

Divorce and Islamic Law of Inheritance: A Comparative Analysis of the Position of Divorcee

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Abstract: - Islam emphasizes on family maintenance. Divorce is the worst profitable in Islam but it is allowed if life is hard for couples because of their conflicts. Islam advises divorce and sometimes it is obligatory for a family is codified and detailed rules. Islam considered the rights and position of divorcee to inheritance and provides some conditions and rules concerning it. This paper deals with three sections; first section, discusses issues such as meaning of marriage, divorce, its types, conditions and others. Second section deals with inheritance such as pillars of inheritance, conditions, sources among others. In the third section of the paper it highlights and analyses the position of divorcee in Islamic law of inheritance with emphasis to the views of some scholars. The method used in the paper in data collection is analytical.

Keywords: Divorce, Islamic Law and Inheritance.

INTRODUCTION

In the name of Allah, most Gracious, Most Merciful.

Islamic law, the *Shari'ah*, is a way of life which the law-giver enjoins to all those who accept Islam to follow. The word Islam itself means a complete submission to the way of Allah in all matters of life both in this world and the hereafter. Also Islam is a universal religion. It transcends all limits of colour, creed and culture. It knows no geographical boundaries. As it is a complete code of life. A perfect code adaptable to mankind of all ages and situations.

Islam has done justice to all kinds of human being where justice is necessary and applicable especially in the area of inheritance. Islam did justice to all; male, female weaker sexes and infants where all were allowed to inherit.

Islamic Law is an all-embracing legal system that regulates and guides the life and conduct of Muslims concerning their rights and duties. The purpose of the law is to promote the welfare of the people individually and collectively. Its basic principles are justice, equality, liberty, and fraternity. From this background this paper attempts to explain the justice of Islam on the position of divorce in the field of Islamic law of inheritance. However a brief of explanation on marriage, divorce, its types, conditions among others were provided in the paper.

DEFINITION OF NIKAH (MARRIAGE) IN ISLAM

Literally, the word *nikah* means "to collect things". It is used to connote the piercing or absorbing of a thing into another thing. When the water of rainfall absorbs into the earth the

Arabs say: *nakaha'l-matru'l-'ard*. Likewise when the trees are intermingled it is said: *tanakahat'il-ashjar* (Al-Sabuni, 1971). Technically, *nikah* refers to cohabitation (*mubasharat*). In *Shari'ah* *nikah* refers to a contract. A contract means a knot or a tie. As a woman and a man are tied together by a knot (of wedding called the wedlock), hence *nikah* is also called *'aqd* (a contract) (Al-Sabuni, 1971).

SECTION I

Meaning of Divorce

Divorce is dissolution of marriage contract by prescribed formulae (Hussaini, 2005). In Islamic law it means the separation which the husband wants as a matter of right (Doi, 2007). It also means breaking of a bond; it is derived from *al-Ithlaq*, which means to send or to leave (Hallaq, 2008). To dissolve a contract of marriage by a husband means he is free in the exercise of its rights. He may, whenever he likes, relinquish the marital rights obtained in exchange for the dowry.

Types of Divorce

A divorce is either revocable or irrevocable **arevocable divorce** is one in which the husband is empowered to revoke the divorced during the waiting period (*Iddah*) in respect of the consent of the wife (Hussaini, 2005).

One of the conditions of a revocable divorce is that the marriage should have been consummated, because a wife divorced before consummation of marriage does not have observe the waiting period (*Iddah*) (Hussaini, 2005).

In accordance with the saying of Allah in the Qur'an where He says:

O believers! When you marry the believing women and then divorce them before you touch them, you are not entitled to reckon for them an *'Iddah*.... (Qur'an, 33:49).

Talaqba'in divorce in which the husband may only live again with his *mutallaqah* (divorcee) after he had contracted a new *'aqd al* marriage with her subject to such conditions as prescribed by the Shari'ah (Hussaini, 2005).

Talaqba'in are of two kinds: *ba'in* (irrevocable divorce - minor degree) and *ralaqba'inkubra* (irrevocable divorce - major degree) (Hussaini, 2005).

