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RESEARCH ARTICLE

# Women's Rights to Inheritance and Property Ownership in Islam

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**Abstract:** The primary purpose of this paper is to focus on women's rights of inheritance and property ownership in Islamic law or *Sharia*. Though a few women can hold their property ownership and possess the rights to inheritance in some Islamic cultures, the rest of the Muslim women are deprived of their economic rights. In this paper, I have tried to show that the Islamic texts – the *Qur'an* and the *Hadīth* do not discriminate between the rights of males and females. But in social practice, the scenario is different. Women's rights are violated in their own families, whether in their parents' or matrimonial houses.

**Keywords:** Muslim women, Property rights, Ownership, Islamic law and Social practice.

## 1 Introduction

Nowadays, it is a controversial issue for both Muslims and non-Muslims whether Muslim women have the right to inheritance and property ownership. The main purpose of this paper is to focus on the rights of inheritance and property ownership of Muslim women in Islamic laws. In the pre-Islamic age, women had no right to inherit the property their parents or kinsmen had left. Men had an absolute right to take over all the properties. Even women themselves were treated as an object that the male members of the family could inherit. But Islam has changed this social custom by making Islamic laws or *sharia*. The *Qur'an* and the *Hadīth* play the primary role in making Islamic laws, and surprisingly both scriptures suggest that both males and females are equal in respect to their rights and duties. This idea of male and female equality in every aspect introduced by Islamic laws is a new approach that could not be found before the Islamic age. Islamic laws declared that women have the right to take her share from the

inheritance of their parents, husband or kinsmen. And this portion of inheritance is entirely her own. She is the owner of her estate. But in practice, most Muslim women are deprived of their economic rights in Islamic society and culture.

## 2 The Right to Inheritance

According to the *Qur'an*, both males and females have the right to inheritance. In the case of inheritance, quantity does not matter whether it is a huge or so tiny. There is a determinate share for both the male and female. In the *Qur'an*, verse 7<sup>th</sup> of *Sura an-Nisa*, it is stated that –

*“From what is left by parents  
And those nearest related  
There is a share for men  
And a share for women,  
Whether the property be small  
Or large, -a determinate share” (Qur'an 04:07)(Ali, 1937, p. 180)*

Thus, from the above *Qur'anic* verse, it is clear that Islam secured and granted a limited number of shares for women. But from this verse, it is not clear that how much portion they can possess. There is another verse in the *Qur'an* stated that women can take only half of property than a man can take over. If the parents leave only two or more daughters without any son then each daughter can take one-third of the entire estate of her parents. A daughter can take half of the entire property of her parent's estate if she is a single child. (Ali, 1937, p. 181) Thus, the portion of the share depends upon the number of successors of the deceased parents. Both the Sunni and Shiite law agreed that the deceased person's entire estate cannot divide only among his successors even if they left a small estate. (Ahangar, 2014, p. 118)

The *Qur'an* suggests that a son has the right to inherit twice as much as a daughter even though they are born from the same parents. It seems that women are deprived from their rights and treated as inferior than man. Most of the people – both Muslims and non-Muslims argued that by this law (women can take only half of what a man did), women are losing their dignity in their own houses.

Thus, this right considered women as inferior and less deserving than man. But the fact is that Islam does not treat women as inferior or less valuable to men. In fact, Islam allows women the right to possess half of the share of a male due to special situations. According to the *sunnah*, the right to inheritance depends on the social and economic conditions of a gender and their role within it. (Jawad, 1998, p. 65) Islam guaranteed the right of inheritance to women not only as a daughter but also as a wife or mother. As a mother, the *Qur'an* suggests to inherit the properties of her deceased son's estate. The amount of the share of a mother is one-sixth in case he leaves his child or siblings. But if there is no child or no siblings to him, then each parent can possess one-third of his entire estate. (Ali, 1937, p. 181)

Islam secured the right to inheritance for a wife to her husband. (Ali, 1937, pp. 180-181) By

