



The Role of Shari'ah in Provision of Shares of Inheritance to Women

Usmat Batool¹

¹ Assistant Professor, Department of Islamic Studies, Bahauddin Zakariya University, Multan, Pakistan.

Email: batoolsyed2011@gmail.com

ARTICLE INFO

Article History:

Received: January 12, 2023
Revised: March 28, 2023
Accepted: March 29, 2023
Available Online: March 30, 2023

Keywords:

Islamic Law
Women Rights
Inheritance
Succession
Custom

Funding:

This research received no specific grant from any funding agency in the public, commercial, or not-for-profit sectors.

ABSTRACT

In pre-Islamic Arabia, before the advent of Islam women were deprived from their basic civil rights including the right of having wealth and property. Generally women were excluded from the right of inheritance also. Islam not only recognized her as human being by raising her dignity but also ensured her better economic position by giving her appropriate property rights including inheritance. The Qur'an and the Sunnah provide the basic provisions of Islamic law of inheritance and eliminate all the unjust custom of woman rights of inheritance before Islam. The Muslim jurists further streamlined the principles of inheritance in such scientific method so they can be easily applicable to actual situations; which undoubtedly is a major contribution in rest of the legal systems. In Islamic law woman can inherit the property of the deceased by varying her place and responsibility in the family as a wife, mother, daughter, grandmother, son's daughter etc. Firstly, this paper describes the pre Islamic custom of inheritance in Arabia with regard to female shares of inheritance. Secondly, this study examines the principles and dynamics of Islamic law of succession and inheritance in the light of different school of laws. This research provides the fact that Shari'ah consider woman as an autonomous legal person and give her the right to inherit the property from the deceased. Some scholars claimed that Islamic law indicates inferior status of women by giving her half of the share to men. This can be understood when the matter is studied as a whole in a comparative manner, rather than partially. This research not examines in detail the provisions of shares of inheritance to women in Islamic law but argued that how Pakistani Law of Inheritance related to women evolve in different different periods of time and Islamize according to Islamic law.

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Corresponding Author's Email: batoolsyed2011@gmail.com

1. Introduction

Evolution of civilization enforced mankind to find ways for peaceful living which resulted in the recognition of right and wrong. From the order of Ur-nammu, King of Ur (Finkelstein, 1968) in Mesopotamia (now Iraq) being the first written law code in known history (2100BCE) listed commensurate punishments for crimes, which echoed in many later laws. King Hammurabi has list of 282 laws inscribed on stele in the center of Babylon (Sampey, 1904) King Wu establish the Zhou Dynasty in China, claiming the mandate of heaven for his rules, beside legal framework of Confucianism, Daoism and legalism (Lun, 2017), the Roman Republic Law inscribed on 12 bronze tablets (Du Plessis, 2016), the idea of natural, universal and republic law somewhere in 340-348 BCE by Aristotle and Plato (Von Leyden, 1967), the customary law of India, the recognition of civil law by Roman Emperor, the Common law of Englishman, Divine ordains remain distinguished among all whether in the form of *Torah*, *Injil* and The *Qur'an* that revealed on Prophet Muhammad (SAW). The later gives legal framework and principle for administration of order by recognizing rights of every individual being, based on equity and equality.

Arab society before the dawn of Islam, clustered into tribes, consisted of clans usually headed by warrior having decisive power over the disputes arising intraclan but the imperative rule of '*might is right*' appears perennial in inter tribe matters (Shah, 2006). Islam brought a radical change not only in prevalent social, cultural, economical and legal systems but also replaced their traditional and customary ways of living especially distribution of wealth on demise of any person in that society. Precisely inheritance is defined as the devolution of one's property on his/her demise, in favour of another as a successor (Macnaghten, 1884). It would therefore be relevant to briefly examine the pre-Islamic law of inheritance in Arabia which was later reformed by the Islamic law. The root ideas of the pre-Islamic law of inheritance were as follows:

- a) That individual members of the family formed the wealth and strength of the united family.
- b) That females could neither inherit nor dispose of property (Levy, 1957).
- c) That females were themselves property to be bought and sold in marriage, to be assigned in payment of debt and to be owned and inherited by their males.

