 439-440.

the female and the male offspring. Hence, the correct sentence analysis in this writer's opinion is:

([among the children] a boy's share is equal to that of two girls').

If this directive had ended on the words (a boy's share is equal to that of two girls'), then it would have meant:

(i) If the children of a deceased are only a boy and a girl, then the boy will receive twice as much as the girl.

(ii) If the number of boys and girls exceed this, then the inheritance shall be divided among them in a manner that each boy receives twice the share of a girl.

(iii) If there are only boys or only girls, then the whole inheritance shall be given to whoever among the two is present.

The third case is also, quite evidently, an essential outcome of the style and pattern of the verse. If it is said that this money is to be distributed among beggars and a male beggar is to be given twice the amount of a female beggar, then this means nothing except that the money is actually meant for the beggars; hence if all beggars are men, all the money shall be distributed among them and if all the beggars are women, then also the same procedure shall be adopted. But the directive does not end here: an exception immediately follows, thereby amending it.

The sentence (and if there are only girls among the children and they are more than two, then they shall receive two thirds of the inheritance) is an exception to (a boy's share is equal to that of two girls').

This means that if among the children of the deceased there are girls, then whether they are two or more, their share is two-thirds. The words (and if there is only one girl, then her share is half) are co-ordinated to this exception by the copulative particle (*harf-i 'attf*) (and).

This writer has interpreted the meaning of as "two or more than two". The reason behind this is that before it, the word

(two) has been suppressed, which is owing to the style and pattern of the Arabic language. If, in the language of the Qur'ān, the share of a girl and of two or more girls are to be stated separately owing to a difference in their proportions, then there can be two ways of doing so. If an ascending order arrangement is adopted, then the share of one girl shall be stated first followed by

the share of two girls. If the share of more than two girls is to be the same as that of two girls, then there is no need to mention it in words. After specifying the share of two girls after that of one, owing to a difference in their amount, if a silence follows, then this is a clear indication that the share of two or more girls is equal to that of two girls'. If a descending order arrangement is employed, then again, the words (more than two or two) are inappropriate as regards the linguistic style and pattern of Arabic; so after stating the shares of more than two girls, the share of one girl will be stated. In this style and arrangement, the commencement of a sentence by bears evidence to a suppression of the word before it. A little deliberation shows that the verse readily suggests this fact. The order of the arrangement demands that should come after , while linguistic considerations dictate that should come before . To fulfill both these requirements, the Qur'ān has suppressed the word by adopting an elliptical style of expression in the descending order arrangement. In the last verse of *Sūrah Nisā*, these shares are stated in an ascending order. Accordingly, we observe there that is suppressed after :

‘

( : )

If a man dies childless and he has only one sister, she shall inherit half of what he leaves and if a sister dies childless, then her brother shall be her heir; and if there are two sisters, they shall inherit two-thirds of what he [or she] leaves. (4:176)

## II (ii)

( : )

**And if the deceased has children, then the parents shall inherit a sixth each, and if he has no children and only the parents are his heirs, then his mother shall receive a third, and if he has brothers and sisters, then the mother's share is the same one-**

**sixth after the payment of any legacies he may have bequeathed and after discharging any debts he may have left behind. (4:11)**

After the children, the shares of the parents are now mentioned. The copulative particle (and) in (and if the deceased has children, then the parents shall inherit a sixth each) does not co-ordinate this clause either to

(and if there are only girls among the children and they are more than two) or to (and if there is only one girl, then her share is half); in fact, it co-ordinates it to the whole directive above which relates to the shares of the children. Hence this co-ordination (*'atf*) is not copulative (*li al-jam 'i*), rather it is emendative (*li al-istidrāk*) in nature. The reason is that though it is clear from the words (a boy's share is twice

a girl's), their actual proportion has not been indicated. This linguistic style can be appreciated from an example: If it is said: "This money is for the children. Let each boy receive twice as much as a girl, and let the father receive half the amount", any person who has even a little linguistic sense will clearly understand these sentences to mean that the money is actually meant for the children. If these sentences had ended without a mention of the father's share, then all the money would have been distributed among the boys and girls in the proportion indicated. But since the father is also to be given half the amount, it is imperative that the father should first receive this amount and then what remains should be distributed among the children. It has been explained above that the expression (and if

