

# Inheritance law in Islam and women

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A source of significant controversy both inside and outside the Muslim community is the Islamic law of inheritance. Whether women can inherit at all is not the controversy. Rather, the dispute centers around the "share" that is to be inherited. The injunction that a male relative (son) receives a share equal to that of two females (daughter) has given birth of a vigorous equality debate. Some argue that the differential treatment on the basis of gender regarding inheritance shares violates international human rights and in Islam women's share in inheritance is unfair and unjustified. Therefore, a number of NGOs and few personalities in Muslim countries have called for equal inheritance rights. On the other hand, Muslims argue that the shares of a male are double than that of a female not because a male is worth more, but because the male has the duty to support his family while the female is exempted from any sort of financial responsibility and can spend it all on herself without the need to share. However, a more dominant position is the general position, even from Muslim women, that what God has ordained for shares cannot be changed and the application of these formal inheritance rules pertaining to designated shares must be understood in a broader socio-cultural and economic context and within wider inheritance systems of practice. If seen as a whole, it would be very clear that in Islamic law women are much more favored financially than males.

One must first realize that Islam revolutionized women's inheritance rights. Prior to the Quranic injunction - and indeed in the west until only recently - women could not inherit from their relatives, and were themselves bequeathed as if they were property to be distributed at the death of a husband, father, or brother. Muslim mothers, wives, daughters, and sisters had received inheritance rights thirteen hundred years before Europe recognized that these rights even existed.

According to the Encyclopedia Americana, in English Common law all the real property held by a woman at the time of her marriage became the property of her husband-he was entitled to the rent from the land and any profit that might be made from managing it. It was not until the late 1870s onwards in Europe that married women achieved the right to enter contracts and own property. In France this right was not recognized until 1938.

During the time of Prophet (SAWS) women themselves were objects of inheritance and they were considered part of the possession of a man. At such a critical juncture of history Islam brought about a revolution in the domain of human thought and outlook towards women and established the right of women to inherit and has distributed the inheritance in a very upright way. This determined share is calculated by Allah Himself and can't be changed. Thus, Islam, by clearly stating in the Quran that women have the right to inherit for themselves, changed the status of women in an unprecedented fashion. The Quran states: *"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."*(Quran 4:7).

**Islamic inheritance systems and the equality debate: Reasons for half share for females**

The division of inheritance is a vast subject with an enormous amount of details (**Quran 4:7,11,12, 33,176**). The general rule is that the female share is half the male's. This general rule if taken in isolation from other legislations concerning men and women may seem unfair. In order to understand the rationale behind this rule, one must take into account the fact that the financial obligations of men in Islam far exceed those of women.

Women in Islam receive assets mainly from three sources: inheritance, Mahr and maintenance. On the other hand male receives double on first source inheritance but they need to give Mahr to wives and maintenance to wives and other dependants. A bridegroom must provide his bride with a marriage gift. This gift is considered her property and neither the groom nor the bride's family have any share in or control over it and remains so even if she is later divorced. The bride is under no obligation to present any gifts to her groom. This symbolizes an assurance of economic security from the husband towards wife. *"And give the women (on marriage) their dower as a free gift; but if they, Of their own good pleasure, remit any part of it to you, take it and enjoy it with right good cheer"* (4:4) Moreover, the Muslim husband is charged with the maintenance of his wife and children. The wife's property and earnings are under her full control and for her use alone since her, and the children's, maintenance is her husband's responsibility. No matter how rich the wife might be, she is not obliged to act as a co-provider for the family unless she herself voluntarily chooses to do so. Women are financially secure and provided for. If she is a wife, her husband is the provider; if she is a mother, it is the son; if she is a daughter, it is the father; if she is a sister; it is the brother, and so on. In this circumstances if we deprive the female completely from inheritance, it would be unjust to her because she is related to the deceased. Likewise, if we always give her a share equal to the man's, it would be unjust to him. So, instead of doing injustice to either side, Islam gives the man a larger portion of the inherited property to help him to meet his family needs and social responsibilities. At the same time, Islam has not forgotten her altogether, but has given her a portion to satisfy her very personal needs. In fact, Islam in this respect is being more kind to her than to him.

