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APPLICATION OF DOCTRINE OF RADD AND EVOLUTION OF RIGHT OF REVERTER OF SURVIVING SPOUSE

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I. ABSTRACT

In Islamic intestate succession, the sharers (Koranic heirs) and the residuaries or customary heirs inherit simultaneously; the distant kindred inherit only in their absence. Following the assignment of fixed sharers to sharers, a portion of the deceased's intestate estate remains undisposed of. Since there are no residuaries to claim the residue, the issue of distribution of excess heritage arises. Under Islamic jurisprudence, the doctrine of Radd (return) is applied to resolve the problem of excess heritage. The paper examines the mathematical application of Radd through detailed illustrations across two broad scenarios: the presence and the absence of surviving spouse of deceased intestate. The former scenario is further bifurcated based on whether the deceased is survived by only one non-spouse heir or multiple heirs. The doctrine of Radd, applied to treat these anomalous situations, itself has certain exceptions. Historically, intense controversies surrounded the application of Radd to the surviving spouse, which has been recognised as an exception to the doctrine in both Sunni and Shia schools of law. In Shia jurisprudence, two additional exceptions prevail. Furthermore, this paper analyses instances where an individual inherits in dual capacities, a situation that structurally mimics the return. The faith on Ghaibt (occultation) of Twelfth Imam and the allocation of unclaimed estate to the public treasury (Bayt-ul-Mal) are reasons to neglect the return of excess heritage to surviving spouse. The right of Reverter of surviving spouse has evolved over centuries. It has ultimately solidified as an equitable principle through the seminal rulings of Indian Courts before and after the independence.

II. KEYWORDS

Residue, sharer, residuary, distant kindred, Imam.

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III. INTRODUCTION

Devolution of property of deceased person professing Islam (Muslim) in India by intestate succession is based on the uncodified Muslim personal law (Shariat) recognized by section 2 Shariat Act XXVI of 1937. A Muslim is entitled to dispose of his property through will (wassiyyat) only to the extent of one third of his property. The remainder of his property devolves through principles of intestate succession. Under Hanafi law of inheritance governing the Sunni sect, heirs of deceased are of three classes namely sharers or Koranic heirs (Dhaw-ul-Fara'd), Residuaries or customary heirs (Asaba) and the distant kindred (Dhaw-ul- Arham). Shia law of inheritance does not recognise distant kindred as separate class of heirs. It considers all those blood relations who are not sharers as the residuaries.

The peculiarity of the Muslim law of inheritance is that Class I heirs i.e. sharers and Class II heirs i.e. residuaries, share the property of the deceased together. In absence of both the Classes the estate devolves upon the distant kindred.

The distant kindred inherit along with the sharers, only in a condition where the surviving spouse is the sole heir and there is neither another sharer or nor a residuary. In the absence of distant kindred also, the estate devolves upon the state or public treasury (Bayt-ul- Mal). This is the general rule of Islamic intestate succession.

In Islamic system of inheritance law assigning fixed shares to heirs as per Quran, two anomalous situations are likely to arise. The sum of shares allotted to various heirs may be less than unity or may be excess of unity. The former situation is solved by the application of doctrine of Radd and later by the application of doctrine of aul.

Radd stands for the return, in Mahomedan law, of inheritance.[2] The residue, the distribution of the residue of the estate, the law of reversion in the distribution of inheritance. The doctrine of Radd is mentioned through other terminologies like rud,

[2] P. Ramamatha Aiyar, The Law Lexicon of British Indian 1071(Madras law journal Office 1940)

return, right of reverter, Al-Radd.[3] The affirmation of this principle in the Ismaili milieu may go back the beginning of the fourth century of hijra.[4]

A. Scope

1. Concerned only with the anomalous situation where surplus is left after allotting the entitled sharers to the heirs of deceased whose estate is the subject matter of inheritance, Muslim law of inheritance recognised by the sects of Sunni and Shia in India.
2. Judicial pronouncements of Indian courts regarding the application of doctrine of return for the Shia and Sunni community.
3. Exceptions to the doctrine in the two sects of Islam.
4. Difference in the assumption and application of doctrine between Shia and Sunni law of inheritance.

