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Women's Succession Rights under Muslim Law

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ABSTRACT

The rights of women are among the most talked about and debated issues across the world. Religion and patriarchy are often considered to be the most common causes of gender inequality in our society. The right to own property is a crucial requirement for the integration of a woman into a country's economy. It also empowers the women and allows them to break away from any limitations imposed upon them and get income and economic security. Islam is based upon the principles of Tawhid or the unification of god, Risalah or the message of Muhammad, Adl or justice and Muswat or equality. However, it has been noted across various Muslim societies, that women have been not allowed to inherit property after the death of their parents. This mostly happens as a result of a lack of proper Islamic teachings and the non-implementation of the laws related to the inheritance rights of a Muslim women. Islam has always given women a very dignified and respected position in society. Both the genders are considered to be equal in relation to the laws of inheritance and no special treatment is given to either of the genders. In Islam, succession is based upon the principle of a double share to a man and a single share to the woman. However, while these laws place certain restrictions upon a woman's right to inherit, it imposes equality in a woman's capacity to own, run and dispose off property. Muslim women enjoyed various kinds of property rights, centuries before the women who were born into countries which are considered to be the gold standard of equality today. Furthermore, Muslim women enjoy various other rights which are not given to the men of their community.

I. INTRODUCTION

Islam is not just a religion but a lifestyle which influences and governs the social, political, cultural, economic and spiritual aspects of an individual's life. The law of succession is an integral part of Muslim Family law and has been

referred to by the prophet as "half the sum of all useful knowledge".² These laws have been primarily taken from four sources, the Qur'an or the holy book of the Muslims, the Sunnah or the sayings, actions and approvals of the prophet, Ijma which deals with the joint consensus of the

¹ Author is a Student in India.

² Sunanibn Majah Translation retrieved from <https://sunnah.com/ibnmajah>

Islamic Scholars and jurists; and Qiyas which involved the expansion of the law through analogical application and reasoning of the different textual rules.³ Muslim Jurists combined the commands issued in the Holy Qur'an with the Sunn'a of the Prophet to build a strong and comprehensive system for the process of succession.

The right to inherit and own property is very important for the advancement of a woman's economic advancement in a society as it not only allows her to generate income on her own but also gives her a sense of autonomy and freedom. Before the emergence of the Islamic succession laws in Arabia, no female could inherit the property of a deceased individual as she was considered to be the property of the groom who "bought" her at the time of their marriage. They were seen as things which would later be "inherited" by the men of that particular family.⁴ In one case, a woman and her daughter were not allowed to inherit the property left behind after the death of her husband. This property was later inherited by his brother who justified his actions by stating that women don't endanger themselves in battle and should thus, not inherit any property.⁵ To this Allah replied,

"men shall have a share in what parents and kinsfolk leave behind, and women shall have

*a share in what parents and kinsfolk leave behind, whether the property be small or large- a determinate share."*⁶

According to Islam, Allah had created men and women from a single source and considered them to be equal in every way possible. All the laws which discriminated against women were abolished and new laws were introduced which ensured equality amongst the sexes. These laws provided equality in financial matters, property, rewards and even punishments. The most significant change in all of this was the recognition of a woman as a legal heir.⁷ On the death of their ancestor, nothing prevents the children of the family, may it be a girl or a boy from inheriting the property. The Qur'an contains a very comprehensive and detailed system of distributing an individual's property amongst his or her family.⁸ Although an individual has the right to dispose of his entire property during his lifetime, after his death this disposal is restricted to a maximum of 1/3rd of the individual's property. The individual can will it to others and modify the shares of the various heirs only if he has the consent of the legal heirs.⁹ The main purpose of these laws is to ensure "material provisions" for the dependents of the deceased person who are tied to him by threads of responsibility and blood relationship.¹⁰ The

³ Ahmad Ali Khan, *Rights of Women under the Islamic Law of Succession*, 20 J.L. & SOC'Y 1 (1999).

⁴ Bishin, Benjamin G., and Feryal M. Cherif., *Women, Property Rights, and Islam*, 49 COMPARATIVE POLITICS 501-519 (2017).

⁵ Azizah al-Hibri, *Islam, Law and Custom: Redefining Muslim Women's Rights*, 12 AM. U. J. INT'L L. & POL'Y 1 (1997).

⁶ The Qur'an Surah An-Nisa (4: 7) Translation retrieved from <https://quran.com/4/7>

⁷ Mohd Altaf Hussain Ahangar, *Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal*, 28 ARAB L.Q. 111 (2014).