The fact is that in Islamic law as a whole, women are much more favored financially than their male counterparts for the following reasons:

- 1 Before marriage any gift given to women is her own and her husband has no legal right to claim on it even after marriage.
- 2 On marriage she is entitled to receive a marriage gift (Mahr) and this is her own property.
- 3 Even if the wife is rich, she is not required to spend a single penny for household; the full responsibility for her food, clothing, housing, medications and recreation etc. are her husband's.
- 4 Any income the wife earns through investment or working is entirely her own.
- 5 In case of divorce, if any deferred part of the Mahr is left unpaid, it becomes due immediately.
- 6 The divorcee woman is entitled to get maintenance from husband during her waiting period (iddat).

## Examples

The financial status of women, if maintenance right, inheritance right and right of marital gift are considered together, the Muslim women are in far better position.

We can give some examples-

Imagine Mr Abdur Rahim left one son, Halim and one daughter, Fatima and 30 lac taka (30,00,000/-) to be distributed between them at the time of his death. So according to Islamic law Halim will receive 20 lac taka and Fatima will receive 10 lac taka. Before her marriage maintenance of Fatima will be on Halim's shoulder. At the time of marriage Fatima will receive mahr (for example 1 lac) from her husband and Halim will have to give Mahr (for example 1 lac) to his wife. If a middle class family spends Tk.30,000/- per month (which is legally to be borne by the male for himself, wife and children) and if the married life is for 30 years, Halim will have to spend  $Tk.30,000/- \times 12 \times 30 = 1,08,00,000/-$  (10.8 million taka) for his family maintenance. On the other hand his sister Fatima does not need to bear any cost for maintenance for herself, husband and children (if she does spend something it is sadaqa not because of obligation under law or Shariah), rather she entails to receive her maintenance from her husband. For example every month she receives 10,000/- for her maintenance (in terms of residence, food, cloth, treatment and entertainment). So in total she receives for 30 years Taka  $10,000/- \times 12 \times 30 = 36,00,000/-$  (thirty six lac taka). In the above mentioned case, the man has to spend 109 lac or 10.9 million taka more than her sister in thirty years. If the advantage of man in inheritance of one million is deducted, even then the sister has advantage of 108 lac or 10.8 million. Now let's calculate rights and responsibilities of both brother and sister-

Halim			Fatima		
Receives as inheritance	+20,00,000/-		Receives as inheritance	+10,00,000/-	Advantage of Brother 10,00,000/-
Gives Mahr		-1,00,000/-	Receives Mahr	+1,00,000/-	Advantage of sister 1,00,000/-
Maintenance expenditure on family		-1,08,00,000/-	Maintenance expenditure on family	nill-	Advantage of sister 1,08,00,000/-
Receives maintenance	nill		Receives maintenance form husband	+36,00,000	Advantage of sister 36,00,000/-
Sub total	+20,00,000/-	-1,09,00,000/-		+47,00,000/-	
Comparative advantage/disadvantage of brother/sister (+ -)		-89,00,000/-		+47,00,000/-	Advantage of sister over brother (1,00,000+ 1,08,00,000+ 36,00,000- 10,00,000)= 1,35,00,000/-

In this example if respective advantages are squired of even then the woman will have an advantage over brother of 1,35,00000 taka (135 lac taka ).

The advantage of the lady will increase if monthly expenditure of family is more than what has been shown in this example If the family is poor which lives on Tk.5,000/-only per month, then he has to spend Tk.1.8.million taka in 30 years. In this case, the inheritance may be very little. As such the advantage of woman obviously remains. It is evident that, the women are always in better position. Only in the case of some super-rich, men may be in advantage. This is what Allah wanted, that is to make women more secure financially.

Now let's see what will happen if a sister gets equal to her brother in the case of Halim and Fatima. Here we have to remember that if sister (female) claims half of inheritance she will be responsible for half of maintenance of her family and males will not intend to give Mahr.

