

## FINANCIAL SECURITY AND INHERITANCE LAWS

### The right to possess personal property

One aspect of the world-view of Islam is that everything in heaven and earth belongs to Allah:

*To Allah belongs all that is in the heavens and on earth... (Qur'an 2:284)*

As such, all wealthy and resources are ultimately "owned" by Allah. However, out of Allah's mercy He created mankind to be, collectively, his trustees on earth. In order to help mankind fulfill this trustee-ship, he made the universe serviceable to mankind:

*And He (Allah) has subjected to you, as from Him, all that is in the heavens and on earth: behold, in that are signs indeed for those who reflect. (Qur'an 45:13)*

It is the human family that is addressed in the above and in other verses of the Qur'an. And since that family includes both genders, it follows that the basic right to personal possession of property (as Allah's trustees) applies equally to males and females. More specifically:

The Shari'ah (Islamic Law) recognizes the full property rights of women before and after marriage. They may buy, sell or lease any or all of their properties at will. For this reason, Muslim women may keep (and in fact they have traditionally kept) their maiden names after marriage, an indication of their independent property rights as legal entities.

Financial security is assured for women. They are entitled to receive marital gifts without limit and to keep present and future properties and income for their own security, even after marriage. No married woman is required to spend any amount at all from her property and income on the household. In special circumstances, however, such as when her husband is ill, disabled or jobless, she may find it necessary to spend from her earnings or savings to provide the necessities for her family. While this is not a legal obligation, it is consistent with the mutuality of care, love and cooperation among family members. The woman is entitled also to full financial support during marriage and during the waiting period (*'iddah*) in case of divorce or widowhood. Some jurists require, in addition, one year's support for divorce and widowhood (or until they remarry, if remarriage takes place before the year is over).

A woman who bears a child in marriage is entitled to child support from the child's father. Generally, a Muslim woman is guaranteed support in all stages of her life, as a daughter, wife and mother or sister. The financial advantages accorded to women and not to men in marriage and in family have a social counterpart in the provisions that the Qur'an lays down in the laws of inheritance, which afford the male, in most cases, twice the inheritance of a female. Males inherit more but ultimately they are financially responsible for their female relatives: their wives, daughters, mothers and sisters. Females inherit less but retain their share for investment and financial security, without any legal obligation to spend any part of it, even for their own sustenance (food, clothing, housing, medication, etc).

It should be noted that in pre-Islamic society, women themselves were sometimes objects of inheritance. In some Western countries, even after the advent of Islam, the whole estate of the deceased was given to his/her eldest son. The Qur'an however, made it clear that both men and women are entitled to a specified share of the estate of their deceased parents or close relations:

*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 4:7)*

### Employment

With regard to the woman's right to seek employment, it should be stated first that Islam regards her role in society as a mother and a wife as her most sacred and essential one. Neither maids nor baby sitters can possibly take the

mother's place as the educator of an upright, complex-free and carefully-reared child. Such a noble and vital role, which largely shapes the future of nations, cannot be regarded as "idleness." This may explain why a married woman must secure her husband's consent if she wishes to work, unless her right to work was mutually agreed to as a condition at the time of marriage.

However, there is no decree in Islam that forbids women from seeking employment whenever there is a necessity for it, especially in positions which fit her nature best and in which society needs her most. Examples of these professions are nursing, teaching (especially children), medicine, and social and charitable work. Moreover there is no restriction on benefiting from women's talents in any field. Some early jurists, such as Abu-Hanifah and Al-Tabari, uphold that a qualified Muslim woman may be appointed to the position of a judge. Other jurists hold different opinions. Yet, no jurist is able to point to an explicit text in the Qur'an or Sunnah that categorically excludes women from any lawful type of employment except for the headship of the state. Omar, the second Caliph after the Prophet (P), appointed a woman (*Um Al-Shifaa' bint Abdullah*) as the marketplace supervisor, a position that is equivalent in our world to "director of the consumer protection department."

