

Misconstruction of Laws Relating Muslim Women's Heritable Property Right in Bangladesh: A Gap between Law and Practice

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Abstract:

For the protection of democracy and to ensure empowerment of women there is no alternative to ensure women's right. Women have various rights such as right to marriage, right to dower, right to maintenance, Right to divorce and right to inheritance. All of these rights are essential for a woman's sustainability. But among all of these rights, right to inheritance is the most debatable right of women in all over the world because our patrilineally dominant society in most often denies this women's right which has been ordained by the Holy Qur'an and Sunnah. In this article it is attempted to sketch the actual situation and place of women's right in Islam. The study finds and identifies the Muslim women's Qur'anic right to heritable property. This paper concludes with the causes to the deprivation of Muslim women from this very right and some suggestions are recommended to remove the barriers in case of restoration of heritable property right by Muslim women.

Key words: Inheritance, legal heirs, propositus.

1. Introduction:

Inheritance in common parlance means money or property derived from one's parents or ancestor. In legal term it is the property received from an ancestor under the Laws of Inheritance or property that a person receives by a bequest or devise. Heritable property includes that property transmissible from parent to offspring or that property capable of being inherited. In case of heritable property there is no distinction in the Mohamedan Law of Inheritance between movable and immovable property or between ancestral and self acquired property. Legal heir in the Islamic context is a term which is properly applied only to those relatives upon whom property devolves, after the decease of its owner, by operation of law; and it is the rights of the legal heirs which are the keynote of the whole system of succession, for they are fundamentally indefeasible. In pre Islamic Arabia there was no principle of distribution of deceased property. There was autocracy everywhere. At that time "might is right theory was followed. In most of the cases women and children were deprived and beguiled. They thought that women and children are incapable and unable because the cant ride on horse, they cannot go to battle field to face the enemy, they cannot earn independently. At that time the women had no social value or social dignity and status. The daughters are seemed as curse and they were buried alive without hesitation. During that period women were absolutely deprived from their social political and economic right. This was not only the condition of Arab but also in all over the world the policy of the distribution of heritable property among Muslim women was discriminatory. Islam, the religion of peace and justice has gradually abolished this partiality and injustice and established a good, fair and universally acceptable principle of distribution of heritable property.

2. Origin of the Law of Inheritance:

Islamic inheritance law is based on well proportioned distribution and justice. Specially incase of inheritance of Muslim women Islam has given epoch-making, logical and equitable prescription. In ancient Roman law a woman would get nothing as a wife. In Jew's scriptural prescript the woman has no share of property in presence of a son. In pre Islamic Arabia women themselves were objects of inheritance. 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 inheritance in a very upright way.

In this regard firstly revealed the provision of wasiyat (Will).Allah (SWT) declared "Prescribed for you, when any of you is visited by death. And he leaves behind some goods, is to make testament in favor of his parents and kinsmen honorably...an obligation on the God fearing. Then if any man changes it after hearing it, the sin shall rest upon those who change it; surely God is all-hearing, all knowing. But if any man fears injustice or sin from one making testament. And so makes things right between them, then sin shall not rest upon him; surely God is all-forgiving, all-compassionate.

Then if any man changes it after hearing it, the sin shall rest upon those who change it; surely God is all - hearing, all-knowing.” (2:180-182).

In Sunan Ibn Majah, Hazrat Jabir (may Allah be pleased upon him) reported that”. "The wife of sad bin Rabi came with the two daughters of Sad to the Prophet (saw) and said: 'O Messenger of Allah, these are the two daughters of Sad. He was killed with you on the day of Uhud, and their paternal uncle has taken all that their father left behind, and a woman is only married for her wealth.' The Prophet (saw) remained silent until the Verse of inheritance was revealed to him. Then the Messenger of Allah (saw) called the brothers of Sad bin Rabi and said: 'Give the two daughters of Sad two thirds of his wealth, and give his wife on eighth, and take what is left' .Then this verse is revealed where Allah (swt) has changed the status of women in an unprecedented fashion and prescribes that “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”(4:7).In this verse it is clearly pronounced that the congenital relationship and blood relationship will be the main principle of achieving inheritance and it is also clear that in the property of the deceased there is the equitable right of men and women. So, the women should not be deprived at any circumstances.

