

# An analysis of residue net estate distribution to *bayt al-māl* in Singapore

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Analysis of  
residue net  
estate  
distribution

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Received 14 April 2019  
Revised 25 May 2019  
25 October 2019  
23 February 2020  
3 March 2020  
Accepted 3 March 2020

## Abstract

**Purpose** – This paper aims to examine the current practice in Singapore regarding an inheritance issue: disposal of the residual net estate to the *bayt al-māl*, which is identified as the Islamic Religious Council of Singapore (Majlis Ugama Islam Singapura, MUIS). The issue arises when the deceased leaves *farḍ* (fixed-share) heir(s) and/or *dhawū al-arḥām* (outer family members) but there is no *‘aṣabah* (agnatic residuary heir by blood). *Farḍ* legal heirs are those beneficiaries for whom the Qur’ān prescribes inheritance of a predetermined share. Disposal of the residual net estate to the *bayt al-māl* results in a reduction in the share due to the *farḍ* legal heir or worse, a total loss to the *dhawū al-arḥām* legal heirs.

**Design/methodology/approach** – A qualitative approach based on library and case study research has been adopted to elaborate practices that fall under the purview of the Administration of Muslim Law Acts (AMLA), Chapter 3.

**Findings** – The current practice seems biased against, especially, women and spouses. It creates high dissatisfaction in the community, especially those affected by such practices. This paper elaborates on the practice of residual net estate distribution in Singapore and the contemporary practices of the four Sunni *madh-habs* – the Ḥanafī, Mālikī, Shāfi‘ī and Ḥanbalī jurisprudential schools – in other countries.

**Research limitations/implications** – In Singapore, Muslim law is defined and implemented by the civil court, not the Syariah Court or MUIS. The recommendation to change from the current classical practice by the Syariah Court and MUIS to the contemporary practice that is relevant to today’s context lies with the civil court and Government of Singapore. The choice for the Syariah Court and MUIS to adopt the contemporary practice as per Ḥanafī School by rule of the court or the government is beyond this research. Zayd ibn Thābit, Caliph Abū Bakr and a small number of companions held the view that the residue net estate asset must go to the *bayt al-māl*, the current classical practice. The contemporary practice adopted by Sayyidina ‘Uthmān ibn ‘Affān, Jābir ibn Zayd and majority of the companions’ view, is not in favour of the residue net estate asset to go to the *bayt al-māl*; rather they view that it must be returned to the legal heirs.

**Practical implications** – Awareness in the community in the current controversial practice in Singapore when the residue net estate through the *farā’id* law was giving to *bayt al-māl* instead of returning to *farḍ* or



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ISRA International Journal of  
Islamic Finance  
Vol. 12 No. 1, 2020  
pp. 49-67  
Emerald Publishing Limited  
0128-1976  
DOI 10.1108/IJIF-04-2019-0055

*dhawū al-arḥām* in the absence of the *‘aṣabah* legal heir as stated in the Inheritance Certificate issued by Syariah Court.

**Social implications** – To understand the contemporary Muslim law and the practical and just application in today’s Singapore context as supported by the AMLA, Chapter 3.

**Originality/value** – This is the first study that challenges the current practice by the Syariah Court and MUIS in Singapore, thereby endeavouring to restore justice to the community.

**Keywords** *‘Aṣabah*, AMLA, *Dhawū al-arḥām*, *Fard*, *Farā’id*, *Radd*, Residual net estate, *Bayt al-māl*

**Paper type** Research paper

## Introduction

The current practice of the Syariah Court in Singapore is that the residual net estate goes to the *bayt al-māl* – which is identified as the Islamic Religious Council of Singapore (MUIS) – when there is no *‘aṣabah* (agnatic residuary heir by blood) in the family structure. This practice has created uneasiness among female legal heirs, spouses, some converts and the community at large. The above-mentioned situation does not arise when there is an *‘aṣabah* legal heir.

This paper discusses this interpretation and application of Muslim inheritance law in Singapore whereby the residual net estate goes to the *bayt al-māl* instead of returning to *fard* (Qur’ānic fixed-share) heir(s) or *dhawū al-arḥām* (outer family members) in the absence of the *‘aṣabah*. This is what is stated in the Inheritance Certificate issued by the Syariah Court. The paper focusses on the current challenges facing the family of deceased Muslims who follow the Shāfi‘ī or Ḥanafī schools of jurisprudence.

This paper is not questioning the Qur’ān, Sunnah, *ijmā’* (consensus of scholars), *ijtihād* (intellectual reasoning), the Administration of Muslim Law Acts (AMLA), Chapter 3 or the sources of Muslim law. It is about presenting alternative contemporary interpretations and practices drawing from the same facts as those referenced in AMLA and sources complementary to AMLA. This study will analyse the jurisdictions and justifications of the current practice and the contemporary practice in other countries and the possible practice of *radd* (return) doctrine in the context of Singapore. Ultimately, revamping the current practice of the *farā’id* law is urgently necessary to achieve *maqāṣid al-Sharī‘ah* (the objectives of Islamic law) in the application of *farā’id* law in today’s Singapore.

The paper is structured as follows: first, it explains the background of AMLA, Chapter 3, and the research on *bayt al-māl*. The books that were used as reference in drafting AMLA are also elaborated as they played a crucial role in defining Muslim law. The definition of the net estate and the *radd* doctrine are defined in the next section in accordance with the four *madh-habs*. The term *bayt al-māl* is also elaborated as per AMLA, Chapter 3, and the Sharī‘ah perspective. The result and discussion elaborate whether the current classical *farā’id* law practice is congruent with today’s context. Finally, the last section provides the recommendation to the Muslim authorities and the government to review the current classical *farā’id* law in light of contemporary juristic opinion and legislation on *farā’id* for the betterment of the community and the nation.

## Background of the drafter of Administration of Muslim Law Act, Chapter 3

The AMLA, Chapter 3, is an Act relating to Muslims in Singapore. It makes provisions for regulating Muslim religious affairs, for constituting a council to advise on matters relating to the Muslim religion in Singapore, and for establishment of a Syariah Court.

Tan Sri Datuk Professor Ahmad Ibrahim drafted AMLA in 1965, and it was implemented on 1 July 1968. It has gone through a series of changes and has continued to

evolve to this day. There is no record that the late Tan Sri Datuk Professor Ahmad Ibrahim received any form of tertiary Muslim law education, and yet he was well informed about contemporary Muslim law. AMLA was thus drafted by a visionary local Muslim with a formal British secular education who practised common law (Infopedia, N.L.B. of S, 2005). His Muslim law references comprised English Islamic books from India and England written by contemporary Muslims like Syed Ameer Ali and non-Muslim orientalisists, such as E.C. Howard, both of whom were judiciary professionals. AMLA, s.114.1, mentions some of these books. Ibrahim's non-exposure to religious school (*madrrasah*) did not limit his understanding of Muslim law. Those books mentioned in s.114.1 of AMLA are meant to help the English judiciary system in its practice of contemporary Muslim law in a secular country like India or Singapore. His approach of gathering contemporary practices of Islamic law within the four Sunni schools and from different countries has an essential bearing on understanding AMLA and the terms presented in each section for the betterment of the community and the nation (Singapore Parliament, 2009, s111/112/114/115).