In countries where Muslims are a numerical minority, some Muslim women, while recognizing the importance of their role as mothers, may be forced to seek employment in order to survive. This is especially true in the case of divorcees and widows and in the absence of the Islamic financial security measures outlined above.

## Inheritance

In the ancient world woman inherited nothing and, even when she inherited, she was treated like a minor. She had no independent legal personality. According to certain ancient legal systems, a daughter received an inheritance but her children did not. On the other hand, a son not only received an inheritance himself, but his children also inherited the property left by their grandfather. Certain other legal systems allowed woman to inherit but not in the form of a definitely prescribed share, or in the language of the Qur'an 'an appointed share'. They simply allowed a progenitor to make a bequest in her favor, if he so desired.

Historians and investigators have given detailed accounts of the various laws of inheritance found in the ancient world, but we need not go into all their details. For our purpose, the above given summary is enough.

The main reason of the deprivation of woman of inheritance was the prevention of transfer of wealth from one family to another. According to the old belief, the women's role in procreation was insignificant. The mothers served only as receptacles, where the seed of the father developed into a child. On this account, they believed that the children of a man's son were his own children and a part of his family, but the children of a man's daughter were not a part of his family, for they were a part of the family of their paternal grandfather. Thus, had a daughter received an inheritance, that would have meant the transfer of property to her children, who belonged to a family unconnected with that of the deceased.

The late Dr. Musa 'Ameed says that in the olden days religion, and not any natural relationship, was the basis of the formation of a family. The grandfather, besides being the social head of his children and grandchildren, used to be their religious head also. The execution of religious ceremonies and rituals was handed down to succeeding generations through the male descendants only. The ancients regarded only men as the means of preserving progeny. The father of the family not only gave life to his son, but also passed to him his religious beliefs and rituals. According to the Hindu Vedas and the Greek and the Roman laws, the power of procreation was confined to men only, and hence family religions were the monopoly of men, and women had no hand in religious affairs except through their fathers or husbands. As they could not take part in the execution of religious ceremonies, they were naturally deprived of all family privileges. Hence, when the system of inheritance came into being, they were excluded.

The exclusion of woman from inheritance had other reasons also, one of them being that she was not fit to be a good soldier. In a society in which great value was attached to the heroic deeds and the power of fighting, and a warrior was regarded superior to a hundred thousand non-fighters, woman was deprived of inheritance, because she lacked the fighting capacity.

For this very reason, the pre-Islamic Arabs were opposed to inheritance by woman, who could not inherit as long as a male member of the family, howsoever distant, existed. That is why they were greatly surprised, when the Qur'an expressly said: *"For men is a share of what the parents and the near relatives leave, and for women is a share of what the parents and the near relatives leave, whether it be little or much - an appointed share"*, (Surah an-Nisa, 4:32)

It so happened that the brother of Hassan bin Thabit, the famous poet, died in those very days, leaving behind a wife and several daughters. His paternal cousins appropriated all his property and did not give anything to his widow or

daughters. The widow complained to the Holy Prophet who called her deceased husband's cousins. They said that a woman was unable to carry arms and to fight the enemy. It was the men who defended themselves and the women. Hence, they alone had the right to inherit the property. Thereupon, the Holy Prophet conveyed to them the command of Allah, as revealed in the above quoted verse.

### Woman's inheritance in Islam

The Islamic law of inheritance is free from all the short-comings and defects of the past. The only thing, which is objectionable in the eyes of the upholders of equality between man and woman, is that the share of woman is half that of man. According to the Islamic law, a son receives twice as much as a daughter, a brother twice as much as a sister and a husband twice as much as a wife. The case of father and mother is the only exception.

If a deceased has children and his parents are also alive, each of his parents will get one-sixth of the property left by him. It is because of woman's special position with regard to dower, maintenance, military service and some of the criminal laws, that her share has been fixed at half that of man.

