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# **GENDER EQUALITY & LAW OF SUCCESSION IN ISLAM**

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New Law College, BVDU, Pune

CLASS : BB.A LL.B 3<sup>RD</sup> YEAR (2023-24)

## **DECLARATION**

This is to declare that the Research Report titled as GENDER EQUALITY AND LAW OF SUCCESSION IN ISLAM- is bonafide work submitted at New Law College, Pune is an outcome of my work and is undertaken by me. I, further declare that present work is bonafide one and outcome of my own efforts, this research report or any part thereof, has not been submitted in part or full to this or any other university for any degree or diploma or any similar title.

Satwik Jain

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## **Chapter-I:**

Gender Equity is preferred over Gender Equality in Law of Succession in Islam

### **2. Introduction**

The way of living in Islam is different from other religion. The goal of sharia law is to provide justice for all people. Islam accords each gender at same level. However, it takes a stand to ensure justice and fairness by providing women with equitable inheritance rights.

Men have the sole responsibility to earn and spend money on their families and also upon entering into a marriage, a male is required to provide his wife dower.

However, women do not have the responsibility of earning money or having financial responsibilities that's why there is a fairly equitable inheritance of right among male and female in islam rather than the equal share. Hence man is given double share than that of women of same degree in getting inheritance.

The analysis of the Islamic inheritance raise the question that there is unequal distribution of property between men and women in islam.

### **3. Review of Literature**

Muslim law of succession is derived from the four sources of Islamic law –

1. The Holy Quran
2. The Sunna that is, the practice of the Prophet
3. The Ijma that is, the agreement of the learned men of the community on what should be the decision on a particular point
4. The Qiya that is, an analogical reduction of what's right and just in agreement with the good principles laid down by God. Muslim law recognizes two types of heirs at law, Sharers and Residuaries. Sharers are the ones who are given right to a certain share in the deceased's property and Residuaries would take up the share in the property that's left over after the sharers have taken their part.

**Sharers<sup>1</sup>**

The Sharers are 12 in number and are as follows: 1. Husband, 2. Wife, 3. Daughter, 4. Daughter of a son (or son's son or son's son and so on), 5. Father, 6. Paternal Grandfather, 7. Mother, 8. Grandmother on the male line, 9. Full sister, 10. Consanguine sister, 11. Uterine sister, and 12. Uterine brother. The share taken by each sharer will differ in certain conditions.

1. **Husband:** - Always sharer: - With child or child of son the  $1/4^{\text{th}}$  Share  
Without lineal descendants-  $1/2^{\text{nd}}$  Share
2. **Wife or wives:** - Always sharer: - With lineal descendants  $1/8^{\text{th}}$  Share  
Without lineal descendants-  $1/4^{\text{th}}$  Share
3. **Daughter:** - With son she becomes residuary. Otherwise Share of  $1/2^{\text{nd}}$   
Where the deceased has left behind more than one daughter, all daughters conjointly takes  $2/3^{\text{rd}}$  part of Share.
4. **Son's daughter:** While the son (or daughter) is primary heir, child of a son how-low-so-ever is a substitute. The substitute is excluded by the primary heir. Thus the son's daughter is a sharer but is excluded by the presence of the son. A son's daughter is excluded by a higher son's son. With equal son's son, she becomes residuary. Thus, the son's daughter becomes residuary with son's son. When she is not excluded or converted into a residuary, she takes as a sharer and her share is  $1/2$  when there is no daughter or lineal descendants.
5. **Father:** - Becomes only a residuary, when he has no child or child of a son  
When there is son or son's son then father will get the  $1/6^{\text{th}}$  of part only as a sharer.  
When there is daughter (or daughter) or son's daughter (or daughters) but no son or son's son then father takes both as sharer and as Residuary.
6. **Paternal Grandfather:** - The paternal grandfather is excluded by the Father and when he is not excluded his share is  $1/6^{\text{th}}$ .
7. **Mother:** - Never residuary. When there is child or child of son or more than one brother or more than 1 sister or 1 sister+ Brother then share of mother is  $1/6^{\text{th}}$  otherwise  $1/3^{\text{rd}}$ .
8. **Grandmother on Male line:** - Her Share would be  $1/6^{\text{th}}$ . She is excluded by mother, who is a primary heir.
9. **Full sister:** With full brother, she becomes residuary. Otherwise her share is  $1/2$ .
10. **Consanguine sister:** - With Consanguine brother, she becomes a residuary. When not excluded her share is  $1/2$ .