there are only girls among the children and they are more than two) is an exception to (a boy's share is equal to that of two girls') and explains one of its aspects, as has been pointed out before. If this is correct, then it cannot be taken as an independent clause like ... (and for the parents ...) and it cannot have a different implication than (a boy's

share is equal to that of two girls'). The total implied meaning can be appreciated by an example: "In this amount, Omar, Ali and Saeed have exactly equal shares, and if only Ali and Saeed are present, then let Ali receive two-thirds and Saeed one-third, and give ten rupees from this to their sister". A little deliberation shows that though it has been said that in the absence of Omar, Ali

and Saeed shall receive two-thirds and one-third respectively, an amendment at the end necessitates that ten rupees from the amount should first be given to the sister, and whatever remains should be distributed between Ali and Saeed according to their shares.

The verse under discussion is also of the same style. Consequently, if this is kept in mind, then it is not at all difficult to comprehend that after the clause (and if there is only one girl, then her share is half), the shares of the parents and the spouses which are co-ordinated to the shares of the children by the copulative particle (and) shall all necessarily be distributed first and whatever remains shall only be distributed among the children. Whether among the children, there are only boys or both boys and girls, the same principle shall apply. Similarly, if only female offspring are present, then they shall receive two-thirds or half (whatever the case may be) from the remaining inheritance and not in any case from the total inheritance.

This is the correct meaning of the verse. Any person, who after comprehending the implications denoted by the particle (and) in (and for the parents), and the particle (then) in (then if there are only girls) reads the verse, shall spontaneously reach the same conclusion.

Consider, next, the remaining part of the verse:

The word (*walad*) in (if he has children) and in (if he does not have children) is used both for male and female children. In the Arabic language, this connotation is conventional and customary. There is no contextual indication, intrinsic or extrinsic, to believe that the word has specifically been used for male children. Linguists maintain that it is used in the singular as well as the plural sense and, also, both for the masculine and the feminine gender. In all the cases mentioned, whether boys and girls in the indicated numbers are present or absent, these connotations of the word shall be considered understood.

According to the linguistic principles of Arabic, after the words (the mother's share is one-third) the word (and the father's share is two-thirds) or words of similar meaning are suppressed, as is readily suggested by the words (and his parents are his heirs). Hence, this mention is a clear proof of the

suppression. When it is said: “If the heirs of this money are only Zahid and Ali, then Zahid’s share is one third”, then after this there is no need to say that “the remaining two-thirds is for Ali” – something which is understood by all requisites of common sense.

Also, in this writer’s view, after (and if he has brothers and sisters, then the mother’s share is the same one-sixth) the words (and the father’s share is [also] one-sixth) or words of similar meaning are suppressed. The contextual indication for this is also very evident. If brothers and sisters are present, then the mother’s share is the same one-sixth as in the case when a deceased has children. This also bears witness to the fact that the father’s share is also the same and that there is no need to express it in words. If a reader relishes the finer aspects of a language, he instinctively concludes that if the mother’s share has reverted to its original amount, so should the father’s share. Thus, the correct analysis of these verses is: “If there are children, then both the father and the mother shall receive one-sixth. If there are no children and only parents are the heirs, the mother’s share is a third, but if there are brothers and sisters, then the mother’s share is the same one-sixth”. One can very well see how this style effectively induces the mind to spontaneously jump to the suppressed words: “and the father’s share is also the same one-sixth”.

It is clear from these verses that in the absence of children, brothers and sisters take their place. This view is endorsed by the last verses of the *sūrah* also, but we shall delay an explanation until these verses are discussed later in this article.

The word (*ikhwatun*), in this writer’s opinion, only signifies the existence of an entity. It merely specifies that in the presence of brothers and sisters regardless that they are one, two, or more in number, the parental shares revert to their original amount. Plurality here does not indicate a numerical amount, rather it only denotes the existence of an entity. To quote a *Ḥamāsī* poet:

*īyyāka wa al-amr alladhī in tawassa‘at  
mawāriduhu dhāqat ‘alayka al-maṣādirū*



(Avoid entangling yourself in a matter in which if the paths that lead to it (*mawārid*) are wide, those that come out (*maṣādir*) are narrow.)

