

Women's inheritance between Islamic law and international instruments

ميراث المرأة بين الشريعة الإسلامية والمواثيق الدولية

Dr/ Ali Ghenam¹ (1), Dr/ Baya Benachour (2), Pr/. Saliha Ben achour

د/ علي غنام، د/ باية بن عاشور، أ.د/ صليحة بن عاشور

(1) Islamic History, Algeria, University –Batna1, LIFNP LAB, Email
ali11021966@hotmail.com

(2) politic sciences, Algeria, University –Batna1, LIFNP LAB; karim6643@hotmail.fr

(3) Oussoul el Fiqh, Algeria, University –Batna1, LIFNP LAB, saliha.benachour@univ-batna.dz

Received: 01/07/2024

Accepted: 07/07/ 2024

Published:15/07/ 2024

Abstract:

Woman is considered in Muslim society; as the essential element for building the family and society. One of the most important issues raised at international conferences is the issue of the family's inheritance, calling for equality between men and women.

The main problem with this article is therefore:

How true is the Islamic law of men's preference over women in the issue of inheritance?

What is the position of international instruments on this?

The most important findings of the study were: the honouring of women's Islamic law and its equity with inequality between women and men, in the interests of justice, by the rule: sheep by fine.

The suspicions raised by international instruments on women, particularly on the issue of inheritance, aim to sow individuality, conflict and material utility within Muslim societies, including the fragmentation of the system of social solidarity and the dismantling of the Muslim family and society .

Keywords: Women; inheritance; Women's inheritance; Islamic law; international instruments

ملخص:

تعتبر المرأة في المجتمع المسلم؛ الفاعل الأساس في بناء الأسرة، لذا أصبحت قضية ميراثها، من أهم القضايا التي تثار في المؤتمرات الدولية، للمناداة بتحقيق المساواة بينها وبين الرجل.

لذا تلخص الإشكالية الرئيسة لهذا المقال فيما يلي:

ما مدى حقيقة تفضيل الشريعة الإسلامية للرجل على المرأة في مسألة الميراث؟ وما موقف المواثيق الدولية من ذلك؟ وقد

توصلت الدراسة إلى نتائج أهمها: إكرام الشريعة الإسلامية للمرأة وإنصافها مع عدم المساواة بينها وبين الرجل، تحقيقاً للعدل، وفقاً لقاعدة: الغنم بالغرم. وأن ما تثيره المواثيق الدولية من شبهات حول المرأة خاصة في مسألة الميراث، تهدف إلى زرع الفردية والصراعية والنفعية المادية داخل المجتمعات الإسلامية، ومنه تفتتت نظام التكافل الاجتماعي، وتفككت الأسرة المسلمة والمجتمع المسلم.

كلمات مفتاحية: المرأة، الميراث، ميراث المرأة، الشريعة الإسلامية، المواثيق الدولية.

¹ Corresponding author.

1. Introduction

The issue of women's inheritance has become an important issue raised in international forums and conferences that embrace women's issues, attempt to reformulate and shape the realities of women's family and social life, as a gateway to changing entire societies, and that all women's rights and functions can be taken as means to bring about such change.

This call in Muslim societies had different rhetorical images, before being imposed on Governments; as international laws and covenants punishable for non-application.

Is this requirement for international instruments truly legitimate for women and society?

Did Islam really favour men over women in the issue of inheritance? Is this a derogation of her humanity? Or diminish her status and dignity? Was Islamic law governing women's inheritance unfair?

Is what current international instruments offer in the issue of inheritance a truly just alternative?

Can inheritance provisions be based on male-female equality?

Is today's practice of depriving women of inheritance at all recognized by sharia law?

This is what I will answer - God willing - through the next article.

Before answering these and many other questions, it may be necessary to see the inheritance of the former nations, especially with regard to women's inheritance and then women's inheritance in international instruments, so that we can finally take a legitimate view of this issue and the uniqueness of its purposes.

2. Inheritance of former nations

The former nations of Roman, Greek, ancient Egyptians and others agreed that the dead's money was the right of his relatives, but disagreed on who was the first to advance. Who is the first is the most. In the introduction of foreigners with relatives sometimes or not? Female inheritance or not? and other provisions.

2.1 Inheritance in ancient Egyptians:

The absolute monarchy was the time of the pharaohs only, the land in all its facilities to them, until the King came to "creep", establishing the rules of inheritance and summarizing the fact that all children, whether in division, do not differentiate between male and female, and marital cause of inheritance .

2.2 Inheritance in Romans:

The Romans' inheritance has gone through several stages, ending in a phase where the cause of the inheritance is kinship, the closest is to others, and females are inherited with both males.

