

Rights Of Maintenance For Grandparents And Other Relatives Under Islamic Law In Malaysia

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ABSTRACT

Maintenance or nafqat is the plural for the word nafaqah . It means something which is given by a person of which he himself requires and needed by another consisting of food, drinks and others.¹ These may also include clothing and lodging.² Under Islamic law, it is incumbent upon family members to maintain each other mutually. The rule being that one party is in need while the other has the means to offer aid. A father, for instance, is to provide for his children. Equally, children are also to maintain their indigent parents. However, not much has been deliberated upon the right of a grandparent to receive support from his grandchild and vice versa, in Malaysia. Little is made known to the masses that a sibling is required to provide for a needy sibling, an uncle has a similar obligation towards a poor nephew and so forth. The right to be supported, however, does not include every family member for this is certainly impracticable and burdensome. Distant relatives therefore are naturally excluded. Difference of religion will also affect the right to receive support and it is also dependent on the closeness of one's relationship to the provider. Still, jurists hold different views on the said matters. This article therefore will look into the rights of grandparents, grandchildren and other relatives to acquire maintenance under the different schools of Islamic law. Reference will also be made to the Islamic Family Law (Federal Territories) Act 1984, hereinafter referred to as Act 303 in discussing the law in Malaysia as the provision in the said Act relating to maintenance of relatives is similar to the provisions in the other states.

MAINTENANCE OF GRANDPARENTS

The causes of maintenance under Islamic Law are blood relation, ownership and marital ties between spouses.³ Pertaining to blood relation, a family member is bound to support the other on the ground that they are a part of the other by way of relation and also based on the feelings of compassion.⁴ In discussing the right of maintenance for grandparents, it becomes inevitable not to discuss the parents' rights as further reading will reveal that both parties are treated alike in respect of *nafaqah*. As regards parents, the majority of *fuqaha* concur that maintenance is the right of parents. Several authorities are brought to substantiate this. The

Malikis, for instance, base their opinion on the following quranic verses⁵ viz. in Surah Luqman, verse 15 where Allah commands “ But if they (parents) strive with thee to make thee ascribe unto Me as partner that of which thou has no knowledge, then obey them not. Consort with them kindly.”, in Surah Al-Baqarah, verse 233 “ Mothers shall suckle their children for two whole years for those who wish to complete the suckling. The duty of feeding and clothing nursing mothers in a seemly manner is upon the father of the child. No one should be charged beyond his capacity. “ and also in Surah Al-Israa, verse 23 “.. And (show) kindness to parents.” A tradition of the Prophet, “Thou and thy property are thy father’s “ is also cited as authority for extending the right of maintenance to mothers by way of analogy or *qiyas*.⁶ Similarly, the Shafiis hold that the duty to provide for one’s parents is also based on the *quranic* injunctions and the *sunnah*.⁷ The Kifayatul Akhyar also cites Surah Al-Luqman, verse 15 and a tradition of the Prophet: “ Verily your children is a gift from Allah and their property are yours when you are in need of them” , as authorities. The Hanafis too hold that children are to support their parents base on the similar quranic verse.⁸

Although the *majority of fuqaha* are unanimous that maintenance is the right of parents, they however differ on its entitlement in respect of grandparents. For instance, the Malikis restrict the right of *nafaqah* to parents only.⁹ Conversely, the Shafiis, Hanbalis and Hanafis assert that a person is bound not only to support his parents but also his grandparents. The All-Umm states that it is incumbent upon a child to maintain his father who is incapable to support himself out of his own labour.¹⁰ This is so since the child exists from the father and that the right of a father is greater upon his child. It further adds that grandparents too have similar rights, no matter how remote since they are regarded as “father”.¹¹ Similarly, the Kifayatul Akhyar asserts that grandparents are treated like parents as well. After citing the various quranic injunctions and the *sunnah* as the basis of responsibility for maintaining parents, the Kifayatul Akhyar states that grandparents are included in the category of parents, as in the cases of emancipating a slave, the exemption of the punishment of *qisas* and so forth.¹² As for the Hanafis, according to the Hedaya it is incumbent upon a man to maintain his grandparents where they are in necessitous circumstances.¹³ Reason being that grandparents are regarded as parents since the former are vested with the similar authorities in matters of guardianship, inheritance and *hadhanah*, respectively, in default of the latter. The Hanbalis hold that fathers, how high soever are bound to maintain their children and are also entitled the same, irrelevant of the right to inherit.¹⁴ Thus this means that a maternal grandfather may claim maintenance although he has no right of inheritance against his grandchild from the daughter.¹⁵