The poet has used the words (*mawārid*) and (*maṣādir*). It will be outright injustice to this literary composition if it is interpreted to mean that it urges the reader to refrain from getting involved in matters whose (*mawārid*) and (*maṣādir*) are, after all, three or more. The poet only intends to establish the existence of a (*mawrid*) and a (*maṣdar*) and obviously has no intention to convey their numerical amount. There may be only one way of getting involved and withdrawing from an affair and there may be several ways to do so. Similarly, a deceased may leave behind a brother and a sister and they can also be five or ten. The word (*ikhwatun*) encompasses all these different cases. To convey such meanings, a language employs this style of plurality. If it is said: "If you have children, then give these sweets to them", no one will consider this to mean that if the addressed person has only one child, then he cannot be given the sweets, merely because the word children has been used by the speaker. Such a meaning can only be inferred by someone who, instead of appreciating a language in literary perspectives, starts analysing it on the basis of crude mathematical axioms.

The words (after the payments of any legacies he may have bequeathed, and after discharging any debts he may have left behind) at the end of the directive imply that if a deceased has outstanding debts to his name, then first of all they must be paid from the wealth he has left behind. After this, a part of his legacy which he might have bequeathed shall be paid, and whatever remains shall be distributed among the heirs. Though the directive of discharging of debts has been stated at the end of the verse, it shall be given priority over all payments. The reason is that a person from whom money is borrowed has a rightful share in the wealth of a deceased borrower before his death, while an heir becomes a rightful shareholder in a person's wealth only after his death. As far as the precedence of the payment of any bequeathed legacy in the actual statement of the verse is

concerned, it owes much to a touch of elegance in presentation – a distinctive feature of Qur'anic Arabic.

## II (iii)

( : )

**You know not who among your children and parents are nearest to you in benefit. This is the law of God. Indeed, God is Wise and All-Knowing. (4:11)**

The reason why this part of the verse is juxtaposed between the ones which state the shares of the heirs is that it should become clear to people that since the Almighty Himself has indicated who the heirs of a deceased should be a more just law in this regard could not have been enacted. Hence, after this Divine Directive, in general circumstances, no one has the right to bequeath his wealth in favour of the heirs designated by the Almighty Himself.<sup>44</sup> This distribution is based on the immense knowledge and wisdom of Allah, which encompass all His directives. Man, in spite of his formidable talents, can neither acquire the vastness of His knowledge nor comprehend the profundity of His wisdom. If he is a true believer, he must submit to the Word of God.

This is the real meaning of the verse. However, a little deliberation shows that the right to obtain an inheritance is based on the underlying cause of (the closest in benefit). This benefit is by nature present in parents, children, brothers, sisters, husbands, wives and other close relations. Hence, in normal circumstances, they will be considered the heirs to the legacy of a deceased. However, in certain unusual circumstances, if an absence of benefit in any of these relationships is diagnosed by sense and reason, then the style and pattern of the verse demands

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44. Consequently, if a person makes a will in favour of his heirs, then this can only be in the case when the heirs are in need of it or have done some service to him or some other similar situation arises. The reason for this is that according to the verse the benefit which is known to God only is the benefit of kinship. It does not relate to benefits and needs which are known to us or can be determined by us.

that such a relative should not become an heir to the legacy. Therefore, in such cases, if someone is deprived from his share, then it would be perfectly in accordance with the purport of the verse, to which its words so clearly testify. In view of this, the Prophet (sws) is reported to have said about the Idolaters and the People of the Book of Arabia:

( : )

A Muslim cannot be an heir of a *kāfir* nor can a *kāfir* be a Muslim's. (*Bukhārī*, No: 6383)

In other words, after the Quraysh and the People of the Book were left with no excuse to deny the truth which had been unveiled to them in its ultimate form, their enmity and hostility became very clear. Consequently, the benefit of kinship between them and the Muslims stood completely severed. Hence, they could not inherit from one another.