⁸ *Id.*

⁹ M. Siraj Sait, *Women's Property Rights in Muslim Matrilineal Communities*, 9 J. Islamic St. PRAC. INT'L L. 1 (2013).

¹⁰ N.J. Coulson. *Succession in the Muslim Family* (1971).

presumption made here is that all human beings are fallible in nature and thus, do not have the capacity to take the correct decision. The rights of a woman in relation to succession and inheritance have been described in great detail in the Qur'an. However, it is usually found that the share of property received by the female heirs is half of the property received by the male heirs.¹¹ Women don't have the same property rights as the men, they do however have some special rights of inheritance which are only enjoyed by them such as Mehr and maintenance. Furthermore, in Islam, the financial needs of a woman are looked after by her lawful guardian i.e., her father, her brother, her husband etc. who has the obligatory duty to look after all the financial needs of the woman under his care.¹²

However, in spite of all of this, the real status of a woman as a legal heir is very different from the ideal one prescribed in the Qur'an. Although Islam is very encouraging on the rights of a female heir in relation to acquiring property, most people are reluctant to give women these rights. Thus, the succession rights of a woman are often forgotten, ignored or modified beyond comprehension.¹³ Furthermore, although several justifications and rationales have been given for the purpose of this system, there is absolutely no doubt that the division of inheritance and the laws of succession which exist in Islam are inferior to the modern notions of equality that

exist today.¹⁴

The doctrinal research methodology was made use of in order to produce this paper. Relevant data from the Qur'an and Sunn'a, relating to the succession rights of Muslim women were analyzed and understood. Furthermore, several journal articles, Newspaper articles, Magazine articles, books as well as Research Papers written by students and researchers alike were also gathered to write this paper. The Analytical Research Methodology was later used to evaluate all of the facts and information collected to identify the most relevant data. Finally, all of the selected information was utilized in order to write a detailed report about the issue at hand, which would help the reader gain a better understanding of the topic. The main aim of this paper is to understand a woman's right to succession in Islam in relation to the position of the various female heirs and the rules of distribution. It will also present the Rationale behind the double-share for a man and the hindrances faced by a woman in her enjoyment of her right to inheritance. Finally, it will provide the reader with appropriate recommendations which will allow the individual to look at the inheritance laws from a new perspective.

II. RESULTS AND DISCUSSIONS

- **Rules of Distribution and the Position of the Female heirs**

¹¹ *Id.*

¹² Rakesh Kumar Singh, *Law of Dower (Mahr) in India*, 12 J. Islamic L. & CULTURE 58 (2010).

¹³ Brooke Thompson, *Do Islamic Succession Laws for Muslim Women Violate the Current Human Rights Framework: Developing an Ethical Working Model*

for Muslim Minority Nations, 13 Muslim WORLD J. HUM. Rts. 45 (2016).

¹⁴ Narendra Subramanian, *Legal Change and Gender Inequality: Changes in Muslim Family Law in India*, 33 L. & SOC. INQUIRY 631–672 (2008).

Priorities in succession

Three rules are followed while distributing property amongst an individual's heirs. They are the "rule of class" the "rule of degree" and the "rule of strength of blood tie". While following the rule of class, the heirs of an individual are divided into several classes and those who belong to a higher class trump the heirs who belong to a lower class. In a case wherein all of the heirs belong to the same class, the rule of degree is followed wherein those who are closer in degree to the deceased trump the heirs who are not as closely related. If the class and the degree of the heirs is identical then the rule of strength of blood tie is followed. Here, those heirs who have a higher and a more superior blood tie with the deceased trump the heirs who have a lower or inferior blood tie with the deceased.¹⁵ However, one of the most fundamental principles of succession in Islamic law is that the Qur'anic heirs, who have been initiated by the Qur'an are given a preferential position when it comes to inheriting property from their deceased relatives. Once the "satisfaction of shares" of the Qur'anic heirs is complete, the remaining balance is given to the agnatic heirs.¹⁶ The principle of Ta'sib determines the shares of a male and a female heir who have the same rank according to the Law of inheritance. This principle dictates that the male heir transfers the female heir of the same rank to

an Asa'ba (residuary). The property is then divided in the proportion of two shares to the male heir and one share to the female heir. This position of the female heirs is considered to be very unique in Islamic law.¹⁷