Pertaining to the difference of religion, this will not hinder a non-Muslim grandparent from receiving maintenance. As has been aforementioned, parents and grandparents are treated alike to the right of support by their immediate descendant. Grandparents are still entitled to maintenance although they be of different religion. According to the Hanafis, “ ..in the case of difference of religion , a man is under no obligation to provide maintenance except his wife, his

parents, grandparents and grandchildren . “¹⁶ Their argument being that the verse pertaining to the basis of obligation for maintaining parents was revealed to a Muslim whose parents were infidels. The same thus applies in a situation where either grandparent is a non Muslim since a grandfather assumes the status of a father and a grandmother takes after the role of a mother in matters relating to inheritance, guardianship and *hadhanah* in default of either parent. The Shafiis equally agree that grandparents are to be maintained although they be of different religion. This finds support in the Minhaj-et-Talibin which firmly states that “Ancestors and descendants should maintain each other mutually without distinction of sex and religion..”¹⁷ Conversely, unlike the Hanafis and Shafiis, the Hanbalis hold that there is no obligation to provide support where either party is a non-Muslim.¹⁸

The duty to provide for a grandparent only exists where the said person is in a state of want. No one is therefore under any obligation to support another relation who is already in possession of sufficient subsistence to survive. The Hedaya asserts that “It is incumbent upon a person to provide maintenance for his father, mother, grandfathers and grandmothers if they should happen to be in necessitous circumstances..”¹⁹ Furthermore, according to the Kifayatul Akhyar, one of the conditions for parents to be supported is that they must not be in a state of affluence regardless that the parents are sick, mentally ill or blind as they are not in need.²⁰ And since parents and grandparents are treated alike, it follows that the same condition applies.

²¹ MAINTENANCE OF GRANDCHILDREN

Generally, the law also fixes the duty upon a person to provide for his relations other than the parents and grandparents. *Example gratia*, according to the Shafiis, maintenance is obligatory upon a family member on the basis of mutual relation, hence, a man is also to support not only his children but also his grandchildren, how low soever.²² Similarly, the Hanafis also accord the right of maintenance to a grandchild.²³ The Hanbalis further add that every child how low soever is entitled to maintenance regardless of the right to inherit.²⁴ Thus this means that a grandchild from the daughter is equally entitled to support as the grandchild from the son although the grandparent cannot inherit from either of the former grandchild unlike the latter.²⁵

The basis of the law for providing maintenance to grandchildren according to the Shafiis are similar to the authorities applicable to children²⁶ , *inter alia* the following quranic injunction and *sunnah*:

“And do not murder your children for fear of poverty.”²⁷

Rasulullah (s.a.w.) said to the wife of Abu Sufyan :

“Take from his (Abu Sufyan) property what is sufficient for yourself in equitable manner and what is sufficient for your child.”

In matters of *nafaqah* a grandchild is treated like ones child since there is similarity of parentage and want between both parties.²⁸ A grandchild, however, will only be supported subject to several conditions. Since children and grandchildren are treated alike in respect of the right of maintenance, it therefore follows that similar conditions apply to the latter.

Firstly, according to the Shafiis, the grandparent must be in a state of affluence *viz.* he is in possession of extra-sustenance for himself and his wife for one full day.²⁹ This means that if he possesses what is only sufficient for himself and his spouse, there is no duty upon him to provide for his grandchildren base on the following tradition reported by Muslim:

“ Begin with yourself. “

Secondly, the grandchild must be in a state of poverty and either a minor, or chronically sick which does not enable him to work or a lunatic.

Poverty has been defined to mean that the said grandchild is incapable of labour, hence if he is healthy, has attained puberty and is also capable to work, no duty is laid upon the grandfather to support him.³⁰

It should be noted that according to the Hanafis, a man is bound to support his infant child although he be poor on the ground that there is participation of blood.³¹ The same thus applies in the case of a grandfather. As a grandfather is regarded a father, it follows that a poor grandfather is still bound to maintain his needy grandchild.