B. Research Objective

1. Rectifying the issue of devolution of excess heritage left after assignment of fixed shares to sharers and residuaries through comprehension and application of the doctrine of return with clarity.
2. Calculation of sharers and disposal of excess heritage among heirs under three possible circumstances.
3. Tracing the origin of bar on the right of reverter of surviving spouse.
4. Analysis of precedents from Indian courts that evolved the doctrine regarding the right of reverter of surviving spouse which transformed original rule of the doctrine into an equitable practice.

C. Research question

1. How to solve the problem of excess heritage that is a probable outcome of ternary scenario of Islamic inheritance system of fixed shares?
2. How Sunnite and Shiaite law differ regarding anomalies to the doctrine of Radd?

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[3] Dr. A. Hussain, The Islamic Law of Succession 418 (Darussalam 2005)
[4] Agostino Cilardo, The Early History of Ismaili Jurisprudence 57(I.B. Tauris, 2012)

3. From where did the injunction to right of reverter arise for specific heirs?
4. What is current status of surviving spouse of deceased Muslim in India, as concerned with the right of reverter?

D. Research Methodology

This is doctrinal research that is qualitatively focussed on, what is the law in a particular circumstance where the shares allotted to all the sharers and residuaries, accordance to their entitlement is less than unity.

The library-based theoretical research is much based on secondary sources such as law books particularly dealing with Mohammedan Law. Digital platforms such as Manupatra, India Kanoon and Lexis Nexis are widely used for analysing judicial precedents that reveal the application of the rule and its exceptions in reality beyond papers.

It is also analytical in nature that is Concerned with the judicial pronouncements of Indian Court in pre-independence and post-independence era dealing with the problem of residue that evolved the original rule into equitable practice. The work is also comparative in nature that distinguishes the exceptions for the doctrine recognized in Sunni and Shia laws of inheritance.

Law relating to the doctrine codified in other Islamic countries are also analysed with the help of research articles that discuss the doctrine in depth to suggest advancements in the prevailing legal system in India.

E. Research Hypothesis

The Quranic Surah al-Nisa verse 11 and 12 prescribes the sharers entitled to sharers. Verse 4:13 states that these entitlements are the limits set by Allah. Verse 4:14 expresses that exceeding that limit deserves punishment. The tone of the Verses 4:13 and 4:14 stands as barriers for the acceptance of Doctrine of Radd. Apart from these the right of reverter to surviving spouse of deceased is obstructed to some extent by verses 8:75 and 33:6 which states that only blood relatives are more entitled to inheritance than other believers resulting in the exclusion of spouses especially wife of deceased. While doctrine of Awl (increase) proved by Ijma is applied to spouses, it would be equitable to apply doctrine of Radd also.

The opinion of scholars differs regarding the widow's right to return. There are nearly three views suggested by the scholars and some express the three views altogether. Firstly, the wife is entitled to return when imam in Ghaibt (occultation). This is based on the faith that the twelfth Imam is hidden and will return on the last day. Secondly, Wife is absolutely entitled to return. This right is obtained as distant kindred and not as sharer. Thirdly, wife does not get return, residue for Imam. It is the classical rule based on the Quran.

F. Literature Review

Poonam Pradan Saxena's Family Law and Paras Diwan's Family Law gives a short introduction of the doctrine of Radd. Dr. Nishi Purohit' The Principles of Mohammedan Law gives a detailed explanation for the calculation of return and distribution of the excess heritage under the rule 235. Mulla Principles of Mohamedan Law is based on the Sirajiyyah composed by Shaikh Sirajuddin provides a great number of illustrations for the better understanding of calculation of sharers in the distribution of excess heritage and the developments in the application of the doctrine by way of judicial pronouncements. Hence it stands as a reliable source in context of application of Mohammedan Law in Indian Courts.

Mohammad Mujib's Renewal on the Radd system on Inheritance Law in the Compilation of Islamic Law analyses the difference in application of doctrine of Radd Jumhur Ulama and the codified Indonesian inheritance law. Calculation of Radd with a fixed asset value of 1000 facilitates in understanding the proposed difference. According to him the codified law includes surviving spouse in the calculation of Radd and allow them to take return along with other heirs. But in India system, under uncodified law following the majority opinion, the husband or wife of deceased is entitled to return only in the absence of other heirs. Even the presence of distant kindred can also exclude the surviving spouse from claiming return. Compared to the Indian system of uncodified law Indonesian codified legal system favours surviving spouse, making them at par with other heirs. Hence the Indonesian law promotes equality. The author asserts three schools of opinion regarding to whom the remainder should be given. First, remainder to Bayt-ul- Mal. Second, to Dzawii Furud (sharer) except husband and wife. Third, to all Dzawii Furud including husband and wife. The author didn't mention the opinion regarding the Ghaibt of Imam. It is accepted that the discrimination to surviving spouse in Jumhur Fiqh regarding Radd is based on the notion that their inheritance rights are limited to marital relations, not kinship.