Thus the laws of Arabia in pre-Islamic days were patriarchal (Anderson, 1959). However, there was no distinction between ancestral and self-acquired property and sons acquired a vested interest at birth in their father's property. In these circumstances the following rules of succession were commonly applicable (Macnaghten, 1884).

- a) Females and cognates were excluded from inheritance. In certain cases, women constituted part of the state. A stepson or brother took possession of a dead man's widow or widows along with his goods and chattels. The male minors who were unable to carry arms were deprived of any share in the estate. The tradition has it that some people disputed as much the prophet's ruling to give a girl half of the estate of her father while she did not ride a horse of fight against the enemy as his ruling to give a boy a share of inheritance while he was not available in wars.
- b) The nearest adult male agnate or agnates succeeded to the entire estate of deceased. Male agnates, who were equally distant to porosities, shared together the estate per capita.
- c) Descendants were preferred to ascendants, which in turn, were preferred to collaterals (Coulson, 1971).
- d) The adopted son had the same right to the estate as the real son if he was able to carry arms.
- e) Mutual inheritance between two men was recognised through a contrail of alliance (Fyzee, 1974). The famous formula was for one of them to say to the other:

"My blood is your blood, my destruction is your destruction, you inherit me and I inherit you, you pursue my blood feud and I pursue yours .(Qur'ān, 33:6)"

So the Islamic law of inheritance introduced radical changes into the pre-Islamic law. The doctrine of shares becomes understandable once it is realised that the shares consist of those who were not entitled to succeed under the customary law in the circumstances in which they are granted the right to take their respective shares.

Islam strengthened the woman's position gave her new rights, and a share in the inheritance. The *Qur'ān* has laid down the general principle of the woman's right to inherit in this verse:

'From what is left by parents and those nearest related .there is a share for n and a share for women, whether the property be small or large, a determinate share.(Qurā'n, 4:7). After establishing the general principle of inheritance the *Qur'ān* explains it in detail, The women share varies according to her relationship with the deceased. Sometimes it's half from men, while in other circumstances some it becomes equal to the men (Adnan, Gunawan: 2004).

2. Islamic Provisions of Inheritance

The laws of succession are generally divided into two categories: testamentary and intestate. Most modern systems of successions rest firmly upon the freedom of the individual to determine the devolution of his property upon his death. These are testamentary systems of

succession where the law imposes compulsory rules of succession of general application requiring that property should on the death of its owner be transmitted in successions (Coulson, 1971).

The Islamic system of succession is known as intestate law of inheritance is one of the most comprehensive systems of intestate succession. It is exhaustive enough to meet most of the situation that might arise. It pays ample attention in the interests of all those who from time to time hold a natural place in the first rank of the affections of the deceased. It is difficult to find any other system of intestate succession containing such kind of equitable rules (Abdullah Ibn. Maḥmūd b. Mawdud, 1951).

2.1. Order of Entitlement of Inheritance

The order in which the persons shall be entitled to inheritance is as under:

1. *Dhawī al Furūd* (Sharers) (Ibn Qudāmah: 1997)
2. *ʿAṣbāt* (Residaries) (Ibn al-Humām al-Dīn ʿAbd al-Wahīd ibn ʿAbd al-Ḥamīd)
3. *Dhawī al-Arḥām* (Distant Kindred) (Ibn Qudāmah: 1997)

There is some disagreement among the different schools of Islamic Law about the persons and the order in which they are entitled to inherit the property left by deceased Muslim. (Amīn, 1983).