For reasons mentioned earlier, Islam considers dower and maintenance essential and effective in the consolidation of a marriage. They ensure domestic harmony and coherence. The abolition of them is likely to shake the family structure and to push woman to prostitution. The dower and maintenance being compulsory, naturally woman's financial commitments have been reduced and man's burden has proportionately increased. To compensate man for his extra burden, his share in inheritance has been fixed at twice that of woman. It is dower and maintenance which have reduced woman's share.

### Objection of the Westernized

Some Westerners, while criticizing woman's lesser share in inheritance and using it as a propaganda weapon against Islam, assert that, after all, there is no necessity of lessening woman's share in inheritance and compensating her for the loss by allowing her dower and maintenance. Is there any need of going into bylanes and adopting out-of-the-way methods? Why should not woman's share, from the beginning, be equal to that of man so that we may not be compelled to compensate her by allowing her dower and maintenance?

The gentlemen, who happen to be more royalists than the king, have mistaken the cause for the effect and the effect for the cause. They think that the dower and the maintenance are the effects of women's peculiar position with regard to inheritance, whereas the real position is just the reverse. Further, they seem to be under the impression that the financial aspect is the only consideration. Had that been the only consideration, obviously there would have been neither the need of the system of dower and maintenance nor that of disparity between the shares of man and woman. As we have mentioned earlier, Islam has taken into consideration many aspects, some of them natural and others psychological. It has considered woman's special needs, arising out of her procreative function. Man naturally has no such needs. Besides, on the one hand, woman's earning capacity is less than that of man and, on the other, her consumption of wealth is more. In addition, there are several other finer aspects of their respective mental make-up. For example, man always wants to spend for the sake of the woman of his choice. Other psychological and social aspects, which help in the consolidation of the domestic relations have also been considered. Taking all these points into consideration, Islam has made dower and maintenance obligatory. Thus, it is not simply a financial question, so that it may be said that there is no need of reducing woman's share at one place and compensating her at another.

### Objection of the heretics of the early Islamic era

We have said that the dower and the maintenance are a cause and the peculiar position of woman with regard to inheritance is its effect. This point is not a new discovery. It came up even in the early days of Islam.

In the second century of the Hijri era there lived a man named Ibn Abi al-'Awja, who did not believe in religion. Taking advantage of the religious freedom of that period, he openly gave expression to his atheistic ideas. Sometimes he even came to the Masjid al-Haram (in Mecca) or Masjid al-Nabi (in Madina) and engaged in arguments on the principles of Islam with the scholars of that time. One of his objections against Islam concerned inheritance. He used to say: "What is the fault of the poor woman that she gets one share whereas the man gets two". According to him, this was injustice to woman, the Imam Ja'far as-Sadiq (P), in reply to him, said that it was so, because woman was exempted from performing military service. Further, Islam had enjoined upon man to pay her dower and maintenance and, in certain criminal cases where the kinsmen of the offender had to contribute to the blood-money, she was exempted from such payment. These were the reasons why her share had been reduced. Thus Imam Sadiq expressly attributed woman's peculiar position, with regard to inheritance, to the existence of the law regarding dower and maintenance and her exemption from military service and the payment of blood-money.

## Female Inheritance in Islam and the Judeo-Christian Tradition

One of the most important differences between the Quran and the Bible is their attitude towards female inheritance of the property of a deceased relative. The Biblical attitude has been succinctly described by Rabbi Epstein: "The continuous and unbroken tradition since the Biblical days gives the female members of the household, wife and daughters, no right of succession to the family estate. In the more primitive scheme of succession, the female members of the family were considered part of the estate and as remote from the legal personality of an heir as the slave. Whereas by Mosaic enactment the daughters were admitted to succession in the event of no male issue remained, the wife was not recognized as heir even in such conditions." Why were the female members of the family considered part of the family estate? Rabbi Epstein has the answer: "They are owned-before marriage, by the father; after marriage, by the husband."