2.3-Inheritance in Greece:

Greece If there is no son of the estate of his nearest gang, women in the absence of a nerve have certain inheritance rights.

2.4-. Inheritance in Jews:

Inheritance in Jews is characterized by the fact that a person is free to act in his or her property as he or she wishes by means of a will. He or she may recommend it to whoever he or she wishes, even a foreigner, and may deprive his or her descendants and relatives of his or her will, and the wife shall not inherit from her husband's estate if he or she dies before him.

2.5-Inheritance in the Arabs in Jahliya:

The inheritance was in the ignorance of manhood and power and they inherited men without women, said the polar when interpreting the verses of inheritance¹.

The Arab son commented: This was ignorant and he acted with great ignorance. The weak young heirs were entitled to money from the forces. They reversed the rule, invalidated the wisdom, favored their whims and erred in their opinions²...

As to the reasons for their inheritance, Al-Jahiliyah: The people of Al-Jahiliyah inherited two things, one descent and the other cause. They died worthy of descent. They did not inherit children and females, but rather inherited from a murderer on the Persians and the possession of the swag³.

Mohammed al-Taher bin Ashour stated that it was customary for Arabs before Islam to contain dead money.

3.Inheritance in contemporary international instrument

The Beijing Document, ratified at the 1995 World Conference on Women in the articles on strategies, addressed women's inheritance and demanded absolute equality in the distribution of inheritance, and ensured that this was applied at the conferences following Beijing in 1995.

3.1. The Beijing document addressed inheritance through three main axes:

- Women and poverty.
- Women and the economy.

¹ - Al-Qaratabi - Al-Jama 'a Al-Qur' an - Arab Heritage Revival House, Beirut, leb T) 1405 E, 1985 M, C5, p. 79-80

² - Ibn al-Arabi, the provisions of the Koran, the investigation of Ali Mohammed al-Bejawi, Dar al-Marefa, Beirut, Lebanon,

³ - Al-jassas, the provisions of the Koran, the seizure and graduation of Abdulsalam Muhammad Ali Shaheen, Dar al-Kabbab al-Science, Beirut, Lebanon, p. 2, 1415 AH

- Baby, girl.

In articles 60, F, 61 (B) of the Women ' The document focused on the issue of inheritance as an economic resource that protects women (individual and human), that is, away from the family and social context - from poverty, and women's enjoyment of the same share of inheritance as men is a manifestation of full gender equality.

In article 165 (b) of the Women and Economy Axis, the document addresses the equal distribution of inheritance between the sexes as an integral part of the economic resources that women are entitled to in order to secure their economic rights and economic independence, and the document therefore called upon Governments to undertake administrative and legislative reforms to give women equal rights with men with regard to economic resources, including ownership opportunities land control, land ownership and other forms of ownership, inheritance, natural resources and available technology.

In article 274 (d) of the Child Girls' Axis, the document considers the unequal distribution of inheritance to be a manifestation of discrimination against women. The document therefore calls upon Governments through this article to eliminate obstacles to equal distribution of inheritance between the sexes for the enjoyment of the child (Girl's) rights without discrimination, as well as the need to give effect to and strengthen legislation guaranteeing the equal right of both sexes to inherit.

4-Women's inheritance in Islamic law

4.1. Legislation on women's right to inheritance through explicit provisions

The Islamic Shariah was incorporated into the order of inheritance, in line with the natural nature of the human soul and in order to avoid innocence. It then followed it with the statement and detail, as required by his wise Almighty. The Shariah determined that women and children have the right to inherit to the neighbourhood of men. without regard to the sex of the child.

Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females; if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half. For parents, a sixth share of inheritance to each if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased left brothers or (sisters), the mother has a sixth. (The distribution in all cases is) after the payment of legacies he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit, (these fixed shares) are ordained by Allah. And Allah is Ever All-Knower, All-Wise surat Anissa 11.

On Jaber, he said: "Saad bin al-Rabi's woman came to the apostle i of her two daughters from Saad, and she said: "The Messenger of Allah, these two daughters of Saad bin al-Rabih, killed their father with you in a martyr. Their uncle took their money and he did not let them money and they only give money." He said: "Give my daughter Saad two thirds and their mother the price and what is left is yours".

4.2. Comparison between male and female shares in Islamic law:

The distribution of inheritance between men and women in the Islamic Shari 'a according to certain cases :

First case: its share should be the same as that of the male.

Example: sisters of a mother; One of them, if alone, takes one sixth.

Brothers to a mother: If one of them alone takes a sixth, and if they are male and female, two or more, they all share a third of the male like the luck of the female

Second situation: Women's share is the same as or lower than that of males.

