

## THE STUDY OF WOMEN'S INHERITANCE IN ISLAMIC AND IRANIAN RIGHTS

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**Abstract:** Women had very difficult conditions in different nations of world, especially in the ignorance age of the Arab, with the worst living conditions like being bought and sold like commodity and being deprived of any social and individual rights even the right to inheritance. They considered women as animals or appliances and furniture of life. Their daughters often, for the sake of fear of famine or fear of contamination, were buried alive in the first day of life. Islam emerged fourteen centuries ago and in such a society, when woman was very humble and scorned, invalidated all the ignorant beliefs. Islam spoke about all issues and causes related to woman and lots of signs and narratives have been mentioned in this context. From a Koranic perspective, woman is the same as in nature. Hence, there is coordination and full compliance between Islam and commands nature and divine order. Islam has awarded the greatest service to women with inserting the principles in the laws related to woman. At the same time, familiarizing women with their real rights revived their forgotten personality and dignity. This paper examines the inheritance rights of women in Islam and Iran. During this study, deprivation and privileges of men and women towards each other will be mentioned according to religion, manners, and customs. At the end, mean scores and financial obligations of men and women were compared and the amount reflected in the legislative justice system and financial duties of these two rights will be evaluated in the rights of the Iranian issue and the Islamic laws.

**Keywords:** Inheritance, Woman, Justice, Religion of Islam, Iran's Rights.

### INTRODUCTION

Islamic of inheritance laws is not imposed based on male or female (gender factor, which was mentioned in the non-Muslim peoples of the United Nations, has been considered); but on the basis financial responsibilities and the position that they both have in the family and considering the responsibilities and obligations that had been placed for the women. Thus, different inheritance is consistent and fair with the overall vision of Islam compared to the division of family responsibilities.

Holy Quran in Surah Nisa, fought with wrong habits and customs which deprived women, children and persons with disabilities of inheritance and put an end on all the wrong rules: "verse 7" i.e.: for men from what their parents and relatives leave there is a contribution. For women from what parents and relatives leave there is a contribution, whether it is little or much. So, nobody has the right to usurp others' contributions (to take him by force). Then at the end of the verse to emphasize the story says, "and this share is set to Alada' (need to be given)." Until no hesitation remains in this debate. Judgment has been mentioned about

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the legacy of women in a separate sentence because presents the independence of women in inheritance as men. (Alshukany, 1964) In the Holy Qur'an, the woman who by the time of ignorance, not only did not have the right to inheritance (but they were considered the property and the deceased heritage.) was given the right to inheritance and to followed by her, the right to occupy the property (like men) was given, whether the woman is married or not. However, according to Islam, a woman has the right to occupy the property independence and the husband does not have custody of her wealth. Therefore, this article attempts to summarize inheritance rights of women in Islam and Iran discussed and cause of the difference in salaries between men and women especially is checked in inheritance matter.

### **Inheritance**

**Inheritance** is a tradition that has existed from the earliest period of human and has had a transformation and development during the history. Inheritance is an exception among the ancient Romans, women (daughter, wife, and mother) had no inheritance rights, In Greece, only the eldest son inherited and women and children had no inheritance rights in general. In India, Egypt and China as well as women were deprived of any inheritance. Incest and polygamy, traditional marriage and adoption were common among Iranians, most popular spouse provided that being older and unmarried girls and boys and sons had inherited. But the Arab disinherited woman absolutely, and the eldest son inherits only. In such a world dominated traditions and different rules on inheritance verses were revealed (Tabatabai, 1976).