*sunnah*, in a marriage contract, a woman may receive a number of wealth or money as a dower or *mahr* from her husband. And at the same time, women are free from any kind of financial obligation. She is not obliged to spend her properties (even a small amount) for the purpose of household maintenance. She may claim her maintenance from her husband even if she is wealthy enough. (Mutahhari, 1998, p. 253) According to Islamic law, she is free to use her money as her wish. She may invest, donate or spend her properties. But on the contrary a man is obliged to give maintenance and take care of the women as well as the whole family. According to the *Qur'an*, dower and maintenance are men's mandatory obligations. He has to pay a certain amount of money or determine the property to his wife, except that he is obliged to provide all the maintenance for household purposes. He is responsible as a father/brother for taking care of his daughter/sister with financial support until she gets married. From the time of marriage, the husband is obliged to take all the responsibilities of his wife. And finally, in the old age or after the death of her husband, her son is obliged to take care of her. (Al-Sheha, p. 112) It is a duty and a responsibility for man towards his family. For this reason, the authors and supporters of *Ikhwanus Safa* (tenth and eleventh-century intellectuals) argued that the right to receive only half share of a man for a woman is justifiable. (Syed, 2004, p. 88) The combined value of the inheritance (half portion of a male counterpart) and the dowry, and lacking any kind of financial obligation and responsibilities, make women equal footing with men. (Al-Sheha, p. 112) Further, they add that a twice share of a woman for a man is a recompense for his duties and responsibilities. (Syed, 2004, p. 88) But in reality, we can see different situations. In many cases we can experience that dower is not enough compensation for a woman compared to her male counterpart. Not only that most of the women are deprived of her rights of inheritance in her parent's home.

The *Qur'an* also made a law for a woman who is unable to get married for some reason or for a woman who is married but her husband is unable to provide her maintenance from his insufficient wealth. In this cases *Qur'an* suggests equal rights of inheritance for both the male and the female. (Ali, 1937, p. 72) Muhammad, the Prophet said that "It is better to leave your inheritors well off than destitute". (Jawad, 1998, p. 69) Regarding these issues, the *Qur'an* suggests that if the parents think that their offspring (specifically their daughter) is suffering or in a disadvantaged situation for financial issues, they can make a bequest in favour of her to secure her future. (Jawad, 1998, p. 68) Islamic laws suggest that if a man cannot fulfil his duty before his death, then the near relatives of the woman can make a bequest in favour of her. (Ali, 1937, pp. 72-73) Ibne Hazm, a member of Zahiri jurist, suggested that it is a compulsory duty for the nearest relatives to make a bequest for the needy person on behalf of the deceased. (Syed, 2004, p. 88) For him, such provision could be legalized by the court in each and every country.

The *Qu'anic* laws specify a certain number of shares as inheritance for the widow from her deceased husband's property. A widow can take one-fourth of her husband's whole property (after paying all the debt) if they have no child. But in case if they have at least one child, she only takes one-eighth portion of the property. In case of polygamy marriage, if a person leaves more than one woman after his death and both of the widows are being alive, then they are advised to take an equal portion of the property (Pearl, 1979, p. 124) (i.e. one-eighth or one fourth), though there is a conflict between the Sunni and shiite Muslims. According to the

Sunni law, if a man is survived by his son or son's son, then the widow/s can receive only one eighth of his remaining properties. Otherwise they can possess one fourth of his whole estate. And rest of the properties will divide among near relatives of the deceased person and other needy people. (Ahangar, 2014, p. 116) On the other side, the Shiite Muslim argued that a widow's portion of inheritance shall be reduced not only if her husband survived by a son or son's son, but her share will also be reduced if he survived by his daughter or daughter's child. Otherwise, she/they can possess one-fourth of her husband's properties. However, both the school – Sunni and Shiite considered that the *Qur'an* prescribes a limited number of shares for the widows from their husband's properties after paying all debts.

The *Qur'an* suggests a man to prepare a will against his wealth as early as possible. Islamic laws – both the *Qur'an* and the *Hadīth* recommend people to make a bequest for his parents, wives and children. The *Qur'an* further suggests His followers to be kind and compassionate with distant relatives, orphans and needy people. They are advised to feed these people out of inheritance; those are present at the time of the division of wealth. (Ali, 1937, p. 180) So, it is right that a woman secured half of the property compared to her brother, but it is wrong to conclude that she gets only that much property because, as a wife or mother, she has separate property allocation.

### 3 The Right to Independent Ownership

The right to independent property ownership for women is most important. It helps women to be financially independent. We know that financial support is a great mechanism that can provide food, shelter, and cloth; it makes men/women as wealthy, leverage and autonomous. Women's property ownership is not devoid of Islamic legislation. As we have seen, women have the right to possess a certain portion of the inheritance from their parents or kinsmen. They have to receive a certain amount of money as her dower from her husband also. According to Islamic law, these properties are absolutely hers. A woman has the right to buy, sell, lease, borrow or lend, mortgage, and sign contracts and legal documents for her property. (Zaitoun, p. 26) According to the *Qur'an*, a woman has the right to manage her own property independently. The *Qur'an*, verse fourth from *sura An – Nisā*, states that woman is free to choose what she wants to do with her property. (Ali, 1937, p. 179) The *Qur'anic* verse that states that women have the liberty to earn just like a man is runs as –

*“And in no wise covet  
Those things in which God  
Hath bestowed His gifts  
More freely on some of you  
Than on others to men  
Is allotted what they earn,  
And to women what they earn  
But ask God of His bounty  
For God hath full knowledge  
Of all things”*. (*Qur'an* 04:32) (Ali, 1937, p. 189)