2.1 Women’s shares allotted in the Islamic law: The Hanafi jurists divide heirs primarily into three classes:

1. Quranic Heirs-dhawu’l-furud (called Sharers);
2. Agnatic Heirs-asabat (called Residuaries);
3. Uterine Heirs-dhawul-arham (called Distant kinderd);

According to Hanafi law the property of the deceased goes, in the first instance, to the Quranic heirs, Class I. If the estate is not exhausted by them, or failing them, it goes to the Agnatic heirs, Class II. And finally, in the absence of heirs of Class I and Class II. The property is distributed among the uterine heirs, Class III. There are twelve Quranic heirs.

The Quranic heires consists mainly of females with a few exceptions. Among twelve Quranic heirs eight are female. This is an illuminating example of how Quranic reform affected Arabian custom. Where there are specific shares for daughter s and sisters but no such shares are distributed for son and brother rather their shares will be considered as residuary after fulfillment of the shares of the Quranic sharers. The allotted Quranic shares of the female sharers are given by the following table:

TABLE OF SHARES – Sunni Law

(1) Sharers	(2) Normal Shares		(3) Conditions under which the normal shares is inherited	(4) This column sets out— Shares of Shares Nos. 3, 4, 5, 8 and 12 as varied by special circumstances; Conditions under which Shares Nos.1, 2, 7, 8, 11, and 12 succeed as Residuaries.
	Of one	Of two or more collectively (b)		
Wife	1/8	1/8	When there is a child or child of a son h.l.s.	¼ when no child or child of a son h.l.s.
Mother	1/6	When there is a child or child of a son h.l.s. or when there are two or more brothers or sisters, or even one brother	1/3 when no child or child of a son h.l.s., and not more than one brother or sister (if any); but if there is also a wife or husband and the

			and one sister, whether full, consanguine or uterine.	father, then only 1/3 of what remains after deducting the wife's or husband's share.
True grand mother	1/6	1/6	A. Maternal- when no mother and no nearer true grandmother either paternal or maternal. B. Paternal-when no mother, no father, no nearer true grandmother either paternal or maternal, and no intermediate true grandfather.	
Daughter	1/2	2/3	When no son.	With the son she becomes a residuary and the son takes a double portion
Son's daughter	1/2	2/3	When no son, daughter, higher son's son, higher son's daughter or equal son's son	When there is only one daughter or higher son's daughter but no son, higher son's son, equal son's son, the daughter or higher son's daughter will take 1/2 and the son's daughter h.l.s (whether one or more) will take 1/6,i.e.2/3-1/2(with an equal son's son she becomes a residuary.
Uterine brother or sister	1/6	1/3	When no child, child of a son h.l.s., father or true grandfather.	
Full brother	1/2	2/3	When no child, child of a son h.l.s., father, true grandfather or full sister.	With the full brother she becomes a residuary.
Consanguine sister	1/2	2/3	When no child ,child of a son h.l.s, father, true grandfather, full brother, full sister or consanguine brother	But if there is only one full sister and she succeeds as a share, the consanguine sister (whether one or more) will take 1/6, provided she is not otherwise excluded from inheritance.

From the above table it is crystal clear that Islamic law of inheritance is a complete scientific code and it is the best testimony of the dexterity of ancient Arabians in the field of mathematics. In this calculation women are neither devaluated nor is their right degraded. Though there are a lot of ambiguities about the verse of the holy Quran where Allah (SWT) declared that "Allah commands you regarding children; for the male a share equivalent to that of two females"(4:11).In another verse Allah(SWT) says "If there are many brothers and sisters, the share of each male should be that of two female"(4:176).The critic of Islam argues that Allah(SWT) has also made clear discrimination between men and women and has given men superiority over women that "Men are (qawwamun) over women"(4:34).