In the Holy Quran (Surah Nisa verse 12) woman's inheritance was determined. In the absence of descendants to Inheritance the deceased wife and children for her husband in the same sentence for assuming the Qur'an in Article 913 of the Civil Code has been predicted. The mentioned sentences are "God's boundaries" (sentences that amount have been determined by God) the Almighty in verse 13 of Surah Nisa charged his servants with the duty to obey it. Because the basis of amount of woman's inheritance from man's estate is based on the Koran sentence, there is no possibility of changing it in the Islamic legal system and different Islamic sects agree on it. But if we want to protect woman about the lack of her inheritance, and in order to remove their requirement after the death of her husband and to prevent possible corruption of financial poverty for women, which is one of the moral deviations, we should take action and it can be resorted to alternative solutions to the wife after the death of her husband in addition to the ordeal of losing a husband is not involved in financial disaster and she can solve her financial needs. One of the solutions could be subject of paying "fair equivalent remuneration" to his wife, i.e. woman would be allowed as she receives dowry from husband's estate after the death of her husband, she can demand and receive fair equivalent remuneration for years of her life as well as husband's estate. Paying fair equivalent remuneration from husband's estate to the woman who has lost her husband and especially the

woman has spent many years of her youth and energy for marriage, parenting and services in marriage, can be replaced with inheritance limitations that the aim is to provide finance for a married woman who has lost her husband.

Another solution testament assumptions that Professor Katouzian (father of Iran's rights) reminds as a minor solution to compensate woman's premise (the inheritance specified in the Quran), however, explaining that "the legislator may declare, if the woman inherits with the second or third group of the heirs (three groups of inheritance has been found in Iranian civil law that despite of the first group, other groups do not inherit and includes: First group: parents and children and children's children, second group: grandparents and brothers and sisters and their descendants, third group: father's brothers and father's sisters and mother's brothers and mother's sisters and their descendants. (Be assumed that the husband makes thirds of his property as woman's wills, unless contrary of wills deduces from other documents (Katouzian, 2007).

Another solution, the payment of pension to the wife lost her husband from social security law and payment of alimony of her husband's death that is performing today at the current rate, there are sub solutions that compensates for woman's deficiencies in inheritance partly.

### **Cause of Couples' Inheritance**

The provisions of article 861 of the Civil Code of the Islamic Republic of Iran, whereby inheritance is necessary for two things (Sobhani, 1998: 48): relative and (holy Quran, Surah Nisa/verse 7) causal affinities. The relative affinity is said to the natural relationship between people that results in the birth of man by man and the causal affinity is said to a kind of relationship that is as a result of marriage. (Shahidi, 2002) It explained that after the marriage, the couple will have a causal relationship. The wife and her husband will find relative relationship with her and his relatives by marriage. (Katouzian, 2007: 202)

Of course, these relatives may not cause the inheritance among all those people, only the couple who inherit from each other because of these relatives. (Imami, 2004: 175)

The important point about couples in relation to inheritance is this that the couples always inherit along with other heirs inherits and presence of none of heirs can never prevent them from inheriting (Article 891 and 938 of the Civil Code). On the other hand, the husband or wife of the deceased never prevents inheritance of other heirs of the deceased relatives. (Katouzian, 2007: 311)

### **Terms of Inheritance Between Spouses**

On the one hand, since the inheritance between spouses depends on inheritance rules and general conditions and on the other hand, specific rules and conditions

as it run rampant, it seems that it is essential that we review the situation in two separate categories:

**First speech:** General conditions of realization of inheritance between spouses

*The first paragraph:* Death of a spouse (the testator)

It explained that, until the wife or husband is alive, all the property and financial rights would be at his disposal and after that the property left by his death will have to be divided among his heirs. We see that the husband or wife of the deceased are including of these heirs (ibid: 159).

*Second paragraph:* Living husband or wife while husband's death

This explains that the husband or wife of the deceased must be alive at the time of the death of his wife to inherit her heirloom. (Imami, 2004: 186)

*Third paragraph:* Presence of heirloom

It explained that, because our purpose of inheritance between spouses is to transfer all or part of the remaining property of the deceased to his wife, obviously if there is no property, there will not be any transmission (Shahidi, 2002: 60).

**Second speech:** Specific conditions for realization of inheritance between spouses

*The first paragraph:* Presence of marriage contract at the time of death of spouse

Although affinity relationship with each other through marriage man and woman are found, this relationship can be eliminated by dissolution of the marriage. The liquidation, whether as a result of marriage annulment or dissolution or divorce occurs, the inheritance between spouses destroys and prevents them from inheriting each other (Katouzian, 2007: 313).