Although the Hanafis, Shaffiis and Hanbalis agree that maintenance is due to grandchildren, the Malikis opine otherwise. According to the Malikis, maintenance is obligatory upon parents and children only who are immediately related and does not include other relations.³² For that reason, no maintenance is due to grandparents on either side as in the case where a grandparent is also not obliged to provide support for his grandchild.

With respect to religion, the Hanafis and Shafiis agree that similarity of faith is irrelevant when determining the right of support to a grandchild. The Hedaya states that difference of religion forbids the obligation of maintenance of any relation except wife, parents, grandparents, children and grandchildren.³³ Likewise as has been aforementioned, the Minhaj-et-Talibin states that family members are to maintain each other mutually without distinction of sex nor religion. As for the Hanbalis, where either one party is a Muslim and the other is not, for that reason there is no duty to give support.³⁴

MAINTENANCE OF SIBLINGS

Do siblings owe each other any obligation in respect of *nafaqah*? According to Hammudah Abd Al-Ati, it is generally agreed that the intra-generational relationship between siblings must be governed by kindness, love, equity and everything that is meant in the concept of *ihsan*.³⁵ However, he explains that jurists seem to differ in their opinion as to its specific application. Some state that it is the fixed responsibilities of siblings to maintain each other in needy circumstances. Failure to fulfill this duty indicates ingratitude and disrespect for blood ties which is punishable not only now but in the hereafter as well. Others however opined that *ihsan* between siblings means a general sentiment of compassion and consideration which does not amount to any particular compulsory pattern of help for needy individuals are actually the responsibility of the whole community and not only of the blood relations.³⁶

As for the Hanafis, they argue that it becomes obligatory upon a person to maintain his male relations within the prohibited degrees provided they are infant and indigent.³⁷ Pertaining to female relation within the similar degrees, the duty exists even though they are adults on the condition that they are in need. This duty extends to the adult male relations within the prohibited degrees who are poor and disabled or blind.³⁸ This means that according to the Hanafis, a sibling is required to maintain another sibling. The duty, however, is fixed on the condition that both parties are capable of inheriting from each other. Hence, there is no duty on a Muslim to provide for his non-Muslim brother since the latter acquires no inheritance from the former.³⁹ Also, since the right to support is dependant on the condition to inherit, it follows that the amount of maintenance to be provided is in proportion to inheritance. For instance, an indigent man with full, paternal and maternal sisters who are with means must provide maintenance to him in five shares. The full sister must furnish three-fifths of the maintenance while the paternal and maternal sisters are each to provide one fifth.⁴⁰ Unlike the Hanafis, although the Hanbalis impose the duty of maintaining one's relatives (besides parents how high so-ever and children how low so-ever) on the basis of inheritance, this is so regardless of whether they are within the prohibited degree or otherwise. Furthermore, a fundamental condition to the right of maintenance is that parties must profess the similar faith which is also the necessary condition for succession.⁴¹ Conversely, according to the Shafis, the duty to provide support does not include those relations outside the line of parentage.⁴² Hence, for instance, a brother or an uncle from either side are not to be supported. The Malikis too as aforementioned do not grant the right to be supported to other relations except that of a parent and a child. Hence, no duty is imposed on a sibling to support another sibling.

MAINTENANCE OF UNCLE, AUNT, NEPHEW AND NIECE

Among the Hanafis, the duty to provide for grandparents and grandchildren is also extended to other relations that include one's uncle, aunt, nephew and niece. The Hedaya declares:

“ It is a man's duty to provide maintenance for all his infant male relations within the prohibited degrees, who are in poverty; and also to all female relations within the same degrees, whether infants or adults, where they are in necessity; and also to all adult male relations, within the same degrees, who are poor and disabled, or blind. “

What may be deduced is that *nafaqah* is due to all relations within the prohibited degree who are in the state of indigent. One, thenceforth, is to support his uncle or aunt from both the maternal and paternal sides and ones niece or nephew from either the male or female sibling as these people are prohibited in marriage to one another. Furthermore, infancy entitles one to be supported whereas adulthood is generally denied the right unless if the relation is a female and poor. Where the person is an adult male, he shall only be entitled to support if he is not only poor but is also either disabled or a blind. This proves that a physically normal adult male, though poor will still need to work for his own support as compared to a poor adult female who may claim maintenance from a rich relation. Reason being that a female at the time then was most probably not accustomed to work for a living.