When we analyze these two verses we find that primarily brother takes the double of a sister but in reality if the financial status of women such as right of dower, maintenance and inheritance are taken into consideration, we can realize that Muslim women are in far better position than that of men. In the second verse the word 'qawwamun' does not imply that men are masters of women, or who desires loyalty from women but this word indicates the social responsibilities of men and duty of men to take care women.

A Muslim woman does not always take half sometimes she takes the heritable property equal to man or more than man. Only in the following four circumstances women take half of the property than the men.

1. Where there is daughter and son's daughter with son and son's son, then the son and son's son will take double shares of the daughter and son's daughter.
2. Mother takes the half share than that of father where there is no son and husband or wife.
3. Where there is full sister with full brother full sister takes half of the brother's share.
4. Consanguine sister takes half of the share than that of the consanguine brother.

In the following nine situations women take the equal share of men:

- (1) With son's son, father and mother take equal share.
- (2) Uterine brother and sister always take equal share.
- (3) All kind of sisters (full, uterine, consanguine) take equal share of uterine brother with consanguine brother and sister.
- (4) In presence of the brother of the deceased only one daughter take the half share of the heritable property, other half goes to her paternal uncle.
- (5) Maternal grandmother takes equal share with father and son's son.
- (6) Mother and two uterine sisters take the equal share with husband and full brother.
- (7) Full sister with husband take the equal share of full brother.(same share if she were a full brother instead of full sister)
- (8) Consanguine sister takes the equal share of full brother if there is husband, mother, one uterine sister and one full brother of the deceased.
- (9) If there is no Quranic sharers or residuaries to inherit then the distant kindred or nearest blood relatives take equal share.(if there is no other heirs without daughter's son, daughter's daughter maternal uncle and maternal aunt ,then all of them take equal share.)

At least at eleven cases women take more heritable property than that of men:

- i. Where the heirs of the propositus are only daughter and husband, daughter takes half of the property and husband take one fourth.
- ii. Where the heirs of the porosities are only two daughters and husband, two daughter will take two third of the property and husband takes one fourth.
- iii. Daughter takes much share with more than one brother of the propositus.
- iv. Two daughter take two third of the property in the presence of husband, father, and mother of the deceased. But in the same situation if there were two sons in place of two daughters, certainly they would take less property then the two daughters. Because the sons are residuaries. So, they take the share after fulfillment of the allotted shares of the Quranic sharer.
- v. If the heirs of the deceased are husband ,two full sister and mother, then two full sister inherit two third of the property.
- vi. With mother and husband two consanguine sisters take more property than that of consanguine brother.
- vii. In the same way if there are husband, mother, father and daughter of the propositus, daughter take the half of the property which is more than the share of a son instead of her.
- viii. If the heirs are the husband, mother and one full sister then the full sister take the half of the whole property of the propositus.
- ix. If the heirs are wife, mother, two uterine sisters, and two full brothers then two uterine sisters take more property than that of the two full brothers.

- x. Where the heirs of the propositus are husband, uterine sister and two full brothers, there the uterine sister takes one third of the whole property. Here the uterine sister takes more property than that of the full brother.
- xi. If the heirs are father, mother and husband, in this case according to Ibn Abbas @ Mother takes one third of the whole property and father takes one sixth.