Specific rules of inheritance

Muslim women can inherit property as an agnate or as a Qur'anic heir. Women can inherit in several capacities, however the wives, daughters and the mothers have been provided with an unmeasured right of succession. This means that their right cannot be excluded by any relative.¹⁸

A) Wives

In accordance with the Qur'an, the wives get one-fourth of the deceased's assets if there are no children and one-eighth of the deceased's assets if there are children.¹⁹ Thus, her share is dependent upon the existence of a descendant. This has been recognized by both Sunni and Shia laws. If there is more than one wife, then the assets will be equally divided amongst them. A divergence occurs in the case of a daughter's child. Here, the widow's share will be reduced to one-eighth under Shia law but will not be reduced under Sunni law. In both laws, the widow's share tends to decrease in the case of a son's child. As mentioned earlier, this portion is fixed and cannot be reduced by any other relative.²⁰

¹⁵ Ahmad Ali Khan, *Rights of Women under the Islamic Law of Succession*, 20 J.L. & Soc'y 1 (1999).

¹⁶ N Coulson & D. Hinchcliffe, *Women and Law Reform in Contemporary Islam*, 1 HARVARD UNIVERSITY PRESS 37-51 (2013).

¹⁷ A. Ali, *Do Women Receive Fair Treatment under the Islamic Law of Inheritance? Review of the Decision of Peshawar High Court in Amir Afzal vs*

Ghulam Haider, 22 JL & SOC'Y 91 (1994).

¹⁸ Mary F. Radford, *Inheritance Rights of Women under Jewish and Islamic Law*, 23 B. C. INT'L & COMP. L. REV. 135 (2000).

¹⁹ The Qur'an Surah An-Nisa (4: 12) Translation retrieved from <https://quran.com/4/12>

²⁰ Mahomed Ullah S. Jung, *The Muslim Law of Inheritance*, 31 ALLAHABAD L.J. 9 (1933).

B) Daughters

The Qur'an specifies that a daughter has a share in the property of her parents and those closely related to her.²¹ A daughter is considered to be a primary heir under both the Shia and Sunni laws. According to the Quran, the share of a daughter depends on whether her parents were survived by sons or daughters. In the case of sons and daughters, each daughter gets one-half of a son's share. If the deceased only had daughters, then the surviving daughters share two-thirds of assets amongst themselves. If the deceased had only one daughter, then she receives one-half of the estate.²² The share of the daughter is reduced if the shares allotted to the Qur'anic heirs exceeds unity. The share of the daughter can also be increased if the shares allotted to the Qur'anic heirs does not use up the estate.²³

C) Mothers

According to the Qur'an, if the deceased individual has children, then the mother will receive one-sixth of the share. However, if the deceased does not have any children, then the mother shall receive one-third of that share. If the individual had any siblings, then she shall receive one-sixth of that share.²⁴ This has been interpreted differently by both the Shias and the Sunnis. Under Shia law, the mother receives one-sixth of the property in the presence of a lineal descendent. This includes the children of the daughter as well. She is also restricted when there

are four sisters or two brothers and one sister or one brother. This does not happen in the case of Shia law where in only the children or the son's children are considered. In cases where there aren't any siblings or children, the Qur'an enables the mother to take a larger share than the father of the deceased individual.²⁵

D) Other Female Relatives

Both Paternal and Maternal grandmothers are considered to be the substitute heirs of the mother. They inherit the assets in her absence and are entitled to her share. This includes a higher ancestor as well but a grandmother who is closer in relationship with the deceased will get the share. Agnatic Granddaughters are considered to be the substitute heirs of the daughters and occupy a very peculiar position in Muslim inheritance law. Sunni law states that a son's daughter can inherit property both as a Qur'anic heir and a residuary. In the case of no surviving children and close son's children, she is given one-half of the estate.²⁶ If there is a daughter, she is given one-sixth of the estate. Under both the laws a sister's inheritance depends on whether the deceased and her are uterine, consanguine or germane siblings. In the absence of brothers, a sister is a Qur'anic heir where as in the presence of her brother she is a residuary heir.²⁷

- **Rationale behind the specific division of property**

Before the emergence of Islam, women did not

²¹ *Supra* note 5.

²² The Qur'an Surah An-Nisa (4: 11) Translation retrieved from <https://quran.com/4/11>

²³ *Supra* note 14.

²⁴ *Supra* note 21.

²⁵ *Supra* note 6.