Tan Sri Datuk Professor Ahmad Ibrahim's views about three *talāqs* (pronouncement of divorce) and AMLA, respectively – in reference to legal reforms in Indonesia, Malaysia and the Arab countries – are extracted from an article titled "Controversial boundary: the construction of a framework for Muslim law in Singapore in the period of decolonisation" (Ayumi, 2015, p. 54). They show his contemporary thinking.

Recent legislation in the Arab countries based on the Muslim law has decreed that where the three *Talāqs* are pronounced at once, this will only take effect as one *Talāq*, but in Singapore the views of the orthodox School are still followed. It is possible, however, by the influence of the Shariah Court and the *kathis* to encourage the Muslims to use only the *ahsan* (or best) form of *Talāq* (Ahmad, 1962.2: xv).

In many respects, indeed, the AMLA is moderate and even conservative when compared with similar legislation in other Muslim countries (ST, 1966.11.17: 8) (Ayumi, 2015, p. 54).

These statements reflect the inclination of AMLA's drafter that it should be implemented based on contemporary Muslim law. He postulates that a three-*talāq* declaration is void and taken as one *talāq* as in a court of appeal case of Mohd Hussin ibn Abdul Ghani and Hazimah binte Md Yusof (1412, JH 189). Here the couple was allowed to reconcile their marriage as referenced in *Permata Pengislahan Perundangan Islam. Biografi Profesor Emeritus Tan Sri Ahmad Mohamed Ibrahim* (Zin and Supi, 2007, p. 135).

Ahmad Ibrahim also endorsed the concept of *Harta Sepencarian* ("Jointly Acquired Asset) in situations of divorce and death. AMLA, Chapter 3, s112.3, defined *Harta Sepencarian* as *Adat Temenggong* (Malay custom), and it has a broader application as compared to jointly acquired property based on civil law.

The terms used in AMLA and its application must be understood based on the contemporary understanding, experience and practices of Tan Sri Datuk Professor Ahmad Ibrahim. As he referred to many Islamic English books as mentioned above, his understanding of Muslim law on estate distribution is not confined to the fundamental concepts of *wasīyyah* (will) and *farā'id* (inheritance law) as interpreted by the Shāfi'ī School. For example, in AMLA, cap 3, s111 and s112, he used the term Muslim law instead of the terms *wasīyyah* and *farā'id*.

The Syariah Court in Singapore issues the Inheritance Certificate, similar to the Succession Certificate issued in India by the Civil Court (Singapore Parliament, 2009, s115). It is a certificate that shows the persons entitled and the prescribed shares for each person based on the *farā'id*. In the past till sometime in the year 2000, this was done by the presidents of the Syariah Court, who do not have the same British secular education and the

contemporary experience as the late Professor Ahmad Ibrahim, who often referred to books written by contemporary scholars, like the books mentioned in AMLA, s114.1. The issuer of the Inheritance Certificate is inclined to the early Shāfi'ī *madh-hab*. It is also evident when the *radd* doctrine applies to legal heirs linked by blood ties, as in the Ḥanafī School, but is not applicable to the spouse (MUIS, 1998, p. 30, Q. 46).

The current *e-farā'id*, which was developed sometime in the 1990s, was programmed based on the early Shāfi'ī view. The current presidents, who have contemporary education in Muslim law, still adopt their past presidents' practices. Thus, till today, the Inheritance Certificate issued is based on the early Shāfi'ī/Mālikī view, not the dominant contemporary Sunni view as envisioned by the late Professor Ahmad Ibrahim when he drafted AMLA. This is evident in the Inheritance Certificate in the case of a sole surviving spouse, who still receives the Qur'ānic share of  $\frac{1}{4}$  for a wife or  $\frac{1}{2}$  for a husband, and the residual net estate goes to the *bayt al-māl*. This leads to a significant concern as the Inheritance Certificate issued is not in harmony with the spirit of AMLA, a contemporary statute.

### Books mentioned in Administration of Muslim Law Act, Chapter 3, s114.1

All of the six books mentioned in s114.1 of AMLA help in defining Muslim law. Thus, the need to understand all the six books is essential for us to implement and be able to appreciate Muslim law and its contemporary applications to suit the Singapore context.

- (1) *Commentaries of Mahommedan Law* was written by Syed Ameer Ali. This book is a valuable reference book on Muslim law as practised in India.
- (2) The book by E.C. Howard was translated from the French edition titled *Minhāj al-Ṭālibīn*, the writings of the Shāfi'ī scholar, Yahyā ibn Sharaf al-Nawawī.
- (3) The book *Digest of Mohummudan Law*, by Neil B. E. Baillie, takes as its primary reference the Ḥanafī book, *Al-Hidāyah*, translated by Hamilton, and the *Fatāwā Alamgiri*.
- (4) *Anglo-Muhammadian Law*, by Sir Roland Wilson, the fifth edition, published in 1921.
- (5) *Outlines of Muhammadan Law*, by Asaf A.A. Fyzee and edited by Tahir Mahmood. This book is on Indian personal law as practiced in India.
- (6) *Muhammadian Law*, by Faiz Badruddin Tyabji. The first edition was published in 1913, the second edition in 1919 and the third edition in 1940.

### Defining residual net estate

After the apportionment of the net estate as per the Qur'ānic shares to the respective *farḍ* legal heirs, the excess will be the residual net estate. For example, a deceased left behind only his mother as *farḍ* legal heir; the residual net estate is one minus  $\frac{1}{3}$ , the Qur'ānic share for the mother. Thus, the residual net estate is  $\frac{2}{3}$ . This residual net estate would go to the surviving *ʿaṣabah* legal heirs if they are present. When there is no *ʿaṣabah* legal heir, in Singapore, *bayt al-māl* will acquire the residue, as the *radd* doctrine is not practiced there.

### Defining *radd* doctrine

In the context of Muslim inheritance law, *radd* in Arabic means "to return". It is the practice of returning the residue of the net estate established through the *farā'id* law to the *farḍ* legal heirs or *dhawū al-arḥām* when there is no *ʿaṣabah* legal heir. As in the above example, if the

*radd* doctrine were practised, the  $\frac{2}{3}$  residual net estate would be returned to the mother instead of handing it over to the *bayt al-māl*.

There were significant disagreements among the Companions on this issue. Sayyidina Abū Bakr, Zayd ibn Thābit and a minority of the Companions were in one camp, agreeing that the residual net estate should go to *bayt al-māl*, whereas Sayyidina ‘Uthmān ibn ‘Affān, Jābir ibn Zayd and a majority of the Companions argued in favour of the *radd* doctrine (Muda and Awang, 2006, p. 120; Al-Zuhaili, 2007, p. 435). The four Sunni Schools also disagree about the residue of the net estate. The Ḥanafīs and Ḥanbalīs argue in favour of *radd* while the Shāfi‘īs and Mālikīs hold the view that the residual net estate should go to *bayt al-māl* (Al-Zuhaili, 2007, p. 435).

