



## Women under sharia: An analysis of the share of female heirs under Islamic law of succession

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### Abstract

Women constitute a substantial segment of human society. On the other hand women receive different treatment depending on socio, religious cultural setting they find themselves. However their treatment under Islamic Law (sharia) attracts more controversy, criticism and even outright condemnation than treatment under any other setting. Many social critics and Gender minded persons know and frown at the rule that under Islamic law of succession a male child is entitled to twice the share of his female counterpart. On the other hand some Muslims out of sentiment and over zealousness came up with logical but not legally based arguments in defence of the rule. Consequently, this paper is design to respectively educate the two groups that (I) the rule changes from time to time in fact sometimes a female heir gets more than twice the share of her male counterpart. (II) Allah's rule/command need no cosmetics from anybody as such those logical arguments should never be relied upon in order to defend or justify the rule.

**Keywords:** women, sharia, succession, men

### Introduction

The term Sharia (Islamic law) has been subjected to different definitions by different scholars. Some writers went as far as qualifying sharia as Mohammadan Law; other commentators see sharia as monster that must not be allowed to flourish owing to certain misconception that it out lived its relevance. This view lead to the emergence and subsequent adoption of secularism that advocates separation of religion from legal and other states matters. On the other hand, sharia is what every way defined or perceived, is a complementary part of the Islamic religion because Islam is a combination of faith and legal order tied/fused together. This relationship enforced by Allah the all mighty by issuing a stern warning to Muslim adherent against selective compliance with divine injunctions. He said“---Do you believe in part of the book and deny other part of it? Those of you who act thus shall be rewarded with disgrace in this world and with a severe punishment on the day of Resurrection. God is never un aware of what you do”<sup>[1]</sup> Interestingly, the above Qura'anic verse has consciously or otherwise been corroborated by a non-Muslim who stated thus: the two (i.e. Law and Religion) need each other, law to give religion, its social dimension and religion to give Law its spirit and direction as well as the sanctity it needs to command respect. Where they are divorced from one another, Law tends to degenerate into legalism and religion into religiosity<sup>[2]</sup>. On the other hand, sharia is a complete code of conduct that regulates the relationship of a Muslim with his creator and his fellow being. Furthermore it regulates the matrimonial ties, right of children, old age, neighbours, Business associates, employers, Human rights generally, state affairs such as foreign relation etc. Note that matrimonial ties create a ground for both husbands and wives to inherit one another. The paper is not intended to discuss sharia comprehensively; rather it singles out an aspect of Islamic Law of succession as

it affects the share of women. Consequently the paper is structured as follows:

### Creation and Status of Women from the Sharia Perspective

Allah (God) in his wisdom and according to his discretion created everything in a manner and the time he liked. He created heaven and the earth with all the oceans, rivers and the mountain. Later on He created Adam and the Eve. Allah could have created all at once (but he had chosen a particular pattern.) The originator of the heavens and the earth! When He decreed a thing, He saith unto it only: Be! And it is<sup>[3]</sup>.

As for the creation of Adam and Eve, mankind has been called upon to reflect and think as follows: O mankind! Fear your Lord who created you from a single soul. He created its mate from it and from the two of them spread countless men and women [throughout the earth]<sup>[4]</sup>. A careful and objective evaluation of the above verse will lead to the conclusion that Adam and Eve were created by the being, from the same source and for the same purpose. I have created Jinn and human kind only for my worship<sup>[5]</sup> it follows from the above that Adam and Eve plus their off spring are on this planet for no other purpose than worshipping Allah, not in the way they want but in the manner He (Allah) prescribed for them weather they are comfortable with it or otherwise.

In a related development, Allah (God) said “To whoever does good deeds, man or woman, and is a believer, we shall assuredly give a good life and we will bestow upon them their reward according to the best of their works<sup>[6]</sup> Even though the verse is self-explanatory, its deemed appropriate to emphasise that the parameter employed in determining who gets what (for equal work) between a man and a women is how best each of them carried out the work in respective of their sex/gender differences.