As for *talaqba'insughra*, it is the *talaq* in which the *mutalliq* (divorcer) and the *mutallaqah* (divorcee) may resume married life only after they have contracted an entirely new marriage.

Ta laqba'inkubra is a divorce where the marriage is fully and completely ended and 'the *mutalliq* and the *mutallaqah* may not remarry save if the *mutallaqah* has, by free of choice and natural events, married another man, lived with him naturally and normally as his wife and by normal and natural events be divorced by him or widowed by him and stays out her required *'iddah* fully and completely (Hussaini, 2005).

In an irrevocable divorce, the divorcer may not return to the divorced wife, who belongs to one of the following categories:

1. A wife divorced before consummation, by consensus of all the schools.
2. A wife who has been divorced thrice. There is consensus here as well.
3. A divorcee through *khul'*. Some legists consider this form of divorce void and say that it is not a divorce at all.
4. A menopausal divorcee, which observes that: She has no *'iddah* and the rules applicable to a divorcee before consummation apply to her as well. According to it,

If you are in doubt concerning those of your wives who have ceased menstruating, know that their waiting period is three months, and (the same is the waiting period of) those who have not yet menstruated ...(Qur'an, 65:4.).

5. The Hanafis say: Valid seclusion (*khalwah*) with the wife, even without consummation, requires the observance of *'iddah*. But the divorcer is not entitled to return to her during the *'iddah*, because here the divorce is irrevocable (Gurin, 1998).

Conditions for Divorce

The husband is free to exercise the right to divorce in Islam but under some prescribed conditions, he has been placed under checks and limitations which permit him to use this right only as a last resort. The verdict of the Qur'an is that a man should do his best to pull on with his wife even though he does not like her. Allah the Almighty says:

Treat them (women) well, though you dislike them. May be you dislike a thing and Allah has placed in it great good for you (Qur'an, 4:19).

However, if it becomes impossible to pull on together, the right to divorce can be exercised. But it should not be a head-long plunge. There should be three divorces spaced by periods of menstrual discharge. By the time the third cleansing, there will be plenty of time for second thoughts. Some way of reconciliation may, after all, be found (Maudoodi, 1941).

The wise advice of the Qur'an is:

Divorce is to be pronounced twice. Then either keep them in kindness or release them go in kindness (Qur'an, 2:229).

And in another verse Almighty Allah says:

And the divorced women should keep themselves in waiting for three menstrual courses. And their husbands have a better right to take them back during this period, if they desire reconciliation (Qur'an, 2: 228).

Another significant Qur'anic injunction is that during the period of waiting the women should not be sent away but should be retained, in the hope that living together might unite hearts, this will be indicated where Allah says:

O Prophet, when you divorced women, divorce them for their prescribed period, and calculate the period, and fear Allah, your Lord. Do not turn them out of their homes, nor should they themselves leave; unless they commit an open indecency. And these are the limits set by Allah. And who-so goes beyond the limits of Allah; he indeed wrongs his own soul. You do not know that Allah may, after this, bring about reconciliation. So when they have reached their prescribed period, retain them in kindness or release them in kindness (Qur'an, 65: 1, 2).

Divorce is not permissible during the course of a menstrual discharge. If divorce becomes a necessary, it should come during the period of purity. There are two reasons behind this injunction (Maudoodi, 1941).

Firstly, during the course of menstrual discharge woman generally become glum and ill-tempered. Changes in their body chemistry provoke them to do things which they would not. This is a medically proved fact. That explains why disputes arising between husband and wife during the course of a menstrual discharge are not considered a sufficient ground for divorce.

Secondly, during this period, the bodily contact, which is an important factor in the mutual attachment of the spouses, is suspended. This can breed estrangement between them. But when the temporary barrier is no more, the serene intimacy of conjugal relations is likely to brush off from the man's mind any lurking thoughts of separation; and the spouses are united together, once again into an integral whole (Maudoodi, 1941).