In Kumarappan's Principles of Equity in Islamic Inheritance: The doctrine Of Aul and Radd, he discusses the doctrine of aul and Radd stands to ensure fairness and equity among heirs. The author focused on only one exception to Radd that is common to both Shia and Sunni schools. He left out the other two exceptions in Shia law regarding the mother and uterine relations. This paper not only explains the first exception of exclusion of husband or wife from return and but also examines the judicial developments ensuring their right to return.

IV. ANALYSIS

When after allotting the specified shares to the sharers and there are no residuaries, then the surplus is not given to the distant kindred but according to the doctrine of Radd(return) the surplus is returned to the sharers, if more than one, in proportion to their respective sharers. But if there is only one sharer then the whole of the residue will return to him or her.[5] In the matter of Rukmanibai v. Bismillabai[6] father died leaving behind only daughter and no other heirs, the court held that the daughter will take her Quranic share and the residue will revert back to her, which would result in the vesting of the entire estate of the deceased on the daughter (sharers) in the absence of residuaries.

In the treatment of residue two situations may arise:

1. In the absence of surviving spouse of deceased
2. In the presence of surviving spouse of deceased

[5] Sir Dinshaw Fardunji Mulla, *Principles of Mahomedan Law* 872–873 (LexisNexis, 24th ed., 2025).
[6] AIR 1993 MP 45

3. If there is only one heir
4. If there is more than one heir.

A. In the absence of surviving spouse of deceased

The share of each sharer is increased by reducing all shares to a common denominator. Reducing the common denominator to make it equal to the sum of numerators and allowing the numerator to stand as before.

1. Illustration

P dies leaving behind no other than his mother(M) and daughter (D), no widow. Calculate the share of heirs to their entitlement to P's estate.

Family Tree

M

(P)

D

Sharers	Shares	Common denominator	Increased share
Mother (M)	1/6	1/6	1/4
Daughter(D)	1/2	3/6	3/4
Sum		4/6	4/4 = 1

M + D = 1/6 + 1/2

= 1/6 + 3/6

= 4/6

Residue = 1- 4/6 = 6–4 / 6 = 2/6

Hence the sum of shares of Mother and Daughter amount only to 4/6, 2/6 is left as residue and no residuary is present to take it. The doctrine of Radd should be applied to distribute the excess heritage among the existing sharers i.e. Mother and Daughter.

The common denominator is 6 and the numerators are added.

1 + 3 = 4

The sum of numerators i.e. 4 is made the denominator and the numerator is allowed to stand as before. The new fraction obtained is the share of the sharers, Mother – 1/4 and Daughter – 3/4.

M + D = 1/4 + 3/4

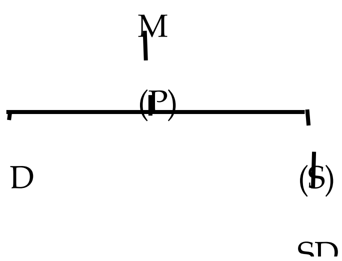
= 4/4

= 1

2. Illustration

A Muslim dies leaving his mother, daughter and son's daughter. Divide the Estate.

Family Tree



Sharers	Shares	Common denominator	Increased share
Mother (M)	1/6	1/6	1/5
Daughter (D)	1/2	3/6	3/5
Son's Daughter (SD)	1/6	1/6	1/5

Sum		5/6	5/5 = 1

M + D + SD = 1/6 + 1/2 + 1/6

= 1/6 + 3/6 + 1/6

= 5/6

Residue = 1 – 5/6 = 6 -5 /6 = 1/6

Hence there are no residuaries to take the residue, doctrine of Radd is applied to distribute the residue to the sharers. The common denominator is 6 and the numerators are summed.