In general, the early Shāfi‘ī and Mālikī scholars adopted the view that there is no such thing as *radd* in the Sharī‘ah; thus, the residual net estate should go to *bayt al-māl*. However, the majority of today’s scholars, even Shāfi‘ī scholars, are of the opinion that the residual net estate should go to the surviving *farḍ* legal heirs or to the surviving spouse(s) as an addition to the Qur’ānic shares they have received or to *dhawū al-arḥām* when there are no *farḍ* legal heir in the absence of ‘*aṣabah* legal heirs (Coulson, 1971, p. 50). However, as stated in all the six books in AMLA, s114.1, all four of the Sunni Schools are in agreement that the *bayt al-māl* will receive the residual net estate by way of escheat when there are no surviving relatives, *farḍ* legal heirs or *dhawū al-arḥām*.

### The four Sunni schools’ traditional views on the doctrine of *radd*

#### The Mālikī view

Traditionally, all the authorities of the Mālikī School seemed to hold an extreme view on the status of *bayt al-māl vis-à-vis radd* (Coulson, 1971, p. 139). *Bayt al-māl* is the public treasury. They recognised *bayt al-māl* as the ‘*aṣabah* in the absence of any surviving ‘*aṣabah* legal heirs. That means there is no *radd*, and the residual net estate will go to the *bayt al-māl* as ‘*aṣabah*. It also means that the residue will not go back to any surviving *farḍ* legal heirs or even to *dhawū al-arḥām*. Such a view was practiced in Tunisia, where the Mālikī School is predominant, until 1959 (Coulson, 1971, p. 140).

#### The Shāfi‘ī view

The original Shāfi‘ī view is that the residual net estate must go to the *bayt al-māl* on the condition that it is “properly administered according to the law” (Coulson, 1971, p. 49). Imam al-Shāfi‘ī’s opinion was that the *bayt al-māl* is a representative of the ‘*aṣabah* legal heirs. He recognised *dhawū al-arḥām*, but the *bayt al-māl* is of higher priority to receive the residue, and thus, *dhawū al-arḥām* cannot receive the residual net estate.

The Shāfi‘ī/Mālikī argument against returning the residual net estate to the *farḍ* heirs or *dhawū al-arḥām* is based on the following Qur’ānic passage:

Those are the limits set by Allah: those who obey Allah and His Messenger will be admitted to Gardens beneath which rivers flow, to abide therein (forever) and that will be the supreme achievement. But those who disobey Allah and His Messenger and transgress His limits will be admitted to a Fire, to abide therein, and they shall have a humiliating punishment (Qur’ān, 4:13-14).

In addition, the Shāfi‘ī and the Mālikī School rely on the following *ḥadīth*:

«إِنَّ اللَّهَ قَدْ أُعْطِيَ كُلَّ ذِي حَقٍّ حَقَّهُ فَلَا وَصِيَّةَ لِرِثٍ»

Allah has given everyone with a right their due right; thus, there shall be no bequest for an heir (Doi and Abdassamad, 2008, p. 505).

They interpreted the above-mentioned Qur'ānic verses and *ḥadīth* to indicate that we cannot change the shares of those who have received the shares defined for them in the Qur'ān. Thus, the residual net estate must go to the *bayt al-māl* as the residuary heir ('*aṣabah*).

Sūrah al-Nisā' (Qur'ān, 4:13-14) did not specifically mention where the residual net estate will go. It does not state that the residual net estate must not go to the *farḍ* legal heirs. Nor does it mention that the residue must go to the *bayt al-māl*.

The Shāfi'ī/Mālikī argument seems to conflict with the doctrine of '*awl*', which is applied to cases where the defined Qur'ānic shares for the *farḍ* legal heirs add up to a total greater than one. In this case, the practice of the Companions was to adjust the denominators of each fraction, and thus, reduce each Qur'ānic share proportionally, including that of the surviving spouse.

#### *The Hanafī and Hanbalī views*

Imam Abū Ḥanīfah, Imam Aḥmad ibn Ḥanbal and the majority of the scholars of that time did agree that the *bayt al-māl* acted as the public treasury or represented the legal heir. However, it is not closer to the deceased compared to the deceased legal heirs. The *bayt al-māl* is linked to the deceased by religion, while the legal heirs are linked to the deceased by blood ties or marriage and religion. They are much closer to the deceased. That being the case, the residual net estate must not go to the *bayt al-māl*. It should be returned to the *farḍ* legal heir or *dhawū al-arḥām* when they are present. This is according to the views of Imam 'Alī ibn Abī Ṭālib, Ibn 'Abbās, Ibn Mas'ūd, and the majority of the Companions (Al-Zuhaili, 2007, p. 436). *Bayt al-māl* will only receive the residual net estate through escheat when there is no legal heir. Their argument is based on the following verse from Sūrah al-Aḥzāb:

The Prophet has a higher claim on the believers than [they have on] their own selves, and his wives are their mothers. In Allah's Scripture, blood-relatives have a stronger claim than other believers and emigrants, though you may still bestow gifts on your protégés. All this is written in the Scripture (Qur'ān, 33:6).

*Farḍ* legal heirs and *dhawū al-arḥām* are heirs by blood, except a spouse, who is heir by marriage. Such a relationship is much closer to the deceased than any stranger or even the Muslim community as a whole as represented by the *bayt al-māl* (Al-Zuhaili, 2007, p. 436). The *farḍ* legal heirs will receive their Qur'ānic shares as per the Qur'ān while the residue will either go to the *dhawū al-arḥām* or back to the *farḍ* legal heirs.

#### **Defining the surviving legal heirs in *farā'id* law**

Legal heirs are well defined in the Qur'ān, Sūrah al-Nisā' (4:7, 8, 9, 11, 12, 33, 176), Sūrah al-Aḥzāb (33:6) and *ḥadīths*.

Abū Hurayrah narrated that the Prophet said:

«أَنَا أَوْلَىٰ بِالْمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ، فَمَنْ تُوَفِّيَ مِنْ الْمُؤْمِنِينَ فَتَرَكَ دَيْنًا، فَعَلَيْ قَضَائِهِ، وَمَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ»

I am closer to the believers than their own selves, so whoever (of them) dies while in debt and leaves nothing for its repayment, then we are to pay his debts on his behalf; and whoever (among the believers) dies leaving some property, that property is for his heirs. (al-Bukhārī, 1422H, Vol. 3, p. 97, no. 2298; IIUM, 2005, Volume 8, Book 80, Number 723).

Ibn 'Abbās narrated that the Prophet said:

«الْجُفُورَا الْفَرَائِضَ بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَىٰ رَجُلٍ ذَكَرَ»

Give the *farā'id* (the shares of the inheritance that are prescribed in the Qur'ān) to those who are entitled to receive them. Then, whatever remains should be given to the closest male relative [of the deceased]. (al-Bukhārī, 1422H, Vol. 8, p. 150, no. 6732; IIUM, 2005, Volume 8, Book 80, Number 724)

In summary, the legal heir is a natural Muslim person related to the deceased by blood ties or marriage or by contract. This summary is also well supported by all the books mentioned in AMLA, Chapter 3, s114.1.