The Biblical rules of inheritance are outlined in Numbers 27:1-11. A wife is given no share in her husband's estate, while he is her first heir, even before her sons. A daughter can inherit only if no male heirs exist. A mother is not an heir at all while the father is. Widows and daughters, in case male children remained, were at the mercy of the male heirs for provision. That is why widows and orphan girls were among the most destitute members of the Jewish society.

Christianity has followed suit for long time. Both the ecclesiastical and civil laws of Christendom barred daughters from sharing with their brothers in the father's patrimony. Besides, wives were deprived of any inheritance rights. These iniquitous laws survived till late in the last century [46].

Among the pagan Arabs before Islam, inheritance rights were confined exclusively to the male relatives. The Quran abolished all these unjust customs and gave all the female relatives inheritance shares:

*"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" (4:7).*

Muslim mothers, wives, daughters, and sisters had received inheritance rights thirteen hundred years before Europe recognized that these rights even existed. The division of inheritance is a vast subject with an enormous amount of details (4:7,11,12,176). The general rule is that the female share is half the male's except the cases in which the mother receives equal share to that of the father. This general rule if taken in isolation from other legislations concerning men and women may seem unfair. In order to understand the rationale behind this rule, one must take into account the fact that the financial obligations of men in Islam far exceed those of women. A bridegroom must provide his bride with a marriage gift. This gift becomes her exclusive property and remains so even if she is later divorced. The bride is under no obligation to present any gifts to her groom. Moreover, the Muslim husband is charged with the maintenance of his wife and children. The wife, on the other hand, is not obliged to help him in this regard. Her property and earnings are for her use alone except what she may voluntarily offer her husband. Besides, one has to realize that Islam vehemently advocates family life. It strongly encourages youth to get married, discourages divorce, and does not regard celibacy as a virtue. Therefore, in a truly Islamic society, family life is the norm and single life is the rare exception. That is, almost all marriage-aged women and men are married in an Islamic society. In light of these facts, one would appreciate that Muslim men, in general, have greater financial burdens than Muslim women and thus inheritance rules are meant to offset this imbalance so that the society lives free of all gender or class wars. After a simple comparison between the financial rights and duties of Muslim women, one British Muslim woman has concluded that Islam has treated women not only fairly but generously.

Apart from recognition of woman as an independent human being acknowledged as equally essential for the survival of humanity, Islam has given her a share of inheritance. Before Islam, she was not only deprived of that share but was herself considered as property to be inherited by man. Out of that transferable property Islam made an heir, acknowledging the inherent human qualities in woman. Whether she is a wife or mother, a sister or daughter, she receives a certain share of the deceased kin's property, a share which depends on her degree of relationship to the deceased and the number of heirs. This share is hers, and no one can take it away or disinherit her. Even if the deceased wishes to deprive her by making a will to other relations or in favor of any other cause, the Law will not allow him to do so. Any proprietor is permitted to make his will within the limit of one-third of his property, so he may not affect the rights of his heirs, men and women. In the case of inheritance, the question of quality and sameness is fully applicable. In principle, both man and woman are equally entitled to inherit the property of the deceased relations but the portions they get may vary. In some instances man receives two shares whereas woman gets one only. This no sign of giving preference or supremacy to man over woman. The reasons why man gets more in these particular instances may be classified as follows:

First man, is the person solely responsible for the complete maintenance of his wife, his family and any other needy

relations. It is his duty by Law to assume all financial responsibilities and maintain his dependents adequately. It is also his duty to contribute financially to all good causes in his society. All financial burdens are borne by him alone.

Secondly, in contrast, woman has no financial responsibilities whatsoever except very little of her personal expenses, the high luxurious things that she likes to have. She is financially secure and provided for. If she is a wife, her husband is the provider; if she is a mother, it is the son; if she is a daughter, it is the father; if she is a sister; it is the brother, and so on. If she has no relations on whom she can depend, then there is no question of inheritance because there is nothing to inherit and there is no one to bequeath anything to her. However, she will not be left to starve, maintenance of such a woman is the responsibility of the society as a whole, the state. She may be given aid or a job to earn her living, and whatever money she makes will be hers. She is not responsible for the maintenance of anybody else besides herself. If there is a man in her position, he would still be responsible for his family and possibly any of his relations who need his help. So, in the hardest situation her financial responsibility is limited, while his is unlimited.