1 + 3 + 1 = 5

The sum of numerators i.e. 5 is made the denominator and the numerators are allowed to stand as before. The new fractions are the shares entitled to the sharers (Mother – 1/5, Daughter – 3/5, Son's Daughter – 1/5)

M + D + SD = 1/5 + 3/5 + 1/5

= 5/5

= 1

B. In the presence of surviving spouse of deceased

As per the original rule, the surviving spouse is excluded from taking return. The share of the husband or wife remains the same in the presence of other heirs.

1. When there is one heir

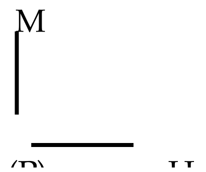
The residue is allotted to the heir other than the surviving spouse of the deceased.

Reduce the shares of sharers or heirs to a common denominator. Find the surplus by to common subtracting the sum of sharers from unity. The surplus i.e. the residue will revert back to the other heir than the surviving spouse.

- **Illustration**

P dies leaving behind her husband (H) and mother (M). Divide the estate of deceased between her heirs.

Family Tree



Sharers	Shares	Common denominator	Increased share	Finalised share
Mother (M)	1/3	2/6	1/2	1/2
Husband (H)	1/2	3/6	-	1/2
Sum		5/6	-	2/2 = 1

Hence there is no child or son of child how low so ever for the deceased, Husband takes ½ and mother takes 1/3.

H + W = 1/2 + 1/3

= 3/6 + 2/6

= 5/6

Residue = 1 – 5/6

= 6-5 / 6

= 1/6

Due to the presence of mother, the husband is excluded from taking return through doctrine of Radd and the residue reverts back to Mother.

M = 1/3 + 1/6

= 2 + 1 / 6

= 3/6

= 1/2

Distribution of estate after application of Radd

H + M = 1/2 + 1/2

= 2/2

= 1

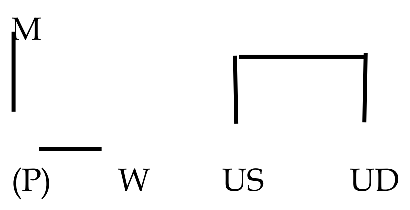
2. When there is more than one heir

Reduce the shares to common denominator. Then reduce the common dominator to make it equal to the sum of numerator and allow the numerator to stand as before. Multiply the obtained with the difference or share. New fractional residue of the spouse's

- **Illustration**

P dies leaving behind his wife (W), mother (M), uterine brother (US) and a uterine sister (UD). Divide the estate of the deceased.

Family Tree



Common denominator

Heirs	Shares	Common denominator	New fractional shares (f)	New fractional share x residue	Increased shares
Wife (W)	1/4	Residue = 1-1/4=3/4	-	-	1/4
Mother (M)	1/6	1//6 = 1/3	1/3	1/3 x 3/4	1/4
Uterine brother (US)	1/6	1/6=1/3	1/3	1/3 x 3/4	1/4
Uterine sister (UD)	1/6	1/6= 1/3	1/3	1/3 x 3/4	1/4
Sum					4/4 = 1

W + M + US + UD = 1/4 + 1/6 + 1/6 + 1/6

= 3/12 + 2/12 + 2/12 + 2/12

= 9/12

= 3/4

Calculation of residue

Residue = 1 – 3/4

= 4-3/4

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= 1/4

Hence the surviving spouse wife (W) is excluded from return, her share is left to be undisturbed.

Sum of numerators leaving surviving spouse's share

W + M + US + UD = 1/6 + 1/6 + 1/6

Sum of numerators = 1+ 1+ 1 = 3

Make the common denominator equal to the sum of numerators of share others heirs than the surviving spouse, then allow the numerator to stand as before. A new fractional share would be obtained i.e. M = 1/3, US = 1/3 UD = 1/3.

Residue from surviving spouse's share = 1 - 1/4 = 4-1/4 = 3/4

Shares entitled by the other heirs than the surviving spouse = new fractional share x residue from spouse's share

Distribution of estate after application of Radd

W + M + US + UD = 1/4 +1/4 +1/4 +1/4

= 4/4

= 1

C. Residuaries for special cause

Residuary for special cause refers to a person who inherits from a freed man by of manumission of the latter. According to Mahomedan law proper, if a manumitted slave dies without leaving any residuary heir by relation, the manumitter is entitled to succeed to the residue, in preference to the right of the sharers to take the residue by Return. But residuaries for special cause have no place in Mahomedan law as administered by Courts in British India, since the abolition of slavery in 1843.[7]

[7] Sir Dinshaw Fardunji Mulla, Principles of Mahomedan Law, ch.7 at 37 (ed.20 2012), available at Lexis Nexis

D. Exceptions to the Doctrine

The rule of Radd being an exception for Islamic inheritance system has its own exceptions. Such exceptions differ in Shia and Sunni law.