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<sup>1</sup> Family Law in India by Prof. GCV Subba Rao Pg no.-722



11. **Uterine sister/Uterine Brother:** - Uterine sisters and brothers become sharers only if there is no child, son's child how low soever, father and grandfather of the deceased. Then the share of either sister or brother is  $1/6^{\text{th}}$  and if there are 2 or more brother and sisters then t would conjointly get the  $2/3^{\text{rd}}$  share and divide it equally.

### **Right to property on Birth in islam<sup>2</sup>**

As According to section 6 of Hindu Succession (Amendment) Act 2005, the male and female both have equal birth right in the ancestral property.

Unlike Hindu, property right of muslim comes only after the death of a person, any child born in a muslim family does not get right to property on birth.

### **Distribution of the property under Muslim Law**

Among sunni muslims the distribution of property is made by the method of per capita according to this method the left over property of the ancestors gets equally distributed among the heirs. Hence the share of each person depends on the number of heirs.

### **Rights of females**

Muslim law of succession does not create any difference between the men and women and both of them become the legal heirs of the property after the death of the ancestors but it is found that the portion of share of the female heir is half from that of the male heir. The reason behind this is that man have only two sources of income one is his own earnings and other is his property gained from succession whereas the woman have five sources of income and man have too many obligations some of which are as follows:

1. The maintenance of sisters where father is incapable of taking care of her daughter or in case where father is not alive and the sister is unmarried.
2. The man has to pay dower to his wife at the time of marriage.
3. The man has the responsibility of taking care of his children.
4. It is the son's duty to take care of his parents during their old age.
5. The man has to get involved in social functions and thus causing a huge expenditure.

Whereas Islam has completely kept the women out from all these obligations and financial duties

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<sup>2</sup> Law Of Succession In Muslim Law By Ramendra pratap singh- E-Journal Legal Services India

that are being vested upon men. This is the main reason why the women in islam is given the half the share in property in comparison to the man and hence islam believes in Gender Equity rather than Gender Equality which means that there is fair and reasonable allocation of property to both men and women other than giving exactly equal land in succession. On the contrary if the term 'Equality' taken in literal sense, that will not bring any welfare to both sexes but would create conflict in respect of mutual duties and rights for that reason the term 'equity' is more appropriate.

The Topic of Gender Equality in succession of islam has been observed by various researcher and scholars and have opined on different angles. Some authors gave the opinion that females are suffering from injustice by getting half the share in comparison with the men and some says that there is equitable distribution of property i.e fair and reasonable distribution of property among male and female.

The Authors who were against the Islamic Law of Inheritance:

**Lindsey (2018)**<sup>3</sup> put forward that under the Muslim law of Succession , men receives double the share the women gets, In some cases distant male relatives may also supersede wives, sisters and daughters and hence leaving the women at disadvantage.

According to **Cherif (2010)**, By giving half the property to women, the women's access to full citizenship in matter of inheritance are impeded.

The Authors who were in support of the Islamic Law of Inheritance found that islam has ensured justice to both sexes in its own schemes. As in there observation the law of inheritance should be seen in a comprehensive outlook rather than apparent mathematical outlook.

**Nasir (2009)** put forward that prior to islam , women was not given a penny of share from the property i.e there was no right of inheritance given to women but in today's era the women is given the equitable share in the ancestral property. Its better to have something rather than nothing.

**Qutb (1964)** observes that part of share of men and women is justified as in islam as men has all responsibilities and obligations to spend money on his family on the contrary women do no have

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<sup>3</sup> Women Rights of Inheritance in Islam: Equity versus Equality Md. Abdullah Hil Gani, Md. Nadir Khan

such obligations in islam.

**Muhammad as-Sadiq** was asked regarding the inequality in distribution of property between man and woman where he replied that the men has more obligations as he goes on war and obligations and responsibilities of the other family member are burdened on the shoulders of the men not women.

**Gustave Le Bon (1884)**<sup>4</sup> says that the principles of distribution of the ancestral property which have been determined in the Quran have a great deal of justice , fairness and reasonableness.