A secondary guidance which is also obtained from this verse is that if in certain cases legacies are left over after distribution and the deceased has not made anyone an heir in them, then they too should be distributed to the (the closest in benefit). This is precisely what the Prophet is reported to have said:

( : ) .

Give the heirs their share and if something remains, it is for the closest male [relative]. (*Muslim*, No: 1615)

## II (iv)

( : )

**And to you belongs a half of what your wives leave, if they die childless. And if they have children, a quarter of what they leave shall be yours after payment of any legacies they may have bequeathed and after discharging any [outstanding] debts.**

**Your wives shall inherit a quarter of what you leave, if you die childless. If you have children, then they shall inherit one-eighth, after payment of any legacies you may have bequeathed, and after discharging any of your [outstanding] debts. (4:12)**

These are the shares of the spouses. They are very clearly stated and need no explanation. After the payment of debts and any bequeathed legacy, these shares shall be given from the total remaining inheritance of a deceased.

## II (v)

( : )

**And if a man or a woman is made an heir on account of his [or her] *kalālah* relationship [with the deceased] and he [or she] has one brother or sister, then the brother or sister shall receive a sixth, and if they be more than this, then they shall be sharers in one-third, after payment of any legacies bequeathed and any [outstanding] debts – without harming anyone. This is a command from God, and God is Gracious and All-Knowing. (4:12)**

After stating the shares the children, the parents and the spouses, these shares state the shares of other relatives. The most important word in this verse is *kalālah*. Originally, it is a (verbal noun) in the meaning of *kalāl* ie, “feebleness and frailty”. To quote a line from A‘shā’s poetry:

*fa ā laytu lā arthī lahā min kalālatin*

(Then I swore that I shall not show any mercy on her because of her feebleness and frailty.)

Mutammim Ibn Nuwayrah says:

*faka annahā ba'da al-kalālati wa al-surā  
'iljun tughālihi qadhūrun mulmi 'ū*

(That [she] camel after the night's tiring journey is indeed like a wild ass whom even a pregnant donkey tries to overtake.)

Figuratively, linguists attribute the following three meanings to this word:

- i) A person who leaves behind neither parents nor children.
  - ii) Any relationship which is not through the parents or children.
  - iii) All of one's relatives except the parents and children.
- Zamakhsharī writes in his *Kashshāff*:

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(*kalālah*) has three meanings: It is an adjective used for a person who leaves behind neither parents nor children; it also means all the relatives of a deceased except his parents and children, and it also denotes the relationships which are not through [the deceased's] parents or children. The Arabs say:

(*mā warith al-majda 'an kalālatin*: he could not become an heir to nobility because of a distant relationship). Likewise, you say: (*mā ṣamata*

*'an 'ayyin*: he did not become quiet because he was unable to speak and (*mā kaffa 'an jubn*: he did not stop

because of cowardice). And (*kalālah*) is a (*maṣdar*: verbal noun) meaning (*kalāl*). (*kalāl*) means loss of

strength because of weakness. A'shā says:

(*fa ā laytu lā arthī lahā min kalālatin*: then I swore that I shall not show any mercy on her because of her feebleness and frailty). Later, it was figuratively used for the relationship which is not through the parents and children. The reason for this being that such a relationship is not as strong as the one through the parents and children. And when it is used as an adjective of a legatee or a legator it means (*dhū kalālah*). Similarly, you say (*falānuḥ min qarābaḥ*) ie, (*falānuḥ min dhawī qarābaḥ*), and it can also be an adjective like (*hajājah*) and (*faqāqah*) meaning “foolish”.<sup>45</sup>

This writer could not find the word used in the first meaning, ie “a person who does not leave behind either parents or children” in pre-Islamic Arabic poetry though this usage is grammatically correct.

It is used at many instances in pre-Islamic Arabic poetry in the second meaning, ie the relationship not through the parents or the children.

To quote Tirmāḥ:

*yahuzzu silāḥan lam yarith hu kalālatan*  
*yashukku bihi minhā ghumūḍa al-maghābiḥ*

(He waves his weapon which he did not inherit because of a distant relationship. Through it he pierces the part concealed in her thighs.)