Example: Mother with father if the dead have children.

If the dead are left with the father and mother, only male or female, the father and mother have one sixth of the estate.

If the deceased is left with the father and mother, only one sixth of the mother and the father take more of the estate than the mother.

Applied example: one person died and left a daughter, wife, mother, father

Wife: $\frac{1}{8}$ takes the price for the presence of the female direct heir branch.

Girl: Take $\frac{1}{2}$ (half) to impose her singularity and non-multiplicity.

Mother: Take $\frac{1}{6}$ (one sixth) imposition.

Father: Takes $\frac{1}{6}$ (one sixth) and the rest.

Case 3: Women's share should be higher than men's.

Fourth case: Women's inheritance and men's non-inheritance

Fifth case: women's share is half that of males.

This is the general rule in women's inheritance.

4.3. The purpose of making women's share half that of men

Giving a male like the luck of the two females in inheritance in Islamic law is not favourable to one sex over another, but quite the opposite where it is balanced and fair; Men marry a woman and are charged with her and her children's maintenance in each case. And she's divorced from him, and either she just does herself or the man does it both before and after marriage. and not costly to spend on the husband or children in any case, It is therefore at least charged with weakening women's burdens in the family composition and the Islamic social system and hence the equity and harmony between sheep and fine and the rigorous distribution of burdens and duties.

For example: Let's impose a man who has died and left a son and daughter and left them with money. What is the fate of this money often a little later?

Answer:

For a girl it will increase and not decrease, by the dowry she takes from her husband when she marries, It increases money when you grow it by trade or by any means of investment As for her young brother, he lacks the dowry he will pay to his bride, the expenses of the wedding and the furniture of the house, and that may go with everything he inherited, Then he always has to spend on himself and his husband and children. Do not you see that what the girl takes from her father's estate remains her savings for the days of calamity, The breadwinner was lost from a husband, father, brother or relative ", while what the son takes is exposed to consumption to meet his financial burden, Which must be done, is Islam really a woman's injustice to inheritance or a denial of her right?

What is said from time to time by those who claim to be women's supporters, how has Islam preferred men over women in inheritance? And they call for it to be settled by the man, what is said of it stemming from the fancy of ignorance of the law of God the Court, and we tell these: you know the Mother of God... To? To say: It is no wonder that the wise Almighty made her share of the half of the man in her rank. Where is the insidiousness signed by God's Division Gel and Ola?

Is it not he who lifted her ignorant injustice, ensured her life by forbidding her death in the dirt, arranged for her a good married life, and protected her from the arbitrariness of the ignorant man during and after marriage¹. [6]

Giving the amount of need is justice, equality when the need varies is injustice, and those who speak of equal inheritance for men and women do not walk behind equitable equality but rather behind unjust equality.

5- Comparison between the system of inheritance in the Islamic Shari'a, international instruments and status systems

The Beijing document's view of women is purely Western for women and the family and is based on individuality, conflict and utility; The document wanted to mainstream Western lifestyle among Muslim societies; Because conflict and clubs govern gender relations within the community or family and the benefit of everything's economic value requires equal inheritance, Inheritance in Muslim societies is a guaranteed right for women and a precautionary solution after the entry into force of social and family solutions that protect women social solidarity guaranteed by the social system of Islamic communities through the Network of

¹1-Mustafa Shalabi, Provisions of Inheritance between Jurisprudence and Law, Arab Renaissance House, Beirut, Lebanon, 1978, p. 22-25

Family and Kinship Relations, The functions and roles of these relationships are complementary because the basis of the gender relationship is originally based on integration rather than conflict.

How can gender equality strategies be applied in part (inheritance) while the system as a whole runs counter to this absolute and complete equality. This is about articles 60, F, 61 (B) of the Women and Poverty Axis.

Article 165 (b) of the Women : Women's financial autonomy, which guarantees them the opportunity to invest and work exploited, is guaranteed in Islamic law fourteen centuries ago. That is why Islam has not linked inheritance to women's independent finances, nor has it made the right to own property linked to inheritance, nor has it made inheritance an economic resource taken as a means for women's economic independence as well. Because inheritance is part of the Islamic social solidarity system that has its functions inheritance ", where the distribution of inheritance shares varies depending on the nature of those functions and is governed by three rules for the distribution of inheritance that have nothing to do with masculinity and femininity.

First rule:

Degree of kinship to the deceased: the closer the heir to the deceased, the greater his share of the inheritance.

Second rule:

is the site of the succeeding generation of the deceased generation; That is, the younger and more future the succeeding generation is, the more it needs the money, so its inheritance is greater than previous generations

Third rule:

It is the rule of material burden, which makes women's inheritance half that of men.

