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# Islamic Feminism: An Intersectional Approach for Understanding the Inheritance Laws of Iran

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## ABSTRACT

*From time immemorial, the transfer of properties across countries has been taking place through a process called 'Inheritance', which refers to a unilateral transfer of property. This concept, however, is solely equated under 'moral' footings. This is problematic because inheritance runs deeper than morals and the ideas of 'good and evil' (Genealogy of Morals, Fredrich Nietzsche) to more sophisticated socio-political structures and factors.*

*This paper shall be an attempt to explore in-depth the concept of inheritance by studying the inheritance laws of Iran to understand the status quo of these laws in comparison to their relevance as in the past. It would involve an analysis of these laws through the lens of Islamic feminism and how these laws affect the wives, daughters, widows, sisters and illegitimate children born in Iran. In recent times, feminism has evolved to imbibe within itself, traditional and intersectional perspectives, thereby realizing the lived experiences of all. Islamic feminism is always pitted against Western feminism, but this paper would attempt to re-define this supposed conflict as independent theories capable of co-existing. The paper would conclude with a comparative analysis of the inheritance law framework in Iran along with drawing a parallel to the inheritance law framework in India.*

## I. INTRODUCTION

Women from time immemorial have been subjected to a plethora of oppressions. Legal and social oppression being the worst of such oppressions and yet, they have come out much stronger with flying colours. In Iran, as shall be dealt with in this paper, the road of revolution has been extremely grueling for women. Especially during the period between 1979-2005, the various forms of socio-political discourses did not just lead to the exclusion of women but also contributed to their economic marginalization. The focus of this paper shall be to delve upon the regressive inheritance laws of Iran through an Islamic feminist lens. Islamic feminists in Iran and other Arab countries believe in asserting their empowerment and revitalization discourse through their very own Islamic Nationalist identities, backed by the

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Islamic sacred texts and not being influenced by any sort of ‘western ideas of modernity’. However, in due course of the paper, I hope to show that any form of feminism cannot stay completely distinct from other types of feminism and hence the same is the case with Islamic feminism too.

Margot Badran, a gender issues specialist for Muslim societies, defines Islamic Feminism as a discourse which is equally prevalent in the West as well as the East. She goes on to say that it is growing immensely even in the countries with Muslim minorities as well as to the non-Muslim believers too.<sup>2</sup> Hence, at this juncture, I believe that it is essential that the Islamic feminism is distinguished from the Western feminist theories. It is well known that Iranian women’s struggle has always been viewed from the same narrow lens which tends to homogenize their struggle to their clothing (like the veil issue) and confining them to the religious oppression which keeps them devoid of their rights as citizens. However, even though both, the Islamic feminism and the Western feminism stand in slight conflict with each other, yet it is significant to note that both do not contradict each other. This is simply because their end goal is the same, to achieve gender-neutral social as well as political rights for women.

Inheritance is dealt with in chapter 2 of the “Civil Code of the Islamic Republic of Iran”. Wherein Section 6 – Subsection 1 (906-915), 2 (916-927) and 3 (928-939) mention the various categories of heirs who would inherit the property of the deceased. The first subsection specifies the immediate heirs being the children and parents of the deceased which depicts the upcoming of a nuclear family structure which emerged during the 20<sup>th</sup> century due to an unprecedented chain of socio-economic changes which knocked the world of the Muslims in Iran (the revolution period, when a significant rebel group of religious and Iranians sought to overthrow the extremely autocratic and repressive regime of Shah Mohammad Reza Pahlavi).

Nikki Keddie points out that after the revolution period, many Islamic countries enacted personal laws and codes to reform the inheritance laws such that the family structure could be moulded to a nuclear family as opposed to a tribal one.<sup>3</sup> The change in the family structures was quite inevitable with the onset of modernity. But how modernity was envisaged in Iran proved out to be regressive for women, whose position did not modernize at all. Women were still confined to houses, without any property rights or even mere inheritance rights. The

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<sup>2</sup> Margot Badran, "Islamic Feminism: What's in a Name?", *Al-Ahram Weekly*, 569 [17 January 2002] 2

<sup>3</sup> Nikki Keddie, *Roots of Revolution: An Interpretive History of Modern Iran* (1<sup>st</sup> edn, Yale University Press 1981)

resulting differences challenged the patriarchal mindsets in Iran fearing the incorporation of the Western cultures into their lives, which they were profoundly opposed to, as then men would have to share their legal dominance with women in both, the social, as well as the political spheres. This lack of agency by men to tolerate and appreciate such differences is one of the core reasons, for Iran's detrimental inheritance laws.