Surviving legal heirs are related to the deceased in a variety of ways:

- blood relation;
- marriage;
- by contract (*walā'*); and
- by religion, which is not an easy matter (Baillie, 1875, p. 684; Coulson, 1971, p. 10, 22; Ibn Rushd, 1996, p. 411; Nawawi, 2001, pp. 246-247; Fyzee, 2008, pp. 320-336).

*Mawālī* heirs (related by contract) are not currently applicable in Singapore. The current practice in Singapore regarding the *farā'id* formula relies on the early Shāfi'ī opinion, whereby the categories of legal heirs are as follows (Syariah Court of Singapore, 2017):

- *Fard* (Qur'ānic heir): wife, husband, daughter, father, mother, sister, uterine sibling, etc.
- *'Aṣabah* (usually from male agnates): son, brother, son and daughter, brother and sister, uncle, etc.
- *Bayt al-māl*: *Bayt al-māl* is defined in the Commentaries of Mahommedan Law as the State Treasury. Thus, it collects all form of revenues, like taxes, etc. for the state and disposes them to the respective sectors in the government. One of the sources of revenue is an unclaimed estate when there is no *fard*, *'aṣabah* or *dhawū al-arḥām* legal heir (Ali, 2005, p. 1137). Technically, the estate is escheat to *bayt al-māl* when there is no legal heir. *Bayt al-māl* has no right to acquire the residue when there is a surviving *fard* (Qur'ānic heir) or *dhawū al-arḥām* (kinsman/outer family).
- *Dhawū al-arḥām* (outer family): *Bayt al-māl* has priority over *dhawū al-arḥām* according to the Shāfi'ī and Mālikī Schools (Ali, 2005, p. 1082). They adopt Zayd ibn Thābit's view, which was a minority view among the Ṣaḥābah. The majority of them, however, were not inclined to have the *bayt al-māl* inherit the residual net estate (Al-Zuhaili, 2007, p. 345). *Dhawū al-arḥām* includes daughter's children, sister's children, brother's daughters, etc. The contemporary Shāfi'ī and Mālikī Schools practise the *radd* doctrine (Ali, 2005, p. 1084), allowing *dhawū al-arḥām* to receive the net residue estate.

The fact that the *bayt al-māl* is not a legal heir is supported by AMLA, Chapter 3, s114.1, in the books *Minhāj al-Tālibīn* (Nawawi, 2001, p. 247), *Muhammadan Law, The Personal Law of Muslims* (Badruddin, 1940, p. 895), *Outlines of Mohammadan Law* (Fyzee, 2008, p. 332), *Mahommedan Law* (Ali, 2005, p. 1047) and *Anglo-Muhammadan Law* (Wilson, 1921, p. 265).

According to the early Shāfi'ī School, the *bayt al-māl* can inherit when there is residual net estate after the *fard* legal heirs have received their shares and there is no *'aṣabah* legal heir. According to the contemporary Shāfi'ī School, this is only possible on condition that *bayt al-māl* is "properly administered according to the law" (Coulson, 1971, p. 50; Nawawi, 2001, p. 247). The questions are, do we have a *bayt al-māl* in Singapore and is it "properly administered according to the law"?

*Baitulmal (bayt al-māl) in Singapore's context*

While there is an express provision for the setting up of the general endowment fund (the fund) as in AMLA, s57(1), "A fund to be known as the general endowment fund is hereby established", the same cannot be said of the *bayt al-māl*. The only references to the *bayt al-māl* in the whole of AMLA are the passing references made in Section 58(1) and Section 59. Nothing in AMLA states that *bayt al-māl* is a legal heir or a beneficiary to a Muslim's net estate.

S 58 – 1, *Wakaf or Nazar Am*

Where, after 1st July 1968, any Muslim person dies in such circumstances that, under the provisions of the Muslim law, his property would vest in, or become payable to, the Baitulmal, the property of that person, in pursuance of such provisions, shall vest in and become payable to the Majlis and form part of the Fund.

This section states that when a person does a *wakaf* or *nazar am*, which is a charitable contribution, the amount is to be paid to the *bayt al-māl*. Nothing in this section states that *bayt al-māl* can inherit a Muslim net estate when the deceased dies intestate or testate. *Bayt al-māl* in Singapore is merely part of the general endowment fund that is managed by MUIS. It is neither even defined as an entity nor is it similar to the *bayt al-māl* during the era of the Prophet (SAW) and the Companions, when it was well-established as the State Treasury, as defined in *Commentaries of Mahomedan Law*. One of its many functions was to inherit unclaimed net estate, which was claimed for it via escheat (Ali, 2005).

S 59, *Vesting of wakaf and nazar am in Majlis*

All property subject to Section 58 shall if situate[d] in Singapore vest in the Majlis, without any conveyance, assignment or transfer whatever, for the purpose of the Baitulmal, wakaf or nazar am affecting the same.

This section defines that the Majlis (MUIS) will manage all the property that is *wakaf* or *nazar* or *bayt al-māl* located in Singapore. It is another piece of evidence that the *bayt al-māl* is not an entity, which makes it difficult to be "properly administered according to the law".

Thus, it is difficult to ensure the fulfilment of the only condition by which the *bayt al-māl* can receive the inheritance. Most contemporary Shāfi'ī authorities admitted that the political circumstances of the Islamic world in all but a few decades prevented the *bayt al-māl* from being "properly administered according to the law" and accordingly from being a legal heir (Coulson, 1971, p. 50).

The question then arises whether, in the absence of legislation establishing *bayt al-māl*, MUIS can claim a right to the deceased's residual net estate in case there is no 'aṣabah legal heir? Before answering the question, it is convenient at this juncture to briefly describe the body vested with the authority to certify the persons who are entitled to a share in the estate of a deceased.

## S115, Inheritance certificate:

- If, in the course of any proceedings relating to the administration or distribution of the estate of a deceased person whose estate is to be distributed according to the Muslim law, any court or authority shall be under the duty of determining the persons entitled to share in such estate or the shares to which such persons are, respectively, entitled, the Syariah Court may, on a request by the court or authority or on the application of any person claiming to be a beneficiary and on payment of the prescribed fee, certify upon any set of facts found by such court or authority or on any hypothetical set of facts its opinion as to the persons who are, assuming such facts, whether as found or hypothetical, entitled to share in such estate and as to the shares to which they are, respectively, entitled.

- The Syariah Court may, before certifying its opinion, require to hear the parties on any question of law, but shall not hear evidence or make findings on any question of fact.
- In any case of special difficulty, the Syariah Court may refer the question to the Legal Committee for its opinion and shall, if such opinion be given, certify in accordance therewith.

This section defines that the beneficiary of the estate of a deceased person can only be a natural person, not the *bayt al-māl*. It seems to contradict AMLA, cap 3, s115, where the Syariah Court states that *bayt al-māl* is a beneficiary when there is no surviving legal heir in the Inheritance Certificate.