With regard to article 274 (d) of the Child Girls' Axis, we conclude that calling for equal distribution of inheritance is one of the instruments that Islamic Governments must pay so as not to qualify as discrimination against women. even if the execution of this claim leads it to block, freeze or repeal the provisions on the distribution of inheritance in the Islamic sharia; The demand for full gender equality in inheritance distribution can therefore be seen as a key part of a far-reaching strategy for which the Beijing Document works and all those who advocate and work towards its application in the realities of Muslim societies And they raise it whenever they find an opportunity, in addition to that if we balance the system of inheritance in the Islamic sharia with the system of inheritance in other old and modern positional systems that did not adopt the Islamic sharia. inheritance system in the Islamic sharia is not condemned by another system in terms of justice and right.

In previous nations, there is a person who grants the inheritance every freedom to dispose of his or her property with the discretion or otherwise. And he found who did not inherit the wife, he found who considered the wife a legacy with the belongings of the house. Not only do they inherit assets with branches, not footnotes with branches. And the older brother might take over the estate without his younger brothers, This is inconsistent with the minimum rules of right and justice.

On the other hand, the Islamic sharia restricted the owner's freedom to dispose of his property by intent within one third, inherited the wife and the woman in general, inherited the assets with the branches as well as the footnotes, equated the eldest son with the youngest son, and abolished the adoption inheritance, the alliance and the inheritance of the son of the adultery.

This was the criterion of right, and the balance of justice around which the high-minded do not disagree, Islam was the divine legislation that the falsehood does not come in his hands or behind him, because it is the legislation of the wise flag.

6. The absolute denial of inheritance to females of our time

It is noteworthy that the full application of the legitimate rules relating to the distribution of inheritance between men and women, as imposed by Islamic law, varies from one Islamic society to another, and even in one Muslim society from one region to another. For example, in a society such as Algeria, women's right to inherit varies. However, we circulate the provision to say that the denial of inheritance by females of this time in any society, or in any region of any society, is a return to first ignorance and an injustice to women's right and injustice that should be lifted. between East and West and North and South

7. Conclusion

From the foregoing it was concluded that:

1. The provisions of inheritance in Islamic law are based on justice, not equality, and a difference between equality and justice.
2. A male, such as the lack of females, is a peremptory constant sharia, which may not be infringed or modified.
3. God Almighty is the one who, with his knowledge, wisdom and justice, divided legacies. His provisions were public order. He did not leave their division to individuals as they wished so that it would not be a means of favour and injustice and damage the interests of individuals and groups according to different whims and lusts.
4. The dearest of Islam is the woman, who honours her, half of her, and appreciates her husband's and her relatives' legacy.

5. The international instruments' call for full gender equality in inheritance is an integral part of a far-reaching strategy of skewing Islamic societies from their legitimacy and customs and fragmenting their social
6. The desire of international charters to mainstream Western lifestyle among Muslim societies by building the family on individual, conflict and utility grounds.solidarity system.
7. Women in the Islamic Shari 'a are guaranteed the right to invest and work independently.
8. The fact that women are now denied inheritance is a wife, sister, daughter or grandmother... It is not Islam in anything but a corrupt custom that is irrelevant.
9. Inheritance must be observed at God's limits, and neither females nor others shall be deprived.

8 .Bibliography List

- 1- Al-Qaratabi - Al-Jama 'a Al-Qur' an - Arab Heritage Revival House, Beirut, leb T) 1405 E, 1985 M, C5.
- 2- Ibn al-Arabi, the provisions of the Koran, the investigation of Ali Mohammed al-Bejawi, Dar al-Marefa, Beirut, Lebanon,
- 3- Al-jassas, the provisions of the Koran, the seizure and graduation of Abdulsalam Muhammad Ali Shaheen, Dar al-Kabbab al-Science, Beirut, Lebanon, 1415 AH
- 4 Directed by the Pastoralist - The Book of Virtue - The Door of What in Girls' Inheritance, Talk No. 2092, C4, p. 361, he said: True talk, directed by Ibn Majeh, Book of Hypothesis - Steel Silver Door - C3 No. 2720, p. 317, directed by Abu Dawood The Book of Hypothesis, pal in the inheritance of steel No. 2891, c2, on Thabet bin Qais Daleb Sa 'ad al-Rabi And then Abu Daoud corrected that and said, "Ben Qais was still killed on Yamama..
- [5] Mustafa Shalabi, Provisions of Inheritance between Jurisprudence and Law, Arab Renaissance House, Beirut, Lebanon, 1978 .