Moving on to the religious aspect of the inheritance laws, The Quran (Surah Nisa verse 11) dictates the proportion of male to female share of inheritance as 2:1 which has also been incorporated in Article 907<sup>4</sup> of the Civil Code. Now, interestingly, even though the Quran does not seclude women from the inheritance, it does, create a distinction between the shares of men and women. This, however, contradicts the leading liberal feminist account of Islam as an inherently patriarchal religion and that the deeply rooted systems of oppression with it can only be liberated by social revolution.

In Islam, it is believed that a man and a woman are not complete by themselves. They become complete only upon marriage which is deemed to be a contract which henceforth establishes them to be one single living entity together. This conception of men and women being incomplete on their own secretly points out the patriarchal social perception of discrete roles and capabilities of men and women. This belief that difference between two genders is something inherently wrong and needs to be eliminated from the core is problematic and deserves special attention to achieve the goal of gender parity above and beyond mere biological distinctions.

Articles such as 949<sup>5</sup> are framed in complete consonance with the same distinction between males and females wherein the females inherit only their share of the property even when there are no heirs of any sort left. Thus, even after 25 years of the Islamic Revolution of Iran, the utmost need to balance the legal authority of the Shari'a Law still stands in opposition to the need for progressive and gender-neutral laws for women of the country. The post-revolution period also saw heightened claims of modernity and with that came up a new era which opened up the scope of re-interpreting Quran and other holy texts of Islam.<sup>6</sup>

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<sup>4</sup> "Article 907 - If the deceased leaves no parents, but has one or more children, the estate will be divided as follows: If there is only one offspring, whether son or daughter, the whole estate belongs to that child. If there are several children, but all are sons or all daughters, the estate will be divided equally among them. If there are several children and some are sons and some are daughters, each son takes twice as much as each daughter." 'On Inheritance' ("Iran Data Portal: Book 2, Chapter 2") < <http://irandataportal.syr.edu/inheritance-law> >

<sup>5</sup> "Article 949 - If there is no other heir except for the husband or wife, the husband takes the whole of the estate of his late wife; but the wife takes only her portion, and the rest of the estate of the husband is considered as the estate of a man without any heir, and will be dealt with in accordance with Article 866." 'On Inheritance' ("Iran Data Portal: Book 2, Chapter 2") < <http://irandataportal.syr.edu/inheritance-law> >

<sup>6</sup> M. Yamani, *In Feminism and Islam: Legal and Literary Perspectives* (Garnet 1996)

Building on the same hermeneutical outlook, Quran was after that professed as a living text by the Islamic feminists which they believed was capable of accommodating changes and subsequent re-interpretations. A theory titled “expansion of Prophetic experience” as proposed by Abdolkarim Soroush, a reformer from Iran backs the argument above. Wherein, Soroush states that Mohammed got inclined towards the Arabic culture in scripting the Quran, because of staying in Arab, had he been in any other country at that time, Quran would have had the ideological influence of that country then.<sup>7</sup> Therefore, due to negligible or almost no hindrance with the Quranic text, the Iranian women as well as the Islamic feminists could assert their legal rights without having been caught in any blame games of getting influenced by the so-called western ideas of feminism.

Subsection 4 of section 6, which is based on the Inheritance Rights of Husband and Wife lays out major gender disparities prevalent in terms of inheritance by women (in this section, the wives). Islamic feminists have critiqued the same through the various alternative interpretations offered by the holy Quran.

Article 944<sup>8</sup> of this sub-section in the very first glance does not at all appear feminist in the sense that it nullifies the right of inheritance of a wife upon remarriage. But on a subsequent reading of this article, it seems to be crafted to prevent women from the exclusion of inheritance upon the death of their husbands, provided they do not remarry.

Thus, this article’s strength lies in the fact that it ensures optimally that the women do not get secluded from the scheme of inheritance. Opining on the same, Louise Halper goes on to say that even though the Iranian government did frame highly sexist inheritance laws, yet, on the other hand, this very suppression did initiate an agency by women to demand and assert their socio-political rights.<sup>9</sup> This line of argument can very adequately explain the upcoming of Islamic Feminism by the exercise of the collective agency of the Muslim women to overthrow the overtly gendered and repressive family laws of Iran.