Halim receives as inheritance	+15,00,000/-		Fatima receives as inheritance	+15,00,000/-	
Maintenance (Half)		-54,00,000/-	Maintenance (Half)		-54,00,000/-
Total		-39,00,000/-			-39,00,000/-

From these two tables it is obvious that if Fatima follows Islamic law she will be gainer of 47 lac taka. On the other hand if she claims half of inheritance she will be looser of 39 lac taka. Moreover, it would be very difficult for a woman (especially when she is expecting and has small children to take care of) to take half of financial responsibility of maintaining the family. In fact in Islamic inheritance law women are much more favored financially than males.

### Exceptional cases

The inheritance law has been given for general cases. The special cases are covered in Islam by inheritance law and by other special laws of Islam dealing with Hiba, Wasiat and Nafqa (maintenance). Let's take examples of two exceptional cases:

Case one:

Imagine the situation that a man dies and leaves no direct heirs but only a brother and a sister. His sister might be a widow with children, without support from others, but she has to feed her children. The brother might be a rich business man and bachelor who has nobody to take care of but himself. Nevertheless, the brother will get 2/3 and the sister will get 1/3 of the estate. The male does get double the female no matter what their respective financial situation is and how many people depend on them. One may raise question that here the sister is in more need of wealth even though she is getting less.

In this case, the deceased may make gift of a part of his/her property (half or one third or more) in favor of the sister. Or he could make wasiat up to one third in favor of the children of the sister (wasiat can not be made for inheritors).Moreover in Islamic law the maintenance of the children of the sister is not on her but on the paternal uncles of the children or other relatives of the paternal side. If there is no paternal uncle or if they fail then responsibility goes

to relations of maternal side that means to the rich bachelor brother of the deceased who has received more than his sister.

Case Two:

Imagine a man and a woman where both are about 45 years old, who have married relatively late, e.g. at about the age of 30 and who have a number of children, some of them still young. Suppose also that both have worked or for some other reason have similar estates they leave behind when dying. If the woman dies, the man gets 1/4 of the inheritance. If the man dies the woman gets 1/8 of the inheritance. The question may raise that in both cases the surviving partner will have to feed and educate the children. So, how the wife would maintain the children's need if she gets less?

In this case also the husband is responsible for maintaining the children even after death of the wife, so Allah has given him a greater share. On the other hand in Islamic law it is not the duty of surviving wife in case of death of husband to maintain the children. The maintenance of the children will be first met from the property of husband, in case of shortfall, the paternal uncles and relations are responsible for their maintenance.

### **Half in inheritance does not mean half in status**

Sometimes it has been claimed that half in inheritance indicates inferior status of women in Islam. We should keep in mind that in Islam asset or money is not the standard of status. Her share in most cases is one-half the man's share, with no implication that she is worth half a man! This variation in inheritance rights is only consistent with the variations in financial responsibilities of man and woman according to the Islamic Law. The status of woman in Islam constitutes no problem. The attitude of the Qur'an and the early Muslims bear witness to the fact that woman is, at least, as vital to life as man himself, and that she is not inferior to him nor is she one of the lower species. The status of woman was taken for granted to be equal to that of man.

This can be understood when the matter is studied as a whole in a comparative manner, rather than partially. The rights and responsibilities of a woman are equal to those of a man but they are not necessarily identical with them. Equality and sameness are two quite different things. This difference is understandable because man and woman are not identical but they are created equals. It is almost impossible to find even two identical men or women.

This distinction between equality and sameness is of paramount importance. Equality is desirable, just, fair; but sameness is not. People are not created identical but they are created equals. With this distinction in mind, there is no room to imagine that woman is inferior to man. There is no ground to assume that she is less important than he just because her rights are not identically the same as his. The fact that Islam gives her equal rights - but not identical - shows that it takes her into due consideration, acknowledges her, and recognizes her independent personality.