²⁶ Asghar Ali Engineer, *Rights of Women and Muslim Societies*, 7 SOCIO-LEGAL REV. 44 (2011).

²⁷ Nehaluddin Ahmad, *Modern Debate on the Socio-Political Rights of Muslim Women*, 13 ASIA-PAC. J. ON HUM. RTS. & L. 42 (2012).

have any say in matters related to property. After the death of a man, his widows would be inherited by his sons. By giving women inheritance rights, Islam was able to save these women from these horrid situations.²⁸ Islam believed in egalitarianism and hence, bestowed women with several rights which they earlier did not enjoy. However, there are many cases wherein a woman inherits less than a man. This is not seen as discrimination but as a rubric which has been set by Allah himself.²⁹ The main reason for the double share for the man was because in Islam, a man only had two sources of Income whereas a woman had several sources of income and was also exempted from all of the responsibilities.

Maintenance right of a woman

A female child was to be given maintenance by her father till her marriage whereas a male child only received till the age of 15. All of her expense including the costs of her marriage were to be borne by the father. After her marriage, the wife received maintenance from her husband and was bound to give all those things which would support her life. This included items such as food, clothing, shelter, medicine and even servants if she had a particular social position in society.³⁰ A man was required to spend according to his means and a wife could not be deprived of her right to receive it.³¹

²⁸B. Bishin, & F. Cherif, *Women, Property Rights, and Islam*, 49(4) *COMPARATIVE POLITICS* 501-519 (2017).

²⁹The Qur'an Surah An-Nisa (4: 33) Translation retrieved from <https://quran.com/4/33>

³⁰ *Supra* note 27.

³¹ The Qur'an Surah At-Talaq (65: 7) Translation

Right to Dower

A husband was duty bound to give his wife a dower at the time of or after their marriage as a show of respect. The wife had complete discretion over this dower and could dispose it off as she pleased. It exclusively belonged to her and could not be restricted by her husband.³² Where there was a marriage, there was a dower whether it was mentioned in the marriage contract or not. In the case of *Maina Bibi vs. Chaudhari vakil Ahmed*,³³ the court held that if a husband died before the payment of dower, then she was legally obliged to have possession of his property until the dower was paid to her.

Personal Income

Any income received by a woman through employment or investment was exclusively hers alone and no individual could interfere in it.³⁴ Any earnings received by her through a job was exclusively hers.

Responsibilities of a man

As mentioned earlier a man only had two sources of income and this too is attached with various responsibilities. He is responsible for maintaining his unmarried sisters and bare all the expenses of their marriages in the absence of his father. He is required to pay the dower of his wife and also maintaining his children. He has to shoulder the responsibilities of taking care of his parents when they are old and ensure that they are cared for properly. He has to also participate

retrieved from <https://quran.com/65/7>

³² The Qur'an Surah An-Nisa (4: 4) Translation retrieved from <https://quran.com/4/4>

³³ (1925) 27 BOMLR 796

³⁴ The Qur'an Surah An-Nisa (4: 30) Translation retrieved from <https://quran.com/4/30>

in various social functions which go on to incur a massive expenditure. Islam completely exempts women from bearing such responsibilities and duties and imposes all of them upon the men.³⁵

- **Obstacles faced by a woman's right to inheritance.**

Socio-Cultural Traditions

Throughout history and all over the world, the status of a woman has always been considered to be lower than that of a man. For centuries, there were hardly any advancements for the empowerment of women especially in the field of inheritance. In several societies, a woman's personal property immediately transferred to her husband after their marriage was complete. She could utilize her wealth without gaining the permission of her husband.³⁶ Although the law is egalitarian in nature there is still a belief amongst the people of today that women do not have a right to gain ownership of a property. This is a very common occurrence in Muslim countries such as Bangladesh and Pakistan. In some cases, they do not receive their inheritance after the death of their parents. While in others, they are forced to give up the property which rightfully belongs to them. Furthermore, it is even considered to shameful for a woman to ask about her inheritance. Thus, these norms make it very difficult for a woman to receive her inheritance.³⁷

³⁵ Ayesha Shahid, *Post-Divorce Maintenance for Muslim Women in Pakistan and Bangladesh: A Comparative Perspective*, 27 INT'L J.L. POL. & FAM. 197 (2013).

³⁶Rajinder Kumar Marwaha & Anuradha Chadha, *Protective Discrimination and Women*, 4 INDIAN J.L. & JUST. 50 (2013).