2.2 Why women take half share in four situations?

The critic of Islam argues that women's share in Islam is completely unfair and unjustified. They think why daughter or sister takes half share in the presence of son or brother? Does it not signify that women's dignity is half than that of men? Their argument is rebuttable because before any fallacy comment about Islamic law of inheritance they should look over the principles of that law. In case of interpretation of law, the necessity of such kind of ethical discussion is acknowledged in Common law system, Civil law system even in international law. In Vienna Convention on the law of treaties (1969), the principles of the interpretation of international treaties have been delineated. The summary of which is that, to interpret any specific provision of law, the whole constituent part and the very objectives of that law must be kept in mind. This theory is also applicable in the interpretation of Constitutional Law. So, in Islam the half share for women is not to degrade or devalue them. The laws of inheritance in Islam are proportional to the duties of spending. Man takes the greater share because he has social and legal responsibility to maintain his family and household including performance of all social contracts. On the other hand a woman has no such responsibility. She is not legally or morally bound to spend a single penny from her own property for the maintenance of the family. Rather after marriage she takes dower and maintenance from her husband and before marriage her father or nearest relative is bound to maintain her. Women are always financially secured and provided for. So, according to the Islamic law, the variation in inheritance right is only consistent with the variation in financial responsibilities of men and women. Moreover, more or less in acquiring share is not the only standard to be dignified to Allah (SWT). Allah (SWT) says: "From you those are the most respected to Allah, who fear Allah most."

The natural demand and necessity of men are different in different situations. In this case the natural justice is equitable distribution. Islam does not think the equal distribution as the basis of justice, rather it think equitable distribution as the foundation of natural justice. So, in case of the Law of inheritance, Islam has accepted this principle of equitable distribution. Supreme Court of Bangladesh has accepted this principle in case of explanation of very important fundamental right "equality before law." (Article-27). In Sheikh Abdus Sabur v. Returning Officer, 41 DLR (AD) (1989) 30 Justice A.T.M Afzal has explained the article 27 in connection with 'reasonable classification' as follows:

"The principle of equality does not mean that every law must have universal application for all persons, who are not by nature, attainment or circumstances in the same position and the varying needs of different classes of persons require separate treatment."

To discriminate between men and women is not the main objective of Islamic law of inheritance. Islam is not the pleader of men or women. This law is composed of some specific aspect such as:

- (1) The nearer in degree excludes the more remote.
- (2) The descendent takes more share than the ascendant.
- (3) The blood relatives get preference to them who are not blood relatives.

Allah (SWT) declares: "Women shall have right similar to the right against them, according to what is equitable; but men 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 give men a degree over women in some economic aspects.

Men and women all are the greatest creation of Allah (Ashraful Makhluqaat). So, to Allah there is no discrimination between men and women. Allah has created women as an independent personality in possession of human qualities and worthy of spiritual aspirations' omens human nature is neither inferior to nor deviant from that of men. The discrimination which we see in our society is manmade.

Allah (SWT) says: And their lord has accepted their prayers, (saying): "Never will cause to be lost the work of any of you, be he male or female; You proceed one from another" (3:195; 33:35-36; 66:19-21).

In another verse Allah (SWT) says “Whoever works righteousness, man or woman, and has faith (in Allah), verily we will give him a new life that is good and pure, and we will bestow on them reward according to their actions”(16:97,4:124).

In fact women are not subordinate to men. They are complimentary to each other. One is incomplete without other. Allah (SWT) say-O mankind! Verily we have created you from a single (pair) of a male and a female and converted you into nations and tribes that you may know each other.”(49:13).From the above discussion it is clear to us that men and women are equal to Allah. Both have equal rights and responsibilities from different aspect. A hierarchical relationship between men and women has been created and later established by misinterpreting the Quranic verses in different manner. So, there is no more scope to imagine that women are inferior to men and they are deprived of their property right.

3. Situation of Muslim women’s inheritance right in Bangladesh:

In our country, the condition of Muslim women’s inheritance right is very deplorable. Because of some deep rooted impediments women are deprived of their inheritance right. For this deprivation sometimes they themselves are liable because they don’t have assertiveness skills. They are used to depend on their father and brother after marriage. They think that they have to come back to paternal family in case of divorce by husband. So, they have to keep strong relationship with their family by relinquishing paternal property right. Besides this many Muslim women of rural area are illiterate and rooted in superstition. They think it will be misfortune for their children and husband if they take inheritance. Most of the women don’t have adequate information, confidence, experience and resources to obtain what they are legally entitled to.