‘Āmir Ibn Ṭufayl says:

*wa mā sawwadatnī ‘āmirun ‘an kalālatin*  
(And the tribe of ‘Āmir did not make me the chief because of a

45. Zamakhsharī, *Kashshāff*, vol. 1 (Beirut: Dār al-Kitāb al-‘Arabī, n.d.), 485.

distant relationship.)

According to *Lisān al-‘Arab*:

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The Arabs say: (*lam yarith hu kalālatan*), ie owing to his distant relationship, he did not become an heir, but he inherited the legacy because of nearness and entitlement to it.<sup>46</sup>

The third meaning attributed to it, ie all relatives of a person except his parents and children is also verified by many examples in pre-Islamic Arabic literature.

A Ḥamāsī poet, Yazīd Ibn al-Ḥakam, while admonishing his son says:

*wa al-mar'u yabkhalu bi al-huqūqi wa li al-kalālati mā yuṣīm*

(Man shows miserliness in discharging his duties and after his death, his distant relatives take away his animals which graze in the forests.)

Azharī, has quoted a poet's couplet:

*fa inna abā al-mar'i aḥmā lahū  
wa mawlā al-kalālati lā yaghḏabū*

(If a person is oppressed and persecuted, it is his father who, in his support, is infuriated the most. *Kalālah* relatives are not infuriated to this extent in such a matter.)

To quote a Bedouin:

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46. Ibn Manẓūr, *Lisān al-‘Arab*, 1<sup>st</sup> ed., vol. 11 (Beirut: Dār Ṣādir, 1400 AH), 592.

I have a lot of wealth and my heirs are distant relatives.<sup>47</sup>

Imām Muslim has quoted the following words in a Ḥadīth narrated by Jābir (rta):

( : ) ,

O Prophet of Allah ! only *kalālah* are my heirs. (*Muslim*, No: 1616)

Many Aḥādīth, quoted in *tafsīr* works, endorse this meaning. Abū Bakr Jaṣṣāṣ writes in his *Aḥkām al-Qur'ān*:

: ,

In this regard, there are two narrations attributed to Abū Bakr, 'Alī and Ibn 'Abbās. One of them says that all except the father and the children are (*kalālah*) and Muḥammad Ibn Sālim reports from Sha'bī, who reports from Ibn Mas'ūd that all except the father and the children are (*kalālah*) and Zayd Ibn Thābit has also reported this meaning.<sup>48</sup>

Now, let us consider the verse under discussion. Though our jurists have unanimously preferred the first meaning here, yet the verse itself testifies against this meaning. If we carefully analyze verses 11 and 12 of *Sūrah Nisā* from (God enjoins you about your children), it is observed that after a mention of the shares of the children and the parents, the Almighty has directed us to carry out the distribution of legacy by the words (after the payment of any legacies he may have bequeathed and after discharging any debts he may have

47. Ibid.

48. Abū Bakr Jaṣṣāṣ *Aḥkām al-Qur'ān*, vol. 2 (Beirut: Dār al-Kitāb al-'Arabī, 1997), 87.



left behind). The directive is repeated in the shares of the spouses: and . A little contemplation shows that in all these instances the verb is used in the active voice and the antecedents of (yūsī), (yūṣīna) and (tūṣūna) are clearly stated in each of these sentences. But in the verse of (kalālah), the verb is used passively. This departure tells us that the subject (fā'il) of the verb (yūṣā) ie, the legator in this verse is not stated. Therefore, in this verse, the word (kalālah) cannot be regarded as an adjective for the deceased. The change conclusively testifies that the Qur'ān has not used the word in its first meaning, ie a person who does not leave behind either parents or children.

As far as the second and third meanings are concerned, any of the two can be preferred on the basis of a more delicate grammatical construction, because in both cases the implied meaning remains the same. Hence in this verse the verb (yūrathu), in the opinion of this writer, is from the *if'āl* category used in its passive form and (kalālah) is (maf'ūl laḥū: an accusative on account of which something is done). (kāna) here is (nāqiṣah: incomplete) and (yūrathu) is its (khabr: inchoative). (rajuluṇ aw imra'atuṇ) are the (asmā: nouns) of (kāna). Keeping in mind this analysis of the verse, it can be translated thus: "and if a man or a woman is made an heir because of his (or her) *kalālah* relationship..."

