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## SCHOLARSTIC VIEWS ON INHERITANCE OF DISTANT UTERINE RELATIONS: A STUDY OF SOKOTO STATE OF NIGERIA

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### **Abstract**

This paper examines the opinion of scholars regarding the inheritance of distant uterine relations in Islam with particular reference to Sokoto state. Distant uterine means all relatives who are neither sharers nor residuaries. Islam as a divine religion aims at protecting man's belief, sense, progeny, blood and establishment of universal justice. These are some of the reasons why Qur'an was sent to the Noble Prophet (SAW) in order to regulate the entire human affairs. These affairs are either between man and his Creator or other creatures. Islam gives equal attention to these two different interactions (interaction between man and his Creator, and interaction among creatures). That is why Qur'an contains several laws that guide different human interactions such as: family affairs, transactions, neighborhood, criminal offences, gift, loan, rent, pledges, will, inheritance, among others. This paper discusses the concept of distant uterine relations, their classifications as well as the opinions of scholars regarding their entitlements in the properties of the deceased person. At the same time, it explained the position of Islam about the inheritance of distant uterine relations and the current practice in *Shari'ah* courts of Sokoto. The paper also discussed its findings and concluded by giving priority to the best opinion of the scholars. The major problem addressed by this research paper includes: lack of sound knowledge of inheritance by some Muslims, lack of proper understanding of the concept of distant uterine relation and lack of proper attention of some people towards the meaning and the stand of Islam about distance uterine relations. In conducting this research work, relevant Islamic sources were reviewed. Interview was also conducted with some Islamic scholars and ordinary people and their views were analyzed and adopted by the researcher.

**Key words:** Inheritance – Distant Uterine Relations

### **Introduction**

Islam as religion of principles and practice does not only comprise rituals but the whole aspects of human existence. Islam makes it a duty that properties owned by individuals should be shared among his family after his death. Because the family is viewed as

extension of his life, it is therefore against the teachings of Islam for a Muslim to make will (*Wasiyyah*) giving all his properties to certain people denying room for inheritance.

Distant uterine referred to the relatives who are not among the *asabah* (agnate) and who have no shares of inheritance as prescribed by Islamic *Shari'ah*. In Islamic law of succession, for anyone to claim inheritance, he/she must be related to the deceased person. However, his /her share of inheritance depends on his /her level of relation to the deceased person and the presence of other heir(s). All heirs are not equal. Some of them have priority over the others. The total number of heirs is twenty five (25) comprising fifteen male and ten female. The male heirs are:

1. Son
2. Son of son (how low so ever)
3. Father
4. Grandfather (father of father how high so ever)
5. Full brother (germane brother)
6. Half brother (consanguine brother)
7. Uterine brother
8. Son of half brother (how low so ever)
9. Son of full brother (how low so ever)
10. Full paternal uncle
11. Half paternal uncle
12. Son of full paternal uncle (how low so ever)
13. Son of half paternal uncle (how low so ever)
14. Husband and
15. Male emancipator (who free his slave)

Note: If a woman died leaving behind all the above mentioned male heirs, only three of them will inherit her; they are husband, father and son.

The female heirs on the other hand include:-

1. Daughter
2. Daughter of son (how low so ever)
3. Mother
4. Grandmother (mother of father)
5. Grandmother (mother of mother)
6. Full sister (germane sister)
7. Half sister (consanguine sister)
8. Uterine sister
9. Wife
10. Female emancipator (who free her slave)

Note: If a man died leaving all the above mentioned female heirs, only five of them will inherit him. These are daughter, daughter of son, mother, full sister and wife.

However, if a person died leaving behind all the above mentioned male and female heirs, only five of them will inherit him. They are father, son, mother, daughter and one of the spouses (husband or wife).<sup>1</sup>

Majority of the Muslim jurists divided all the heirs into two main types:

1. Qur'anic Heirs (*Ashab al-Furoudh*)

2. *Asabah* (residuaries or agnates)

While some believed that, there are three more types in addition to the above mentioned ones. These are:-

- *Dhawul al-Arham* (distant kindred)
- Emancipator (who freed his /her slave)
- *Bait al-mal* (Muslim public treasury)

Imam Rabhi opined strongly that the legal heirs are divided into two only. This is also the opinion of some of the Muslims scholars of his time.<sup>2</sup> Sheikh Muhyiddin classified the heirs into ten classes in which he started with Qur'anic heirs and ends with public treasury.<sup>3</sup> He further stated distant kindred as one of those classes. While scholars like Ibn Ishaq (one of the Sokoto Jihadist)<sup>4</sup> are of the opinion that the heirs are divided into three and that is the opinion of the majority of scholars. This also represents the opinions of some scholars in Sokoto.