As aforementioned, the necessary condition to receive support is that the said relation must be one who is forbidden in marriage to the provider. The right of inheritance is therefore of secondary importance. For instance, where a minor has a rich maternal uncle and also a rich paternal uncle's son, his maintenance shall be obligatory on the maternal uncle, “ because the maternal uncle is a relation who is unlawful (*Mohurrum*) :and the maintenance of those who are unlawful or *Maharim*, is obligatory on *Zee Ruhum-i-Mohurrum*, and not on those who would inherit.“⁴³

It is also stated in the Hedaya that difference of religion forbids the duty to maintain one's relation except in the cases of parents, grandparents, children, grandchildren and wife.⁴⁴

As for the Hanbalis, maintenance is due not only to one's parents (how high so-ever) and children (how low-so-ever) but also to other relations beyond this line. Family members are to maintain each other mutually on the condition that the person providing subsistence is entitled to inherit from the supported relation.⁴⁵ Similarity of faith thus becomes an essential condition to the right of *nafaqah*.⁴⁶

MAINTENANCE OF OTHER RELATIONS BESIDES CHILDREN AND WIFE UNDER ACT 303

The duty to maintain family members besides children and wife under Act 303 is provided in section 60 which reads as follows:

“ The Court may order any person liable thereto according to Hukum Syara’, to pay maintenance to another person where he is incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health and the Court is satisfied that having regard to the means of the first-mentioned person it is reasonable so to order.”⁴⁷

MEANING OF “ANY PERSON”

Generally, no one can be made to provide for another unless the former is connected to the latter by way of marriage, relationship and ownership.⁴⁸ Pertaining to the second class of obligation, this only arises where the parties are related by blood. For instance, adoption and illegitimacy deny the right to be supported. An adopted person is in no way legally related to the adopter by way of parentage. The Quran firmly warns that Allah has not made the adopted child as one’s child.⁴⁹ Hence, no right of inheritance nor maintenance are created between the adopted and adopter. As regards status, once legitimacy becomes established, both parents and child become subject to the various rights and obligations that are recognised by Islam, for instance the children is bestowed the right to maintenance but not otherwise.⁵⁰

Under section 60, the words “any person” therefore, actually refer to one who is blood related to the other which *inter alia* may include children, grandparents, grandchildren, siblings and their off-springs.⁵¹ These are the people whom according to Islamic Law may be ordered to provide subsistence to their needy relations.

It is also clear that the words ‘any person’ under the aforementioned section bear no gender significance. This is because under Islamic law, the duty to maintain a relation may be imposed on either man or woman equally. For instance, it is stated in the Minhaj-et- Talibin that, “ancestors and descendants should maintain each other mutually without distinction of sex ..”⁵² Thus, where there exist several descendants, maintenance is due from all but where they are not of equal degree, the obligation of providing maintenance rests on the nearest kin.⁵³

It is further stated that where equality of degree of relationship exists, the duty is imposed on the person who will be called to succession, while another opinion regards the right to succession constitutes *prima facie* the basis of the obligation to support one’s ancestors while the degree of relationship is only of secondary importance.⁵⁴

As for the support of a descendant, a child whose parents are incapable may claim maintenance from his nearest ancestors, either those in the same line

or ancestors from the parents' side. Where a person has both ancestors and descendants living, he must seek maintenance from the latter regardless of the distance of degree of relationship. This is the surer opinion stated in the Minhaj-et-Talibin.⁵⁵

Pertaining to religion, as has been deliberated, similarity of faith is not essential to the Syafiis. Parents (how high-so-ever) and children (how low-so-ever) must mutually support each other regardless of religion. As for the Hanafis, parties must be of the same faith except in the case of maintenance for one's parents, children, grandparents, grandchildren and wife. The Hanbalis however claim that similarity of faith is an essential condition to maintenance.

It should be noted that Act 303 is inapplicable to a non-Muslim.⁵⁶ Thus, this would mean that the duty of maintenance cannot be imposed to such a grandparent or grandchild. A needy person thus is robbed of the right to claim maintenance from his non-Muslim grandparent or grandchild under the said Act. Section 60 therefore is only applicable where both the provider and the recipient are Muslims. Henceforth, this is not in accordance with the Islamic spirit pertaining to providing support for a relation in need.