1. The Quran provides clear-cut evidence that woman is completely equated with man in the sight of God in terms of her rights and responsibilities. The Quran states:

*"Every soul will be (held) in pledge for its deeds" (Quran 74:38).*

*“So their Lord accepted their prayers, (saying): I will not suffer to be lost the work of any of you whether male or female. You proceed one from another”... (Quran 3: 195).*

*“Whoever works righteousness, man or woman, and has faith, verily to him will We give a new life that is good and pure, and We will bestow on such their reward according to the their actions.” (Quran 16:97, see also 4:124).<sup>9</sup>*

2. Woman is recognized by Islam as a full and equal partner of man in the procreation of humankind.

*“O mankind! Verily We have created you from a single (pair) of a male and a female, and made you into nations and tribes that you may know each other...” (Qur’an, 49:13; cf. 4:1).*

3. She is equal to man in bearing personal and common responsibilities and in receiving rewards for her deeds. She is acknowledged as an independent personality, in possession of human qualities and worthy of spiritual aspirations. Her human nature is neither inferior to nor deviant from that of man. Both are members of one another. God says:

*“And their Lord has accepted (their prayers) and answered them (saying): ‘Never will I cause to be lost the work of any of you, be he male or female; you are members, one of another...’ (3:195; cf 9:71; 33:35-36; 66:19-21).*

4. She is entitled to freedom of expression as much as man is. Her sound opinions are taken into consideration and cannot be disregarded just because she happen to belong to the female sex. It is reported in the Qur’an and history that woman not only expressed her opinion freely but also argued and participated in serious discussions with the Prophet himself as well as with other Muslim leaders (Qur’an, 58:1-4; 60:10-12). Besides there were occasions when Muslim women expressed their views on legislative matters of public interest, and stood in opposition to the Caliphs, who then accepted the sound arguments of these women. A specific example took place during the Caliphate of Umar Ibn al-Khattab.
5. Historical records show that women participated in public life with the early Muslims, especially in times of emergencies. Women used to accompany the Muslim armies engaged in battles to nurse the wounded, prepare supplies, serve the warriors, and so on. They were not shut behind iron bars or considered worthless creatures and deprived of souls.
6. Islam grants woman equal rights to contract, to enterprise, to earn and possess independently. Her life, her property, her honor are as sacred as those of man. If she commits any offense, her penalty is no less or more than of man's in a similar case. If

she is wronged or harmed, she gets due compensations equal to what a man in her position would get (2:178;4:45, 92-93).

Apart from recognition of woman as an independent human being acknowledged as equally essential for the survival of humanity, Islam has given her a share of inheritance.

*“And women shall have rights similar to the rights against them, according to what is equitable; but man have a degree (of advantage as in some cases of inheritance) over them” (2:228).*

This degree is not a title of supremacy or an authorization of dominance over her. It is to correspond with the extra responsibilities of man and give him some compensation for his unlimited liabilities. It is these extra responsibilities that give man a degree over woman in some economic aspects. It is not a higher degree in humanity or in character. Nor is it a dominance of one over the other or suppression of one by the other. It is a distribution of God's abundance according to the needs of the nature of which God is the Maker. And He knows best what is good for woman and what is good for man.

Some people claim that Islam is unjust towards women because it entitles them to inherit half of what men get. In fact, those people only know one side of the truth. First, the principle of women inheriting half the money is only applicable in 45 percent of the cases. In the other 55 percent, women inherit the same amount or sometimes even more. For example, a mother and a father each inherit the sixth of their son's property when they are not the only inheritors.

In addition, the laws of inheritance in Islam are proportional to the duties of spending. Indeed, a man in Islam has the responsibility of supporting his family, his brother's children (when his brother dies), his parents (when they retire and do not have an income), his children from his previous marriage (if he has them) and his household, including his wife and children. A woman, on the other hand, does not bear this responsibility. She has the freedom to use the money she collects from her dowry or work as she pleases.

In fact, the status of woman in Islam is unprecedentedly high and realistically suitable to her nature. Her rights and duties are equal to those of man but not necessarily or absolutely identical with them. If she is deprived of one thing in some aspect, she is fully compensated for it with more things in many other aspects. Islam gives her as much as is required of her. Her rights match beautifully with her duties. The balance between rights and duties is maintained, and no side overweighs the other.

Finally, the beauty or comprehensiveness of Islamic law of inheritance will be understood if it is read with the law of maintenance, wasiat and hiba. An examination of the inheritance law within the overall framework of the Islamic Law reveals not only justice but also an abundance of compassion for woman.