We found no evidence for the “fact” that the *bayt al-māl*, as mentioned in AMLA, s58.1 and s59, is the state or public treasury in Singapore. Thus, it is impossible to evaluate if it is “properly administered according to the law”. It is just a part of the general endowment fund. MUIS is a body authorised to manage funds for Muslims in Singapore. It looks after assets and revenues from which the Muslim public could benefit. In Singapore, the revenue collected by the *bayt al-māl* is commonly the residual net estate, as reflected in [Table I](#). *Bayt al-māl* has claimed about SGD 21,800,000 over the past 15 years (refer to [Table II](#)).

In summary, the residual net estate of deceased Muslims, which are claimed by the *bayt al-māl* falls in the following scenarios, as in [Table I](#).

- There is only a *farḍ* or *dhawū al-arḥām* legal heir as in all the cases in the Shāfi‘ī School.
- There is only a surviving spouse as the legal heir as in cases number 5 and 8 for the Ḥanafī School.
- There is no Muslim beneficiary, even though the deceased may leave behind non-Muslim dependents as in Cases number 10 and 11.

Summary of the relevant facts distilled from the previous s115 are as follows:

- The Inheritance Certificate is an opinion on a given set of facts.
- The beneficiary must be a natural person.
- The current practice of issuing the Inheritance Certificate relies on the early Shāfi‘ī opinion.
- There is no mention of *dhawū al-arḥām* legal heirs as non-beneficiaries to the estate.
- There is no mention that *bayt al-māl* can inherit the estate.
- The Syariah Court will refer to MUIS Legal Committee’s opinion in any case of exceptional difficulty.

The current practice, when there is no ‘*aṣabah* legal heir, is that the Syariah Court will typically certify in the Inheritance Certificate that the *bayt al-māl* is entitled to the deceased’s residual net estate. The fatwa from MUIS Legal Committee seems to influence the outcome of the Inheritance Certificate ([MUIS, 1998](#), p. 30, Q. 47).

*Bayt al-māl being “properly administered according to the law”*

The performance of *bayt al-māl* as being “properly administered according to the law” is an essential consideration for *bayt al-māl* to receive the residual net estate. However, there is no clear definition of the method or any key performance indicator that the Muslims can use to measure the performance of *bayt al-māl* to meet the condition of being “properly administered according to the law”. Muslim scholars have not defined

| Case no. | Legal heirs/ dependents (no other Muslim legal heir, except those mentioned) | Shāfi'ī School                        |  | Ḥanafī School                       |  |
|----------|--|---------------------------------------|--|-------------------------------------|--|
|          |  | Legal heirs/ dependents' shares       | Current (early view) practices residual net estate that goes to <i>bayt al-māl</i> | Legal heirs/ dependents' shares     | Current (early view) practices residual net estate that goes to <i>bayt al-māl</i> |
| 1        | Widower and daughters  | $\frac{1}{4} + \frac{2}{3}$<br>91.67% | $\frac{1}{12}$<br>8.33%  | $\frac{1}{4} + \frac{3}{4}$<br>100% | 0<br>0%  |
| 2        | Widow and daughters  | $\frac{1}{8} + \frac{2}{3}$<br>79.17% | $\frac{5}{24}$<br>20.83%   | $\frac{1}{8} + \frac{7}{8}$<br>100% | 0<br>0%  |
| 3        | Daughters or sisters   | $\frac{2}{3}$<br>67.67%               | $\frac{1}{3}$<br>33.33%  | 1<br>100%                           | 0<br>0%  |
| 4        | Widow and daughter   | $\frac{1}{8} + \frac{1}{2}$<br>52.5%  | $\frac{3}{8}$<br>37.5%   | $\frac{1}{8} + \frac{7}{8}$<br>100% | 0<br>0%  |
| 5        | Only widower   | $\frac{1}{2}$<br>50%                  | $\frac{1}{2}$<br>50%   | $\frac{1}{2}$<br>50%                | $\frac{1}{2}$<br>50%   |
| 6        | Only daughter or sister  | $\frac{1}{2}$<br>50%                  | $\frac{1}{2}$<br>50%   | 1<br>100%                           | 0<br>0%  |
| 7        | Mother   | $\frac{1}{3}$<br>33.33%               | $\frac{2}{3}$<br>67.67%  | 1<br>100%                           | 0<br>0%  |
| 8        | Widows with no children (widows will share equally)                          | $\frac{1}{4}$<br>25%                  | $\frac{3}{4}$<br>75%   | $\frac{1}{4}$<br>25%                | $\frac{3}{4}$<br>75%   |
| 9        | Only uterine sister or brother   | $\frac{1}{6}$<br>16.67%               | $\frac{5}{6}$<br>83.33%  | 1<br>100%                           | 0<br>0%  |
| 10       | Non-Muslim parent/children/spouse/siblings                                   | 0<br>0%                               | 1<br>100%  | 0<br>0%                             | 1<br>100%  |
| 11       | Adopted children/siblings or foster parents                                  | 0<br>0%                               | 1<br>100%  | 0<br>0%                             | 1<br>100%  |
| 12       | <i>Dhawū al-arḥām</i>  | 0<br>0%                               | 1<br>100%  | 1<br>100%                           | 0<br>0%  |

**Table I.**  
The application of *farā'id* law in the Shāfi'ī School and Ḥanafī School

Source: Authors' own

**Table II.**  
Inheritance in SGD '000 collected by *bayt al-māl* in the last 15 years

|          |       |       |       |       |       |       |      |       |      |
|----------|-------|-------|-------|-------|-------|-------|------|-------|------|
| Year     | 2017  | 2016  | 2015  | 2014  | 2013  | 2012  | 2011 | 2010  | 2009 |
| SGD '000 | 2,423 | 1,444 | 1,141 | 1,542 | 4,026 | 1,583 | 987  | 2,199 | 834  |
| Year     | 2008  | 2007  | 2006  | 2005  | 2004  | 2003  |      |       |      |
| SGD '000 | 1,025 | 325   | 1,290 | 1,509 | 595   | 877   |      |       |      |

Source: MUJS (2004-2018) Annual Reports 2004-2018

and agreed upon those elements in this era. As such, the performance of *bayt al-māl* today is also not measured by the community. Unfortunately, this undefined condition creates *gharar* (uncertainty). When there is *gharar* in any practice, we are encouraged not to comply with those practices. As the controversial condition for *bayt al-māl*

creates *gharar*, for *bayt al-māl* to receive the residual net estate in today's context is improper.

What is inevitable today is that the *bayt al-māl* in Singapore or in any other Muslim and non-Muslim countries is far different from the past *bayt al-māl*. That is, the main reason why the contemporary scholars of the four Sunni schools and the legislation or legal practices in many Muslim and non-Muslim states are not inclined to hand over the residual net estate to *bayt al-māl*, unless through escheat.

