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Research Paper

Women Rights of Inheritance in Islam: Equity versus Equality

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Abstract

Islamic law of inheritance, applicable to Muslim, stands on the foundation of principle of equity not of equality to ensure and manifest justice between the both sexes of human being. Rights fountain from the mountain of duties. Within the family structure of Islam, men, being the sole bread earner, women are privileged and protected under the umbrella of obligation of men. Social security and economic independence are ensured to women by providing equitable share in inheritance in contrast to men. Due to failure of comprehensive understanding of the whole aspect of rights and duties of men and women in the valley of Islam, some critiques consider this as an injustice to the women. Life-cycle of a man is full of financial obligations whereas a woman is immune from any such obligations though she has much wealth or earns money. In her life-cycle a woman is kept protected as financial obligation lies on the father, brother, husband, son etc. and finally on the state and in no circumstances a woman remains unsecured and unprotected. The present study readdressed the scheme of sharia law to show that Islam has ensured justice by ignoring apparent mathematical calculation in getting equal share to that of man by ordaining equitable distribution. Both descriptive and analytical methods were used in this research by using primary as well as secondary data sources.

Keywords

Equity, equality, inheritance, *Shari'ah*, obligation

1. Introduction

Islam has a distinct way of life apart from other civilization. The scheme of sharia law is to ensure justice to human being. Islam gives equal dignity to both sexes of human being. But in terms of getting inheritance it takes its stand to ensure fairness and justice by giving women equitable rather equal share since men have the sole responsibility to earn and expend for their families. On the other hand, women do have zero responsibility in this regard though they earn money or possesses much more wealth. A man has to pay dower to his wife at the inception of marriage, has to bear maintenance of his wife and children. Naturally as duties breed rights, double shares are

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given to a man than that of a woman of the same degree in getting inheritance. To evaluate the scheme of inheritance law in Islam fair and unbiased outlook is expected as Islam suggests a comprehensive approach in distribution of inheritance.

However, some critiques of Islamic laws of inheritance claimed that Islam does injustice to women in terms of inheritance. The critiques of Islamic Inheritance put argument that there is unequal proportion of inheritance between men and women in Islam. They have tried to evaluate the scheme of the *Shari'ah* law plainly from gender centric outlook. The feminist movements have demanded equal rights as in their view, women are also given opportunity and are expected to be able to function as the protector and the holder of power in a family like men.

This paper may give humble answers to the critics who criticize the unequal distribution of share from their feminist perspective of injustice.

2. Objectives

The current study intends to find out the basis of Islamic approach regarding distribution of wealth in inheritance to men and women. The major objective of this paper is to find out whether Islam has ensured justice or fairness to both sexes of human being by applying its doctrine of inheritance i.e. equity instead of equality in the distribution of inheritance rights.

3. Literature Review

The inheritance law of Islam has been observed and examined from various outlooks by different researchers and scholars. Literatures in respect of distribution of property between men and women under Islamic law are done from different angles.

Some authors render their opinions in perspective of injustice and western feminist approach. Lindsey (2018) opined that under the Islamic law of inheritance, men generally receive larger, sometimes double, the shares than women get. In some cases, distant male relatives can supersede wives, sisters and daughters, leaving women not just bereaved but also destitute. Cherif (2010) says that Islam, specifically the prevailing interpretations of Islamic law and the attitudes fosters gender inequality in Muslim countries and he also argued that Islamic law is seen to impede women's access to full citizenship by focusing on the matters of inheritance where women are entitled to half as much as men.

The abovementioned arguments have been curtailed by some other authors in their research findings. In their opinion, the arguments of critiques are based on the Western outlook of equality where justice can only be manifested through equality in positions and in monetary values in all respect of human life. The supporter of Islamic laws of inheritance found that Islam has ensured justice by its scheme. As in their opinion Islamic laws of Inheritance should be observed in a comprehensive outlook rather than plain or apparent mathematical outlook. Haonrver (1988) in his research found that that the Qur'an corrected the inequities and the economic injustices which existed in pre-Islamic Arabia concerning the distribution of wealth after making a comparative review of the pre-Islamic and the Islamic principles of the inheritance laws.

Nasir (2009) states that prior to Islam, women had neither inheritance rights of any kind; nor did they enjoy the legal rights, nor did they had the financial independence that exist for them at the present time. The reforms undertaken by the *Shari'ah* secured fair and just inheritance rights for women.

Kuran (2011) observes that the rules of inheritance are ordained in details in the Holy Quran other than all other economic rules. Although a female heir's entitlement normally amounts to only half that of a male in the same class of inheritors, in seventh-century Arabia this right strengthened and increased the economic security and social status of women.