This paper focuses particularly on *dhawul al-Arham* (distant kindred) and specific shares of their inheritance as prescribed by *shari'ah* in the field of Islamic succession.

The major problem which is to be addressed in this research is the issue of succession of distant kindred in the area. Under Maliki School of law which the people of Sokoto adhere to, did not recognize the inheritance of distant kindred. However, due to the lack of standard Islamic public treasury governs by Islamic government in the country, some scholars of Sokoto agreed with the succession of distant kindred and is currently been applied in the Islamic *Shari'ah* court throughout the state.

Mal Arzika sees Distance uterine relation as all relatives who are neither sharers nor residuaries.<sup>5</sup> While Alhaji Bello and others hold the view that distant kindred are all members of the family of the deceased person, whether they belonged to the legal heirs or not.<sup>6</sup>

From the foregoing, it is a clear indication that some people in the area did not understand the meaning and the position of *shariah* pertaining to the inheritance of distant kindred which calls for a massive awareness. In this regard, this research paper also aims at creating awareness among the Muslim *Ummah* in the area about the position of Islamic *Shari'ah* in respect of the succession of distant kindred. The research again serves as a reference material and adds to the existing literature in the field of Islamic Law of Succession.

In conducting this research work, relevant Islamic published and unpublished sources were reviewed and interview was employed for oral information.

### Sokoto State

Sokoto is a city located in the extreme North West of Nigeria, near the confluence of the Sokoto and Rima rivers. As of 2006 census, it has a total population of 4,244,399. Sokoto is the modern day capital of Sokoto state (and its predecessor, the North Western state). The name Sokoto (which is the modern/anglicized version of the local name Sakkwato) is of Arabic origin, representing *Suk* meaning "market". It is also known as Sakkwato Birnin Shehu da Bello (the city of Shehu and Bello).<sup>7</sup>

Being the seat of the Sokoto caliphate, the city is predominantly Muslims and one of the major centers of Islamic learning in Nigeria. The Sultan who heads the caliphate is

leader of the Nigerian Muslims and president of the Supreme Council of the Islamic Affairs in Nigeria.

### Meaning of Distant Kindred

*Dhawul al-Arham* referred to the relatives who are not among the *asabah* and who have legal shares of inheritance prescribed under the Islamic *Shari'ah*. They are entitled to inherit if there are no *Asabah* or *Furud* heirs.<sup>8</sup> However, they can inherit if there is a '*fard*' heir who cannot inherit by '*radd*' such as husband or a wife in a situation where there is no '*asib*' (residuary).<sup>9</sup>

The definition shows that distant kindred include all relations whether near or remote, who are not sharers or residuaries.

In another definition, distant kindred are defined as those relatives who are neither agnate nor Qur'anic sharers; they are uterine relations who are either female or linked to the deceased through a female. It is agreed under Islamic law that they take nothing.<sup>10</sup> They include: daughter's children, brother's daughter, sister's children, mother's brother (i.e. maternal uncle), mother's sister, mother's father among others. However it has been argued that, instead of taking the estate or residue (if any) to *bait al-mal*, in the absence of Agnates or Qur'anic heirs, *Dhawul- arham* are more closely related to the deceased than the public treasury.