Out of both the interpretations of article no. 944, one thing stands crystal clear, i.e. this article very conveniently creates two classes of women - first, those who do not remarry upon their husband’s death and second, those who do remarry upon their husband’s death. Such social divisions and differences prevalent in Iran form the focal point of most of the Islamic

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<sup>7</sup> Fareshteh Ahmadi, ‘Islamic Feminism in Iran: Feminism in a New Islamic Context’ (2006) 33 < <http://www.jstor.org/stable/20487863> >

<sup>8</sup> “Article 944 – If the husband divorces his wife when he is ill, and dies of that same disease within a year from the time he divorces her, the wife takes inheritance from him, even if the divorce was irrevocable; provided that the wife has not taken another husband.” ‘On Inheritance’ (“Iran Data Portal: Book 2, Chapter 2”) < <http://irandataportal.syr.edu/inheritance-law> >

<sup>9</sup> Louise Halper, ‘Law and Women’s agency in Post – Revolutionary Iran’ [2005] 85

feminists who primarily focus on proposing solutions to such cancerous problems in a way which is similar to other feminist studies across the globe. As Fatima Seedat rightly opines, “the failure of academic feminists to recognize difference as a crucial strength is a failure to reach beyond the first patriarchal lesson.”<sup>10</sup>

Article 945,<sup>11</sup> on the other hand, is extremely repulsive on a whole new level. It necessitates sexual intercourse as a pre-requisite for a woman to have a claim in inheritance. It does not just legitimize the notion of ‘woman as a chattel of the owner, i.e. the husband’ but also explains the possibility of the heirs to lose a say in the property, from the testator. This article draws its legitimacy from the pre-revolution period of 1925-1979 wherein the then monarch, Reza Pahlavi (a.k.a. Raza Shah) first created a Civil Code in which he incorporated ideas of modernity (or as believed in that period) such as education, politics (including the right for representation) and family law. Interestingly, this Civil Code was based on a European model and is the present-day “Civil Code of the Islamic Republic of Iran.” It posed a great deal of confusion and restlessness in its initial stages of incorporation about how to balance both, the European model of the code, as well as the religious sanction which it derives from the holy Quran. Thus, very deliberately, it was ensured that the matters related to family law remain subject to both the civil as well as the religious domain. So that the women were left with no option at all, there was this fear of either defying the religious authority or voicing against the state. But this state of restlessness was however short-lived. Feminists like Sylvia Walby soon figured out that this gradual shift in the status of rights for women from the patriarchy in the private realm of the family towards a publicly regulated state domain meant that the ray of hope for gender-neutral family laws was still alive.<sup>12</sup>

Another very gruesome Article of the code for rendering a feminist analysis is Article 939,<sup>13</sup> the horror of the Iranian Civil Code. The only thing which makes it less of a nightmare for me is that Iran at least recognizes intersex people, unlike India where there is absolutely no recognition or even mention of inheritance or mere property devolution rules to them.

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<sup>10</sup> Fatima Seedat, ‘Islam, Feminism, and Islamic Feminism: Between Inadequacy and Inevitability’ (2013) 25 < <http://www.jstor.org/stable/10.2979/jfemistudreli.29.2.25> >

<sup>11</sup> “Article 945 – If a man marries a woman when he is ill, and dies of that disease before the consummation of the marriage, the wife does not inherit from him; but if he dies after the consummation, or after recovery from that disease, the wife takes inheritance from him.” ‘On Inheritance’ (“Iran Data Portal: Book 2, Chapter 2”) < <http://irandataportal.syr.edu/inheritance-law> >

<sup>12</sup> Sylvia Walby, ‘Theorising Patriarchy’ (1991) 213 < <http://www.jstor.org/stable/42853921> >

<sup>13</sup> “Article 939 – If the heir is a hermaphrodite and is one of a group of heirs whereby the males take twice the portion of the females, his portion will be determined as follows : If the indications of masculinity are greater, he takes the portion of the boys of his degree; and if the indications of femininity are greater, he takes the portion of one girl of that degree; and if neither the masculine nor the feminine indication is preponderant, the hermaphrodite will take one-half of the sum of the portions of one boy and one girl of his degree.” ‘On Inheritance’ (“Iran Data Portal: Book 2, Chapter 2”) < <http://irandataportal.syr.edu/inheritance-law> >

Intersex people have faced a series of severe oppression in not just Iran but across the gender insensitive world. Sumit Boudh, in his biographical piece titled *'Invisibility of "Other" Dalits and Silence in the Law'*, of the Project Muse narrates his very own story of insult and humiliation when he was mocked as a 'faggot', publicly in a park of Delhi during a morning walk.<sup>14</sup> This is just one experience. Fatemeh Javaheri, in her piece on 'Transsexuality in Iran' deals with several stories and case studies on how transsexuals are socially ridiculed and hence are often suppressed in their demands for a normal life with rights equal to those of men and women in all spheres including those of inheritance.<sup>15</sup> But this seems very far-fetched in Iran. The strictly embedded notions of masculinity and femininity, as mentioned in article 939 assert various forms of biases that prevail even in today's world. For example, biases of sexual orientation, gender identity, and expression (SOGIE).