MEANING OF "ANOTHER PERSON"

As previously discussed, the causes of maintenance are blood relations, marriage and ownership. With respect to blood relations, no maintenance is due where the person is not blood related to the other. However, there lies an exception to this rule *viz.* a man is not incumbent to provide for a relative who is not a Muslim.⁵⁷ The Hanafis assert that no obligation lies upon a person to provide for his non muslim brother because as maintenance is connected to succession, the fact that a Muslim cannot inherit from a non-Muslim explains why both are not to provide for each other. The Hanbalis equally agree that maintenance is due to siblings only where there is similarity of religion.

It has also been pointed out that difference of religion does not bar a grandparent from receiving maintenance. The Hanafis and Shafiis concur that one is to support a needy grandparent although he be of different faith. There is, however, no provision under Act 303 to allow the said grandparent to make such a claim. This is because by virtue of section 4, the Act applies to Muslims only. The Hanbalis, however, has this duty fixed on the basis that both parties are co-religionists.

In order to be entitled to maintenance, section 60 requires that the said person must be "...incapacitated, wholly or partially, from earning a livelihood by reason of mental or physical injury or ill-health..". It can be deduced from the said wordings that the incapacity must exist from the the abovementioned circumstances only *viz.* mental or physical injury or ill-health. Thus a child who is incapable of earning a livelihood by reason of its infancy cannot seek maintenance under this provision. Section 60, thence forth is only applicable to an adult relation who is suffering from physical or mental abnormalities that impedes him from working.

Where the needy person is a child, maintenance, thenceforth, may be sought under section 72.

This is because maintenance for children are provided for under Section 72 (1) which dictates that the duty to maintain children is incumbent upon the father.⁵⁸ It is further provided that if the father is “dead or his whereabouts are unknown or if and so far as he is unable to maintain them” the duty then is imposed on another person liable under Islamic Law. As grandparents, siblings, uncles and aunts may be ordered to support another relation, it follows that an infant grandchild, sibling, nephew or niece therefore may seek maintenance from them by employing Section 72(2) and not under Section 60. An attempt by a needy relation of tender age to seek maintenance *via* Section 60 will therefore be fruitless since the aforesaid section is applicable to a person who is incapacitated from earning a livelihood by reason of mental or physical injury or ill-health. And since a child is naturally incapacitated from earning a livelihood by reason of infancy, it follows that Section 60 refers to an adult person who is incapable of work by the reasons mentioned therein.

There is also no mention of the person being in a state of indigence which is an essential condition under Islamic law. True enough, it can be construed that where a person is incapable of earning a livelihood, he can be deemed to be in need, this is not necessarily so. For instance, a man might be physically incapable of working but that does not mean that he is a pauper. Thus, it can be construed that under section 60, a rich man who is paralysed or blind which impedes him from working is still entitled to claim maintenance from his relations.—

As Section 60 requires that the person to be supported must be incapacitated from earning a livelihood, it follows that a parent who is healthy and able to work will not be able to claim maintenance under Act 303. This is because under Islamic law, an indigent parent is still entitled to receive maintenance from his off-spring although he is able to work. According to the Hanafis, if parents “were to labour for a subsistence, it would subject them to pain and fatigue, from which it is the express duty of their child to relieve them; and hence it is that maintenance to parents is incumbent upon the child, although they should be able to subsist by their own industry.”⁵⁹ As for the Shafiis, one opinion states that in such a case, the child owes no duty to his parents while another opinion asserts that such a duty is not extinguished by referring to Surah Al-Luqman, verse 15 as aforementioned⁶⁰ It is therefore submitted that since grandparents are regarded as parents, it follows that the rule of treating them in kindness which also means not having to subject them to pain and fatigue equally applies to the former.

Hence, an indigent grandparent who is capable of working but does not work will not be allowed to claim maintenance under section 60. Non-fulfilment of the condition of being “incapacitated”, has therefore, rob the indigent grandparentparent of his right under Islamic Law. This is unfair since the said grandchild could be a rich person but that the indigent grandparentparent is still required by the Act to work for his own support.