So when a causal relationship resulted in inheritance that wife or husband is alive at the time of death of a spouse.

*Second paragraph:* Permanent marriage

By virtue of Article 940 and 1077, Civil Code condition of inheritance between spouses is permanent marriage. In a temporary marriage none of spouses inherit of each other (ibid: 317).

***In the Case of this Condition is Important to Mention a Few Notes***

- (a) The provisions of article 943 Civil Code if a man divorces his wife for returning to (returning to husband), each of the couples who die in a few days, other one inherits. According to Article 1150 Civil Code, (Detachment) includes a period until the expiration of the woman whose marriage has been dissolved, cannot marry another man. But the ruling referred to in Article 943 should not be known as an exception to the requirement at the time of death of a spouse's married, because according to paragraph 2 of article 8 of non-litigious law, a couple who spends most days of returning divorce,

the wife is in order. Of course, such a ruling is the result of the marriage works, such as the wife's alimony and inheritance between spouses, etc., applies during this time (Imami, 2004: 300).

- (b) The provisions of article 944 Civil Code, if a husband divorces his wife when he is sick and dies because of the disease within a year of divorce, female inherits from the deceased, provided she would not get married, although irrevocable divorce (non to return). Some lawyers know such a ruling because of the lack of impact of the divorce in inheritance, due to respect or disdain for divorce at the last known disease. Some also know base of this sentence preventing the exclusion of women from inheritance, in the last days of the life of husband.
- (c) The provisions of article 945 Civil Code If a man gets married to a woman during his illness and dies at the same time, she inherits provided that intercourse has taken place between them. Although sexual relation between spouses is not near condition of inheritance, the legislator has estimated such a condition in this particular case. The reason for such a decision is the legislator wishes to destroy possibility of motivation of harm to their heirs, from the testator. It explained that intercourse with wife has been assumed as the real reason of a husband's need to have a wife and having no harmful motivation to the other heirs.

### *Islamic Law of Inheritance Differences Between Men and Women*

It has been accepted that men and women having numerous differences in physical and emotional fields. Professor "Rick" famous American psychologist who has researched and explored in the lives of men and women for many years and has written a big book about the differences between men and women, says, "Men and women of different body differ from composition with each other generally. Feeling of these two groups is never the same. Apart from these two cases, he overviews the differences between men and women respectively" (Motahhari, 1989: 166). According to Islam, men and women, are two humans to complement each other and need each other and apart from each other are incomplete. So they are never equal in all respects as the same and differences are undeniable physically and mentally that is the indispensable role of each in the universe, because if both were equal in every way they could not meet each other's needs. So there are differences between male and female that some examples will be referred in the following:

1. **Hormones**, the amount and type of their secretion in the consumed materials metabolism by human, growth of human diversity, creating emotional states such as anger and aggression, the resistance against germs, sexual activity and other physical dimensions as well as behavioral and psychological affect each of the sexes and the differences between men and women are more visible. More complex than the male, female genitalia, hormonal

changes and it changes each month over the life of women, creates issues such as menstruation, pregnancy, childbirth, breastfeeding, menopause and influences on woman's body, spirit, work and behavior (Asimov, 1989).

2. More complex than the male, female genitalia, hormonal changes and it changes each month over the life of women, creates issues such as menstruation, pregnancy, childbirth, breastfeeding, menopause and influences on woman's body, spirit, work and behavior (ibid).
3. According to statistics, life expectancy for women is 4, 7, 8 and 10 years longer than men on average; they live about 7 years longer than men (Hosseini, 2002: 107). Also there are significant differences in the brain and nerves between the male and female brain. About the differences in cell size, body interacts with hormones and functions, detailed studies have been done.
4. Also lots of differences of the skeleton between men and women have been expressed in such a way that they realize the differences of individual's gender in the forensics; for example, they have said that the bones of the skull and pelvis have the greatest differences in terms of gender, so that only by examining the skull and pelvis of 90% of individuals, their sex can be determined (Christian, 1996: 4).

Also, other physical aspects such as the urinary tract, heart, lungs and other human organs as well as the differences between the sexes have been expressed. The researchers and scientists and physiologists have conducted investigations and researches particularly.