1. Sunni Law

As per Sunni law there is only exception that wife or husband of the deceased is not entitled to return in the presence of another sharer or distant kindred. In Makmutha Beevi (Died) v. Mohamed Meeran (Died) (1st Plaintiff),[8] it was held that the wife's share of one-fourth does not get enlarged, as the doctrine of Radd cannot be applied in favour of the wife where another heir, namely a uterine brother, is present.

The classical rule under Hanafi law of inheritance is that the return is applied only to the blood relations (Nasab). The preference to blood relatives in return is based on the surah 8:75 "But only blood relatives are now entitled to inherit from one another, as ordained by Allah," and 33:6 "As ordained by Allah, blood relatives are more entitled to inheritance than other believers and immigrants, unless you want to show kindness to your close associates through bequest." In the absence of Residuaries, the surplus amount after assignment of shares to the sharers, is returned to the sharers according to their respective rights, except the husband or wife and where there is no other heir the surplus goes to the Public Treasury (Bait-ul-Mal).[9]

Mohamed Arshad Chowdry v. Sajida Banoo[10] brought a transition to the original rule in Hanafi school and solidified the equitable practice that the surviving spouse is entitled to return (or take entire property) if there are no other heirs to the deceased. The Calcutta High Court ensured right of surviving spouse to return rather than giving residue to public treasury. In Bafatun v. Bilaiti Khanum,[11] Banerjee and B.G. Geidt, JJ. affirmed the equitable practice applied in Mohamed Arshad Chowdry's case.

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[8] *Makmutha Beevi (Died) v. Mohamed Meeran (Died) (1st Plaintiff)*, A.S.(MD). No.126 of 2018, Madras High Court, Madurai Bench, decided on 01.12.2023.
[9] *Bafatun v. Bilaiti Khanum*, (1903) I.L.R. 30 Cal. 683, para 6.
[10] ILR 1878 3 Cal 702.
[11] ILR 1903 30 Cal 683

Mir Isub Mir Inus Maldikar vs. Isub[12] questioned whether widow is entitled to return in absence of residuaries and distant kindred. The Hon'ble judges referred to Mulla's Mahomedan Law, 5th Ed; and held that "the widow will take one-fourth as sharer, and the remaining three-fourths by "Return". The surplus three-fourths does not escheat to the Government"[13] The Bombay High Court affirmed the earlier views of High Court of Calcutta in the matters of Mohamed Arshad Chowdry and Bafatun. Hence this became the rule in Sunni law.

Husband or wife can inherit as sharers and also as distant kindred. But 'return is not possible as sharers in their case. They are, however, not excluded from the 'return' in their other capacity as distant kindred.[14] This is based on the hadith that the wife is otherwise related to the husband and take the excess heritage as relative. In Mazirrannessa Bibi v. Khondakar Golam Kibria[15] S.K. Chakravarti, J. held that it is lawful for a person to inherit his wife in his capacity as the husband as also the son of a paternal uncle. The husband inherited half estate of the wife as sharer and the remainder as distant kindred (paternal uncle's son).

2. **Shia Law**

While the Shia law has three exceptions. among those the first exception no longer valid by way of court ruling. The three existing exceptions are

- Husband or wife (surviving spouse) is not entitled to return.
- Mother is not entitled to return when she survives the deceased along with father and one daughter, in the presence of
  - two or more full or consanguine brother
  - one such brother and two such sisters.
  - four sisters.

[12] 1920 44 Bom 683
[13] Mir Isub Mir Inus Malidikar v. Isub (12.01.1920)- BOM HC MANU/MH/0040/
[14] Sir Dinshaw Fardunji Mulla, Principles of Mahomedan Law, ch.7 at 40 (ed.20 2012), available at Lexis Nexis
[15] AIR 1970 Cal 387

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Despite the brothers and sisters, themselves excluded from inheritance, they stand as bar to the mother from receiving return.