Naturally, only the deceased person will have the right to make someone his heir. Since the second object of the passive verb (yūrathu) is not stated, linguistic principles dictate that, in the given context, the verse should only mean that a (kalālah) relative can be made an heir together with the rightful heirs as well in cases when a portion of the inheritance remains after it has been distributed among the rightful heirs and also when none of them is present.

Consider now the next part of the verse:

(if a man or a woman from the associations of a single relationship is made an heir and has one brother or one sister, then he (or she) will be given one-sixth of what the heir himself receives and if the heir has more than one brother or sister, then they shall share equally in a third of what the heir himself receives,

after all outstanding debts are paid off and the legacies he may have made distributed). After this, there remains no need to say that the remaining five-sixths or two-thirds (whatever might be the case) shall be given to the person whom the deceased had made his heir. If it is said: "Ahmad has made your son the heir of his wealth, but if he has a brother then the brother shall be entitled to a third of his share", it clearly means that after the brother receives his share, the remaining money should be given to the son who has actually been made the heir.

This directive of the Qur'ān has a very sound reason behind it. Naturally, a deceased can choose to make any brother, sister, aunt or uncle (the *kalālah* relatives) his heir. But there can be other brothers or uncles besides the one who has been made an heir by a deceased. The case is no different for sisters or aunts also. A person can prefer any uncle or aunt. But the Almighty does not approve of totally depriving all other associations of the same relationship of any share. Therefore, if a person, for example, has made one of his paternal uncles, Saeed, the heir to his remaining estate in the presence of two other paternal uncles, then the two shall share equally in a third of what Saeed receives, and Saeed himself shall receive the remaining two-thirds.

Consider now the remaining part of the verse. The words of the Qur'ān are: . These words at the end of the verse serve as a warning that making someone an heir should not be a source of harm for any of the rightful heirs. To dispel any element of foul play, the Almighty Himself has fixed the shares of the real heirs. Since, according to the verse, a person can make any of his (*kalālah*) relatives his heir, it is emphatically stated that, while exercising this prerogative, the rights of a rightful heir should not be usurped – this is not a piece of advice from an earthling. It is what the Creator of the heavens and the earth has directed us about. If any of His creation deliberately deprives a rightful claimant from his share, then he should be aware that God has knowledge of all his deeds, and, if he errs unintentionally, the Almighty is Gracious and Merciful. He does not burden a person with a responsibility he cannot fulfill. All His directives bring ease and facility for His creation and are not meant to put them through hardship and difficulty.

## II (vi)

( : )

**People ask your pronouncement. Say: God enjoins you about your *kalālah* heirs that if a man dies childless and he has only a sister, then she shall inherit half of what he leaves and if a sister dies childless, then her brother shall be her heir; and if there are two sisters, then they shall inherit two-thirds of what he [or she] leaves. If there are many brothers and sisters, then the share of each male shall be that of two females. God expounds unto you that you err not and God has knowledge of all things. (4:176)**

Since, according to the interpretation given above, all brothers, sisters, uncles and aunts are (*kalālah*) relatives and a person can make anyone of them his heir, it is possible that he might prefer an aunt or an uncle over his brothers and sisters. If a deceased has children, then the nature of the directive is proper in all respects, but if the deceased has no children and has brothers and sisters, then this authority vested in him stands objected to. It is an unquestionable reality that after one's children, one's brothers and sisters among his (*kalālah*) relatives are nearest to him. Common sense demands that in such a case they should receive a large portion of the legacy. Verses 11-12 of *Sūrah Nisā* clearly state that if a deceased has brothers and sisters, then the parents shall receive a sixth each. Since this share is the same as what they receive in the presence of children, the question arises whether it has still been left to a person to make the brothers and sisters his heirs, or can he deprive them of a share in his wealth. While explaining verses 11-12 of *Sūrah Nisā*, it was written that the style of the verses is such that in the absence of children, the brothers and sisters of a deceased should be his heirs. But obviously, the meaning unfolded by a particular style cannot be as certain and definite as the one which is directly stated in words. In the absence of children, the question about the shares of brothers

and sisters can even arise today. It had arisen in the time of the Prophet (sws) as well. Jabīr (rta) reports:

( : ) .