5. Women in dealing with issues and problems, they pay attention to details and act more emotional, but men deal with problems and issues holistically and act more rational.

Then, because man and woman have various differences in the above fields, so it is necessary to have different rights, too, that Islam and following it Iran rights have paid attention to this matter completely.

Despite of all these differences, Islam says there should be justice between them and requirement of justice between men and women is this that rights of both sides are different and based on their ability, duties and tasks; because if abilities and duties and tasks of men and women are different but their rights are equal, one of the sides will be oppressed of their rights definitely. In Islamic legal system, women in terms of categories wife, child (daughter), mother and sister, who benefit from the inheritance that we are to explain each item in detail:

***(a) Woman's Inheritance, as Wife***

Wife in all classes shares with all the heirs. If the deceased (husband) leave no children, his wife inherits one-fourth and if they have child, she has one-eighth

of the inheritance. Holy Quran in Surah Nisa verse 12 says: "If you have no child, after fulfilling any wills and paying the debt (Liabilities), a quarter of your legacy is for your wives. If you have a child (although this is the child of the other spouse), an eighth of heirloom (property left by the deceased) belongs to them. It is noteworthy that if the deceased (husband) has multiple partners, a quarter or an eighth of the estate is for the spouses, it will be split equally between them." This ruling documentary is narrated (Sheikh Saduq, 1974: 188): "wife never takes more than a quarter (Quarter) and less than the price of 1/8 (one-eighth), they are four or less, they are all the same and a quarter or an eighth shares evenly." Article 913 of Iran Civil Code on woman's inheritance amount from her husband's properties says, "each of spouses that is alive, benefits his or her share and this amount (Koranic certain share) includes Half heirloom is for the spouse (husband) and a quarter of it (one-fourth) for the wife if the deceased has no children or their children have no children and a quarter of a heirloom is for the husband and 1/8 (one-eighth) of it is for the wife, If the deceased has children or descendants of children, the rest heirloom is divided in accordance with the other heirs (those who inherit)." And Article 946 of the Civil Code states that couple inherits all the property of the wife and the wife inherits one-eighth of the same movable property (property that are transferable) if the husband has children, and inherits one-eighth of the price of immovable property (property that cannot be moved) ranging from field (ground) and objects (what made on the ground). If the couple has no children, the wife's share is a quarter of all the property as above order. Also, Article 940 of the Civil Code states that: couple (husband and wife) whose marriage has been permanent and are not banned from inheritance, do inherit from each other.

***(b) Wife's Inheritance, as a Child***

If the girl is an only child, all heirloom is for her and if all children of the deceased are daughter, property is divided equally between them, but if they were different (some boys and some girls), boys inherit twice as many girls; the Holy Quran in Surah Nisa verse 11 says about it, "God enjoins you about your children that accept (heritage) for boys twice as many girls." And in the last part of Article 907 of the Civil Code states that: If children (left by the deceased) are numerous and some of them are boys and some girls, the son inherits twice as many girls.

***(c) Woman's Inheritance, as Mother***

Maternal inheritance cases are the following:

1. If the deceased, other than the parent, does not have an heir, then only the mother would be his heir; she get one-third of the property into assumption (i.e., the share specified in the Quran) and the rest to reject (i.e., after the share of those which is determined were given, their other share of the property is given to the heirs who do not have certain share).



2. If the deceased only has a mother and wife, the mother inherits three quarters of heirloom (property of the deceased left still undivided); a third of them to assumption and the rest to reject. (The meaning of these has been stated above number 1).
3. If the deceased has a mother and husband, mother inherits half of her heirloom; a third of them to assumption and the rest to reject.
4. If the deceased does not have the inheritor other than the mother and the father, the mother takes one-third of the estate. If the deceased does not have chamberlain (the one who prevents inheriting others) like two brothers or four sisters, one brother and two sisters of parents (i.e., brothers and sisters who are of the same parents) or patronymic (i.e., brothers and sisters who have a father but is separated from the mother), although these people, they will not inherit the father nor the mother, but are chamberlain and do not allow mother to inherit more than one-sixth of the inheritance.
5. If the deceased has the mother and a daughter, the mother inherits a fourth of heirloom fully.
6. If the deceased has mother and father and brothers who are chamberlain (the one who prevents others to inherit) of more than one-sixth, the mother takes one-sixth of heirloom, also, if he/she has a boy or boys with their mother, the mother gets one-sixth.
7. If the deceased has mother and two daughters, the mother gets a fifth of heirloom.
8. If the deceased has mother and daughter, the mother takes less than a fifth and more than a sixth.