MEANING OF "MEANS"

It is provided under section 60 that a person can be ordered to maintain another where the former has the means and it is reasonable to do so. According to the Shaffiis, this duty is laid on one who possesses more than is necessary for the support of himself and his household.⁶¹ If necessary, the person should sell his property to discharge himself of this duty or in default, work for this purpose.⁶² Hence, a man is not bound to maintain his ancestor or descendant where he only possesses what is sufficient in order to survive. For instance, a child who does not possess more than what is necessary for the support of himself and his spouse for one full day has no duty of maintaining his parents, for a poor man has no duty to maintain another poor person.⁶³ Thus it may be deduced that since a grandparent is regarded as a parent, the duty to maintain the former only exist where the grandchild possesses the means to do so and is not in a needy state himself.

Similarly, the Hanbalis assert that the duty to support a relation becomes incumbent only where the person possesses more than what is necessary for himself and his spouse only and does not include other members of the household. Thenceforth, the maintenance for parents, grandparents, children and grandchildren are treated in equal status.

However, the quantum of affluence to be possessed by a person before he is made liable for the support of his relation according to an opinion in the Hanafi sect is that which prohibits him from receiving *zakat*. This is the opinion of Imam Abu Yusuf while Imam Muhammad opined that the said person must be in possession of property more than what is sufficient for the support of himself and family for a period of one month or "whose superfluity from his daily earnings enables him to afford it."⁶⁴

CONCLUSION

Maintenance under Islamic law is not only confined to one's wife and children. Generally, a person owes a duty to provide subsistence for another family member. This, however, is subject to the conditions that the former has the means and the latter is in needy circumstances. Also, this right is not extended to include all relations who are blood related since this would be impracticable as the duty to provide for another relation besides one's wife, children and parents can be regarded as onerous.

Such right to maintenance for a family member is also provided for under Act 303. Where the needy relation is of young age, maintenance thus may be sought under Section 72. This is because besides dictating that the duty to maintain one's children is upon the father, Subsection (2) further provides that such duty may be imposed on another relation where the father is dead or his whereabouts are unknown or that he is unable to maintain them. The application of section 60, however, is rather restricted as a non-Muslim grandparent is not

able to claim maintenance from his Muslim grandchild since the said Act only applies to Muslims. Also, it is suggested that the word "indigent" be included under section 60 as the incapacity from earning a livelihood does not necessarily mean that the person is without affluence. Hence, in order to be entitled to maintenance, one should not only be incapacitated from earning a livelihood but must also be in a state of indigence. This will surely defeat the claim of a rich relation for subsistence merely because he is physically incapable of working.

ENDNOTE

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¹ As Shan'ani, *Subulussalam* vol.III transl., (Surabaya:Al-Ikhlas, 1995), p.788.

² B. M. Dayal, *The Durr-Ul-Mukhtar of Muhammad Ala-Ud-Din Haskafi* transl., Law Pub. Co.:Lahore, n.d., p.316.

³ *ibid.*

⁴ Kifayatul Akhyar, vol.II, p.289.

⁵ Jamal J. Nasir, *The Islamic Law of Personal Status* (London:Graham & Trotman, 1986), p.171.

⁶ *ibid* quoting Abu Zahra, Personal Status, p.414.

⁷ See Imam Taqiuddin Abu Bakar Bin Muhammad Al-Husaini, *Kifayatul Akhyar* transl. vol.II, (Singapore: Pustaka Nasional, 1993), p.289-290.

⁸ See Hedaya, *The Hedaya* vol.I, (New Delhi:Kitab Bhavan, 1979), p.147.

⁹ Jamal J. Nasir, *The Islamic Law of Personal Status* (London:Graham & Trotman, 1986), p.171.

¹⁰ Al-Imam As-Syafii, *All-Umm* transl., vol 7, (K.Lumpur:Victory Agencie, 1989),p.422.

¹¹ *ibid.*

¹² Imam Taqiuddin Abu Bakar Bin Muhammad Al-Husaini, *Kifayatul Akhyar* transl. vol.II, (Singapore: Pustaka Nasional, 1993), p.290-291. For instance, according to Imam Abu Hanifah, Imam Shafii and Imam Ahmad, a father who causes the death of his son, intentionally, shall not be punished by qisas, namely, death. Similarly, where the death is caused by either grandparent, qisas will not be carried out, *see further* Dr. Anwarullah, Prof. *The Criminal Law of Islam*, (K.L: A.S Nordeen, 1997), p.76.

¹³ C. Hamilton, *The Hedaya*, vol.I., (New Delhi:Kitab Bhavan, 1979), p.147.

¹⁴ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta:Basrie Press, 1994), p.152.