It was on these grounds that the Prophet (peace be upon him) disapproved of divorce during the course of menstrual discharge. Abdullahi bin Umar divorced his wife during the course of menstrual discharge. Then Umar (R.A) reported the fact to the Prophet (peace be upon him). He felt upset and told

Umar (R.A) to direct his son to retain his wife and divorce her after she was cleansed (Maudoodi, 1941).

Who is Divorcee?

A divorced woman or a woman who is separated from her husband (Fauzan, 2017).

Difference between Divorcee and Widow

Here are some tips to understanding the differences between divorcee and widow these differences are as follows:

1. Divorcees did not have happy marriage otherwise they had still married. Widows had a happy marriage or at least they only remember the happier times.
2. Divorcees have spouses who are regularly involved in their children's lives. The spouse helps with decisions about the kids; attends their sporting events, theater performances, and weddings. Widows don't have co-parents to rely on, but also don't have listen to their opinions on child rearing.
3. Divorcees get a break from parenting if they have shared custody. Widows have a full time parenting gig.
4. Divorcees may get some ongoing financial support for the children and or/alimony payments. Widows may have inherited life insurance, but it's a typically one-time payment.
5. Divorcees have hostility towards the ex-husband and perhaps the entire female/male population. Widows generally have a favourable opinion opposite sex.
6. Divorcees have to deal with an ex-husband who may be a pain in the butt. Widows don't come with the ex-factor baggage.
7. Divorcees may compare with the new person with the ex-husband the partner may feel the need to prove him/herself different than the ex-husband. Widows will talk about their deceased spouse, and this can be annoying.
8. Divorcees likely didn't have the best sex life towards the end of the marriage. They may be excited with someone who enjoys sex wants to be intimate again. Widows in happy marriages may have had a decent sex life and want to have it again.
9. Divorcees frequently have had family and friends who sided with one spouse over the other. Widows' family and friends may be happy include into the new person into their lives or it may be hard to for that guy/girl to walk in the shadow to the deceased (Maghniyyah, 1997).

SECTION II

deal with Islamic Law of inheritance where it covers definition, pillars, conditions, reasons, impediments, sources, heirs among others

Definition of Inheritance

In Islamic jurisprudence there are two words used for the law of succession, they are *Al-Mirath* (الميراث) and *Al-Fara'idh*

(الفرائض). The latter is more frequently used by the Muslim Jurists than the former (Bin Haider, 2003).

Al-Mirath is derived from the verb '*Waratha*' (ورث) which means to inherit anything. Another literal meaning of the word *mirath* is that, it connotes the handing over of a thing from one person to another (Al-Zuhaili, 1997).

And the word *Al-Faraidh* is a plural of *Al-Faridha* (الفريضة) which is derived from the verb *Faradha* (فرض) which literally mean "a fixed share" (Al-Zuhaili, 1997).

In the legal terminology, it is knowledge about some rules of *Shari'ah* which guides us who will inherit and who will not and what shares will go to the heirs from the property of the deceased (Al-Zuhaili, 1997).

Pillars of Inheritance

Pillars of inheritance are those important elements, if any one of them is missing in a given case, and then there is no inheritance. They are three (Al-Rahbiy, 2001).

Al-Muwarith (The deceased person)

A person who had died in fact or in law and left behind some inheritable property and relatives who have right to inherit his property.

Al-Warith (The heir)

Who is related to the deceased and entitled to get share from the deceased's property.

Al-Maurooth (The subject matter or estate)

The property of the deceased person. It is also known as *Al-Tarika*, either it is movable (*Manqool*) or immovable (*A'qar*). The property also includes the *Qiyami* or the *Mithli*. *Qiyami* are those things that are dissimilar and are not interchangeable, like land, animals, house, etc. While *mithli* are those properties whose unites or parts are similar to each other and they are interchangeable without many differences. For example, oranges, coins and books etc (Abu Malik, n.d).

Grounds or Reasons of Inheritance

There are three reasons or grounds of inheritance in Islamic law. Anyone claiming a share must establish that he possesses one of the following reasons (Al-Sharbiniy, n.d).

1. A-Nasab (Blood Relationship) (النسب)
Blood relations are the descendants and the ascendants of the deceased person. They include upspring, both male and female, parents brothers, and uncles.
2. Al-Zawaj (Valid Marriage) (الزواج)
A valid marriage contract also makes one of the spouses eligible to inherit the other ((Al-Sharbiniy, n.d)).
3. *Al-Wala'u* (Emancipation)

This is if a master emancipates his slave, he is entitled to inherit the free slave in the absence of any other heir of the deceased (free slave). But not vice versa. As it is reported in the Hadith of Barirah the Prophet (Peace be upon him) said: “*Al-Wala'a* has a relationship similar to that of blood relationship” (Al-Bukhari, 2003).

According to some Maliki jurists, there is another ground of inheritance that is, the *bait al-mal*, or the public treasury. In other words, it means that, where a deceased is not survived by anybody who could come under any of the above stated grounds then the estate goes to the *bait al-mal*. (Bin Haider, 2003).

Conditions of Inheritance

There are three conditions of inheritance that must be satisfied before one can have a share in the estate. These conditions are:

1. Death of the *muwarith* (testator). The death of the testator must be actual and clear. It should be either actual death, or by the court pronouncement in a case of a missing person.
2. The survival of *warith* (heir) at the time of death. Before an heir can inherit the deceased, it must be provided that he was alive at the time of the death of the testator.
3. There must be one of the grounds of inheritance. That is before a person can claim a share from the estate of the deceased, he must show that he falls under one of the grounds of inheritance as mentioned earlier. (Al-Sabuni, 1423 A.H)

Impediments to Inheritance

The previous pages provide that before a person can claim his right to inherit his deceased relative, he must show that he is related to him through one of the grounds of inheritance. Nevertheless, a situation may arise where by a relative is barred to claim his right to inherit even though he might be duly falling under one of the grounds of inheritance. This is a situation whereby he is falling within one of the impediments to inheritance. These impediments are those factors that are recognised by *Shari'ah* as those acts if committed by a heir, or he found himself in without his own act, would bar him from inheriting his deceased relative. There are three impediments to inheritance, which have been unanimously agreed upon by the four sunni schools, they are: (IbnJuzayyi, n.d)

1. Killing
2. Difference of Religion
3. Slavery

1. Killing (*Qatal*)

Qatal, killing, homicide, manslaughter, all are the names given to the act of taking the life of a fellow human being.

In Islamic law of inheritance, killing is considered to be an impediment to inheritance. Because if a killer is to be allowed to inherit the person he killed, it would become rampant.

Therefore, in order to avoid such possibilities, Islam has provided rules impeding the killer to inherit. It has been reported by Umar Bin Khatab that, I heard Prophet (peace be upon him), saying: “The killer inherits nothing” (IbnMajah, 2002)

2. Difference of Religion

This is a situation whereby the religion of the deceased is different from that of his existing relatives or heirs. Hence, where the religion of the deceased is different from his heirs, then the heirs are barred or impeded to inherit him. It is a unanimous view of the Muslim relative as it is provided for by the Glorious Qur'an where Allah says:

“And never will Allah grant to the unbeliever a way (to triumph) over the believer” (Qur'an, 4: 141)

And it is reported by Usama Bin Zaid that, the Prophet (peace be upon him) said:

“A Muslim cannot be the heir of a disbeliever nor can a disbeliever be the heir of a Muslim” (Al-Bukhari, 2009)

Hence, in the light of the above stated authorities, difference of religion between the heirs and deceased is, undoubtedly, a factor of impediment to inheritance.

According to Imam Abu Hanifa, Imam Shafi'i and Imam Malik, a non-Muslim can never inherit his deceased Muslim relative, whether he converted to Islam before the distribution or after (IbnRushid, 1989).

However, according to Imam Ahmad Bin Hanbal, a non-Muslim relative can inherit his Muslim relative, if he converted to Islam after the death of the deceased, but before the distribution of the estate (Ibn Qudamah, 1419 A.H).

3. Slavery

Slavery is considered to be a factor of impeding a slave to inherit. A slave cannot inherit his relative nor can his relative inherit him. This is because a slave is considered to be the estate of his master. Therefore, if he is allowed to inherit, indirectly it would be his master who would actually gain. To this regard the Glorious Qur'an says:

“Allah sets forth the parable (of two men: one) a slave under the dominion of another, he has no power of any sort and (the other) a man on whom we bestowed a good provision from us and he spends thereof secretly and openly. Can they be equal? (by no means)” (Qur'an, 16: 75).

And it is reported that the Prophet (peace be upon him) said:

“A slave does not possess anything, except the right to divorce” (Al-Bukhari, 2003)

It should be noted that at this juncture that a heir who is impeded by one of the above discussed impediments to inheritance cannot affect or disturb the share of other heirs. He is considered not existing in law. For instance, where a woman is killed by her son, and she is survived by her husband, full brother and the killer son, the husband is entitled to 1/2 and the full brother takes the remaining as an agnatic heir. The killer son gets nothing. And his existence is not valued. Therefore, he cannot force the other heirs to get their smaller shares or to be excluded. The same rule is applicable to the other impediments (Al-Rahbiy, 2001)

Sources

The sources of Islamic law of inheritance are four as follows:

1. The Glorious Qur'an

Almighty Allah explained the shares of children (male and female) daughter, daughters, parents, in verse eleven of Surah al-Nisa'i as He explained the portion of spouses, uterine brothers, and uterine brother in inheritance in verse twelve finally mentioned the shares of full sister or half-sister, brother alone whether full or half brother, two sisters (full or half), brothers (full brothers together with full sisters or half-brothers together with half -sisters) in verse 176 of Surah Al-Nisa' (Fauzan, 2017).

2. Sunnah

Ibn Abbas (may Allah be pleased with him) narrated, the Prophet (peace be upon him) said: Give the Fara'id (the shares prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.

Shaykh Salihbn Fauzanbn Abdallahbn Fauzan said after citing the verses of inheritance if you add the saying of the Prophet (peace be upon him) he cited the Hadith mentioned above you find that it covers the rules of inheritance (Fauzan, 2017).

3. Consensus of the Companions

Muhammad bnSalih Al-'Uthaimin mentioned in his book titled *Tashil al-Fara'id* "Muhammad bnNasar extracted the consensus of the companions that 1/6 is the share of one grand-mother and above in inheritance" ('Uthaimin, 2007)

4. The *Ijtihad*(studiousness) of the companions

The inheritance of collaterals (full brothers or half-brothers) together with grandfather is an *Ijtihad*led by some companions this is the view ofAliyubnAbiTalib, IbnMas'ud and ZaidbnThabit, lateron, this view was adopted by Imam Malik, Imam Shafi'i, Imam Ahmad in one of his views, Abu Yusuf and Muhammad bn Hassan from Hanafi School of law (Ambali, 1998).

The Heirs

Heir is defined as a person whose relation to the deceased legally entitles him to inherit part of deceased property depending on factors such as his relation to the deceased and

presence of other heir(s). All heirs are not equal. Some of them have priority over the others. The total number of heirs is twenty five. There are fifteen male heirs and ten female (IbnQudamah, 1419).

The male heirs are:

1. Son
2. Son of son (how low so ever)
3. Father
4. Grandfather (father of father how high so ever)
5. Full brother (germane brother)
6. Half-brother (consanguine brother)
7. Uterine brother
8. Son of full brother(hls)
9. Son of half-brother (hls)
10. Full paternal uncle
11. Half-paternal uncle
12. Son of full paternal uncle (hls)
13. Son of half paternal uncle (hls)
14. Husband
15. Male emancipator (who freed his slave) (Bin Haider, 2011).

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

Female heirs are:

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

Note 1:If a man died leaving all above mentioned female heirs only five of them will inherit him; they are **daughter, daughter of son, mother, full sister and wife.**

Note 2: If a person died leaving behind all above mentioned male and female heirs only five of them will inherit him. They are **father, son, mother, daughter and one of the spouses (husband or wife).**

SECTION III

Analysis of the Position of Divorcee in Islamic Law of Inheritance according to the views of Muslim Scholars:

Inter-inheritance between husband and wife is possible until their relationship ceases either by divorce or the annulment of marriage. But inter-inheritance is possible during revocable divorce and within the limits of the "*Iddah*". On the other hand, marriage annulment and definite divorce stops inheritance between husband and wife as soon as they depart, unless the husband is accused of divorcing his wife in order to deprive her from inheritance especially during the last illness in which death occurs (*maradulmaut*).

It is appropriate to firstly define *maradulmaut*, explaining the effects of *Tasarrufat* (Operations) duing *maradulmaut* because the topic of discussion is falling under the operations of the deceased during *maradulmaut* that is position of irrevocably divorced woman divorce irrevocably during *maradulmaut*.

Definitions of death sickness

- Death sickness is an illness which results in death.
- The point in time at which death sickness commences may be debatable. The issues that need to be addressed are the physical and mental state of the individual, the underlying disease and the actual death.
- A prolonged illness which continues for a whole year, or more, ceases to be regarded as **Maradul-Maut**. Under these circumstances, **Maradul-Maut** will be considered to commence from the time when the disease leading to possibility of death acute.
- If a person who is seriously ill recovers, then obviously the illness cannot be defined as death sickness (Hussaini, 2005).

The Effects of Tasarrufat (Operations) During MaradulMaut

1. If during *MaradulMaut* (death sickness) a man acknowledges a right/obligation which is common knowledge or evidenced by witness, then such acknowledgement will be fully valid and its discharge will be just as incumbent as all other rights and obligations which were confirmed prior to *MaradulMaut*.
2. If during *MaradulMaut* a man acknowledges a right/obligation in favour of non-heirs, which is neither confirmed by common knowledge nor evidenced by witness, then this acknowledgement too is valid. This obligation will also have to be discharged incumbently before the distribution of the *mayyit's* (deceased's) assets among his heirs.
3. If during *MaradulMaut* a man makes an acknowledgement of any obligation favour of a heir or he makes a gift of an asset to a heir, it will have no validity. These operations are null and void. However, if all of the adult heirs uphold the operation, the obligation will be executed from the assets remaining after funeral expenses and payment of debts.
4. If a person who is a heir of the testator ceases to be his heir, the acknowledgement in his favour will be valid. This will happen if the beneficiary of the acknowledgement predeceases the testator. In view of him dying first, he no longer remains a heir, hence the acknowledgement of debt/obligation in his favour is valid and the debt/obligation will be paid to the heirs of the predeceased former heir.
If the acknowledgement is confirmed by common knowledge or evidenced by witnesses it will constitute a debt of the first category of Qardh. In the absence of such evidence the obligation will be assigned to the second class of Qardh.
5. If a man divorces his wife during *MaradulMaut*, whether by *TalaqBa'in* or *TalaqRaj'i*, the *Talaq* is effective. If the man dies before expiry of her *Iddah*, she remains his heir and will inherit in his estate. If

he dies after the expiry of the *Iddah*, she will not inherit in his estate (MajlisulUlama'u of South Africa, N.D).

Then from here, the researcher will focus on his comparative analysis of the position of divorcee in Islamic law of inheritance by bringing the views of some jurists among the schools of law and their reasons, and discussion will commence by divorce during death sickness or inheritance of divorced woman or divorcee and her position according to the Muslim Scholars:

If a man divorced his wife revocably (*TalaqRaji'i*) and died, it has been unanimously agreed by Muslim Jurists that she will inherit him (the ex-husband), if her *Iddah* (waiting period) did not expire at the time of his death. But if the divorce was irrevocable (*TalaqBa'in*), then she cannot inherit him at all, whether her *Iddah* did expire or not (Fauzan, 2017).

However, it should be noted that, if the irrevocable divorce (*TalaqBa'in*) was pronounced during the death sickness, and the deceased died due to the same sickness, the four Islamic schools of jurisprudence have different views (Bin Haider, 1975).

Hanafi School: Imam Abu Hanifah is of the view that if the *Talaqba'in* is pronounced during the death sickness and the *Iddah* period did not expire, it is only then she is allowed to inherit him. However, if the *Talaq* was pronounced due to her own request against any amount during his death sickness, then she has no right to inherit him.

Hanafi school's reason is that, the *Iddah* (period) itself it is part of marriage rulings and the scholars similitude or compare her divorce as *Talaq Al-Raja'i* (revocable divorce) (Fauzan, 2017).

Maliki School: Imam Malik on the other hand opines that if the *TalaqwasBa'in* and pronounced during death sickness, she is entitled to inherit her ex-husband, whether her *Idda* had expired or she had married another man, or whether it was pronounced on her own request. In *Fath al-Jawad* if he divorced her irrevocably in his illness she will inherit him even after expiation of *Iddah* even if she married (IbnRushid, 2005).

Maliki School's reason, says in the book of *Al-Dhiya'uala Al-Dhurra al-Bayda'u* "The inheritance stands even if she married due to the Athar narrated by Urwa that 'Uthman said to Abdul-rahman bin Auf when he divorced his wife Tamadurbint Al-Asbagh, if you die I will allow her to inherit you (Bin Nasir, 1990).

Shafi'i School: According to Imam Shafi'i, if the *Talaq* was *ba'in*, whether it is pronounced during death sickness or during his health, she is not entitled to inherit him.

Shafi'i school's reasons because it was divorce by him irrevocably before his death, and if she loses her inheritance from him just like he divorces her during his health condition (Fauzan, 2017).

Hanbali School: According to Imam Ahmad Bin Hanbal, if the *Talaqba'In* was pronounced during the death sickness, she has the right to inherit him whether her *Iddah* expires or not. However, if she had married another person, before the death of her ex-husband, then she has no right to inherit him and if she converted to another religion she has no right again to inherit him. Hanbali school's reason is that if he divorces her deliberately in order to prevent her from her right share the Shari'ah cannot consider his intention even if she finishes or did not finish her *Iddah* she is entitle to inherit him (IbnQudamah, 1419 A.H).

The most preponderant view: The most preponderant view according to the researcher of Imam Ahmad because the reason for giving her right of inheritance is that he divorced her in order to deprive her or abstain her from inheriting him. This decision cannot change due to expiation of her *Iddah* so as to punish him. Allowing her to inherit before expiation of *Iddah* as said by Hanafiyyah has no meaning because the divorce is in existence during *Iddah* or after the *Iddah*, she only allowed inheriting in order to punish the husband and prevent people from committing that act. Allowing her to inherit after she married another husband based on malikiyyahwiew will make her to inherit more than one husband at a time and this is not allowed by the consensus.

Abstaining her from inheritance totally as said by shafi'iyah is not right because 'Usman bin Affan (R.A) gave the right of inheritance to TamadurBint al-Asbagh al-Kalbiyyah when Abdurrahman Bin Auf divorced her during his death sickness. The reason why the researcher prefers this view is that it is a moderate view it didn't abstain totally and it didn't allowed totally, Allah knows the best.

CONCLUSION

From the foregoing discussion, the paper highlights on the following points:

1. Meaning of divorce and its condition.
2. Differences between divorcee and widow.
3. Islamic law of inheritance and its some important segments.
4. Definitions of *marad al-Maut* (death sickness).
5. Operation of deceased during death sickness.

Finally, the paper shades light about its mostimportant aspect which is the position of divorcee in Islamic law of inheritance. The divorcee as discussed in the paper is of three types:

1. Revocable divorced woman: Muslim scholars unanimously agreed that she can inherit him as long as she is in her *Iddah* period.
2. Irrevocable divorced woman: Muslim scholars unanimously agreed that she cannot inherit him whether her *Iddah* expired or not.
3. Irrevocable divorced woman during death sickness: Muslim scholars have four different views. The most preponderant view is the view of Hanbali School of law which says she is allowed to inheritance even

after *Iddah* period as long as she did not marry another husband and also she did not converted to another religion.

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