Similarly prescribed punishments for offences under Islamic Law are not based on gender, consider the following:

- a. Cut off the hands of thieves whether they are male or female as a [deterrent] punishment by God for what they have done, God is almighty and wise <sup>[7]</sup>
- b. The hypocrites, both men and women are all a like <sup>[8]</sup>

When it comes to acquisition and disposition of property or rights and obligations, both men and women enjoy/possess the same capacity except if they are (or one of them is) under aged or mentally retarded <sup>[9]</sup>.

From the above said it is clearly explained by the creator that He does not discriminate between men and women. Only that he assigned and allocate rights among them in a manner that the true believers need not questioned.

### **Islamic Law of Succession from the Historical Perspective**

The word succession refers to the practice under which an individual or group of individuals assume title over a property left by their deceased relation depending on the degree of their closeness to him and in conformity with the rule prevalent at the time. It is an old practice that predated Islam by centuries. Some available materials indicate that the Assyrians, Babylonians, Greeks and Romans have practiced one way of succession or the other.

Note that the history of Islamic law of succession goes hand in hand with messenger hood of the holy prophet Muhammad (S.A.W), consequently, it is imperative to critically examine the immediate proceeding era in the Arabia before the advent of the prophet. That era is known among historians as Jahiliyyah period, literally translated the era of ignorance. During that period the Arabian population were practicing succession based on four grounds namely Blood relation (Nasab), Adoption (Tabanni), Defence pact (Halaf) and marriage (Nikah) <sup>[10]</sup> each of the above grounds merits further explanation which time and space cannot accommodate. In spite of the above grounds the Arab based on their own customary norms out rightly excluded women and children from succession. Children because they were under aged, but for women their age was immaterial i.e.no matter how old they might have been they share similarity with children. A pre Islamic Arab was quoted as saying "How can we give property to he who cannot ride a horse, could not take up sword and could not fight an enemy" <sup>[11]</sup>.

Another serious anomaly and highest form of injustice was that not only were women excluded from inheritance but they were also part of the estate to be inherited(except they were able to run away) further more at their deaths, their husbands had the sole right to inherit all their properties to the exclusion of her blood relation".

However, with advent of Islam the practise was reform according to one of the fundamental futures of sharia i.e. gradually. The prophet of Islam met certain cultural practices dominate on the Arabian society, some of such practices were fit for retention as they posed no threat to the establishment of the (new) nation. Others were however harmful and had to be done away with <sup>[12]</sup>. Consequently, the prophet purified the ummah in systematic, logical and even scientific approach of not treating those problems swiftly but rather step by step (as in the case of prohibiting alcohol).

The first Islamic legislation on succession recognised Hijra (migration) as a ground for succession as a result of which those who followed the prophet (S.A.W) to medina were made heirs to one another On one hand and on the other hand the host community of medina and their meccan immigrants were made heirs to one another as well. This arrangement was based on Quranic provision (see chapter 8, 72-75) <sup>[13]</sup>. in essence two grounds for succession were introduced to temporarily operate alongside the pre Islamic grounds.

The next step was reformatory i.e. Alwilayah as a ground for succession was retained but slightly modified and made contingent upon Islam and migration.

There after a serious reformed by which women minors and old age were allowed to inherit was introduced. It is also supported by a Quranic provision; Men shall have share in what parents and relative leave behind, whether it be little or much. This is ordained [by God] <sup>[14]</sup> with revelation of this and other related verses, the Arabian population who were then new into the religion of Islam were not comfortable. Ibn Jareer reported from Ibn Abbas (R.A) because the verses pronounced what male and female children were entitled to likewise wives among others. So they resolved to either keep mute and never discuss the issue so that the prophet (S.A.W) may forget about it or talk directly to the prophet so that he change it <sup>[15]</sup>.

Finally, the brotherhood between meccan and their medina hosts as well as the immigrants among themselves were abrogated thereby refining the Law of succession and raising it to the present level.