2.2. Share of Wife

Like that of the husband there are two situations of wife's right of inheritance as well: In the first case, the wife is entitled to one-fourth of the estate, whereas in the second case she is entitled to one – eighth of the estate (al-Buhūtī, 1968) If there are two or more wives the aforesaid share shall be divided equally among them. The principle is that where the fixation of shares is on the basis of relationship only and the number of heirs has not been specified, the heirs of the same relationship, even where their number is more than one, totally share together in the inheritance allowed or fixed for one. Thus if the widows of the deceased are more than one, all of them, as explained above, shall be co-sharers in the one fourth or the one-eighth of estate as the case may be (Aḥmad Muḥammad Salāmah Ṭaḥāwī). If the son (of the deceased) is murderer or is a non- Muslim or has turned an apostate, in that case, he shall be considered under law to be nonexistent and the share of the husband or the wife (as the case may be) shall not get reduced (Abū al-Barakāt Aḥmad bin Muḥammad al-Dardīr, 1396).

2.3. Share of Mother

Mother means the true mother of the deceased. The step mother of the deceased is not entitled to his inheritance because there is neither relationship by lineage nor the relationship by affinity between them.

There are three situations of the mother of getting the inheritance from her son or the daughter:

1. When there are the daughters or the sons of the son's issues or two brothers and sisters of any sort of the deceased the mother shall get one sixth shares.
2. When there is none of the person stated above, the mother shall be entitled to one third of the entire state.
3. When the wife or the husband of the deceased (as the case may be) is there, the mother after their shares shall get one third of the remaining state (Abū al-Barakāt Aḥmad bin Muḥammad al-Dardīr, 1396).

The rule laid down by Abdullah Ibn ʿAbbās differs from the rule of conduct stated in case No. 1 above. According to him in the event of there being two brothers or sisters the mother shall be entitled to one-third share shall be held to be entitled to one-sixth share. Ibn ʿAbbās in support of his view relies on the verse four of *al-Nisā* he contends that word "*Ikhwa*" used in this verse is particularly for the brothers and sisters as Allah in the Qurʾān says: وَإِنْ كَانُوا إِخْوَةً رِجَالًا وَنِسَاءً. In this verse the word "*Ikhwah*" is for both the males and females, not that it covers the male (brothers) only. Relying on the verse four of *al-Nisā*, Ibn ʿAbbās argues that in case only my sister and my brother are alive, the mother gets the share that has been stated in the Holy Qurʾān to the one-third of them ʿAlī (R.A) has the same opinion (Abū ʿAbd Allāh ibn Muḥammad

ibn Aḥmad al-Anṣārī al-Qurṭabī). He also argues from the said verse, that as per *Qurā'nic* text a share of one-third is mandatory for the mother. It is only when the son or the daughter of the deceased is alive or his three or more than three brothers are alive, the mother's share will be reduced from one third to one sixth (Abū al-Barakāt Aḥmad bin Muḥammad al-Dardīr, 1396).

In the event of wife's or husband's death: According to the rule of conduct of the jurists in general, if a woman dies leaving behind her husband, father and mother, half the share goes to the husband, one third of the residue shall be given to the mother and the rest shall be given to the father. Similarly when the husband dies leaving behind his wife and his parents, one-fourth share goes to the wife and one third of the residue shall be given to the mother and the rest shall pass to the father. If, however, in place of the father the deceased leaves his grandfather, the mother shall get one third of the whole and, after giving husband's or wife's share, the rest shall go to the grandfather. According to Imam Abu Yusuf, however, in the presence of the grandfather as well, after giving away the share of the wife or the husband the mother shall be entitled to one third of the residue and not of the whole property (Abū al-Barakāt Aḥmad bin Muḥammad al-Dardīr, 1396).

2.4. Share of Daughter

The daughter is one of the sharers. By a daughter is meant the one who a true daughter of the father or the mother begotten directly in legal wedlock if the deceased is male and he from his legitimate wife has a daughter she shall be called his true daughter. Likewise if the deceased is a female, the daughter begotten by her shall be her true daughter. Her share is also fixed in the *Qurā'n* as Allāh says in eleventh verse of *al-Nisā*,

"Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half". (Qurā'n, 4:11)

2.5. Share of Daughter under Different Schools of Law

The real daughters of the deceased, when the inherit occupy according to the four imams, one of the three situations are as under:

1) If she is alone, she is entitled to half of the estate (Abū 'Abd Allāh ibn Muḥammad ibn Aḥmad al-Anṣārī al-Qurṭabī).