Some literatures can be traced in this respect focusing on the principle of equity. The rules of equity and equitable considerations commonly recognized in the Courts of Equity in England are not foreign to *Mussalman* system, but are in fact often referred to and invoked in the adjudication of cases under that system. Mulla (2013) and Islam (2004) observed that both sexes of human have some constraint of varying categories and not equally competent in all respect of life. If they pursue their respective duties and respect their due rights, only then justice to both the sexes will be established.

On the contrary, if the term 'equality' taken in literal sense, that will not bring any welfare to either of them rather it may create conflict in respect of mutual rights and duties. For that reason, the term 'equity' is more appropriate in contrast to the term 'equality' in the peripheries of rights and duties under Islamic jurisprudence. Islam (2004) has further observed that as the international human rights standpoint, mostly based on western outlook, is for the development of human being from their perspective, it must support and respect the Islamic law of inheritance though seeming apparently discriminatory in their eyes but in Islamic view from the perspective of rights and duties of men and women, it has ensured justice because men are burdened with responsibilities and expenses which women need not share and for this man should certainly have something as subsidy.

Shah (2006) has observed that in the Islamic philosophy of human rights, duties are stressed more than rights; respecting the human rights of others amounts to fulfilling the duty imposed by divine command. When there is observance of duties by one, there is possession of rights by another. He has also opined that women inherit a smaller share not because of their gender, but for their economic contribution in family.

Radford (2000) observed that the piecemeal application of certain practices without an understanding of the larger picture and context and application may give the impression that Islamic inheritance law is unfair towards women. But in reality, this would be a hasty conclusion. He showed two justifications of receiving greater shares of the inheritance. One is that men function as a provider for the family and another is that a wife is entitled to the entirety both of her own wealth and husband's wealth and a husband is entitled only to his own.

Similar argument is given by Qutb (1964) who argues that the proportion of share of men and women is natural and justified as in Islam men alone are charged with shouldering all the financial obligations to spend on his wife, children, sisters and widows etc. On the other hand, women are under no such obligation to spend money on her family and also may keep her own property without spending it on her household. A careful reading and understanding of the full breadth of Islamic inheritance rulings rebuts the notion that the rulings privilege men. While women inherit less than men in four situations, they inherit more than men in 16 situations, and equal to men in 10 situations (Soltan, 2000).

This paper rebuts the proposition of injustice towards women in respect of inheritance based on apparent mathematical calculation and gender equality. The researchers show that the women in Islam are not deprived rather justice has been ensured towards women by allotting equitable share in the quantity of half, equal, less than half and more than half of the property of the propositus, as per the demand of situation.

4. Methodology

The researchers used a qualitative approach to determine the right of a Muslim woman under Islamic Sharia law in respect of inheritance. The study is basically based on secondary data. Data is collected from various sources of Sharia law (Quran and Sunnah), published journal articles and reports. The data analysis also followed by the qualitative way maintaining the descriptive and critical technique in the time of analysis of the data.

5. Findings and Discussion

Allah, the Exalted, offered a full and detailed method of women's inheritance in the Qur'an and Sunnah, and if an unbiased student of knowledge reflects on the details, he or she will discover the fault of the critiques that women are discriminated in enjoying right of inheritance.

A man shoulders the responsibility of maintenance of wife, children and other necessitous relatives within prohibited degree i.e. parents, minor siblings, unmarried sister, divorced or widow sister etc. On the other hand, a woman has no financial responsibilities whatsoever but is secured and provided for expenses except very little of her own elegant or lavish personal expenses.

We can compare the responsibility of man and woman with the following table:

Table-1: Responsibility of man and woman

Woman			Man	
As a daughter before marriage	Maintained by father	Maintenance	As a son up to adult age	Maintained by father
As a wife after marriage	Maintained by husband		As a husband	Maintained by himself
As a mother	No financial responsibility to children		As a father	Full responsibility for daughter up to marriage, for son up to adult age
As a widow	Maintained by adult son/other male relatives		As widower	Maintained by himself
As unmarried sister when becomes orphan	By adult brother/ other male relatives		As adult brother when becomes orphan	By himself
As orphan granddaughter	Maintained by grandfather, uncle etc.		As adult orphan grandson	By himself
As wife	Dower is paid by husband	Dower	As husband	No dower is paid by wife

In the above table we see that women do not have any financial responsibility comparing to or in contrast to men. All the responsibility belongs to men. If there is no close male relative to a woman, then the society at large and the state in particular has to take the responsibility of a woman.

