

Inheritance and Women's Rights

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 favour, 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.

WHY WOMAN WAS DEPRIVED OF INHERITANCE?

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.

INHERITANCE OF AN ADOPTED SON

The pre-Islamic Arabs sometimes adopted someone as their son. The adopted son like a real son, was considered to be an heir. The custom of adoption existed among other nations also, including the ancient Romans and the Iranians. The adopted son, being considered to be just like a real son, enjoyed such privileges as were not allowed to the lineal daughters. These privileges included the right of inheritance. Similarly, marriage with the wife of an adopted son was prohibited. The Holy Qur'an abolished these customs.

INHERITANCE OF AN ALLY

Another custom, which was common among the pre-Islamic Arabs and was abolished by the Qur'an, was that of alliance. Two persons unrelated to each other, used to enter into an alliance, committing to each other by oath: "Your blood is my blood; any aggression against you will be an aggression against me; you will inherit from me and I from you". According to this alliance, both of them defended each other during their lifetime, and whosoever died first the other took his property.

WIFE, A PART OF INHERITANCE

Sometimes the pre-Islamic Arabs counted a widow to be a part of her deceased husband's property and appropriated her accordingly. If the deceased had a son from another wife, he could throw a piece of cloth on the widow as a mark of acquiring her. Then he could dispose her at his will and pleasure. He had the option of either marrying her himself, or giving her in marriage to someone else and taking her dower. This custom, which was not peculiar to the Arabs, was abolished by the Qur'an.

In regard to inheritance, many aspects of the ancient Indian, Japanese, Roman, Greek and Iranian laws also were objectionable and discriminating. For lack of space we cannot reproduce all that has been written by the experts in this respect.

INHERITANCE OF WOMAN DURING THE SASANIAN PERIOD

The late Saeed Nafisi in his book, 'Social History of Iran from the Sasanian times to the end of the Umayyad period', writes: "Another interesting feature of the Sasanian culture was that, when a boy reached the age of puberty, his father married him to one of his own numerous wives. During that period, woman had no legal personality. The father and the husband had vast powers over her property. It was the duty of the father or the head of the family to marry a girl when she reached the age of 15 But the age of marriage for the boys was 20. After being married, a girl was not entitled to receive any inheritance from her father or guardian. She had no right to choose her husband herself, but she could contract an unlawful marriage if her father failed to marry her when she reached the age of puberty. In that event also she did not inherit from her father.

The number of women a man could marry was unlimited. The Greek sources mention cases, where a man had several hundred women in his house. The Zoroastrian religious books show that the rules of marriage during the Sasanian period were complex and confused.

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 WESTERNISED

Some Westerners, while criticising 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 woman'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.

The other Imams also answered likewise when a similar question was put to them.