¹⁵ The maternal grandfather is regarded as 'Dhawil-Arham'. Jurist differ in their opinion as to their rights of inheritance. For instance Imam Syafii, Imam Malik and Ibn Hazam opined that they are not entitled to inheritance at all as there is no clear authority either from the Quran, Hadith or Ijma' that allows them to such a share. Generally, Imam Abu Hanifah and Imam Ahmad Hanbal *inter alia* agree that "Dhawil-Arham" holds no right to inheritance. However they assert that in certain circumstance, such "Dhawil-Arham" possesses the right to inherit, namely, in the absence of "Ashabul-Furud" and "Asabah" that is those inheritors with a fixed share or entitled to the residuary, respectively. *See further* Abdul

Rashid Hj. Abdul Latif, *Undang-Undang Pusaka Dalam Islam* (K. Lumpur: Penerbitan Hizbi, 1997), p.36-39.

¹⁶ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147.

¹⁷ En Nawawi, *Minhaj-et-Talibin*, transl. (Lahore: Pakistan Educational Press, 1977), p.389.

¹⁸ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p.155.

¹⁹ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147.

²⁰ Imam Taqiyuddin Abu Bakar Bin Muhammad Al-Husaini, *Kifayatul Akhyar* transl. vol.II, (Singapore: Pustaka Nasional, 1993), p.291.

²¹ Imam Taqiyuddin Abu Bakar Bin Muhammad Al-Husaini, *Kifayatul Akhyar* transl. vol.II, (Singapore: Pustaka Nasional, 1993), p.289.

²² C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147.

²³ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p.152.

²⁴ The children from the daughter are regarded as 'Dhawil-Arham'. Jurist differ in their opinion as to their rights of inheritance. For instance Imam Syafii, Imam Malik and Ibn Hazam opined that they are not entitled to inheritance at all as there is no clear authority either from the Quran, Hadith or Ijma' that allows them to such a share. Generally, Imam Abu Hanifah and Imam Ahmad Hanbal agree that "Dhawil-Arham" holds no right to inheritance. However they assert that in certain circumstance, such "Dhawil-Arham" possesses the right to inherit, namely, in the absence of "Ashabul-Furud" and "Asabah" that is those inheritors with a fixed share or those entitled to the residuary, respectively. See further Abdul Rashid Hj. Abdul Latif, *Undang-Undang Pusaka Dalam Islam* (K. Lumpur: Penerbitan Hizbi, 1997), p.36-39.

²⁵ See also Surah Al-Baqarah, verse 233 and Surah At-Thalaq, verse 6, ibid, p.292-293.

²⁶ Surah Al-An-Am, verse 151.

²⁷ Dr. Mustafa al-Khin et.al. *Fiqh Syafi'i Sistimatis*, vol.3-4, transl. (Semarang: CV Asy-Syifa, 1987), p.421.

²⁸ ibid.

²⁹ ibid, p.422.

³⁰ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.148.

³¹ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p.152.

³² C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147.

³³ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p. 155 quoting Al-Mughni vol.VII.

³⁵ Hammudah Abd Al-Ati, *The Family Structure In Islam* USA: American Trusts Publications, (1977) p.209.

³⁶ *ibid.* referring to the opinions of Ibn Tymiyyah, Ibn Al-Qayyim, Al-Subki and Abu Zahrah.

³⁷ *ibid.*

³⁸ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147.

³⁹ Dr. Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, vol.I, (Karachi: Hamdard Academy, 1978), p.751 quoting Ibn al-Humam: *Fath al-Qadir*, 1356 (A.H) vol.III, p.348 and Ibn al-Nujaym: *Bahr al-Raiq*, Cairo, 1311 (A.H) vol.III, at p.223-224.

⁴⁰ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.148.

⁴¹ Jamal J. Nasir, *The Islamic Law of Personal Status* (London: Graham & Trotman, 1986) p.172 quoting Ibnul Qayyim, *Zad ul Maad*, vol.3, at p.164.

⁴² Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p.153.

⁴³ Mohamed Yusoof K.B., *Mahomedan Law* vol.II, (Calcutta: Thacker, Spink & o., 1898) p.333.

⁴⁴ C. Hamilton, *The Hedaya* vol.I, (New Delhi: Kitab Bhavan, 1979), p.147-148.