It is only the early doctrine of the Shāfi'ī and Mālikī schools that allows the residual net estate to go to the *bayt al-māl* when there are still surviving legal heirs (Nawawi, 2001, p. 247). Brunei Darussalam (State Mufti's Office, 2000, pp. 140-141) and Malaysia also practised this doctrine. The *bayt al-māl* mentioned in Imam Shāfi'ī's era is not the same *bayt al-māl* mentioned in AMLA, s58.1. Moreover, the Qur'ān (4:7, 11, 12, 33, 176) mentions the legal heir to be a natural person related to the deceased by blood or marriage and religion, and that is confirmed in AMLA, Chapter 3, s115.

Modern Shāfi'ī and Ḥanafī opinion excludes the *bayt al-māl* from inheriting the residual net estate and adopts the *radd* doctrine when there are legal heirs; the residual net estate is returned to the surviving legal heir, even to the spouse, if he/she is the only surviving legal heir as in *Sajidabanoo vs Mahomed Arshad Chowdhry* (1878) ILR 3Cal 703 in Calcutta (Kemp, 1878). The article, "Concept of al-radd in Islamic estate law", supported this view (Muda, 2003, p. 55). The majority of the four Sunni schools are of the opinion that when there is no surviving legal heir the *bayt al-māl* will receive the residual net estate by way of escheat, as stated in *Succession in the Muslim Family Law* (Coulson, 1971, p. 50), *Outline of Mohamman Law* (Fyzee, 2008, p. 332), *Mahommedan Law* (Ali, 2005, p. 1137) and *The Islamic Law of Malaya* (Ibrahim, 1965, p. 290).

The Muslim authorities in Singapore have not adopted this contemporary practice. In the current practice, the residual net estate will be returned to the surviving legal heir other than the spouse if the deceased followed the Ḥanafī School. If the spouse is the only legal heir, *bayt al-māl* will take the residual net estate after giving the spouse the Qur'ānic share regardless of the school.

### Issuing inheritance certificate in Singapore

Inheritance Certificate is a certificate issued by the Syariah Court of Singapore stating its opinion on the persons entitled and the shares in the estate of a deceased. It is a requirement in the probate process. Currently, in Singapore, the Inheritance Certificate can only be issued by the Syariah Court through its e-Inheritance Certificate application. The application is solely following the early *farā'id* views of the Shāfi'ī School. If the application is made based on another School, like the Ḥanafī, the Syariah Court official will process the Inheritance Certificate manually based on the early *farā'id* view of the School of the deceased.

The e-*farā'id* software in the Singapore Syariah Court only prompts for the details of the deceased's *farā'id* and *ʿaṣabah* legal heirs; for example:

- Female inheritors (beneficiaries).
- Daughter, mother, sons of daughter (granddaughter from the son), mother's mother (maternal grandmother), father's mother (paternal grandmother), sister (germane; same father and mother), consanguine sister (same father), uterine sister (same mother) and wife.
- Male inheritors (beneficiaries).

- Son, son's son (grandson from the son), father, father's father (paternal grandfather), brother (germane: same father and mother), consanguine brother (same father), uterine brother (same mother), nephew (son of the germane brother), consanguine nephew (son of the consanguine brother), uncle (germane brother of the father), consanguine uncle (consanguine brother of the father), male cousin (son of brother of the father) and consanguine male cousin (son of consanguine brother of the father).

The details for the *dhawū al-arḥām* are not prompted by the system as required in the contemporary *farā'id*. It means that the system available for Muslims is that of the early Shāfi'ī School when applying the Inheritance Certificate. Other than the Shāfi'ī School; for example, the Ḥanafī School, the Syariah Court official has to manually modify the *e-farā'id* output, and there is also need to input the *dhawū al-arḥām* legal heirs' details.

### Contemporary practices of the four Sunni schools

The condition set by classical Shāfi'ī and Mālikī scholars is that *bayt al-māl* is a public treasury or is a representative of the *'aṣabah* so that it can inherit the residual net estate when it is "properly administered according to the law" (Coulson, 1971, p. 50; Nawawi, 2001, p. 247). N J Coulson explains the meaning of: "properly administered according to the law":

[...] to be that its existence and organisation as a function of state should be strictly following the constitutional precept of Shari'ah doctrine which, inter alia, precisely defines the mode of expenditure of its revenues.

Technically *bayt al-māl* should act for the state, not for a select group, and it is supposed to operate and manage in accord with the Shari'ah. Most contemporary Shāfi'ī scholars and Mālikī authorities consider Imam al-Ghazālī's view to apply to today's situation (Al-Zuhaili, 2007, p. 436). That is, when a country's functioning is in the hands of politicians, not Muslim authorities or scholars, it prevents *bayt al-māl* from being "properly administered according to the law" in accordance with the constitutional precept of the Shari'ah doctrine. Thus, most contemporary Shāfi'ī and Mālikī scholars tend to adopt the Ḥanafī and Ḥanbalī opinion on the residual net estate.

Contemporary Ḥanafī, Ḥanbalī, Mālikī and Shāfi'ī scholars hold that the residual net estate will first go to the inner family (*farḍ* legal heirs), followed by the *dhawū al-arḥām* (outer family) in the absence of inner family. Finally, it will go to the *bayt al-māl* as escheat when there are no legal heirs (i.e. *farḍ* legal heirs, *'aṣabah*, and *dhawū al-arḥām*) (Coulson, 1971, p. 50).

### Legislation of the four Sunni schools in some Muslim and non-Muslim countries

Legislation in Muslim countries recognises that today's *bayt al-māl* is not able to function as the state or public treasury as in the past. Thus, it is difficult to adopt the previous stand that *bayt al-māl* is or represents, the *'aṣabah*. Hence, the residual net estate should go to heirs related by blood ties or marriage.

The legislation in Yemen, which adopts the Shāfi'ī School, recognises the *radd* doctrine; the residual net estate is returned to the *farḍ* legal heirs proportionately but not to the surviving spouse. The residual net estate will go to the *bayt al-māl*, not to the spouse.

The legislation in Tunisia, a state that predominantly practices the Mālikī School, did not give the residual net estate to the spouse before 1959. After 1959, it changed; the *radd* doctrine was recognised and implemented. The residue can go to the surviving spouse. They

treat the surviving spouse like any other *farḍ* legal heir; he/she will share the *radd* with others proportionately. Tunisia still does not recognise *dhawū al-arḥām*.

Indian and Pakistani legislation have also adopted the changes with a slight modification by allowing the spouse to receive the residual net estate in the absence of all other legal heirs (Kemp, 1878; Fyzee, 2008, p. 405, 426). It means that if there are *dhawū al-arḥām*, the spouse will not inherit the residual net estate. That will go to the *dhawū al-arḥām*. Sudan adopted this view in 1925.

The legislation of Egypt and Syria, which have majority Ḥanafī populations, also adopted the changes, but with a difference; that is, by returning the residue to the spouse even though there are *dhawū al-arḥām*. *Dhawū al-arḥām* will get their share when there are no other surviving legal heirs, such as a spouse, children, parent, grandparent, sibling, agnatic uncle or nephew from the agnatic uncle.