### Opinion of Judiciary through Judicial Pronouncement

#### 1. Imambandi v. Sheikh Haji Mutsaddi (1918)<sup>5</sup>

**Facts:** A man named Ismail Ali Khan died leaving behind her 3 widows and children from each widow. One of his Widow namely Enayet-uz-Zhora having two minor children filed a suit for claiming the share of their children in his husband's property.

**Issue:** Whether the mother has the right to deal with the property share of her minor children in husband's property after his death?

**Held:** The Court held that according to the Muslim personal laws , the mother can have the custody Right but not a natural guardian of the minor ,after the death of the father , the paternal grandfather becomes the natural guardian and has to look after the affairs of the minor's property and mother had no authority to alienate the property.

#### 2. Mohammed Gani v. Parthamuthu Sowra (2008)<sup>6</sup>

In this case Abdul Rahiman Rowther prepared the Partition deed in which he divided the property among himself, his wife, his daughter(the plaintiff) and his two sons( the defendants). The plaintiff and defendants were minor at the time of the partition so their mother was made a guardian. The will offered the joint share of rice mill to plaintiff and defendants. The plaintiff claimed the 1/4<sup>th</sup> share for herself, but defendant said according to Muslim Personal laws the she was entitled for 1/8<sup>th</sup> share as she is married, the trial court Gave the decision in favour of plaintiff giving them the ownership of the 1/4<sup>th</sup> property.

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<sup>4</sup> Inheritance Rights of Women in Islamic Law by Muhammad Jalal Uddin

<sup>5</sup> Imambandi v. Sheikh Haji Mutsaddi (1918) 20 BOMLR 1022

<sup>6</sup> Mohammed Gani v. Parthamuthu Sowra LAWS(MAD)-2008-1-378

The High Court of Madras put forward that partition deed did not specify the equal distribution of shares between plaintiff and defendants and intention of the deceased ancestor was that parties should conjointly enjoy the property. However the dispute of partition arose hence the Muslim Laws of inheritance shall apply according to which the plaintiff was entitled for  $1/8^{\text{th}}$  shares only, as the plaintiff was the married woman and hence according to Islam which follows the Gender Equity concept which distribute the property of the ancestor in a Fair and a Reasonable manner and here in this case woman is already married and must have got the dower during her marriage and had very less or no responsibilities or obligations in comparison to the defendants. Hence according to the Madras High Court it is very Reasonable decision in giving only  $1/8^{\text{th}}$  share to the plaintiff and  $7/8^{\text{th}}$  to the defendant as they were burdened with too many responsibilities and obligations.

This report disprove the theory that there is injustice faced by women in respect of inheritance based on apparent mathematical calculation and gender equality. The researcher showed that Muslim women were not deprived, but justice was ensured by distribution of property in a fair and reasonable manner(Equitable).

#### **4. Statement of Research Problem:**

The issue of Gender Equality in the Inheritance of ancestral property in islam has been a topic of discussion for many years because many people are not aware of the complex provisions related to the property rights in Succession of Islam.

According to the law, if a couple has only a Single girl child, she is only entitled to the half of her father's property and rest will go to her father's siblings and if there are more than one girl child, they would conjointly get only two third share of the total property.

If the woman's spouse passes away, she will be only be entitled to one-eighth of the estate and rest will be given to the other male members.

Modern society is comparing the Gender Equality in Law of Succession in Islam with the Western Outlook according to which the women should be given the exactly equal share in the ancestral property but Islam believes in Gender Equity which is wider concept where men and women are

given Fair and Reasonable distribution in the ancestral property according to the responsibilities and obligations burdened on them.

As in the contemporary world, women are actively educated and equal in every field of profession so here arises the problem that why they are given half the share in comparison to men in the ancestral property if they are equal in every field. So my opinion to this problem would be that in Islam men is not given Dower at the time of marriage but the women is given. Women does not have the responsibilities and obligations of the family but men have such responsibilities and have much financial burden in managing these expenses.

### **5. (i) Research Objective**

The goal of the current Report is to find out the basis of Islamic approach regarding distribution of a property among men and women as Law of Succession in Islam. The major goal of this Report is to find out whether Succession in Islam has ensured justice or fairness to both male and female by applying its doctrine of inheritance i.e. equity(i.e Fair and Reasonable) instead of equality in the distribution of ancestral property.