The basis to which article no. 939 confines itself is that of the indications of masculinity or femininity. Interestingly, both these parameters, i.e. 'indicators' as well as the social constructs of 'masculinity and femininity' are flawed in itself. Firstly, because an indicator in itself cannot measure the degree of anything and secondly, every individual on Earth has an amalgamation of both the feminine and masculine traits. It is not possible for one person to have either all or none of such traits. Also, because both masculinity and femininity are social constructs, it seldom happens that one can concretely define what both of them are. A recent example of the same is a Female Turned Male (FTM) Patrick Califia, a prolific American author, sex activist and a physiotherapist, who in her provocative opinion piece 'Manliness' raises the issue of masculinity and goes on to describe his lived experience and confusion as to what does being masculine entail.<sup>16</sup> Even by the end of his piece, he seems to state that the societal expectations and set standards to measure masculinity and femininity are entirely baseless and devoid of any reason.

We all have observed that the plight of women is often measured in a shallow manner, by perceiving them as a homogeneous group, wherein all the women are believed to be suffering oppression similarly. However, this is problematic because women are not on equal footing in terms of the repressive and oppressive structures of power. Kimberley Crenshaw, a chief critical race theory scholar, explains this situation through her concept of 'intersectionality', which is exploring the nexus between co-existing identities and the related structures of power and oppression. Similar is the case with Muslim women wherein being a Muslim and

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<sup>14</sup> Sumit Boudh, 'Invisibility of "Other" Dalits and Silence in the Law' (2017) 222

< <https://doi.org/10.1353/bio.2017.0010> >

<sup>15</sup> Fatemeh Javaheri, 'A Study of Transsexuality in Iran' (2010) 365 < <http://www.jstor.org/stable/27919922> >

<sup>16</sup> Susan Stryker and Stephen Whittle, *The Transgender Studies Reader* (Routledge 2013)

being a woman are both distinct identities. Still, they co-exist within the anti-Muslim and patriarchal systems of oppression. Such a flawed conception of women as an isolated, oppressed group leads to the formation of social divisions which later develop representational, intersubjective and organizational forms and thus affect how we theorize the solutions to such problems.<sup>17</sup> Therefore, a proper feminist analysis of the detrimental laws of Iran would not suffice if we presume that all women are oppressed in the same manner. It is essential to realize that even within women lie other sub-categories of women who may be deprived or belong to a particular caste, race or even class.

## II. CONCLUSION

I believe that *Afsaneh Najmabadi* rightly calls the post-revolutionary period in Iran as the "years of hardship and years of growth."<sup>18</sup> The struggle was tough not just because it dealt with the gender insensitive inheritance laws of Iran but also because the standard Islamic practices of 'tafsir' (understanding the holy Qur'an) and 'Ijtihad' (self-study of religious texts) were under challenge. Despite all the hardships, Iranian women cut across all the social, ethnic and religious barriers and left no stone unturned to win back all that they had previously lost.

By the end of this paper, I believe that my arguments were successful in proving that the inheritance laws of Iran which have derived their authority from the religious texts, as analyzed, appear to be extremely regressive for women. As a solution for the same, the Islamic feminists found a ray of hope to re-interpret these texts in such a manner that leads to debunking of gender biases. Thus, they came up with an ideology of construing these religious texts as living documents, capable of re-interpretation. The paper also mentioned the fear of Islamic feminists of straying towards the Western ideologies of feminism even though Islamic feminism does draw certain parallels with the Western feminism, which is quite inevitable in today's scenario.

Thus, keeping in mind the current status of the detrimental laws of Iran, the utmost need of the hour is an intelligible re-interpretation of the Quranic text so that specific gender-neutral inheritance laws can be established for the women of Iran. As, Audre Lorde quotes – "In our world, divide and conquer must become define and empower".<sup>19</sup>

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<sup>17</sup> Nira Yuval-Davis, 'Intersectionality and Feminist Politics' (SAGE Publications 2006) 193 < <https://hal.archives-ouvertes.fr/hal-00571274> >

<sup>18</sup> Afsaneh Najmabadi, 'Feminism in an Islamic Republic: Years of Hardship, Years of Growth' (1998) 59

<sup>19</sup> Audre Lorde, *Sister Outsider: Essays and Speeches* (Crossing Press 1984)