Discriminatory practices

Women tend to face discrimination is almost all the areas of her life and the Islamic world in not an exception to this practice. Society celebrates the birth of a boy and takes greater care in their upbringing compared to a girl. This special status is observed regardless of the economic standing and the social status of the family. There is a false belief that only sons can bring honour and respect to the family and only they will take care of their parents when they reach a greater age. Women are forced to live very rigid and disciplined lives all in the name of religion and culture.³⁸ However, this is far from the truth. In Islam, women need to be free from any kind of discrimination and cannot be mistreated in any way whatsoever. Islam gives great importance to the upbringing of a girl and even says that if you bring up your daughter in a positive manner then she will be your protector on the day of judgement.³⁹

Lack of religious knowledge

This is another major issue which creates roadblocks in the path of a woman to gain her inheritance. This is because the lawmakers do not understand the context of the Shariah law and interpret it in a way, which they deem fit. Sometimes countries will pass their own laws which will come into conflict with the Shariah law and will create even more anarchy and confusion. The position of a woman is rapidly

³⁷ M. R. I. Sourav, *Unjust land right of women in Bangladesh*, 1(3) INT RES J INTERDISCIP MULTIDISCIP STUD 5-13 (2015).

³⁸ Madalina Tomescu & Liliana Trofin, *Religion and Discrimination against Women*, 4 J. RES. GENDER STUD. 1244 (2014).

³⁹ *Ibid.*

changing all across the globe.⁴⁰ Muslim countries such as Turkey have equal inheritance laws which give women the same inheritance rights as a man. However, these laws go against the Qur'anic guidelines of inheritance.⁴¹

III. CONCLUSION AND RECOMMENDATIONS

Islam is a comprehensive way of live which gives great emphasis to dignity and respect. Thus, it is very unfortunate that the Muslim society breaks away from the Islamic principles. It is quite clear from the earlier discussions that women enjoy a very respected and dignified position in the field of succession laws in Islam. In cases where a son does not provide proper support to his elder parents and the daughter provides maintenance to them, the parents will make a gift in her favour so that there is a balance between them.⁴² There is absolutely no doubt in anyone's mind, that Islam has considerably raised the status of woman in society. It has also been noticed, that the rights which have been bestowed to a woman under Islam have not been observed by today's patriarchal society. However, this division of property is not at par with the modern standards of equality. The female heirs are in a weaker position compared to their male counterparts. Furthermore, women are constantly deprived of their inheritance rights through the execution of "relinquishment deeds" which further lowers the status of a woman in our society.⁴³ In the case of Ghulam Ali,⁴⁴ the court held that the practice of

relinquishment was against morality and public policy. Those who demand their rights, are shunned by the society. The courts have constantly taken a very positive stance towards the inheritance rights of a woman and have not only shown their distaste towards the societal practices of discrimination but have also taken a very active stance in the protection of these rights. Thus, it is quite evident that the Modern Muslim woman is facing a grave issue. She can either decide to follow the Islamic law of Inheritance where she will receive one-half share of property but will have an opportunity to inherit as a daughter, agnate daughter, mother etc. or she can decide to follow the modern law where she will inherit like her male counterpart but will not be able to inherit in the same capacity as a family member.

In several Muslim countries such as Morocco, Tunisia, Pakistan, Iraq etc. legislations have been passed which have not only modified the personal laws but have strengthened them as well.⁴⁵ It is necessary, that these legislations include a path through which an individual can dispose of his own property according to his own wishes. Modifications also need to be made in relation to male and female heirs of same rank so that they can enjoy an equal share in the property of the deceased. This is a very necessary step for the law to be at par with the modern standards of equality. It is my firm belief that not only should the succession laws of a country be modified but the restrictions and ideologies which holds it

⁴⁰ *Supra* note 6.

⁴¹ *Supra* note 37.

⁴² V. Narain, *Gender and community: Muslim women's rights in India* (2001).

⁴³ *Ibid.*

⁴⁴ PLD 1990 SC

⁴⁵ J. L. Esposito, *Women in Muslim family law* (2001).

back should change too. Individuals need to be more aware of their inheritance rights. This can be achieved through the implementation of various government schemes and broadcasts which will address the issue of women's inheritance laws. Inheritance laws should also be taught to the students during their secondary education. Furthermore, centers also need to be established which will monitor the system of inheritance in the country. Once these obstacles are cleared from the path of these laws, women will be able to enjoy the property which they rightfully deserve according to Islamic law.

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