*Dhawul al-Arham* are known as distant kindred, the cognates, or the uterine in english. *Arham* is an Arabic word and the plural of *Irham*, which literally means womb in which fetus develops before birth; as in *Surah al-Imran*.<sup>11</sup> Allah says: He Who shapes you in the wombs as He pleases.<sup>12</sup>

### Division of *Dhawul Al-Arham*

Those relatives who are not members of *Ashab al- Furud* and *Asabah* categories are known as *Dhawul Arham*. They are divided into four categories as follows:

1. Those relatives directly related to the deceased which are deceased's daughter's children and his son's daughter's children.<sup>13</sup>
2. Those relatives who are the roots of the deceased, i.e. such roots who are neither among the *Dhawul furoodh* nor among the *Asabah*. They are those grand fathers and grand mothers known as *Fasid*, i.e. not *Saheeh*<sup>14</sup> Among the *fasid*; grandmothers and grandfathers are the maternal grandfathers (mother's father) and the paternal grandmothers.
3. Such nephews and nieces who are not among the *Dhawul Furoodh* and *asabah*. They are the entire sister's children (nephews and nieces), brother's daughter and the children of *Akhyafi* brothers.
4. Such uncles and aunts who are not among *Dhawul Furoodh* and *asabah*. They are paternal aunts (father's sisters), *Akhyafi* uncles, maternal uncles (Mother's brothers) and maternal aunts (mother's sisters).

### Inheritance of *Dhawul Al-Arham*

Majority of the companions of the noblest Prophet (S.A.W), including Caliph Umar bn Khattab (R.A), Ali bn Abi Talib (R.A), Ibn Mas'ud (R.A), Mu'az bn Jabal (R.A) and Ibn Abbas (R.A) were of the view that; *Dhawul Arham* are entitled to inherit in the absence of Qur'anic heirs and *Asabah*.<sup>15</sup> This view has been adopted by Imam Abu

Hanifah and Imam Ahmad bn Hanbal. They based their view on the following verse of the Qur'an: Allah (S.W.T) says in the Qur'an:  
But those of (blood) relationship are more entitled (to inheritance) in the decree of Allah. Indeed, Allah is All-knowing of all things.<sup>16</sup>

In addition, the Prophet Muhammad (S.A.W) was reported to have said:  
Uncle (maternal) is the inheritor of someone who does not have inheritor.<sup>17</sup>

On the other hand, the second group of *Sahabah* (R.A) opined that; *Dhawul Arham* are not entitled to inherit, and the estate goes to the Muslim Public Treasury (*Bait al-Mal*). This is the view of Zaid bn Thabit (R.A) and Ibn Abbas (R.A). The second view is that of Sa'id bn Zubair, Sa'id bn al-Mussiyyab, Sufyan al-Thauri, and Ibn Hazm. This view has been adopted by Imam Malik and Imam Shafi'i.<sup>18</sup> They based their argument on the *Hadith* of the Prophet Muhammad (S.A.W) which says:  
Indeed Allah has given everyone his entitlement (inheritance), therefore there is no bequest (*wasyyah*) of a heir.<sup>19</sup>

Therefore, in this case if distant kindred has a share of inheritance or is among the legal heirs, Al-Qur'an could have mentioned categorically and specifically his portion or a share. In the absence of this, it clearly shows that, distant kindred are not entitled to inheritance. In another *Hadith*, the Prophet Muhammad (S.A.W) was asked about the inheritance of paternal aunts (father's sister) and maternal aunts (mother's sister). He answered:  
Jibril has informed me that they inherit nothing.<sup>20</sup>

Based on the afore-mentioned, it is clear that the strongest view is that; they are entitled to inheritance due to the following reason:

Absence of Islamic Public Treasury (*Bait al-Mal*) in the country, therefore, giving such inheritance to the uterine relative is better than taking it to the public treasury; more especially in the present time people are in much need. Even Imam Malik and Shafi'i (R.A) who differs in their opinion have later in the second century, followed the first view i.e. the view of Imam Ahmad and Abu Hanifa, because of the mis-usage of *Bait al-Mal*. Therefore, all *Sunni* schools agreed upon the inheritance of *Dhawul Al-arham*.<sup>21</sup>

Moreso, a number of personalities in *Shari'ah* courts of Sokoto state like upper *Shari'ah* court Sokoto were interviewed. The then presiding judge interviewed confirmed that *Shari'ah* courts recognize the inheritance of distant kindred in Sokoto state.<sup>22</sup> Similarly, some scholars in Sokoto were interviewed who confirmed that transferring the estate to the distant kindred is better than transferring it to the public treasury in the absence of legal heirs.<sup>23</sup>

### **Findings**

On the basis of what the research discusses, it is clear that Muslims in Sokoto state recognized the distant kindred as one of the legal heirs. However the scholars in the area accepted distant kindred as one of the heirs on condition that there is no standard Islamic

Public Treasury in the area operating under *Shari'ah*. This is also the opinion of later Muslim scholars of Malik School of law like Imamul Bajji and others

Moreover, this research discovers that before the advent of Islam, people disposed their property the way they wish without any divine regulations. Likewise, some Muslims in the area do not understand fully the concept and legal position of distant kindred under the *Shari'ah*. However, there are no much problems concerning the application of the law on distant kindred in the *Shari'ah* courts in the area. But this paper made an attempt to answer such problems.

