

Position Paper on Islamic Inheritance

A source of significant controversy both inside and outside the Muslim community is the Islamic law of inheritance. This "law" is in fact a continuing process of interpretation of Quranic rules and principles to form the complex "laws" of inheritance under Islam. It is a dynamic process which, based on specific text in the Quran and traditions of the Prophet Muhammad, continues to be discussed in each Islamic age by Muslim scholars addressing changing issues and times.

Before delving into this complicated and controversial area, one must first realize that Islam revolutionized woman's inheritance rights. Prior to the Quranic injunction -- and indeed in the west until only recently -- women could not inherit from their relatives, and in the case of Arabia at least, were themselves bequeathed as if they were property to be distributed at the death of a husband, father, or brother. Thus, Islam, by clearly stating in the Quran that women have the right to inherit for themselves, changed the status of women in an unprecedented fashion. The Quran states: "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." (Quran 4:7). Thus, whether women can inherit at all is not the controversy. Rather, the dispute centres around the "share" that is to be inherited.

The same chapter of the Quran goes on to state in detail the division of property based on the number of relatives and the level of kinship of the inheritor. (See Quran 4:11) The injunction that a male relative receives a share equal to that of two females applies only to the inheritance of children by their parents. Parents who inherit from a deceased child, for example, each inherit one-sixth of the property if the deceased child is survived by a child of his or her own. In that instance, the division is equal between the mother and the father of the deceased.

The verse then states what the mother shall receive if the deceased left no children or if the deceased left siblings. Presumably, the father and the mother inherit equally in those situations. The rationale behind a brother receiving double his sister's share, on the other hand, is based on the Islamic legal presumption that he has an obligation to provide for her support. Bearing in mind that these verses were revealed in Arabia over 1400 years ago, when women had no financial security other than what was provided by men, these verses demonstrate the care and respect given to the family unit, and ensured that women's rights would continue to be protected. Hence, brothers with sisters were given larger shares than their sisters, together with the legal obligation to spend a portion of this wealth on those sisters.

Within the field of Islamic scholarship, there is much discussion on the topic of inheritance. There are scholars who argue that these rules apply only if no will was left by the deceased and that the division can be changed by a will. Presumably, the will would be analogous to a debt and would be paid prior to any other disbursement of property. (See Quran 4:11; Fathi Osman, *Muslim Women in the Family and in the Society*, at 24-25.) Furthermore, a tradition of the Prophet Muhammad states that a person can will up to one-third of his or her property in any manner, thus allowing equalization of gender-based default presumptions. (It should be noted that a majority of the Sunni schools of thought state that the one-third share cannot be bequeathed to natural heirs; however, others, including the Shiite school, disagree with this limitation.) Moreover, transfers of property can be made during the life of the testator. The majority of schools argue that the verses provide guidance as to who should be provided for and at what level. Furthermore, there are scholars who maintain that these laws are applicable only in an Islamically-based legal system and government where a woman would have

recourse against a relative who was obligated to provide for her but failed to do so. One may argue that in the absence of a complete application of Islamic law, where the rights of women will have no teeth, Muslims should turn to the spirit of that law, which is justice, and find ways to accomplish this goal. This is especially true where Muslims are a minority, as in the United States. Muslim scholars, legislators, and researchers must – and are beginning to -- boldly address this issue to focus on these challenges. The Islamic laws of inheritance are, like all issues in Islamic law, a dynamic process that must respond to the many challenges and opportunities that world changes present.