Now we can put our attention on the position of women in respect of inheritance. We need to rediscover the scheme of sharia law regarding the share of women. It is to be noted that among 12 Qur'anic heirs, who are of first grade heirs, 8 are women. They are mother, true grandmother, widow, daughter, son's daughter, full sister, consanguine sister and uterine sister. If we closely examine the provision of Islamic law, we find several situations concerning the share of women:

a) Sometimes inheritance of a woman is half or less the share of a man
b) Sometimes she inherits while the male counterpart does not inherit
c) Sometimes she has equal share to male
d) Sometimes she inherits more than male

5.1. Situations where a woman inherits half or less the share of a man

Where there are sons and daughters or son's sons and son's daughters of predeceased son or sons in the absence of any survived son or daughter of the propositus. The Quran says: "Allah instructs you concerning your children, to the male, the equivalent portion of two females" (The Holy Quran, 4:11).

a) If the propositus leaves father, mother and does not leave any children, father gets twice of mother
b) If the propositus having no son leaves full sisters and full brothers (siblings from the same father and mother)
c) If the propositus having no son and full sister leaves consanguine sisters and brothers

5.2. Situations where a woman inherits while a male counterpart does not inherit

There are situations where woman inherits but in the same case if it is man of same degree he does not inherit. To understand it we can place a diagrammatical illustration. For example, a woman died leaving behind property of Tk.78,0000 and is survived by husband, father, mother, a daughter, a son's daughter/son's son.

Case A:

Heir (Quranic)	Quranic share	Calculation	Amount (Tk.)
Husband	1/4	3/15 x 78,0000	15,6000
Father	1/6	2/15 x 90,0000	10,4000
Mother	1/6	2/15 x 90,0000	10,4000
Daughter	1/2	6/15 x 90,0000	31,2000
Son's Daughter	1/6	2//15 x 90,0000	10,4000

Case B:

Heir (Quranic)	Quranic share	Calculation	Amount (Tk.)
Husband	1/4	3/13 x 78,0000	18,0000
Father	1/6	2/13 x 78,0000	12,0000
Mother	1/6	2/13 x 78,0000	12,0000
Daughter	1/2	6/13 x 78,0000	36,0000
Son's Son	Residue		Nothing is left

Here, the son's daughter inherits Tk. 10,4000 as Quranic heir i.e. heir of first degree while the son's son as residuary i.e. heir of the second degree inherits nothing as nothing is left after deducting share of the Quranic heir.

5.3. Situations where a woman has equal share to a man

a) If the propositus leaves father, mother, and son or son's son.
b) If the propositus, without having father/true grandfather or child or son's child, leaves uterine brother and sister.
c) If the propositus, without having father/true grandfather or child or son's child, leaves full sisters, and uterine brothers and sisters.
d) If the propositus, without having father/true grandfather or son or son's son, leaves a daughter, a brother.
e) If the propositus leaves father, maternal true grandmother and son or son's son. Here the share of father and maternal true grandmother is the same.
f) If the propositus, without having father/true grandfather or child or son's child, leaves her husband and a full sister, the sister receives the remaining half as Quranic heir.

If there is husband, mother, uterine sister, and a full brother, the husband is entitled to half, the mother is entitled to one sixth, and the remainder (one sixth) goes to the full brother. The share of uterine brother and sister is the same.

5.4. Situations where a woman inherits more than a man

It is to be noted that the biggest share of inheritance in Islam is two-third (2/3) which is granted to women not to men. Where there are two or more daughters or son's daughters or full sisters or consanguine sisters in the absence of male counterpart of the same degree, they get collectively 2/3 in the respective case. We can explain the matter in the following tables:

Fact 1:

Suppose, a woman is survived by husband, father, mother, and two daughters or two sons leaving behind Tk. 360,000, the distribution will be as follows:

Heir	Quranic share	Calculation	Amount (Tk.)
Husband	1/4	3/15 x 360,000	72,000
Father	1/6	2/15 x 360,000	48,000
Mother	1/6	2/15 x 360,000	48,000
2 Daughters	2/3	8/15 x 360,000	192,000

The denominator of the distribution will be 15 instead of 12. As the aggregate of numerator is 15. By applying doctrine of awl or increase, the denominator is made 15.

If the heirs are two sons instead of two daughters as mentioned above, the distribution will be as follows:

Heir	Quranic share	Calculation	Amount (Tk.)
Husband	1/4	3/12 x 360,000	90,000
Father	1/6	2/12 x 360,000	60,000
Mother	1/6	2/12 x 360,000	60,000
2 Sons	Residue	5/12 x 360,000	150,000

Here we find that the daughters get Tk. 192,000 while the two sons in the similar situation get Tk. 150,000.