Sometimes the family even the society refuse to transfer the Muslim women’s allotted share. They think, if the sisters or daughters are given the heritable property then the foundation of familial and social relationship will be broken. Because by sister or daughter property of the propositus will go to a family who have no blood relationship with the deceased. As a result the patrimony is transferred to the male line and women remain systemically devalued without property and genealogical identity. Here the paternal family of the women does not hesitate to violate directly the Quranic injunction. Where Allah (SWT) says:”O you have believed, do not consume one another’s wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves or one another. Indeed, Allah is to you ever merciful”(4:29).Women are deprived from hereditary rights and having limited control over household resources and decision making process and secluded with heavy domestic workloads. Denial of a rightful share of ancestral property characterizes the unequal power relationship of resource less and destitute women of Bangladesh. So, they are marginalized, victims of violence and excluded from holding powerful decision making positions.

Though the modern community is struggling to empower women by ensuring all of their rights .The government of Bangladesh has ratified many international legal instrument like International covenants on Economic, Social and Cultural Rights and on Civil and Political Rights, The Convention on the Elimination of All Forms of Discrimination Against Women, to ensure women’s property and inheritance right .Besides the Constitution of Bangladesh is enshrined with equal opportunity for men and women. Hence, Bangladesh is obliged to eliminate all kinds of discrimination. Therefore, the vulnerable position of women in the society urges to address the influencing factors of women empowerment which may lead to improve women’s self-determination, access to socio-economic resources, freedom of choices and participation in decision making process in the contemporary society of Bangladesh.

RECOMMENDATIONS: The following recommendations are suggested to ensure Muslim women’s hereditary property right.

- A) A basic change in the institutional structure should occur to create awareness among women about their rights.
- B) Adequate legal supports and advice should be given in case women who wish to contest their claims.
- C) Undertaking effective legal education program so that poor women could have greater capacity to understand and deal with property related issues.
- D) Islamic Inheritance law should be enforced with iron hand.
- E) Challenge should be taken against religious misinterpreters of women’s right.

- F) Better gender training is essential to eliminate discrimination against women.
- G) To mitigate the gap between the laws and the existing practices against women's heritable property right the male should be motivated to change their mentality and to recognize women's prescribed right to inheritance.
- H) Overall disadvantaged position of women (nutrition, education, access to information etc) should be ensured.
- I) All social constraints preventing women from owning and inheriting should be removed.
- J) Gender sensitizing through the media by paper, bulletin, brochure, seminar and educational institutions, etc., for changing social norms and social perception.
- k) Social position of women should be improved to eradicate gender-stereotype attitudes.
- L) Strong monitoring body should be appointed in order to effectively implement the Islamic Inheritance law.

Conclusion: Allah is the lord of the earth and the sky. Since he is the Omni powered creator of all wealth and property, He has the absolute power to determine the shares of the heirs of the deceased..For this reason Allah has presented a complementary gift to Muslim unman by describing a scientific, well balanced and equitable inheritance law. In the history of the world no man made theory has been capable to present such a unique inheritance law. Here the women have been given half share of men for some financial responsibilities of men in family and society .It is the demand of justice. So, men should obey this divine law undoubtedly as a mercy from Allah. And only by accepting the genuine interpretation of the Quran verses relating inheritance, we can avoid the general use of gender biased inheritance laws which are now practiced in our country. Gustave Le Bon has perfectly said:

“The principles of inheritance which have been determined in the Quran have a great deal of justice and fairness. The person who reads the Quran can perceive these concepts of justice and fairness in terms of inheritance. I have compared British, French and Islamic Laws of Inheritance and found that Islam grants the wives the right of inheritance, which our laws are lacking while Westerners consider them to be ill-treated by the Muslim men”. (Le Bon, Gutave: The World of Islamic Civilization. New York: Tudor Pub. Co (1974).

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