So if the deceased left behind only one daughter and one true brother. According to all Sunni Imams as also the Zāhirīyyah (al-Ḥillī: n.d), the daughter as sharer shall get half the estate and the brother (of the deceased) as residuary the other half. On the contrary shall be entitled to the entire estate. The Sunni rule of conduct is in accord with the *Qurān* and the *Sunnah*.

2) In the case of two daughters and no son, there is difference of opinion as to how much estate is total shall the two daughters get there is however, no difference of opinion if in the above case daughters are more than two. If there are two daughters and no son the two daughters, according to the assertion of Prophet's (SAW) companions in general, shall divide among themselves two third of the estate. According to the assertion of *ḥadīth* Ibn-'Abbās, however, these two daughters shall share in the half as is the half fixed for one daughter. He is in support of his contention, puts forward the *Qurā'nic* verse (Quran 4:11) Arguing that Allāh has made the mandate of two third estate being shared among the daughters dependent on more than two, and that what is made dependent on a condition cannot be implemented unless that condition come into existence. Hence, the entitlement of the daughters, to two-third of the estate shall not be given effect to unless they are more than two. But the opinion of majority of *ṣiḥābah* and *jumhūr* is that the daughters, whether two or more than two, shall share in two-third of the estate where there is no son, which stands proved by the Prophet's tradition as narrated by Jābir b. 'Abdullah that he along with the Prophet (SAW) was proceeding towards the market when a woman with her two daughters appeared and said, "O Prophet these are two daughters of Sa'ad bin Rabī' who while fighting on your side got killed in the battle of 'Uhad at the hands of infidels, and the uncle of these two daughters (according to the then prevailing practice among the Arabs when the daughters used to be inherited) took possession

of the whole property of the deceased and left nothing for them. O' Prophet do not see that men do not (is a respectable society) marry the girls who do not possess property and riches." The Prophet (SAW) told the woman "Allah shall soon decide the matter." The widow of Sa'ad bin Rabi', after waiting for some days, came weeping in his presence again. Her tears became the cause of blessings from Allah and the last and final degree regarding inheritance got revealed where in the shares of wives, daughters have been fixed. The Prophet (S.A.W) sent words to the brother of Sa'ad "of the property left by your brother give its two-third to the two daughters and one-eighth to the widow and whatever remains thereafter is yours." (Al-Baghwi).

According the direction issued by the Prophet (S.A.W) explained the revelation that Allāh's saying "فَإِنْ كُنْ نِسَاءً فَوْقَ اثْنَتَيْنِ" means two or more than two. The argument of Ibn 'Abbās may be answered thus: In the Allāh says "لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ" the reference is clearly to the combination of a son and a daughter, in which case it is unanimously held that the son shall get two-third and the daughter shall get one-third in the estate. It indicates that a son is equal to two daughters. Thus, the two-third of the estate for two daughters, when there is no son along with them, gets proved.

Irrespective of the argument stated above, the view reported from Ibn 'Abbās is not free from doubt. It is said that this report from Ibn 'Abbās that "for two daughters the inheritance is half" is *munkar*, rather the correct position is that Ibn 'Abbās too, agreeing with the other companions, was convinced of two-third share for the two daughters (al-Sarakhsi, 1989).

2.6. Share of Son's Daughter

The son's daughter in the absence of daughter of the deceased is like his daughter in three situations (Jurjāni). In the event of there being no son or these being one daughter or there being no daughter or son, the son's daughter inherit like the daughter.

According to the four Sunni schools of thought there are in all six situations in which, son's daughter gets the inheritance (Ibn-e-Rushd).

1. Where there is no son or daughter and there is son's daughter, she shall get half of the estate.
- ii) Where there is no son or daughter and there are two or more than two son's daughters, they shall get two third share in the estate.
- iii) Where there is no son and there is a daughter besides one or more than one son's daughter, the daughter shall get half share in the estate and the son's daughter, shall get the one-sixth share. That is to say, in the presence of one daughter the grand daughters, even more than one, shall get one-sixth share, which shall be divided equally between them. Same is the assertion of Ḥaḍrat 'Abdullah Ibn Mas'ūd (Ibn-e-Rushd). The same rule laid down by Ibn-e-Ḥazm (Abu Muḥammad Ibn Ḥazam al-ẓāhirī).
- iv) When there are two daughters and one or more than one grand-daughter shall not inherit, because the daughters, in accordance with the Qurā'n and Prophet's (SAW) tradition, shall receive their two-third share in the estate.