It is interesting to note that Indonesia, whose population is predominantly of the Shāfiʿī School, adopted Sayyidina ʿUthmān ibn ʿAffān’s version of the *radd* doctrine. That is, all *farḍ* legal heirs, including the spouse, are equally treated. They are to receive the residual net estate in proportion to their Qurʾānic shares. It is documented in June 1991 in the Indonesian constitution on Muslim law in the book, “Kompilasi Hukum Islam, Juni 1991, Bab IV, Pasal 193”.

### Authority to legislate Muslim estate law in Singapore

The authority in Singapore to legislate Muslim law on estate matters lies with the civil court as defined in AMLA, Chapter 3, s1, the State Courts or High Court, not the Syariah court. The civil court can also make a judgement on any hearing of Muslim estate based on Muslim law as defined in AMLA, Chapter 3, s114.

There is no specific section that gives MUIS the authority to legislate Muslim estate matters. They can only give fatwa, an opinion, as in AMLA, Chapter 3, s32.

The Syariah Court is confined only to giving an opinion as defined in AMLA, Chapter 3, s115 on a person’s entitlement and his/her respective shares by issuing the Inheritance Certificate. It means that the Inheritance Certificate is not the final word in distributing the estate of a Muslim.

Unfortunately, Singaporeans (Muslims and non-Muslims) have the misconception that the authority to legislate Muslim law on estate matters lies with MUIS and the Syariah Court. They treat the Inheritance Certificate as the final word on Muslim law. They also treat MUIS’s fatwas (legal opinions) as a “revelation” that must be complied with. Questioning or challenging the Inheritance Certificate and fatwas seem “sinful”; as such, many remain silent on the subject.

In the classical tradition, the *farḍ* legal heirs with blood relationships such as mother, daughter, sisters and so on will receive the residual net estate except for the spouse. Sūrah al-Aḥzāb supports this practice:

The Prophet has a higher claim on the believers than [they have on] their own selves, and his wives are their mothers. In Allah’s Scripture, blood-relatives have a stronger claim than other believers and emigrants, though you may still bestow gifts on your protégés. All this is written in the Scripture (Qurʾān, 33:6).

As such, there are arguments by some scholars that the spouse, husband or wife, cannot receive the residual net estate as they are heir to the deceased not by blood-ties but by marriage. The tie dissolves when one of the spouses dies. It differs from the blood relationship; the ties never dissolve after the death of any family members. The prescribed amount they receive is thus as mentioned in Sūrah al-Nisā’ (Qurʾān, 4:12).

Some scholars argue that the maximum amount the husband can receive is  $\frac{1}{2}$  and the wife  $\frac{1}{4}$ .

Sayyidina ‘Uthmān ibn ‘Affān, the third caliph and Jābir ibn Zayd are the exceptions who took the view that the spouse can inherit the residual net estate similar to *farḍ* legal heirs who have blood relationship (Doi and Abdassamad, 2008, p. 484). They should share the residual net estate on a prorated basis like others.

### Reform and legislating of the residual net estate or *radd* doctrine in Emory University Islamic family law archive

Sharī‘ah law is always characterised as a divine ordain that is eternally valid and immutable. The issue is not Sharī‘ah law *per se*, but the interpretation based on past and new knowledge and its application in different times, locations and situations, which are the drivers of this reform and development. There are thus various developments of Muslim law in different Muslim countries regarding the treatment of the residual net estate. In some countries the *farḍ* legal heirs are prioritised over *bayt al-māl* to receive the residual net estate; in some others, it is the *dhawū al-arḥām* (Ahmed, 2019).

- *Syria*: The Law of Personal Status 1953 (Syria Family Law 1953); in inheritance matters, a reform extended the *radd* doctrine to allow the surviving spouse to share in the residue of the deceased spouse’s estate.
- *Egypt*: Egypt Inheritance Law 1943; a notable reform was introduced by legislation in 1946. The *radd* doctrine was also extended to allow the surviving spouse to share in the residue of the deceased spouse’s estate.
- *Yemen*: The *radd* doctrine was extended to allow the *farḍ* legal heirs to share in the residual net estate in proportion to their share, excluding the spouse.
- *Sudan, Algeria, India, Pakistan and Jordan*: The *radd* doctrine was extended to allow the *farḍ* legal heirs, including the spouse, to share in the residual net estate.
- *Tunisia*: The Law of Personal Status, 1956; the *radd* doctrine was extended to allow the *farḍ* legal heirs, including the spouse, to share the residual net estate. When there are daughters, the paternal uncle should not get a share.
- *Indonesia*: Kompilasi Hukum Islam, Juni 1991, Bab IV, Pasal 193, stated that the *radd* doctrine was extended to allow the *farḍ* legal heirs, including the spouse, to receive the residual net estate in proportion to their Qur’anic shares.

There are also reforms made in many other countries about the *radd* matter (Muda and Awang, 2006, p. 132). Such developments reflect the up-to-date and dynamic nature of the Sharī‘ah, which enable it to accomplish *maqāṣid al-Sharī‘ah* in any corner of the world and in any era.

Contemporary Shāfi‘ī and Mālikī scholars are in favour of returning the residual net estate to legal heirs as argued by Ḥanafī and Ḥanbalī scholars (Al-Zuhaili, 2007, p. 435). These scholars tell us that the decision to prioritise the residual net estate for legal heirs over the *bayt al-māl* is more likely to achieve the *maqāṣid al-Sharī‘ah*.

AMLA, Chapter 3, s33, authority (school) to be followed:

- Subject to this section, the Majlis and the legal committee in issuing any ruling shall ordinarily follow the tenets of the Shāfi‘ī school of law;

- If the Majlis or the legal committee considers that the following of the tenets of the Shāfi'ī school of law will be opposed to the public interest, the Majlis may follow the tenets of any of the other accepted schools of Muslim law as may be considered appropriate but in any such ruling the provisions and principles to be followed shall be set out in full detail and with all necessary explanations; and
- In any case where the ruling or opinion of the Majlis or the legal committee is requested in relation to the tenets of a particular school of Muslim law, the Majlis or the legal committee shall give its ruling or opinion in accordance with the tenets of that particular school of Muslim law.

Muslims in Singapore predominantly subscribe to the classical Shāfi'ī School as stated in AMLA, Chapter 3, s33.1. The principal legislation about Singapore Muslim law, as stated in AMLA, Chapter 3, s33.2, makes provision for MUIS to adopt the practices or views of schools other than the Shāfi'ī School when it is prudent to do so to achieve the benefits that are required.

As mentioned earlier, the Qur'ān (4:11, 12, 176) and the *ḥadīths* – which are the primary sources of Muslim law – mention that the beneficiaries to the net estate are always natural person/s; they never mentioned that a non-person in the form of the *bayt al-māl* can inherit a Muslim net estate. Thus, this section is in harmony with Sayyidina 'Uthmān ibn 'Affān's view, the contemporary views of Ḥanafīs, Mālikīs, Shāfi'īs and Ḥanbalīs, and the legislation of some Muslim and non-Muslim countries on the *radd* doctrine. *Bayt al-māl* can only inherit through escheat when there is no surviving legal heir who is a natural person.

Thus, stating *bayt al-māl* as a beneficiary in the Inheritance Certificate is in contradiction to the primary sources of Muslim law, to AMLA s115, and the Constitution of the Republic of Singapore, article 12.1 (Singapore Parliament, 1965).