3. **Uterine brothers and uterine sister are not entitled to return in the presence of full sisters**

But this exception does not apply if the uterine brothers and sisters co-exist with the consanguine brothers and sisters. In such a case, all of them share proportionately in the balance.[16]

In Abdul Hamid Khan vs. Peare Mirza and Ors.[17] Justices Nanavutty and Zia-ul-Hasan analysed the divergence of opinion among the authorities on Shia Mahomedan Law regarding the application of doctrine of return to a childless widow. The High Court of Oudh held that widow in these days present is entitled to return when there is no Imam is in existence in physical plane.

According to Shia belief, the twelfth Imam Muhammad al-Mahid is ever present though he is said to be now hidden from mortal eyes (occultation). Existence of Imam in the flesh on this earthly plane prevents widow from getting residue of her husband's estate by "rud". Hence it is concluded that when no Imam exist in actual flesh, childless widow is undoubtedly entitled to get the benefit of doctrine of "return". The view of Oudh court is equitable that followed Syed Ameer Ali who observed that according to modern jurist Bait-ul-Maal, which earlier existed for the benefit of the indigent Moslems, and for the promotion of the welfare of the Islamic Commonwealth, now exist as mere Government exchequer, the doctrine of escheat does not apply to either the case of a husband or a widow. Where an intestate dies leaving no other heirs, excepting a wife or a husband, the entire inheritance goes to him or her.[18]

By way of the judicial pronouncements, in Shia law and Sunni Law, the surviving spouse of deceased is entitled to return in absence of other heirs and the excess heritage does not pass to public treasury.

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[16] Dr. Paras Diwan & Peeyushi Diwan Jain, Family Law 538 (ed.14 Allahabad Law Agency 2025)
[17] AIR 1935 Oudh 78
[18]2 Syed Ameer Ali's of Muhammadan Law 113-114 (ed.7 Kitab Bhavan 1965)

V. SUGGESTIONS AND RECOMMENDATIONS

Apart from the Muslim Personal Law (Shariat) Application Act, 1937, which merely declares the application of Muslim personal law to Indian Muslims in matters including inheritance, a standard codified law governing each aspect of Muslim inheritance, including the doctrines of *awl* and *Radd*, is necessary. Comparable statutory frameworks exist in jurisdictions such as Indonesia through the Compilation of Islamic Law, Egypt through Qanun-al-Mawarith No. 77 of 1943, Algeria through the Algerian Family Code, and Syria. Such codification would reduce uncertainty, avoid inconsistent reliance on custom or uncodified juristic opinion, and provide clearer guidance to courts and litigants.

However, any recommendation for a faith-specific codified Muslim inheritance law must also be situated within the contemporary Indian debate on the Uniform Civil Code. On 10 March 2026, while hearing a petition alleging discriminatory treatment of Muslim women under personal law, the Supreme Court reportedly observed that a Uniform Civil Code may provide an effective legislative solution to gender-based inequalities in personal laws, while cautioning that merely striking down existing personal-law provisions could create a legal vacuum and that Parliament has an important role in this reform process. This development is directly relevant to Muslim inheritance reform. While a community-specific codification may preserve doctrinal fidelity to Islamic inheritance principles and clarify the application of *Radd*, a Uniform Civil Code represents an alternative constitutional route aimed at equality, uniformity, and gender justice across communities. The politically contested nature of the UCC debate suggests that, at minimum, legislative reform of Muslim inheritance law must be guided by constitutional values of equality and legal certainty while remaining attentive to religious autonomy and doctrinal coherence.

A code of Islamic inheritance law, if preferred as a transitional or community-specific reform model, should be based on the Qur'an, Hadith, and recognised juristic doctrines, with careful reference to authoritative fiqh texts and Indian judicial precedents. Codification should contribute not only to legal certainty but also to social justice by reducing avoidable litigation. Although existing precedents are binding, a standard statutory framework remains desirable because courts presently rely heavily on classical texts, commentaries, and translations that may be inconsistent, difficult to access, or open to divergent interpretation.

VI. CONCLUSION

In inheriting to the estate of the deceased, a system where the shares of heirs are fixed, the doctrine of Radd or return, along with doctrine of aul or increase stands to treat the irregularity in distribution of estate.

Despite the absence of codification, courts continue to apply the doctrine effectively. It would be much better if a codified law is enacted to have a much structured and uniform approach, avoiding confusions in application of the doctrine under various circumstances that are likely to arise in the course of inheritance, especially regarding the position of spouses.

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