### **Some Fundamental Principles of Islamic Law of Succession**

This aspect of Islamic Law is based on a number of principles with varying weights and relevance. At this juncture, some of such principles are discussed as follows:

#### **(A) Elements of Succession (Ar kaan El irth)**

The above refer to some components that are central to the entire process of succession, they are so important that the absence of any of them renders the whole process in operative, and they are outlined below as follows:

#### **Deceased (Al muwarath)**

This means a male or female who passed away and leave behind some properties.

#### **Heirs (Al waratha/ Al warithun)**

The word in its singular form stands for a male or female who is related to the deceased and is qualified to inherit him/her in the absences of any impediment. The heir must survive the deceased and the relationship between them (Heir and the deceased) must be factually established and legally recognised.

#### **Estate (Tarika/ Al muwarath)**

The above (Tarika) in the language of Muslim jurists means what the deceased leaves after his death such as land, physical cash (shares in a company etc.) it is a subject of distribution among her/his legally recognised heirs. Estate distribution is governed by the following rules:

- a. Liabilities such as debt owed by the deceased, funeral

expenses(where applicable), bequethesed (within 1/3 limit) must be settled out of whatever the deceased leaves behind, whatever is left there after is to be distributed among the heirs in a manner specified by the law.

- b. This rule has to do with the status of the estate left behind by the deceased. Property/wealth are classified into two(2) namely:
  1. Property that enjoys protection of the law (Mal mutaquam) i.e. The law (sharia) recognised it and permit the use of it in a normal way, furthermore a trespasser is liable for any destruction or harm done to the porty <sup>[16]</sup>. These include physical cash, landed property, shares in textile and food processing industries etc.
  2. Property that does not enjoy protection of the law (Mal gair mutaquam) these are properties that sharia does not recognise them as subjects of any use, possession or storing such as alcoholic drinks (khamr) and swine. A Muslim is not allowed to use either of the above, further more ownership of a Muslim over them is not recognised by the law (Sharia) <sup>[17]</sup> as such if they are destroyed by another Muslim, the owner will not recover. But the same class of property enjoy full protection of the Law if they are owned by a non-Muslim. It follows therefore, only properties that fall under no (i) above are recognised as distributable estate.

**(B) Grounds for Succession**

Muslims inherit one another on one ground or the other. The most notable ones are hereby outlined as follows:

- a. Blood relationship: This means people who are related to one another through blood they include father, fathers father how high so ever, mother, mothers mother and paternal uncles, they are group together and called Ascendants. Direct sons and daughters they are also called Descendants. Other relations such as brothers full as well as half from either fathers or mothers side.
- b. Matrimonial ties: Husbands and wives inherit one another under the following conditions:
  1. The marriage is valid. This means all the terms/requirements of a valid marriage are satisfied and the couple are living together as such.
  2. In the event of divorce, the couple are presumed to be living together provided the divorce is revocable and the waiting period is not over (Iddah).
  3. If the divorce is irrevocable, the judge will evaluate the circumstances with a view to ascertaining whether it was calculated to evade the succession. In such a situation the heir must get the specified share by a court decree.
- c. Client age (Alwala): The messenger of Allah said “The Clentage is the exclusive right of him who set the slave free”. The client or his child may inherit only where the deceased is not survived by an heir by blood <sup>[18]</sup>.

However, there are other principles of Islamic law of succession that numerous and complex to the extent that they need separate treatment.

**Two (2) for Male One (1) for Female and the Attempted Justification**

The earlier verse prescribed/provided that women like their male counterparts are entitled to a share out of the estate of their deceased parents or relations be it little or much without specifying the quantum. So this rule was contained is a verse revealed consequential to a complaint laid to the holy prophet by a wife (a mother of two female children) whose husband martyred at the battle of Uhud and his brother went away with all the deceased property living nothing for the children(and their mother). Going by the prevailing customary practise by then, such children would not get a husband. The prophet calmed her down by saying “God will surely issue a decree on that” Hence the revelation of a lengthy and wide range encompassing verse of the matter. “Concerning your children, God enjoin you that a male shall receive a share equivalent to that of two females, but.....” <sup>[19]</sup>.

