

Figh: Fara'id

INHERITANCE LAWS

Definition

Fara'id

Is the study of the categories of inheritors, their prescribed portions & the laws governing the division

of the inheritance itself.

Fard kifayah

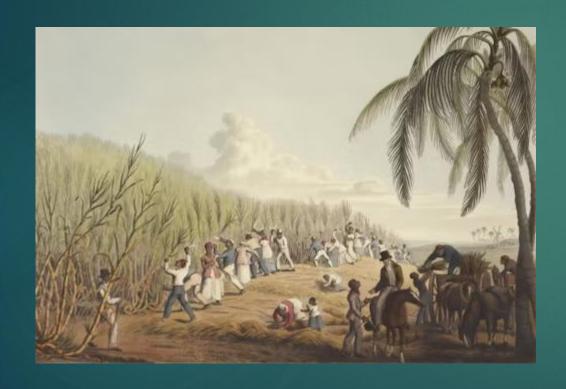
Knowledge of the laws of fara'id is considered fard kifayah, which means that it is obligatory (fard) on the community, as a whole.

Obligation

If someone among them knows it or learns it, then whole community is released from the obligation. If no one learns it, then the whole community bears the sin of not fulfilling an obligatory duty.

- In recent times;
 - ▶ This science has been forgotten in most Muslim countries, due to;

Colonisation & the resulting introduction of Western legal systems





Significance of Fara'id

- The Islamic system of inheritance takes into account economic, social & psychological needs of human society
 - By ordering the implementation of the natural & systematic flow of wealth
 among family members





when death occurs



- System of inheritance laws are chosen by Allah (swa)
- ▶ It is based on human nature & human needs, within a societal framework
- Following slide will look at (just) a few ways these laws; protect the rights of family members & regulate distribution of wealth

Protection of Natural Inheritors

In non-Islamic nations;

Accepted practise is

That the owner of wealth is totally free

to give all the wealth to whomever they please Regardless of kinship or family obligations.

This attitude based on Westen outlook on;

private ownership of wealth.

- Private ownership has been so highly regarded that family rights have been all but disregarded
- > The direct result of this outlook is the frequent oppression of some, if not all, members of the family in wills

Example;

> Some people bequeath all of their wealth to animal societies or to the upkeep of their pets, to the exclusion of their next of kin.

Newsweek reported: Peter Sellers died & left \$10 million to his last wife (Lynne Fredrick - not the mother of his children) to whom he was married for only a few years. Whilst leaving his own two daughters & son only about \$2,000 each. Children ended up contesting the will (attempt to set right unjust system of inheritance) (Newsweek, February 9, 1981)

- > Islamic system considers wealth as a trust from Allah (swa)
- > Which returns to Allah (swa) for the most part, upon the death of its earthly trustee.
- ➤ However, one third of one's wealth may be willed to whomever one wishes (but even in this portion one is accountable to Allah (swa))
- Islam has fixed the rate of distribution of inheritance among family members in such a way that unjust distribution cannot take place at any time.

Protection of Roles

- Islamic laws take into account; society's natural males & females' roles
- Certain communist states have adopted a mechanically even distribution of wealth among heirs (in name of equality)
- > Done in attempt; to remedy the ills of capitalist freedom in inheritance laws
- Such a system does not consider gender roles in society

In the Islamic division of inheritance outlined (below)

Males

- Given as much as 2 times the portion of corresponding female heirs
- Hence, supporting their societal role as; providers & protectors

Females

- Not required to support themselves (in Islamic society)
- Unmarried women are their father's responsibility
- No father; obligation falls to, brothers, uncles, nephews, sons

Islamic Division

- The Islamic division of inheritance takes into account;
 - ▶ The societal needs (of men & women)
- ▶ In a way which contributes positively
 - To the development of a healthy society
- Western systems
 - ► Father may leave all wealth to
 - Daughter
 - ➤ Or state may divide on a 50/50 basis (between male & female heirs)
- ► Therefore; disturbing natural balance of society
- Such division methods threaten instinctual male & female roles
- Contributing to disruption of society

Circulation of Wealth

- ▶ The accumulation of wealth in a progressively smaller segment of society is also prevented by the Islamic method of distribution.
- ► The rich, as a rule, tend to marry among themselves & with most non- Islamic systems of inheritance the lion's share of the inheritance is usually given to the eldest son.
- ▶ Thus, these systems keep the wealth of the society in the hands of a small group with each passing generation.
- ► This restrictive process fosters class distinctions & progressively widens the gap between the rich & the poor. It provides a basis for class war & revolutionary upheaval
- ► However, in the Islamic system, wealth is automatically distributed among all of the sons & daughters of the deceased, as well as some of the other family members, regardless of age or status, avoiding the explosive trend of class divisions.