Fact 2:

Suppose, a woman is survived by husband, mother and 2 sisters or 2 brothers leaving behind Tk. 360, 000, the distribution will be as follows:

Heir	**Quranic share**	**Calculation**	**Amount (Tk.)**
Husband	1/2	6/16 x 360,000	135,000
Mother	1/6	2/16 x 360,000	45,000
2 Full Sisters	2/3	8/16 x 360,000	180,000

The denominator of the distribution will be 16 instead of 6. As the aggregate of numerator is 16. By applying doctrine of awl or increase, the denominator is made 16.

If the heirs are two brothers instead of two sisters as mentioned above, the distribution will be as follows:

Heir	**Quranic share**	**Calculation**	**Amount (Tk.)**
Husband	1/2	3/6 x 360,000	180,000
Mother	1/6	1/6 x 360,000	60,000
2 Full Brothers	Residue		120,000

Here we find that 2 full sisters get Tk. 180,000 while the two full brothers in the similar situation get Tk. 120,000.

Fact 3:

Suppose, a woman is survived by husband, father, mother and a daughter or son leaving Tk. 312, 000, the distribution will be as follows:

Heir	Quranic share	Calculation	Amount
Husband	1/4	3/13 x 312,000	72,000
Father	1/6	2/13 x 312,000	48,000
Mother	1/6	2/13 x 312,000	48,000
One Daughter	1/2	6/13 x 312,000	144,000

If the heir is one son instead of one daughter as mentioned above, the distribution will be as follows:

Heir	Quranic share	Calculation	Amount
Husband	1/4	3/12 x 312,000	78,000
Father	1/6	2/12 x 312,000	52,000
Mother	1/6	2/12 x 312,000	52,000
One Son	Residue		130,000

Here we find that one daughter gets Tk. 144,000 while one son in the similar situation gets Tk. 130,000. From the above illustrations we learn that in all situations, women do not take less the share of men. Also, it is established that on many occasions, women may take the equal share of men or even more.

So, in Islamic law, the inheritance of heirs is not based on gender but on the extent of kinship to the deceased and the financial responsibility and maintenance of the heirs. If we closely observe the above illustrations, we will find that women are given half of the men where she is complemented by her male counterpart of the same degree i.e. daughter-son, brother-sister etc. As in the absence of the ascendant the responsibility to maintain women goes to men i.e. adult brother, if the woman remains unmarried or becomes widow. On the other hand, when the deceased leaves only daughters or sisters having no sons or brothers, as the case may be, the women are given half of the property if single, if more than one given 2/3 of the property collectively as there is no brother of her to look after directly. Although the Muslim law of inheritance may seem to be a complex infra-structure of devolution of property, in reality, it is comprehensive, logical and complete in all respects (Sinha,1995). Islamic law of inheritance is the most exact and scientific law (Faiz-ud-din, 2009). Muslim women are the absolute master of their property and have ability to deal with their share unlike Hindu law and the older English common law (Fyzee, 2008). Therefore, the Islamic rules of inheritance should not be judged based on apparent distribution rather it must be valued having comprehensive outlook to understand perfection of the Islamic law as Allah SWT, the Almighty can never do injustice. The issue of injustice may not be the right discussion as to women's rights in inheritance under Islamic law as Allah SWT says that: "God is not oppressor of His servants, and Your Lord wrongs no one" (The Holy Quran, 18:49).

6. Conclusion

The treatment of women in Islam in respect of inheritance, must be observed in broader aspect of Islamic social and financial policy. Being an ideology and system distinct from the western outlook of rights and responsibilities of man and woman, it must be judged from the perspective of rights and responsibilities of man and woman ordained by Islam. Unlike other social systems, a person can generally deal with his wealth in his life however he wants, but his will has certain

restrictions under the Islamic Law as it has put certain restrictions in dealing with wealth i.e. it has made payment of Zakat obligatory for Muslims, restricted bequests up to 1/3 of the whole property etc. unlike other social, political and religious systems. In other social systems often, there is no law that obliges a man with financial responsibilities and relieves the women in this respect. In Islam, men are required to take care of the entire financial needs of the women of the family. Therefore, demanding a "fair", "just" or "equal" share of inheritance for both male and female Muslims, who do not have equal financial obligations and responsibilities, is an unfair and unjust demand. But the critiques of Islamic law of inheritance being failed to realize the comprehensive system of *Shari'ah* law always beat drums for equal rights of women in all respect in inheritance and blame Islamic system for the vulnerability of the women. But it is evident that it is not the law but the social mentality and evil practice is responsible for the deprivation of women in getting their rights of inheritance. So, instead of demanding equal share of the women in inheritance, the feminist movement and everyone concerned should stand for the manifestation of justice by raising voice for the enforcement of the prescribed share determined by the Holy Quran for the Muslim women as the women in our society usually do not get their share in most of the cases and to achieve that end, voice is needed for the enactment of proper laws and establishment of proper legal framework.

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