Regarding this question Ibn 'Abbas says that the directive regarding two daughters is the same as regards one daughter. Hence the two daughters shall get half and (therefore) the grand-daughter' shall get the remainder one-sixth. But this view does not seem to be correct or authentic as already discounted in the foregoing section regarding the daughter's inheritance.

- v) Where along with the son's daughter there is a grandson of the deceased and there is no son of the deceased the grandson shall make the son's daughter into a residuary and the estate shall be divided between them on the principle of "for male twice that for a female." If the deceased had left two daughters and one grandson and one grand-daughter, in that even, after giving two-third to the daughters of the deceased, the remaining, on the principle of a male's equal to two females, shall be divided between the grand-daughter and the grandson (Ibn-e-Rushd).

Ibn Mas'ūd however, differs on this question. According to him, in the presence of two daughters of the deceased, the grandson shall not make the grand-daughter into residuary, rather than the grandson shall get the entire state.

- vi) Where the son of the deceased is present, the son's daughters do not inherit at all.

The son being the residuary take the entire estate because the one remote stands excluded in presence of the one closer. As against this (in the event of there being no son) a grand daughter's right in presence of a daughter does not lapse, because the daughter being sharer takes her due share, and for completing the two third for the females the grand-daughter is held entitled to the one-sixth share. Thus, the two-third fixed for the daughters (including the granddaughter) gets completed in accordance with the *Qur'ān* and the Prophet (SAW) traditions (Abu Zahra).

2.7. Share of Full Sister

The sister is called the full true or real sister whose parents and the parents of the deceased are the same.

A full sister's right to inheritance arises in the following situations:

- i) If there is no son (of however low degree) nor the father of the deceased, and only two sisters are his heirs, both of them shall get two-third share in the estate. The same provision shall apply to more than two sisters.
- ii) The sister becomes residuary with her full brother and she shall then, get her share in accordance with the rule "male shall get the double compared to the female."
- iii) If a son or the father of the deceased is not present and among the heirs there is present a sister, she shall get half of the state as provided in that of the *Qur'ān* (Abu Zahra)

Here, sister means both the full as well as consanguine sister in as much as the deceased is the male.

- iv) If there is a full sister along with the daughter or granddaughter, then after giving the share to the daughter or grand-daughter, the sister shall get the residue." In this connection, two different views are given below (Ibn-e-Rushd).
- a) That sisters, along with, daughters shall become residuary after the daughter and granddaughter get their shares; the sister shall take it whatever shall be the residue.

2.8. Share of Consanguine ('Allātī) Sister

Consanguine sister is the one who is related from father's side. The directive regarding consanguine sister of the deceased is to be found in the *Qur'ān* (Qur'ān, 4:176) thus, as a rule is applicable to the inheritance of full sister of the deceased so shall it be applicable to the consanguine sister of the deceased. Indeed, in the matter of inheritance the full sister have precedence over the consanguine sister; because the full sister compared to consanguine sister is more closely related to the deceased and under the principle of "nearer excludes the remote excludes the consanguine sister."

There are seven situations of consanguine sisters getting the inheritance. The five situations are the same that have been stated regarding the full sister, but two situations are in addition to those five. See these seven situations are summarized as under:

- 1) If the deceased left only one consanguine sister she shall get a half (Al-Sharbīnī).
- 2) Where no full sister of the deceased exists but there are two or more consanguine sisters, they shall be given the two-third. All the consanguine sisters shall divide thus two-third share among him. This directive is under the *Qur'ānic* permission which has already been stated regarding the full sister, which equally applies to consanguine sister.
- 3) The consanguine sister with two full sisters not be the heir as the full sisters take the complete two-third which is the right of the sisters; thereafter no share shall remain for the consanguine sister.