So, from the above *Qur'anic* verse and other Islamic textual references, we can conclude that *Qur'an* secured an independent economic status for Muslim women. This right applies to all women whether she may be married or divorced or otherwise. They may donate their property to the nearest one or needy people at their will. They may make a company or a commercial business to act as a trustee through which they become wealthier. For this reason, they may be able to pay *zakat*. (*Zakat is one of the main pillars among the five pillars of Islam. Zakat is an annual tax on Muslims to aid poor people in the Muslim community.*) The concept of *zakat* is also a gem in Islamic teaching that advocates the independency of economic rights for women. *Zakat* encourages women to invest, save and distribute their own earnings according to their prudence. It also urges them to enact their right to participate in different economic activities. (Ahmad, 1991, pp. 80-81)

## 5 Violation of Muslim Women's Rights of Inheritance and Ownership

Women's rights have been violated by the patriarchal society throughout the ages. Women's rights of inheritance and property ownership have been violated in most countries only to prevent male dominance in our society. Women are also liable for losing their equal rights through subordination. (Ajayi & Olotuah, 2005, p. 58) The *Qur'an* granted women equal rights to everyone regardless of sex or gender. According to Islamic law, Muslim women have equal rights to access and control their property as men do. But women's rights are violated in their own houses. Women's rights are violated before marriage by their nearest one, e.g. father, mother, brother and after marriage by their matrimonial family members. (Ajayi & Olotuah, 2005, p. 60) As we all know, the family is the smallest unit of society. Thus, the violation spread in society from family. Another reason for this violation is sex preference. Sex preference is not only a sole problem of the Muslim community rather, it is a prior desire of almost everyone, irrespective of religion. Even now, most people desire to have a baby boy. The birth of a baby boy is greeted with joy and cheer, even if they already have a baby boy before the last one. They think that the thing that keeps their lineage for a long time is only possible through the birth of a son. On the other side, the birth of a baby girl is viewed as the cause of soreness. There is an Indian proverb states, "*Eighteen that goddess-like daughters are not equal to one son with a hump*". (Dahl, 2010) This proverb is not applicable only for the Indian civilization but also for the worldwide country, especially for Asian and Nigerian people. Thus, it is clear that a son is more valuable than a daughter. So, people neglect women and violate their rights. And most of the time, newborn baby girl was killed by their family members. However, the women's rights of inheritance and property ownership can make an improvement for women as well as the overall welfare of society.

## 6 Conclusion

Thus, from the above discussion, we can say that Islamic laws secured the right of inheritance for women not only from their parent's property but also in her husband's wealth. These

properties are significantly belongs to women. More accurately we can say that the women are the owner of the estate that they inherited from their parents and kinsmen. They have full freedom to spend their money as their will, which we may call women's rights of independent ownership. For this reason, Gustave Le Bon, in his book *Arab Civilization* stated that “*The principles of inheritance which have been determined in the Qur'an have a great deal of justice and fairness.*” (Al-Sheha, p. 113) But the Muslim community violates the Divine law and deprives women of their inheritance rights. Most of the cases social, cultural, economic and political factors play a vital role in determining the situation of who can hold the inheritance left by the parents or kinsmen. Women are deprived of their rights of inheritance by strong social pressure. (Jawad, 1998, p. 68) This is not only the case for the women of rural areas but the urban areas also. By this social pressure women are obliged to renounce their share for the benefit of their male counterpart. Otherwise, they are alleged selfish, irresponsible, greedy, and so on. (Jawad, 1998, p. 70) Sometimes it creates a conflict between them if the female refuses to renounce her share. Undoubtedly the most sorrowful thing is that almost all Islamic countries are dominated by social and cultural practices instead of the *Qur'anic* law and *Sunnah*. Now the scenario has to change; a little number of Muslim women can enjoy the right to independent ownership, which they have earned specially in India, Bangladesh, the United Kingdom and the United States. (Ahangar, 2014, pp. 125 - 127) But, a large number of women is deprived from their right to inheritance and independent ownership.

Thus we have seen that the *Qur'an* has given equal rights of inheritance and independent ownership to the woman as a man does. The *Qur'an* neither discriminates against people on the basis of gender/sex nor makes any discrimination on their rights and duties. Most of cases bias is held on social practices based on the reflection of patriarchal prejudices and social customs. We have to change these social prejudices and customs to secure equal justice. This can be possible not only through making laws or rules but through social and legal practice. We can upgrade the entire women from this deprive situation by giving them their equal rights of inheritance and ownership. And for this up gradation, we need to protest. We have to stand up against this violation with a conjoint hand of both male and female.

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