Prevention of Dissatisfaction

- ▶ The fact that the Islamic laws of inheritance are laid down by Allah (swa) the most just, & not by people, helps those who inherit, to be satisfied with what has been allotted to them.
- Since the heirs know that these are not man-made laws, which unjustly favours others, they tend to be more ready to accept Allah's (swa) decree.
- ▶ Divine laws consider and take into account all of humankind's innumerable needs. Many of these needs cannot be determined by science, even though they may be closely connected to other very existence.
- ▶ It is only the Creator of that complex creature, the human being, who could possibly know what best suits human needs, regardless of time and place.
- in non-Islamic systems, the division of inheritance is based solely on human interpretations of man-made laws or the reversal of court rulings in order to suit a rival interest group
- sometimes discontents may succeed in getting new laws passed to secure new rights for themselves, but they simultaneously abuse and oppress others in the process.
- ► This leads to an unending series of legal disputes & changes which tend to keep the society in constant turmoil.

Property rights for Women

- Islam established the right of women to inherit and to earn property 1400 years ago
- at that time, women in other societies were considered the property of their husbands in the same way that houses, animals and other possessions were
- ► It was only in the beginning of the 20th century that women in America, England and other Western countries gained the right to own property
- Prior to this change, women could not represent herself in financial transactions and her wealth usually became a part of her husband's wealth when she got married
- Hence, it could be said that the Islamic inheritance laws provided and continued to provide a sound basis for the establishment of women's right to possess wealth independently of men

Avoidance of Delays

No Will

The inheritance laws of Islam come into effect automatically on the death of an individual.

Whether a will was left or not.

No Delay

In this way;

the Islamic Society avoids unnecessary delays in the distribution of inheritance.

As well as the resulting confusion & rivalry among heirs.

No Islam

Since non-Islamic societies depend largely on a signed, witnessed will before distribution of inheritance can take place, wealth can often be tied up for many years while various wills & claims are contested.

Conditions for Inheritance

- ► For an heir to be eligible to inherit, the following conditions must be fulfilled:
 - 1. Before the division of inheritance may take place, the death of the testator, whether it be actual or estimated, has to be established.

Actual death means that the individual has been pronounced clinically dead In cases wherein the courts declare someone dead due to his absence for a long period of time, his death is referred to as death by decree.

Someone who has left Islam is also referred to as being dead by decree because his or her apostasy deprives them of their property in a Muslim state.

If a miscarriage takes place after the 4th month of pregnancy, it is assumed that the child was alive in its mother's womb prior to the miscarriage & its death is referred to as an estimated death.

The end of the 4th month is when human life actually starts, based on hadith of Ibn Masud in which Prophet (pbuh) stated;

"Indeed, the creation of each one of you is brought together in his mother's womb for 40 days as an oily drop then as a Leech-like clot of blood for a similar period, then as a clump of flesh for a like period. Then an Angel is sent to blow his soul into him." (Bukhari)

2. For a person to be eligible to inherit, he has to have been alive after the death of the one from who he is inheriting, even if it was only for a moment.

For example, if both a father and his son died in a car crash, it would have to be established beyond a doubt that the son died after his father did for the heirs of the son (i.e. the grandchildren) to be able to inherit from his father (i.e. their grandfather). The life of the heir would be assumed in the case of an heir being a four-month-old foetus at the time when his or her father died, even if the heir was later stillborn (born dead).