- 4) In the existence of one full sister the consanguine sister shall get one-sixth, so that the two-third may get completed. As two and more than two sisters together get two-third and the full sister having already taken her half share, the one-sixth being the residue, shall be given to the consanguine sister, so that the two third may thus be completed:
- 5) If, with the consanguine sister, there exists, the consanguine brother, the brother shall make her sister residue after the full sisters take their two-third the estate that is left, the consanguine brother and sister divide it between themselves on the principle of "the male having twice the share of the female".
- 6) In the existence of the daughter or grand-daughter of the deceased, the consanguine sisters shall become the residuary. Hence, after the daughter or granddaughter takes her share, the residue shall be taken by the consanguine sister as residuary. This is the view of the companions in general. Indeed, Ibn 'Abbās does not hold the sisters along with the daughter or grand-daughter as residuary as has already been discussed in connection with the inheritance of full sister (Al-Sharbīnī).
- 7) The consanguine sister like the full sister, in the existence of the son or grand-son or the father of the deceased, shall stand excluded from the inheritance. According to Imam Abu Ḥanīfah the same shall be the rule when the grandfather of the deceased exists. Besides, the consanguine sisters as well are excluded in the existence of the full brother of the deceased (Al-Sharbīnī).

2.9. Share of Uterine (*Akhyāfī*) Brother and Sister

Uterine brothers or sisters are the brothers and sisters who are related to the deceased through the mother and not through the father. Uterine brother and sister are also include in sharer, because their shares as well are fixed in the *Qur'ān* (iv: 12)

There are four situations of uterine brother or sister getting the inheritance as under:

- 1) Where the issues of the deceased or the issues of his son are not there, neither is there the father nor the grand-father, but there is one uterine brother or sisters his or her share shall be the one-sixth of the estate of the deceased.
- 2) Where two or more uterine brothers or sisters are there, for all of them, in total, is the one-third share in the estate, which shall be divided equally among them.
- 3) When one uterine brother and one uterine sister is there, each of them shall get the one-sixth share (both of them shall be the equal sharers in one- third).
- 4) Where the uterine sister is also there with the uterine brothers, all of them shall be entitled equally in the one-third share. No distinction shall be made in the shores of male and female, as in the *Qur'ān* provided that there is no son, daughter, the son's issues or the father or grandfather of the deceased (Al-Sharbīnī).

2.10. Share of Grand-Mother

In Arabic the word *Jaddah* (grand-mother) is spoken for both the paternal grandmother and the maternal grandmother; of howsoever high in degree may be. They are included in sharer. There are three situations of grand-mother's inheritance.

- 1) Maternal grand-mother and paternal grand-mother shall get one-sixth of the estate either they be one or several provided they shall be true and belong to the same degree.
- 2) In the existence of the mother all grand-mother of every kind shall stand excluded.
- 3) Maternal grand-mother shall get excluded by the father and so by the grand-father. Indeed, the father's mother shall not be excluded and shall get the inheritance with the grandfather (al-Sarakhsī, 1989).

3. Conclusion

In pre-Islamic Arabia the status of women was not consistent rather oscillated from tribe to tribe due to different cultural and social characteristics of that society. The women were treated by men as second class citizen and deprived of their basic civil rights. Islam restored the dignity of women by recognizing her as an independent legal person and human being endowed with civil rights. According to Islamic law a Muslim woman has the right to keep her property or wealth, whether inherited or acquired, and can spend it as her own whims and wishes without being meddling by anyone. In Islamic law of inheritance the woman's share is one-half of the man's shares in most of the cases. It is because the difference of financial responsibilities of man and woman. Sometimes it has been claimed that half in inheritance indicates inferior status

of women in Islam. This can be understood when the matter is studied as a whole in a comparative manner, rather than partially. 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. In some cases 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 Islām are proportional to the duties of spending. Indeed a man in Islām has the responsibility of supporting his family, his brother's children (when his brother dies), and 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.

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