## Results and discussion

*Maṣlahah mursalah* (public interest), as argued by Kamali (1998, p. 267), is an accepted Shari'ah principle based on the needs of the community. It encourages the betterment of the community or lessens something that threatens the well-being of the community. The deduction of this concept is from some Qur'ānic verses such as Sūrah al-Ḥajj (22:78):

And strive in His cause as you ought to strive [with sincerity and under discipline]. He has chosen you and has imposed no difficulties on you in religion [ . . . ]

AMLA, Chapter 3, 33(2) quoted this principle. This section allows MUIS to adopt other practices from the same school or another school or legislation in other Muslim and non-Muslim countries that can achieve *maṣlahah mursalah* if the existing ruling is against public interest. It is in line with the view of Sayyidina 'Uthmān ibn 'Affān – which was also adopted by the contemporary Ḥanafī and Mālikī schools and by other Shāfi'ī scholars, and legislation in some Muslim and non-Muslim countries – that allows the residual net estate to be returned to the *farq* legal heirs, including the spouse or *dhawū al-arḥām*.

The principle of *maṣlahah mursalah* is a reasonable and sensible justification on why the residual net estate can be returned to the *farq* or *dhawū al-arḥām* legal heirs or even the sole surviving spouse (Shalabi, 1978, p. 266). It helps to maintain the relationship and responsibilities that exist between the family or couple during their lifetimes. Thus, is it not better for them to receive the residue instead of the *bayt al-māl*?

MUIS's justification for *bayt al-māl* receiving the residual net estate is that its use for the public good will be considered ongoing charity (*sadaqah jāriyah*) by the deceased. Their argument of benefitting the public is complicated for us to digest. The principle of fulfilling

one's responsibility towards legal heirs and dependents takes priority over any ongoing charity on behalf of the deceased. Prophet Muhammad (SAW) showed how he distributed the estate. He cleared the deceased's debts first before exercising the *waṣiyyah* (will), even though Sūrah al-Nisā' (4:11, 12) mentions *waṣiyyah* before clearing a debt. The sensible process is to discharge the deceased's obligation before performing a good deed on his behalf. The deceased's obligation includes the responsibility of ensuring that the family is not worse off after a death in the family. It is also well supported by the *farā'id*, whereby two-thirds ( $\frac{2}{3}$ ) of the net estate is reserved for the beneficiaries who are heirs to the deceased by blood ties or marriage, and *waṣiyyah* is limited to one-third ( $\frac{1}{3}$ ).

A relevant incident involved a man who had to pay *kaffārah* (expiation) to the poor and needy due to a misdeed on his part. Prophet Muhammad (SAW) instructed him to give the *kaffārah* to his needy family, as recorded in the translation of *Ṣaḥīḥ al-Bukhārī*, Volume 8, Book 79, Number 700 (IIUM, 2005). The responsibility towards the family comes before others in the community.

In summary, the practice of denying the family or dependents their needs from the net estate by giving that residual net estate to the *bayt al-māl* as a good deed of the deceased is not consistent with the Sharī'ah. The evidence presented to support the residual net estate going to the *bayt al-māl* is weak in its indication of the view, which cannot be sensibly justified based on Muslim law.

In general, the findings of the study revealed that the justification for the *bayt al-māl* to receive the residual net estate is no longer relevant in Singapore in today's context. The return of the residual net estate to *farḍ* or *dhawū al-arḥām* legal heirs is more justifiable and fulfils the *maqāṣid al-Sharī'ah* and the statute and constitution of Singapore.

### Conclusion

In today's context, the *bayt al-māl* does not function as the *bayt al-māl* during the victorious decades of the Muslim empire. It no longer supports the full needs of the needy in the Muslim community, especially the legal heirs or the dependents (Muslim or non-Muslim) of the deceased.

Recommendations are made in four areas to practise the *radd* doctrine in Singapore effectively.

#### *Islamic Religious Council of Singapore (Bayt al-māl)*

MUIS, in principle, must prioritise the needs of the deceased's legal heirs and dependents. It is possible by accepting the contemporary practice and current legislation on *radd* doctrine as practised by many Muslim and non-Muslim countries, by returning the residual net estate to the *farḍ* or *dhawū al-arḥām* legal heirs or dependants.

MUIS can advise the Syariah Court to adopt the contemporary Ḥanafī School as stated in AMLA, Chapter 3, s115.3:

In any case of special difficulty, the Syariah Court may refer the question to the Legal Committee for its opinion and shall, if such opinion be given, certify in accordance therewith.

MUIS legal committee should convince the Syariah Court to adopt the contemporary Sunni Schools' opinion where the residual net estate of a deceased with no '*aṣabah* legal heir goes to the *farḍ* or *dhawū l'arham* legal heirs and not to the *bayt al-māl*.

#### *Syariah Court*

To apply AMLA, Chapter 3, s33.2 and s33.3 state:

If the Majlis or the Legal Committee considers that the following of the tenets of the Shafi'i madhhab of law will be opposed to the public interest, the Majlis may follow the tenets of any of the other accepted madhhab of Muslim law as may be considered appropriate, but in any such ruling the provisions and principles to be followed shall be set out in full detail and with all necessary explanations.

In any case of special difficulty, the Syariah Court may refer the question to the Legal Committee for its opinion and shall, if such opinion be given, certify in accordance therewith.

These sections allow Muslims not to adopt the Shāfi'ī School if it harms the community. They can adopt other schools of jurisprudence that will remove the harm and benefit public interest. This means the Syariah Court should seek advice to adopt the contemporary Shāfi'ī or Hanafi School as stated in AMLA, Chapter 3, s1115.3

These sections of AMLA allow the Syariah Court to adopt the view of the third caliph, Sayyidina 'Uthmān ibn 'Affān, regardless of the *madh-hab* followed by the deceased, to achieve public interest.

### *Government*

As discussed, AMLA is a statute about Muslim affairs. The Singapore government should consider adopting legislation such as that in India, Pakistan, Indonesia, Tunisia and so on, on the *radd* doctrine. The legislation should allow all the Muslim heirs, including the spouse, to receive the residual net estate, and the *bayt al-māl* can only receive the residual net estate through escheat when there is no surviving Muslim heir.

In case the *bayt al-māl* receives the residual net estate when the deceased left a dependent who does not get any share from the estate, such as an adopted child, foster parents, aged non-Muslim parent or non-Muslim child, the civil court should make a recommendation or compel the *bayt al-māl* to exercise *ihsān* (excellence) by giving such persons something, as stated in the Qur'ān (4:8).

### *Muslim community*

Muslims must continuously learn about the principle of estate transfer as per the Sharī'ah, not just *farā'id* practices or relying on MUIS. They must resort to the Qur'ān and *ḥadīths*, not merely accept the fatwas or advice of some religious teachers. When there is a conflict in Sharī'ah law, especially in fatwas, one must return to the Qur'ān and *ḥadīths* as per Sūrah al-Nisā' (Qur'ān, 4:59).

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