Entitling Factors

- In order for an heir to be entitled to inherit a portion or all of the deceased's wealth, one of the following factors must be present:
- Marriage a marital partner has the right to inherit if any one of the following conditions are met:
 - 1.a. if he or she has a valid marriage at the time of the partner's death (If the marriage was not of the prohibited type)
 - 1.b. if the woman was in the *iddah* (waiting period) of a reversible divorce (*talaq raj a divorce in which the husband has the option of taking the wife back or remarrying her*) at the time of her death or that of her partner
 - 1.c. if his or her partner died before the consummation of marriage.
- Qarabah (kinship) the heir has to fall under one of the following three categories of Qarabah-kinship, in order to be eligible for a share of the inheritance:
 - **2.a.** Usul: parents of the deceased and their parents
 - 2.b. Furu: children of the deceased and their children
 - **2.c.** Hawashi: brothers or sisters of the deceased, whether paternal, maternal or half, and the sons of blood brothers (nephews), paternal uncles of the deceased and their sons (male cousins of the deceased)

Dawil-arham (Excluded blood relatives)

If none of the inheriting relatives are leaving or some of the inheritance remains after the fixed portions have been distributed, the remainder is given to the closest non-inheriting males.

Example; the maternal uncle of the deceased. If none are alive, it is then given to the non-inheriting females.

Example; nieces of the deceased, the deceased's daughter's son or the deceased's sister's son

4. Bayt al-Mal (Islamic Treasury)

If there are no relatives alive, close or distant, or some inheritance still remains after the portions have been distributed, the remainder should be turned over to the;

Bayt al-Mal – the Islamic treasury.

This is based on the hadith of the prophet (pbuh), in which he said;

"I am the heir of He who is without an heir; I pay his debts and I inherit from Him." (Sunan Abi Dawud)

Disentitling Factors

▶ There are certain factors whose presence make the heir not entitled to inherit from the deceased. All of these disentitling factors must be absent before the division of the inheritance may take place.

Qatl (Murder)

The murderer cannot inherit from the one he or she has murdered. This law is based on the statement of the prophet (pbuh);

"The killer inherits nothing." (Sunan Abi-Dawud)

2. Ikhtilaf al-Adyan (Religious Differences)

If the deceased is of a religion different from his or her heir, the air is not allowed to take any of the inheritance. This law is based on the hadith of the Prophet in which he stated

"A Muslim may not inherit from a kafir, nor can a kafir inherit from a Muslim." (Bukhari)

That is, if a Muslim dies leaving close relatives who would normally inherit from him (father, mother, brother, sister, son, daughter and so on), but who are non-Muslims, the Islamic State would not give their portions according to the Islamic laws of inheritance. However, if a bequest or will (wasiyyah) was made, then non-Muslim relatives would be entitled to receive the stated portion as long as it did not exceed one-third of the wealth left by the deceased.

Talaq ba'in (Irreversible Divorce)

If the man and woman are irreversibly divorced (a divorce in which the husband cannot take the wife back), neither can inherit from the other.

There are three rights connected to the deceased's wealth which have to be subtracted from the total inheritance before the calculation of the heir's shares of inheritance can even begin:

- Burial provision: a portion of the inheritance should be set aside to cover the expenses for the preparation and burial of the deceased.
- 2. Debts: goods, property or money which were owed by the deceased at the time of his death have to be returned prior to any division of inheritance. Reimbursements or debts incurred by the deceased due to damages or accidental murder (i.e. car accidents) have to be completely paid off prior to any division of inheritance, even if their payment consumes all of the inheritance.
- 3. Bequest (Wasiyyah): the deceased is allowed to give away up to one-third of his wealth to other than his natural heirs in a written will known as wasiyyah. Prior to the revelation of the verses of inheritance, bequests were the only method of inheritance and it was compulsory to make them to the close family members. However, when the Quranic verse detailing the distribution of inheritance were revealed, the Prophet (pbuh) Said; "All who have rights have been giving them, so there are no (longer any) bequests for heirs." (Muslim) More than one-third of the inheritance can only be given with the consent of the heirs. Those receiving the wasiyyah may be relatives or non-relatives, Muslims or non-Muslims. Repayment of debts is given precedence over bequests because repayment of a debt is obligatory whereas a bequest is only a recommended act. Allah's Messenger (pbuh) would not pray funeral prayers over those who died in debt and had no means to pay it off. (Muslim). He also informed us that all the sins of a martyr who died in the way of Allah would be forgiven except for his debts. (Ibid. Hadith no. 4646)

Knowledge of Family Members Entitled to Inherit

- ▶ It is necessary that a person have full knowledge of the laws of inheritance in order to distinguish between those family members who are not eligible to inherit from those who are. Otherwise, the distribution of inheritance cannot take place properly. The family members entitled to inherit are:
- Male Heirs: sons, grandsons, father, paternal grandfather, brothers, paternal nephews, uncles, male cousins and husband
- Female Heirs: daughters, granddaughters, mother, grandmothers, sisters and wives

NOTE: The term brother, sister, son, etc. Are used to denote their relationship to the deceased. If otherwise intended they will be qualified (e.g. brother's son or sister's son, etc)

Types of Inheritance

- In the inheritance laws of Islam there are only two ways in which the inheritance may be calculated and distributed among the heirs. These two methods of calculation are referred to as *fard* Inheritance and *ta'sib* Inheritance.
- Fard inheritance is calculated according to certain fixed and strictly defined portions. The majority of heirs who inherit by this method are female relatives. According to the law it is the first section of the inheritance which should be distributed. This principle is based on a hadith related by Ibn Abbas in which the prophet (pbuh) is reported to have said;

"Give the fard portions of the inheritance to their owners and give the remainder of the inheritance to the most deserving male." (Bukhari)

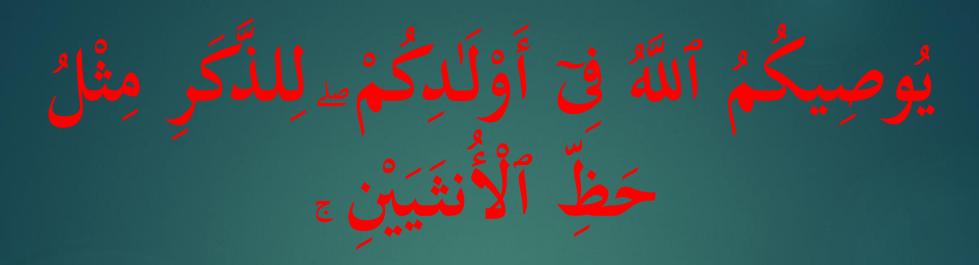
The fard portions consist of only six basic fractions:

- ▶ One half (½)
- One-fourth (1/4)
- ► One-eighth (1/8)
- Two-thirds (2/3)
- ► One-third (1/3)
- One-sixth (1/6)

The portion of the heirs who inherit according to the *fard* method shift from one fraction to another based on those who inherit along with them.

Example

- ► The daughter of the deceased should receive one-half the inheritance if she has no living sisters or brothers. If she has a living sister or sisters, she shares two thirds of the inheritance with them.
- ▶ The ta'sib method is the receipt of the remainder of the inheritance fard portions have been distributed or the receipt of all the inheritance if no recipients of fard portions are living.
 - ▶ For example; if the airs consist of a mother, two daughters and a grandson, the mother would receive by fard 1/6, the two daughters by fard 2/3, and the grandson would receive the remainder by ta'sib, which in this case is 1/6.
- The majority of the heirs who inherit by this method are males. In cases where male and female heirs inherit together according to ta'sib, the males receive two times the portion of the females according to Allah (swa) statement;



"ALLAH ADVISES YOU CONCERNING YOUR CHILDREN THAT THE MALE SHOULD GET A PORTION SIMILAR TO THAT OF 2 FEMALES..." (QURAN 4:11)

EXAMPLE: if there were one son and three daughters sharing their inheritance by ta'sib, the son would receive two-fifths (2/5) of it and each daughter would receive one-fifth (1/5).

FIQH: The Inheritance of the Furu; the Usul and Marital Partners

► Furu

1. The Son

The son of the deceased inherits by the ta'sib method only fard method. The following are the most common inheritance situations and their corresponding portions:

- La. If he is the only living heir, he inherits all of the inheritance.
- 1.b. Fard portions are distributed.
- 1.c. If he has a sister or sisters inheriting along with him, he shares the remainder of the inheritance with them at a ratio of 2:1 after the *fard* portions have been distributed.
- I.d. If there is more than one inheriting son, they share their inheritance portion of a single son equally under the previously mentioned circumstances.
- 1.e. If the sons are living, the grandsons do not inherit at all.
- 1.f. If there are no living sons the grandsons inherit by ta'sib in the same way the sons inherit. They share the inheritance with the granddaughters the way the sons share with the daughters (at a 2.1 ratio), except that their presence does not change the portion due to a daughter or a group of daughters who inherit by fard.

2. The Daughter

The daughter inherits by both the fard and ta'sib methods in the following ways:

- 2.a. If she is the only living heir, she inherits one half (1/2) of the total inheritance by fard.
- 2.b. If no sons of the deceased are alive, she will receive the same portion of one-half (1/2) of the total inheritance by fard.
- 2.c. If there is more than one daughter and no sense of the deceased or living, they equally share two-thirds (2/3) of the total inheritance by the *fard* method.
- 2.d. If there is only one daughter and granddaughter(s), the daughter will receive one-half (1/2) of the inheritance and the granddaughter(s) will receive one-sixth (1/6) in order to complete the *fard* portion of two-thirds (2/3) set aside for daughters.
- 2.e. If two or more daughters are present, the granddaughter(s) will be totally blocked from inheriting anything.
- 2.f. If there are sons present, the daughter(s) will share the remainder of the inheritance with their brothers at a ration of 2:1 by ta'sib after the other fard portions have been distributed.

► Usul

1. The Father

The father inherits by the fard and ta'sib methods in the following situations:

La. If a son or grandson is living, the father inherits one-sixth (1/6) of the inheritance by the fard method of division.

1.b. If a daughter or son's daughter(s) is present, the father inherits one-sixth (1/6) of the inheritance by fard, plus the remainder by ta'sib, if there is any after the other fard portions have been given out.

1.c. If no son or daughter Grandson or granddaughter is living, the father inherits the remainder of the inheritance by ta'sib after the fard portion has been distributed.

1.d. If the Father is the only living heir, he inherits the whole inheritance by ta'sib.

2. The Mother

The mother inherits only by the fard method according to the following circumstances:

- **2.a.** If there is no inheriting son(s) or grandson(s), or daughter(s) or granddaughter(s), or group of brothers or sisters, the mother inherits one-third (1/3) of the total inheritance.
- 2.b. If there is a son(s) or grandson(s), or daughter(s) or granddaughter(s), or a group of brothers or sisters present, the mother will then inherit one-sixth (1/6) of the total inheritance.

Marital Partners

1. The Husband

The husband inherits by fard in the following two ways:

- 1.a. If there is no son or daughter, grandson or granddaughter living, he inherits one-half (1/2) of his deceased wife's wealth.
- 1.b. If there is either a son or daughter, grandson or granddaughter, the husband then receives one-quarter (1/4) of the inheritance.

2. The Wife

The wife inherits by fard in the following three ways:

- 2.a. If there are no children or grandchildren, she inherits one-quarter (1/4) of her deceased husband's wealth.
- 2.b. If there are children or grandchildren, the wife then inherits one-eighth (1/8) of the deceased husband's wealth.
- 2.c. If there is more than one widow, each equally shares in one-quarter or one-eighth according to the above-mentioned conditions.

Sample Problems & their Solutions

It should be noted that in problems of inheritance, heirs and their portions are worked out according to their relationship to the deceased.

Problem 1: A boy's father was killed, leaving only the boy and his sister among his father's living relatives. He also left behind property valued at 60,000 dinars. How much will the boy and is sister receive?

Solution:

Inheritance: 60,000 dinars

- 1. Divide 60,000 dinars between two people at a ration of 2.1
- 2. Total number of parts: 2+1=3 (2 part for the son, one part for the daughter) Amount of each part: 60,000 divided by 3 = 20,000
- 3. The son receives $2 \times 20,000 = 40,000$ dinars
- 4. The daughter of receives $1 \times 20,000 = 20,000$ dinars

Problem 2: A woman died in a car crash and was survived by a husband three daughters and a son if the jury which she left was valued at a £20,000, how much would each of her heirs receive?

Solution:

Inheritance: £20,000

1. The husband will receive 1/4 by fard instead of 1/2 because of the presence of a son or daughter. The husband receives 1/4 of £20,000; $1/4 \times 20,000 = £5,000$

Remaining inheritance: £15,000

- 2. The Remaining £15,000 is to be divided into 5 parts at a ration of 2:1:1:1 (2 parts for the and 1 part for each daughter)
- 3. Total number of parts: 5. Amount of each part: 15,000 divided by 5 = 3,000
- 4. The son receives $2 \times 3,000 = £6,000$ by ta'sib
- 5. Each daughter receives £3,000 by ta'sib

Problem 3: A woman's son drowned, leaving behind the woman, her two granddaughters by the son, a great-grandson by one of the granddaughters and the woman's sister among his living relatives. If he left a bequest of one-sixth (1/6) for the woman's sister and two houses valued at 180,000 franks each, how much will each of his relatives receive?