### Recommendations

- Scholars should engage in explaining the meaning and the position of Islam about the inheritance of distant kindred.
- More books, articles and journals should be written about the inheritance of distant kindred under Islamic Law of succession.
- Islamic organizations like J.N.I, IZALA, QADIRIYYAH, TIJANIYYAH and others should create a forum of awareness about the case of distant kindred in Islam.
- T.V and Radio stations should organize programs for enlightening the Muslims about distant kindred and the like.

### Conclusion

This paper discussed the different views of Muslim Scholars about the case of distant kindred or distant uterine relatives under Islamic Law of Succession. Some scholars are of the opinion that distant kindred should not be given inheritance since they are not among the Qur'anic legal heirs. While some opined that they can be given inheritance in the absence Qur'anic legal heirs, in which they said, it is better since they are closer to the decease than the (*bait al-Mal*) i.e. public treasury. More so, due to the misuse of the public treasury nowadays and the poor condition of people in terms of their basic needs, it is more appropriate therefore to give the inheritance to the *Dhawul al-Arham* than to give it to the public treasury. Likewise, all the Muslim Schools of Law agreed that *Dhawul al-Arham* are entitled to inheritance in the absence of Qur'anic legal heirs. As earlier mentioned, even the scholars who hold different views had later followed and agreed with the first view that, *Dhawul al-Arham* should be given inheritance.

### Endnote:

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3. M. Muhyiddin, *Ahkamul mawaris*, Darul Dala'ia, Cairo, 2006, P. 72.
4. M. Y. Al-amin, *Taisirul Gawamid Min-Kitab Sullamil Gawamid Fi Ilmu Al-Fara'id Li-Sheikh Usman bn Ishaq*, Sharif printing press, Kano, 2015, P. 69.
5. Mal Arzika, (70yrs), Islamic scholar, interviewed at Tambuwal on 1/9/2016.
6. Alh Bello, (65yrs), Trader, interviewed on 10/9/2016

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11. A. Rumsey, *Al-Sirajiyah Muslim law of Inheritance*, kitab bhayan, New Delhi, 1981, P.44.
12. Qur'an.3:6.
13. A. Rumsey, *Al-Sirajiyah Muslim law of Inheritance*, op.cit, P.45
14. Ibid, P.47
15. I.A. Ibrahim, *Al-Azbu Al-Fa'id*, Dar al-Kutub al-Ilmiyyah, Beirut, 1st edition, 1421 (A.H), Vol.1., P.21.
16. Qur'an.8:75.
17. Narrated by Ahmad Abu Daud, Ibn Majah, Authenticated by Tirmizi, *Nail Al-Awtar*, Vol.6, P.66-67.
18. S. A. M. Ilish, *Sharh Minah al-Jalil Ala Mukhtasar al-Allama Khalil*, Makatabah al-Najah, Libya, N.D, Vol.4, P.417.
19. Narrated by five with the exception of Al-Nisa'I, authenticated by Tirmidhi and Hafiz, *Nail al-Awtar*, Vol. vi, P.68.
20. Reported by Imam Malik in Muwatta', *Kitab al-Fara'id*.
21. M. Y. Al-amin, *Taisirul Gawamid Min-Kitab Sullamil Gawamid Fi Ilmu Al-Fara'id Li-Sheikh Usman bn Ishaq*, op.cit, p.166.
22. Kasim Yusuf, (48yrs), Presiding Judge Upper *Shari'ah* Court Sokoto, interviewed at his chamber on 25/09/2016.
23. Bakiru Abubakar Gulma, 45 yrs, Imam Arkilla Jumu'at Mosque, interviewed on 2/10/2016.