Holy Quran says about inheritance mother in Surah Nisa verse 11, “and if the deceased has a child, each of the parents inherits a sixth of the heritage and if he has no children and parents are the only inheritors, the mother takes one-third of the property. But if he/she has brothers, the mother’s share after the deceased’s will and paying his/her debts, is one-sixth.” The above issues have been listed in Articles 906 and 908 and 909 of the Civil Code of Iran.

***(d) Woman’s Inheritance, as Sister***

Two verses were revealed in the Holy Quran about sister’s inheritance: we read in Surah Nisa twelfth verse: “If a man dies, his (brothers or sisters) inherit from him. Or a woman dies and has brothers and sisters, each of them inherits one-sixth of the heirloom. There is this order when one brother or sister of the deceased remains; but if the deceased has more than one brother or sister, they inherit a third of property in total (they divide a third of the wealth among themselves.)”



In the same Surah, verse 176 (Nisa) has been said, "They ask you (about siblings). Say: Allah, the judgment of (brothers and sisters) states that to you." Then he pointed to several sentences:

1. When a man dies and has no children, but has a sister, half of his heritage is for sister.
2. If a woman dies and has no son but has a brother (of paternal parent only), brother inherits all of his inheritance.
3. If the person dies and two sisters remain to his or her memory, two-thirds ( $\frac{3}{2}$ ) of his heritage are for the heirs of the deceased.
4. If there are several siblings (more than two), all his heritage is divided among themselves, so that the contribution of each brother gets double the share of a sister.

Article 918 of the Civil Code also stated that: If a dead person has parental brothers, his parental brothers do not inherit, if there are not parental brothers, (brothers and sisters of a father and mother), patronymic brothers (brothers and sisters who have a father but are separated from mother) they inherit their share. Parental brothers and patronymic brothers do not deprive any of maternal brothers from inheritance (brothers and sisters who have a mother but are separated from the father). Also articles 919 to 922 of the Civil Code are about this case. The cause of inheritance differences of men and women in Islam:

It should be noted that being lower women's inheritance in some cases is not due to the fact that female character and value is ignored in Islam; but solely it is because of the differences between men and women of the different world and social and economic factors that also requires different rights. The following tips that underpin the philosophy of the differences between men and women's legacy, Inheritance laws in the Islamic legal system have been set based on social status and to judge the state of nature to which each man and woman.

And criterion is not only being male or female and the impression that women always inherits half of a man solely because of gender, is either due to carelessness and lack of research in the laws of inheritance in Islam; because sometimes inheritance (share that man inherits the deceased's property) is equal to two; such as inheritance of parents when accompany the deceased's children that the parents inherit as the same or the deceased has only relatives of the mother; in addition, in some cases the share of women is more than men; for example: if the heir of the deceased is limited to parents and wife, the mother inherits one third ( $\frac{3}{1}$ ) and the father inherits one-sixth ( $\frac{6}{1}$ ) of heirloom (left property of the deceased is still not divided) or in some cases wife accompanies by several brothers and sisters. Inheritance laws established in terms of social interest and in cases where interest is appropriate, or a person desires by his own, that his heirs equally benefit from his property, he can use the right of his will for stock split and equality of it. Islam

in all cases where the human personality is the criterion for the state legislature, the rights situation is quite the same for men and women, such as: Free to believe, reward and punishment (punishment), education, employment, marriage and so on, is the sole criterion of excellence in the law, the dignity that comes with virtue, not with property and assets. If man is more pious, is more superior and if the woman is more pious, is more superior. