

## Islam and Welfare Economics: A Focus on Inheritance

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**Abstract:** This paper focuses on the institution of inheritance in Islam as a mechanism for redistribution of wealth with the goal of improving the welfare and or economic efficiency of society. It should to be understood that implementation of inheritance law antler' Islam" does not' violate any of the existing relaxation of the assumptions of the welfare functions such as the efficiency Criterion. Constant Proportional Shares, Pareto-Safety, and Maximum Social well-being. It is in this regard that this paper considered the institution of Inheritance, as spelt out in Islam as a manifestation, of how to improve societal welfare and at the same time receive the blessings of Allah (SWT). It therefore urges the Ummah to see to the. rightful implementation of this institution within the framework of their respective State's Social Welfare Programs. In the next section, the paper defines inheritance in a broad sense and in relation to Islam. This is followed by identifying eligible candidates for inheritance with some accompanying illustration where' possible. Finally, the paper rounded, MP with concluding, summary.

**Keywords:** Islam, Inheritance, Welfare Economics and Policy.

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### I. INTRODUCTION

Welfare economics in a broad sense is concerned with the maximization of the economic well-being of the members of society. It tries to answer some central questions of how resources or Factors of production are to be employed efficiently and by what mode of production; and how the products are to be distributed among members of society. Central to these is the notion of economic efficiency which Layard and Walters assumed four conditions must be met<sup>1</sup>. These include efficient production process which, calls for equating marginal products of all items produced in society employing the scarce resources, efficient consumption ' calls for equating the ratios of' marginal utilities of all members of society; efficient product mix requires the ratio of marginal utility to equal the ratio of marginal products and lastly social justice is called for whereby the ratio of the marginal utility for each individual he equal to the ratio of marginal utility of society via the social; welfare function and the grand utility frontier<sup>2</sup>. The problem with the above assumptions is that it is over ambitious in a way that they all have to be satisfied' at once otherwise the model break down. This is a recognized problem among welfare economists. It is this understanding that led to various forms of relaxations of these assumptions in order to mimic 'the real world. For example, there is the Kaldor Criterion also known as Potential Pareto Improvement Criterion, Pareto Safety etc. Albeit several contributors to the efficiency criterion have shown that 'although efficiency is a good thing, it is an insufficient criterion for economic policy for a good number of reasons such as the existence of other legitimate societal goals that might otherwise not be addressed by the efficiency criterion, the non-uniqueness of efficiency; and its failure to solve the philosophical questions about the legitimacy of authority and the relationship between government and citizens<sup>3</sup>. Contributing to the efficiency debate, Sen posits thus:

A Pareto Optimal state can quite possibly, be a den of inequity and wretchedness If that condition is to be treated as sufficient for overall optimality, then welfare economics must be seer, to be oddly insensitive."<sup>4</sup>

Further, there is a number of other fundamental .problems, associated. with the efficiency criterion which deals with the, existence of societal welfare function and. how to arrive at such a function. Arrow demonstrated how it is impossible to have a society welfare function even, if it is by a democratic process<sup>5</sup>. A good number of critics of efficiency criterion have identified the need, for a more humane society that is ethical, fair and just in its distribution of resources that are endowed to all. What has been, lacking in most of our societies is the way in. which this .ethical, fairness, and justness are to be addressed/ Are there alternatives offered by other disciplines.

This is our 'opinion trial there are alternatives offered by other disciplines such as the implementation of existing welfare institutions in Islam.

Even in conventional political economies, it is conventional to find- programs. Favoring redistribution of

income, wealth and resource allocation *via* regulation, taxation or even public 'investment based solely on public interest. Welfare institutions in Islam are common: These include the institution of *Zakkat*, Inheritance, *Diyah* (Compensation) and land rent to mention but a few.

### **Inheritance: A Meaning**

According to the Encyclopedia of Social Sciences,

Inheritance is the entry of living persons into the possession of dead persons' property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system. But the actual forms of inheritance and the laws and customs governing it may differ greatly from one society to another and from time to time. "Changed ways of owning and using property will always be going with, them in the long-run alteration in the laws and practices relating to the inheritance of wealth."<sup>6</sup>

Thus, right from the outset, every society has its own ' system of inheritance law because of its economic relevance. Inheritance laws existed in the earlier civilizations and empires such as in the Greek and Roman empires and the pre-Islamic Arabian Society all had a system that guided the distribution of inheritance. . These respective systems were all aimed at striking a balance as to how effective the inheritance wealth could be distributed among the heirs.

However, the advent of Islam brought with it a complete way of life including a well fashioned out inheritance laws. The laws are clear with well spelt out rights of each beneficiary so that no one person is disadvantaged be you young or old, man or woman, born or unborn. All heirs are weighted based on their closeness in succession rank as well as their social responsibilities. Unlike the social science definition, Islamic law of inheritance originates from specific verses of the Holy Qur'an and expounded upon by the Sunnah of the Prophet (PBHU) in a harmonious order. According to Mannan the Islamic law of inheritance is at the present day a fixed, scientific and harmonious system<sup>7</sup> every heir has a proportionate share relative to the heir's rank of succession. This is contained in Surah *Al-Nisa*:

(Allah (thus) directs you as regards your children's (inheritance): to the male, A portion equal to that of two females: if only daughters, two or more. Their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, If no children and the parents are the (only) heirs, the mother has a thud; if the deceased left brothers (or sister?) The mother has a sixth (The distribution in all' cases is) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit These are settled portions ordained by Allah; and Allah is All-knowing, All wise).<sup>8</sup>

Thus, Islamic inheritance law has curbed out any tendency to cheat, especially the cheating of women and children which are common in other societies operating different Inheritance, systems. This paper is an attempt to reawaken the Ummah to this benevolent gift within the framework of current welfare economics in modern Islamic societies.

### **Basic Principles:**

The Islamic law of inheritance is known to have brought about a salient revolution in the whole philosophy of distribution of wealth and introduced new technique, unheard of before, increasing national wealth (hence improved welfare) through participation of women in economic activities.<sup>9</sup> It should be pointed out wealth of the deceased must satisfy certain conditions before attention is in a fashion of succession. In particular there are four conditions that the wealth must satisfy which include:

- i. Bond responsibilities on the wealth of the deceased such as incomplete payment, for a purchased item. The seller of such an item must be settled out of the remaining wealth first, before considering the would-be-heirs in succession;
- ii. Funeral expenses: All obligatory expenses for the burial of deceased must be met before considering heirs to the wealth;
- iii. Debt burden: All forms of debt obligations on the deceased ranging "from pure debt, to unpaid wages/salaries of staff or laborers as well as perhaps uncompleted payment of dowry for his wife or wives are to be settled first. Should there be multiple debt burdens which include some purchased items, then the seller of such traded items has priority in debt claim over others with pure monetary debt. Of those with pure monetary debt, the person with the largest debt burden will need to be settled first. Suppose the wealth cannot meet the debt obligation, then if there is only one person to whom the deceased is indebted, whatever is left will be used to settle part of the debt. But should there be more than one persons who need to be settled with amount less than their combined debt burden, then whatever is available of the wealth will be paid to them in constant proportion of their debts. For example, suppose the deceased is indebted to A in tune of \$500; and B, \$300 and yet to C, \$200; but the deceased has left only \$600 in wealth, it follows that A shall receive half of what is left (\$300), while B will receive three-tenth (\$180) and C., one fifth (\$120)

based, on their total debt burden ratio of 5:3:2 respectively.

- iv. Fulfilling .willed testimony:- after meeting all of the above obligations, whatever is left, of the wealth can be shared by the heirs subject to a maximum of one-third (unless the heirs agree to relinquish more than one-third) of this wealth for fulfilling willed obligations of the deceased. Where one-third of the remaining wealth is adequate for the beneficiaries of die will, then die method of 'constant proportion share' adopted in (iii) above becomes applicable.<sup>10</sup>

It should be noted that it is only after obligations iv above are met by the deceased's wealth and whatever remains thereof is what is eligible for inheritance by the respective heirs. As stated in the Holy Qur'an: ... (The .distribution in all cases is) after the payment of legacies and debts...) <sup>11</sup> it should be pointed out. that no part, of the one-third in (iv) above is permitted to be disposed of by will in order that it may be used to augment the shares of one or more heirs to the prejudice of the other heirs.<sup>12</sup> Also see *Surah al-Baqarah*<sup>13</sup> *Surah Al-Ma'idah*<sup>14</sup>.

### Foundation of Inheritance

Inheritance is founded on the following principles:

- i. Closeness to the deceased based on blood relationship or by way of marriage, this include parents, children, brothers and sisters and spouses;
- ii. There is no discrimination based on sex or age to determine eligibility;
- iii. In the absence of 1 above, the next closest in succession rank become inheritors;
- iv. In the absence of 1 and 3 above the deceased's wealth is turned over to the State Treasury (*Bayt al-Mal*) for use in public programs such as schools, roads, hospitals, the array and the like;
- v. A male claimant is eligible for double the share of a female claimant on the same; rank of succession
- vi. Brothers and sisters qualify for nothing once parents are still alive.

The Islamic law of Inheritance provides an interwoven process of check and balance as well as fairness, equity and social justice on all would be inheritors.<sup>15</sup> It is a uniquely fashioned out system that opposes the concentration of wealth in the hands of very opportune few as could be found in other' systems by way of will for example In order to provide more insight, this paper has offered some basic explanation of some of these principles in the section on social and economic significance of Islamic inheritance system and its social welfare implication.<sup>16</sup>

### Social and Economic Significance

Inheritance in Islam has both social and economic importance to society. It offers a social justice system in terms of wider coverage of beneficiaries who are considered in rank of Succession. It is anti-capitalistic in outlook in that it has for example made it incumbent upon the deceased not to will more than one-third of his/her wealth once he/she enters into a state of terminal ill-health.

This is a justice system'-that is meant to provide the deceased with a legacy among friends and associates while still meeting the obligations of his kindred in inheritance wealth. It can be seen that there is a clear- distinction between" those who will enjoy the willed portion of the wealth and heirs who enjoy the inheritance; but no one person is-to enjoy both. Another manifestation of the system is that it considers those individuals' who ordinarily, if the deceased were to be alive, they could equally turn to him/her, during time of need, such as the spouses, parents, brothers and sisters and other kindred within the succession rank as the case may be Each beneficiary is entitled only to his/her fixed shares and no more, Further, no heir shall be deprived of the right to inherit either in part or in the whole except under special circumstance whereby the heir is connected to the causes of the death of the deceased as a motive driven to inherit

The inheritance system presented here has also out rightly rejected the concentration of inheritance wealth in the hands of only one person or a few as could be found in other systems. It denies any act of discrimination based on either age or sex. Thus, there is equity,, fairness and justice in the Islamic inheritance system. It may suffice to point out that some critics may question the rationale of why should a male beneficiary on the same level of succession with a female beneficiary receive double the share of the female? An answer to this question requires an understanding of the sociology of family structure in Islam and the assigned responsibilities > of every member. The male has more family responsibilities to meet than the female heir. He may have wives and children looking up to him while the female heir may be married to a husband who is responsible for her social needs. Further, she may equally turn to the brother during any time of need/crisis, all these factors manifest into why a male heir receives double the share of a female heir on the same succession rank.

On the economic front, inheritance wealth can provide a good source of sustenance for quite a good number of people depending on their respective needs. The sharing process also had taken care of economic needs of individuals This Explains why the children of the deceased may have a greater share than the parents of the deceased. Even though there is a Hadith of the Prophet (SAW) which says both you and your wealth are the belongings of your father.<sup>17</sup> But the economic need for children may be more than that of their grandparents as the

grandparents are now in an aging process. The children will need a good start in life which may require heavy financial responsibility and often times the inheritance wealth may as well be a source of financial investment capital for the children. More so later in life, the grandchildren may also render some support to the grandparents.

Husbands and wives can also inherit each, other A husband is guaranteed at least a quarter of his wife's wealth. All these are based on their expected responsibilities as they start a new life without a previous partner. The husband will still be responsible for the growing children and other related family responsibilities while the wife on the other hand, can still count on her children's share of the inheritance wealth as the case may be. Besides, she can get assistance from several others such as her parents, brothers, uncles or better still, she may get married to a new husband who by law will become responsible for all her social and economic needs.

Another area of importance within the current set up of modern Islamic societies is the inheritance of indivisible property blocks'. Of interest here are properties such as estates; agricultural land, ownership in business organization and so on.

This does not seem to present much problem when you critically evaluate the form and nature of modern business enterprise ownership.

Largely, corporations and other businesses operate in shares which could be owned by several 'individuals'<sup>1</sup> or shareholders. Shareholders can change their ownership by way of sale of shares. What is required is just a formality of transfer of ownership in certain number of shares from one individual to a number of 'new shareholders'. With regard to agricultural land, the commonest fear is that of reducing the land holdings to uneconomic size through parceling. Contributing to this debate, Mannan commented that cooperative farming can eliminate this problem.<sup>18</sup> Also, that states can fix a limit on the smallest, size of economic land holdings as practiced in the United Arab Republic commenting further he says

In public companies and corporations the parceling out of shares among a larger number of holders has little effect upon management, even in the case of family business charges can be made on the net earnings for the different members of the family and where such a business is turned into a private company, actual shares can be issued and the business, still earned on without change of policy.<sup>19</sup>

The essence of this is to point out to the need for Muslims to adhere strictly to the laws governing inheritance such that ownership of a business corporation, estate and the like does not become a basis for discriminating among prospective heirs. Such discriminations could manifest themselves in various forms such as gifts or will in which case, Islam has placed an upper limit of one-third of the inheritance wealth. In essence Islamic inheritance law offers a social justice system where heir's right is protected and every heir should enjoy the improvement brought about by inheriting a legal share.

Another area of concern is the social and economic position of women in Islamic inheritance system. Clearly, the inheritance law has recognized the participation of women in economic activities. They can own, possess and enter into business, they can inherit and they can be inherited. But a woman has no social responsibility imposed on her.

Whatever she does for her family, she does so out of her own accord but not incumbent upon her. A woman beneficiary has her own fixed share according to her rank of succession, be she a wife, a daughter, a sister or a mother as the case may be. So, women have identity of their own and the free will to manage their business affairs within the limits of Islamic injunctions.<sup>20</sup>

However, the difference between the, normal share of a female to male heir on the same rank of succession is in any way not discriminatory but rather, is a function of their social responsibilities. The social obligation of keeping and maintaining a family rests squarely upon the husband even if the wife commands more wealth than her husband. To enable the male to meet up this challenge, he has fixed share of twice that of the female personality involved followed by their social needs and functions. In the following section, we consider some few illustrations with hypothetical cases.<sup>21</sup>

### **Some Illustrations**

In this section, some few illustrations of Hypothetical cases are presented so as to add to the discussion so far accomplished. Recall that if a Muslim passes away, his wealth must first meet certain obligations before heirs to such residual wealth are considered for the purpose of inheritance. In our illustration, it should also be clear that whenever a subject is mentioned, it should automatically be clear as to who the deceased is. For example, if we are talking about mother's share, certainly then the son/daughter is the deceased. If we are talking of son/wife then father/husband is the deceased.

**1. Father:** Father has three kinds of inheritance, shares depending on the composition of the beneficiaries: Viz; (a) one-sixth (b) one-sixth, then to claim the remaining two shares; (c) three-quarters as contained in *al-Ta'ssub* condition highlighted here.

a. Where a father and son or grandson are the only heirs, the inheritance wealth is shared into six. The father

gets his fixed share of one-sixth, and the son or grandson gets the remaining five.<sup>22</sup>

b. In the event where father and daughter or granddaughter is the sole beneficiaries, the wealth is proportioned into six equal shares. The father gets the usual one-sixth, while the daughter or granddaughter gets three shares (half).<sup>23</sup>

**2. Grandfather:** For the grandfather, there are five instances in which he will benefit from the inheritance wealth. The first and second are same as in a and b, in (1) for the father above. This is applicable if the father too is dead,<sup>1</sup> for example:

If grandfather, wife and brothers (full or half-brothers) are the only claimants, then the wealth is divided into eight.

**3. Husband;** There are two forms of inheritance by a husband:

If a husband, a sister (*al-ukhtal-shaqiqah*) and a step-brother (*al-akh liumm*) are the three beneficiaries, the wealth is divided into six shares. Three shares (half the inheritance) go to the husband. The sister (*al-shaqiqah*) gets two shares and the stepbrother gets one share.<sup>24</sup>

Where husband, father and daughter are the heirs, the wealth is divided into twenty-four shares. The daughter has a fixed share of twelve, the father has four shares and the husband has six.<sup>25</sup>

**4. Step-brother** of the same mother only (*al-akh liumm*) has two occasions on which to inherit:

If there is only one such step-brother together with a full brother (*al-shaqiq*) the wealth is shared into six. One share goes to the step-brother and the remaining five shares are for the full brother.

Where step-brothers/sisters (from same mother) are more than one together with an uncle (*al-amm*) constitute the only claimants, then the wealth is shared into three. The step-brothers or sisters are entitled to one-third of total wealth to be shared equally among themselves (male or mixed). Two-thirds of the wealth is for uncle.<sup>26</sup>

**5. Mother:** There are three cases of inheritance by a mother: (a) one-sixth (b) one third (c) One-quarter.

Mother has a fixed share of one-sixth if she and her grandchildren together with brothers/sisters or both and father are the heirs. For example, if mother, father and son are the only claimant, the wealth is divided into six. The mother gets one-sixth, so does the father, while the son gets two-thirds.

Suppose, mother, wife and brother (*al-shaqiq*) are the only heirs, then the wealth will be split into twelve shares. The mother will get four of twelve shares, the wife, three of twelve and the remaining five shares go to the brother.<sup>27</sup>

**6. Grandmother:** The grandmother has two situations in terms of inheritance wealth. These situations are (a) one-sixth (b) situations whereby she gets nothing.

a. If grandmother, wife and full brother (*al-shaqiq*) are the only claimants, the wealth will be shared into twelve units. The grandmother has two shares, wife three shares and the brother the remaining seven shares.

b. The situations where grandmother gets nothing are of three types:

Where mother and grandmother are both legitimate claimants, the presence of the mother will block the grandmother from benefiting.<sup>28</sup>

**7. Daughter:** A daughter can inherit on three grounds.

Where daughter and father are the only heir, the wealth is divided into two. The daughter gets half and so does the father.

Where there are two or more daughters together with the father, and husband as heirs.

If a son and two daughters are the sole beneficiaries, the wealth will be divided into two. The son will have one share to himself while the two daughters will share the remaining half. However,<sup>29</sup>

**8. Granddaughter:** There are five situations under which a granddaughter can inherit

a- Granddaughter can inherit up to half of the wealth if there are no other claimants who would otherwise make her derive benefit from residual share (*al-ta'ssub*)

b- Granddaughter can inherit two-third of the wealth if they are two or more in number and if there is no grandson with whom they are on the same succession level and also no daughter to the deceased.

c- The granddaughter can inherit one-sixth of the inheritance wealth in the presence of a daughter.

d- The granddaughter may be forced into taking residual shares (*al-ta'ssub*) if a grandson with whom they are on the same level is a heir in the absence of any son.

e- A granddaughter could be blocked by the presence of a son, two or more daughters and a grandson who is on a higher level of succession than herself. **Full-sister** (*al-ukht al-shaqiqah*): There are five instances over which a sister can inherit.

a- A sister can inherit up to half of the inheritance wealth in the absence of a brother.

b - Two or more sisters will inherit two-third of the wealth in the absence of a brother (*al-Shaqiq*).

c- A sister will benefit from residual share (*al-ta'ssub*) if she is joined by a brother on the same rank of succession.

d- In a situation where a daughter, sister and a granddaughter are inheritors, the wealth will be divided into six shares. The daughter will get three shares, the granddaughter one share and the sister, the

remaining two shares.

E - However, should it be the case where there are no residua shares after all beneficiaries have got their shares, the sister may end up with nothing.<sup>30</sup>

## II. Summary and Conclusions

This paper has dwelled on a number of issues within, the framework of inheritance welfare economics in Islam. It has identified that, adoption of inheritance as a welfare economic measure will not lead to the deficiency of the efficiency Criterion as a social welfare economic policy. Pragmatic solutions to social welfare problems is called for which requires less emphasis on the traditional social welfare function. Within modern Islamic societies, agencies should focus more on programs that will result in improved welfare standards if such welfare oriented institutions of *Zakat* and inheritance for example are strictly adhered to. Several illustrations have been provided on how the inheritance wealth, is shared among different, heirs depending on the rank of the beneficiaries. Thus, the inheritance law in Islam if strictly adhered to can provide a means of alleviating some of societies' welfare problems leading to improvement in the standards of living of the citizens.

The employment of inheritance as a social welfare programmed will not undermine the basic constructs of the social welfare function but rather on the contrary, this will lead to improvement in welfare standards since the beneficiaries would have had an improved wealth: status compared to the *ex ante* state. It is therefore tempting to conclude that the redistribution of inheritance wealth *ex post* may at least lead to potential improvement. That is starting from an initial state .A, can there be a redistribution of wealth such that on arrival at state B, no one person is made worse off and that at least one is made better off? In this context, we can say absolutely, yes Because in state A, with the deceased gone, wealth are redistributed leading to state B, where the heirs are made better off.

The paper also explained the various aspects of the laws governing the shares of the respective heirs and why each person receives what he/she gets. The underlining principle being equity, fairness and social justice that has no parallel of its kind in any society.

## Endnotes

<sup>1</sup> Al-Imam malik b. Anas (no date), *Al- Mudawwanah al-Kuhrah Dar Sadir Beirut* Vol III New Edition.

<sup>2</sup> Al-Imam Malik b. Anas *Op cit*.

<sup>3</sup> Al-Imam Muhammad Abu Zahrah (163), *Ahkam al-Zakat Wa al- Mawarith Dar al-Fikr al-Arabi*.

<sup>4</sup> Al-Imam Muhammad Abu Zahrah (163), *Ahkam al-Zakat Wa Al-Ma'variih Dar al Fikr al-Arabi*.

<sup>5</sup> Al-Imam Muhammad Abu Zahrah (1978), *Sharh Qanun al-Wasiyyah* Dar al-Fikr al-Arabi.

<sup>6</sup> Al-Imam Muhammad Abu Zahrah (no' date). *Fi al Mujtami' Al-Islami* Dar al-Fikr al Arabi.

<sup>7</sup> Al-Tmam Malik b. Anas *Op cit*.

<sup>8</sup> Arrow, K.J. (1951), *Social Choice, and Individual Values*, New York: John Wiley

<sup>9</sup> Badran Abu al-Alinayn Badran (1975), *Al- Mawarith Wa al-Wasiyyah Wa al-Hibar* Mu'assiat Shabab Al-Jamia'h Alexandria.

<sup>10</sup> Encyclopaedia of Social Sciences as quoted in Mannan(197.5).

<sup>11</sup> Holy Qur'an (Yusuf All Translation 1991 New edition) 2:180-182 and Footnote 1 86—187

<sup>12</sup> Holy Qur'an 4: 11 -12, 4:176.

<sup>13</sup> Holy Qur'an 4:11

<sup>14</sup> Holy Quran 5: 105-108.

<sup>15</sup> Holy Qur'an *Surah Al-Nisa* 4:11

<sup>16</sup> Kamal Salih al-Banna (1980). *Al-Siyagu Al-Qa- muniyyah, Alimat Al-Kutbi Cairo*.

<sup>17</sup> Layard P.R.G. and A.A. Walters (J978), *Microeconomic. Theory*;. New York: McGraw-Hill.' p.4-51.

<sup>18</sup> Mannan *Op cit*. p. 183.

<sup>19</sup> Mannan *Op. cit*

<sup>20</sup> Mannan *Op.cit*

<sup>21</sup> Mannan, M.A. (1975), *Islamic Economics Theory and Practice: A Comparative.*

<sup>22</sup> *Study*. Lahore, Pakistan, Sh. Muhammad ashraf Kashmir Bazar Mannan, *Op. cit*.

<sup>23</sup> Muhammad al-Mubarak (1970), *Nahw Insaniyyatin sa'idah* Dar al-Fikr, Beirut.

*Op cit*

<sup>24</sup> *Op cit*

<sup>25</sup> *Op cit*

<sup>26</sup> *Op cit*.

<sup>27</sup> *op. cit*.

<sup>28</sup> *op. cit.*

<sup>29</sup> Randall Alan (1987). *Resource Economics: An Approach to Natural Resource and Environmental Policy*. 2nd ed. New York: John Wiley.

<sup>30</sup> Shaykh Aliy al-S. Vid al-Adwi (no date), *Raahiy.it Al-Admi Dar al-Fikr* Vol. II, Beirut.