Thirdly, when a woman gets less than a man does, she is not actually deprived of anything that she has worked for. The property inherited is not the result of her earning or her endeavors. It is something coming to them from a neutral source, something additional or extra. It is something that neither man or woman struggled for. It is a sort of aid, and any aid has to be distributed according to the urgent needs and responsibilities especially when the distribution is regulated by the Law of God.

Now, we have a male heir, on one side, burdened with all kinds of financial responsibilities and liabilities. We have, on the other side, a female heir with no financial responsibilities at all or at most with very little of it. In between we have some property and aid to redistribute by way of inheritance. If we deprive the female completely, it would be unjust to her because she is related to the deceased. Likewise, if we always give her a share equal to the man's, it would be unjust to him. So, instead of doing injustice to either side, Islam gives the man a larger portion of the inherited property to help him to meet his family needs and social responsibilities. At the same time, Islam has not forgotten her altogether, but has given her a portion to satisfy her very personal needs. In fact, Islam in this respect is being more kind to her than to him. Here we can say that when taken as a whole the rights of woman are equal to those of man although not necessarily identical (see Qur'an, 4:11-14, 176).

### **The superiority of the Qur'an's commandment over the modern one with respect to the female inheritance**

The Qur'an decrees that the male shall receive the portion of two females (in inheritance).

The Qur'anic injunction of inheritance is perfectly just and a perfect mercy for women. It is just because, in the majority of cases, and according to the Islamic Law, the husband provides both for the wife's and the children's livelihood, whereas the wife is not under any legal obligation to provide either for him or for herself. Thus she is compensated for the half-share less that she is allocated from any inheritance than the man. It is a perfect mercy because a girl is delicate, vulnerable and so is held in great affection by her father who, thanks to the Qur'anic injunction, does not see her as a child who will cause him loss by carrying away to others half of his wealth. In addition, her brothers feel compassion for her and protect her without feeling envy of her, as they do not consider her as a rival in the division of the family possessions. Thus, the affection and compassion which the girl enjoys through her family compensate for her apparent loss in the inheritance.

It is for this reason that it is severe injustice, far from being kindness, to institute more for the girl than her due out of unrealistic feelings of compassion-unrealistic because no one can be more compassionate than God. Rather, if the Qur'anic bounds are exceeded, women may become, for the reasons we have given, vulnerable to exploitation and tyranny in the family, especially in view of the barbaric selfishness of modern times-which can be as bad as the tyranny of the jahiliyya (the pre-Islamic age of ignorance) when infant girls were buried alive. As for the Qur'anic injunctions, all of them, like those pertaining to inheritance, prove the truth expressed in the verse, *We have not sent you (o Muhammad), save as a mercy unto all beings.*

Modern civilization, which, in essence, is a system of savagery because it lacks real human values, wrongs mothers more than girls by depriving them of their rights. Being the purest and finest reflection of Divine compassion, the affection of mothers is the most revered reality in the creation. A mother is so compassionate, self-sacrificing and intimate a friend that she sacrifices all she has including her life for her children. A timid hen, for instance, whose motherliness represents the lowest degree, has been observed to attack a dog in order to protect her chicks.

It is, for this reason, plain to those who are really human, if not to those who appear human but are bestial in essence, what a great injustice and shameful disrespect, what a heart-rending ingratitude and a harmful poison for social life it is, to deprive such a respected, dear being of her rightful share in the wealth of her son. As for the Qur'anic injunction, which gives the mother one sixth of her son's inheritance, as in the verse, *And to his mother a*

*sixth*, it is in perfect accordance with justice and universal truths.

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