⁴⁵ Muhammad Jawad Mughniyah, *Fiqh Lima Mazhab*, transl. vol.II (Jakarta: Basrie Press, 1994), p.152.

⁴⁶ *ibid.*

⁴⁷ A similar provision also appears in the Islamic Family Law Enactments of Selangor (Section 60 Enactment No.4 of 1984) Malacca (Section 68 Enactment No.8 of 1983), Pulau Pinang (Section 60, Enactment 1985, Negri Sembilan (Section 60 Enactment No.7 of 1983), Perak (Section 56 Enactment No.13 of 1984), Johor (Section 60 Enactment No.5 of 1990), Trengganu (Section 59 Enactment No.12 of 1985) and Pahang (Section 61 Enactment No.3 of 1987).

⁴⁸ A man is bound to maintain his wife regardless of the fact that she may have the means to support her and he does not whilst children are to be maintained by their father. There is however no obligation to maintain anyone else on the basis of being related to the other by marriage, for instance, a man is no way bound to support his mother-in-law. The maintenance of a servant is incumbent upon the master. See further, Fyzee, *Outlines of Muhammadan Law* (Delhi: Oxford Univ. Press, 1974), p.211-216 and H.Idris Ahmad, *Fiqh Syafii*, vol.II, (K.Lumpur: Pustaka Antara, 1991), p. 372-376.

⁴⁹ Surah Al-Ahzab, verse:4.

⁵⁰ Dr. Tanzil-ur-Rahman, *A Code of Muslim Personal Law*, vol.I, (Karachi: Hamdard Academy, 1978), p.692.

⁵¹ As this paper discusses the right of maintenance of relations besides children and parents, the writer thus will not deal with the duty imposed on them to support each other.

⁵² En Nawawi, *Minhaj-et-Talibin*, transl. (Lahore: Pakistan Educational Press, 1977), p.389.

⁵³ *Ibid*, 390.

⁵⁴ En Nawawi, *Minhaj-et-Talibin*, transl. (Lahore: Pakistan Educational Press, 1977), p.390.

⁵⁵ *ibid*.

⁵⁶ Section 4 Act 303 provides: "Save as is otherwise expressly provided, this Act shall apply to all Muslims living in the Federal Territory and to all Muslims resident in the Federal Territory who are living outside the Federal Territory. A similar provision that restricts the application of the statute to the Muslims only, also appears in the Islamic Family Law Enactments of Selangor (Section 4 Enactment No.4 of 1984) Malacca (Section 5 Enactment No.8 of 1983), Pulau Pinang (Section 4, Enactment 1985), Negri Sembilan (Section 4 Enactment No.7 of 1983), and Pahang (Section 4 Enactment No.3 of 1987). The Islamic Family Law Enactment of Johor, however, not only applies to Muslim but also to the apostate and the *Kitabiah* woman.

⁵⁷ The difference of religion also does not bar a wife from receiving her maintenance, *see further* C. Hamilton, *The Hedaya* vol.I, (New Delhi:Kitab Bhavan, 1979), p.147.

⁵⁸ A similar provision also appears in the Islamic Family Law Enactments of Selangor(Section 72 Enactment No.4 of 1984) Malacca (Section 59 Enactment No.8 of 1983), Pulau Pinang (Section 72, Enactment 1985, Negri Sembilan (Section 72 Enactment No.7 of 1983), Johor (Section 72 Enactment No.5 of 1990), Trengganu (Section 71 Enactment No.12 Of 1985) and Pahang (Section 73 Enactment No.3 of 1987).

⁵⁹ C. Hamilton, *The Hedaya* vol.I, (New Delhi:Kitab Bhavan, 1979), p.148.

⁶⁰ Imam Taqiyuddin Abu Bakar Bin Muhammad Al-Husaini, *Kifayatul Akhyar* transl. vol.II, (Singapore: Pustaka Nasional, 1993), p. 290-291.

⁶¹ En Nawawi, *Minhaj-et-Talibin*, transl. (Lahore: Pakistan Educational Press, 1977), p.389.

⁶² *ibid*.

⁶³ Dr. Mustafa al-Khin et. al. *Fiqih Syafii Sistimatis* vol.3-4 , transl. (Semarang: CV Asy-Syifa, 1987), p.427.

— ⁶⁴ C. Hamilton, *The Hedaya* vol.I, (New Delhi:Kitab Bhavan, 1979), p.148.