<u>Solution:</u>

Inheritance: $2 \times 180,000 = 360,000$ franks

- 1. The aunt's portion by wasiyyah has to be given first, then the remaining inheritance is divided according to the fard & ta'sib methods. The aunt receives 1/6 of 360,000; 1/6 x 360,000 = 60,000 franks.
 - Remaining inheritance: 30,000 franks
- 2. The woman, Who was the boy's mother, Will receive 1/6 by fard instead of 1/3 because of the presence of inheriting daughters or an inheriting grandson. $1/6 \times 300,000 = 50,000$ franks
- 3. The Woman's two granddaughters, Who were the deceased man's daughters will receive 2/3 by fard (which they share) because they were more than one and there were no sons to share with them by ta'sib. 2/3 x 300,000 = 200,000 franks; each daughter will inherit 100,000 franks.
- 4. The great-grandson, who is the man's grandson, is not on the same level as the daughter's, therefore he does not share with them by ta'sib. He will receive the remainder of the inheritance (50,000 franks) by ta'sib.

Problem 4: A woman's daughter died in a plane crash along with the woman's grandson by her daughter the woman's brother also perished The daughter was survived by her mother her husband, her daughter and her son's son. If the dead woman was an only child and her father had died the year before, leaving a total inheritance of 192,000 liras, What is each of her heirs entitled to?

Solution:

Inheritance: 96,000 liras

- 1. If the dead girl was an only child, her share of her dead father's wealth would have been 1/2 x 192,000 = 96,000 liras.
- 2. Her mother would inherit from her 1/6 by fard instead of 1/3 because of the presence of a daughter or a grandson. $1/6 \times 96,000 = 16,000$ liras.
- 3. Her husband would receive 1/4 by fard instead od 1/2 because of the presence of a daughter or a grandson. $1/4 \times 96,000 = 24,000$ liras.
- 4. Her daughter would receive 1/2 by fard because there were no sons to share with her by ta'sib. $1/2 \times 96,000 = 48,000$ liras.
- 5. The remainder of 8,000 liras would go to her grandson by ta'sib.

Problem 5: A girl's grandfather died, leaving behind her grandmother, her great-grandfather and a paternal aunt.

If all he left was \$4,800, what would each of his heirs get?

Solution:

In relationship to the deceased, the girl is a granddaughter, her grandmother was the deceased's wife, her great-grandfather was his father and her paternal aunt was his daughter.

Inheritance: \$4,800

- 1. The wife will receive 1/4 because there are a daughter and granddaughter living. $1/8 \times 4,800 = 600 .
- 2. The daughter will receive 1/2 by fard because there were no sons to share with her by ta'sib. $1/2 \times 4,800 = \$2,400$.
- 3. The granddaughter will receive 1/6 by fard completing the fard portion of 2/3 set aside for daughters. $1/6 \times 4,800 = \$800$.
- 4. The Father will inherit 1/6 by fard due to the presence of a daughter or granddaughter (1/6 x 4,800 = \$800) and he will inherit the remaining \$200 by ta'sib.

Problem 6: A man died leaving 720,000 rupees for his mother, father, wife, four daughters, two sons, two granddaughters and one grandson.

Solution:

Inheritance: 720,000 rupees

- 1. The mother will receive 1/6 by fard due to the presence of sons or daughters or granddaughters. $1/6 \times 720,000 = 120,000$ rupees
- 2. The Father will receive only 1/6 by fard due to the presence of sons. 1/6 x 720,000 = 120,000 rupees
- 3. The wife will receive only 1/8 by *fard* due to the presence of sons or daughters or granddaughters. 1/8 x 720,000 = 90,000 rupees.

 Remaining Inheritance: 390, 000 rupees
- 4. To calculate the inheritance of the 2 sons and four daughters, divide the remaining share of 390,000 into 8 parts at a ration of 2:2:1:1:1:1 (two parts for each son, 1 part for each daughter). 390,000 divided by 8 = 48,750 rupees.
- 5. Each son will receive $2 \times 48,750 = 97,500$ rupees by ta'sib.
- 6. Each daughter will receive 48,750 rupees by ta'sib.
- The granddaughters will not receive anything because of the presence of two or more daughters.
- 8. The grandson will not receive anything due to the presence of sons.



Thank You