Wife	<u>Son Daughter</u>
1/8	R
1	7

The wife share is 1/8 (30,000) =3,750  
 The children share is 7/8 (30,000) =26,250  
 To calculate the share of each of them at the ratio 2:1, 26,250 should be divided by 3  
 =26,250÷3=8,750  
 a. The male share= 8,750×2=17,500  
 b. The female share=8,750×1=8,750  
 Conclusively 3,750+17,500+8,750 = 30,000

From the above, the status of women at least at this level has been elevated from zero (0) to half of her male counterpart. Note that upon today, there are some societies where a wife inherits nothing from the estate of her deceased husband. But surprisingly, rather than appreciating the rule some people opt to condemn it and turn their back to the injustice metted against women in other societies/cultural settings.

On the other hand, some Muslims out of sentiment are trying to persuade the critics as to why the rule should not be criticised. Some of their argument goes as follows <sup>[20]</sup>.

- a. Women are mothers, wives, daughters or sisters and in each case there is a provision as to who look after them. So whatever they inherit will be saved or channelled into luxurious spending. Whereas a man has a lot responsibilities to shoulder.
- b. If a father leaves an estate of 30,000 of account and is survived by a male and a female child only, the male will get 20,000 and the female will get 10,000. However the male will continue maintain her not only out of his 20,000 but also other resources gathered through day to day struggle until she is married out in which case the responsibility of maintaining her is then transferred to her husband.

**Other Shares of Female Heirs**

The controversy and criticism of the share of a female in comparison with her male counterpart revolves around the 2:1 rule for male and female respectively. The critics and other readers need to know that:

- a. Sometimes a female heir gets as much as her male counterpart as in a case of a deceased who is survived by a father, mother, wife and a male child. Whatever the deceased left behind is to be shared as follows:

1/6 for the father, 1/6 for the mother, 1/8 for the wife and the residue(R) for the male child, it can be observed that the share of the mother is the same as the share of the father in spite of their gender differences. On the other hand the share of the mother is higher than the share of the wife gender similarity notwithstanding.

- b. A female heir gets more than the share of a male heir e.g. a deceased is survived by a father, mother, wife and a daughter. The sharing formula goes as follows 1/2 for the daughter,<sup>[21]</sup> 1/6 for the mother, 1/6 for the father and 1/8 for the wife and whatever is left there after goes to the father. Suppose the distributable amount left by the deceased is 240,000 units of account.

Daughters share= $1/2 (240,000) = 120,000:00$

Fathers share= $1/6 (240,000) + R = 40,000 + R$

Mothers share= $1/6 (240,000) = 40,000:00$

The wife share= $1/8 (240,000) = 30,000:00$

To calculate the value of R it goes thus:

$120,000+40,000+40,000+30,000+R=240,000$

Therefore  $230,000+R=240,000$

$R=240,000-230,000$

$=10,000$

Now the share of a father is  $40,000+10,000=50,000$ .

Note that (50,000) is not up to 1/2 the share of a daughter so why the criticism?

### Conclusion

Readers can observe that the paper treated only two instances under which female heirs inherit as follows:

- a. Instance where both male and female heirs get equal share.
- b. Instance where female heir gets more share than her male counterpart.

Of course other female heirs (a part from the two treated above) such as Grandmothers, wives, granddaughters from sons side, sisters(both full and half) inherit different shares depending on the nature of their relationship with the deceased and the circumstances under which they are inheriting. They are not discussed because the primary concerns of the paper are as follows:

1. To prove the critics that the two (2) for male and one (1) for female sharing formula under Islamic law of succession is not constant. Therefore, there is no room for any insinuations that females are not fairly treated under the system.
2. To draw the attention of those who took it upon themselves to argue with a view to convincing the critics of the rule as to its suitability to either keep away from the exercise or at least take it lightly and play softly. This is because objection to this rule was raised from the initial

stage when the prophet himself was around, only that it died down shortly because ones obedience and respect to the Islamic law is proportionate to the strength of his faith, consequently no amount of logical arguments can persuade some of this critics. After all guidance is Allah's gift to whom so ever he chooses.

3. To remind some few Muslim's who joined the critics band wagon that Islamic religion entry point is first believing that there is no deity worthy of worship except Allah.

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