### **5. (ii) Research Question**

1. What are the key gender-based disparities within the Islamic law of succession, and how do they expressed in inheritance practices?
2. Law of Succession in islam follows the concept of Gender Equity rather than the concept of 'Gender Equality' in literal sense?

### **5. (iii). Scope and Limitations of Research Report:**

#### **Scope:**

This Report gives the vast idea About the Gender Equality In Succession of Islam and it did not take word equality in Literal sense that there would be a equal mathematical distribution of the property among males and females but in fact it uses the wider concept Gender Equity which means there is a fair and reasonable distribution of the property, one having the more obligation shall be given the larger portion in the ancestor property and majorly the males member of the family having the larger number of the responsibilities and obligations of the family so they get double the share then the female and hence society criticize the Islam Law of Succession as Gender Biased without knowing the deep root cause of the same.

This Report is basically supports the Islamic Law Of inheritance and says that it is Just and fair for women as well. Those who criticise the Islamic Law of Inheritance without knowing the deep route cause of its nature may go through this short and precise report in order to get the solution why it is of such nature which appears as such it is unjust for women but actually it is not of such nature.

This Report is readable by person of all age group and majorly by the people who have the interest in social activism.

This Report will try to clear all your doubts regarding the concept of Gender Equality and Gender Equity in Succession Rights of Islam by giving the short reading of 30 to 40 minutes only.

**Limitations:**

There are certain Limitations to this Report ,this report treats all the family member to be of encouraging and helpful nature which is the ideal case situation and they would help the women of the there family in case her father/husband dies , as there are certain cases where farther male inherits the property over the wives , daughter and sisters and in those cases the women apparently got dependent over those relatives, and as per the understanding of the Islam it works on the Ideal situation where members of family help each other and follows the Social Solidarity theory of Leon’s Duggit that in the society interdependence of one men on other men is very important and those laws which does not follow the social solidarity theory , it is bad in law.

**6. Chapterisation**

Chapter 1. Gender Equity is preferred over Gender Equality in Law of Succession in Islam

Chapter 2. Right of females over Distribution of the property under Muslim Law

Chapter 3. Gender-based disparities within the Islamic law of succession

Chapter 4. The Holy Quran- The Source of Muslim Law of Succession

**7. Conclusion/Recommendation**

In other Religion, there is no such law that over-burden only a men with financial obligations of family and not involving the women in the responsibilities of the family. In Islam only men are required to take care of the entire financial needs of the women and other members of the family. Therefore, demanding a “fair”, “just” or “equal” share of inheritance for both men and women of

Islam, who do not have equal financial liabilities and duties, conclusively this is an unfair and unjust demand. The Society blame Islamic system for the giving women the unequal status but it is clear that it is not the Islamic law but the social mentality and evil practice is responsible for the distress of women in getting their rights of Succession. So, instead of demanding equal share of the women in property, the feminist movement and everyone concerned should stand for the justice by raising voice for the enforcement of the prescribed share determined by the Holy Quran for the Muslim women as the women in our society usually do not get the penny in share in most of the cases and voice is needed for the proper implementation of laws.

It is easy to understand from the discussion presented in this Report that a woman source of earnings are at least four with no responsibilities and obligations and a man earns from not more than two sources but with too many obligations and responsibilities.

A men is given double the shares in Succession only for their over-burdened obligations towards their family member but in any exceptional scenario when the men is unable to perform his obligations and responsibilities and does not provide proper support to the parents and other family members then the women takes the control to provide maintenance and services to the family members then the parents can make a gift in name of the women, hence this proves that Islamic Law of Succession follows the concept of Gender Equity rather than Gender Equality as distribution of ancestor's property is Fair and Reasonable , the one who is obligated with more responsibilities is given more share in the property and this is not a apparent mathematical calculations by equally dividing the shares between men and women, there is always a reasonable distribution of property among men and women.

To ensure the inheritance right of women the following steps can be taken by the state:

1. Like birth and marriage registration, death should also be mandatorily registered to maintain the records of deaths where the date of death, the names of the living heirs (both men and women) and amount of his property must be recorded.
2. The state may telecast and broadcast the issue of women's inheritance rights through electronic and printed media.
3. A chapter on inheritance right of women should be included in the curriculum of the Schools.

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- Books
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  - ii. *Family Law* by Dr Paras Diwan
  - iii. *Mulla Hindu Law* by Dinshan Fardunji Mulla

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