I was sick and in a state of unconsciousness when the Prophet of Allah arrived at my place. He performed ablution and the people sprinkled some water over me from which the Prophet was performing his ablution. When I came to my senses, I said: “O Prophet of Allah all my heirs are *kalālah*. At this, this verse<sup>49</sup> of inheritance was revealed”. (*Muslim*, No: 1616)

From the words: “O Prophet of Allah all my heirs are *kalālah*. At this, this verse of inheritance was revealed” of the above Ḥadīth, it is evident that among the (*kalālah*) relatives the question particularly concerned his brothers and sisters and the last verses of *Sūrah Nisā* were revealed as a result of this inquiry.

A special style of the Qur’ānic verses is that in them certain questions are stated in a very concise and compact form. The actual nature of the question and its background is revealed by the answer which the verses subsequently give. By not taking into consideration this style, our commentators have come across many difficulties in understanding (God enjoins you about your *kalālah* relatives). Here also, if only the answer is analyzed, the meanings the verse convey are very evident. The verse is of the same style and pattern as (God enjoins you about your children). In the latter case, the directive is about the children as the heirs of a deceased while in the former case the pronouncement is about (*kalālah*) relatives as the heirs of a deceased. The article (*alif lām*) defines the word (*kalālah*) in this verse, which testifies to the fact that the question

49. It has been explained in the Aḥādīth that by “this verse of inheritance” is meant the last verses of *Sūrah Nisā* in which the shares of the brothers and sisters are stated. Likewise, some other Aḥādīth clearly mention that Jābir (rta) had only sisters among his heirs.

concerns some specific relations among the (kalālah) relatives and the answer shows that these specific relations are the deceased's brothers and sisters. Verse 12 of *Sūrah Nisā* has already empowered a person to bequeath a part of his legacy in favour of (kalālah) relatives like uncles, aunts, brothers and sisters. Here, a particular case is mentioned after the general directive. Considering this, the correct meaning of the verse is: "Say, Allah gives you a pronouncement about brothers and sisters among the kalālah relatives". An example of this Qur'ānic style and construction can be seen in verse 189 of *Sūrah Baqarah*<sup>50</sup>.

It should be clear that the words (if a man dies childless...) do not state the meaning of (kalālah); they merely impose a condition which must be fulfilled if the brothers and sisters are to receive a share in a legacy. Just as in the verse (and if he does not have children, and his parents are his heirs), a condition is imposed that if the deceased is childless and only his parents are his heirs, then they shall receive such and such shares. Similarly, in the given verse, a condition is stated that if a person dies childless, and he has brothers and sisters, then their share is such and such. Also evident from the condition in the verse is that brothers and sisters are heirs of a deceased, only in case he dies childless. If he leaves children, then they do not have any share in his wealth except if a deceased makes a bequest in their favour according to the general directive mentioned in verse 12 of *Sūrah Nisā*.

The shares of brothers and sisters stated here are the same as those of the children stated earlier. Also, the style of the words (and if there are many brothers and sisters, then the share of each male shall be equal to that of two females') bears witness to the fact that these shares also shall be given after the parents and the spouses are handed over their shares. The relevant arguments are presented in the section which deals with the shares of the children. Hence, if the deceased only has sisters, then two-thirds or one half (whatever the case may be) of the share meant for the brothers and sisters shall be given to the sister or sisters.

50. See: Amīn Aḥsan Iṣlāḥī, *Tadabbur-i Qur'ān*, 2<sup>nd</sup> ed., vol. 1 (Lahore: Faran Foundation, 1986), 471.

We have indicated earlier that it is evident from verse 12 of *Sūrah Nisā* that in the absence of children, the brothers and sisters of a deceased take their place. This particular verse of *Sūrah Nisā* conclusively proves the premise. It was possible to misinterpret it from the style of verses 11-12, but here all doubts have been removed as to what the words imply. The Qur'ān, therefore, says:

( : )

God explains to you that you err not and God has knowledge of all things. (4:176)



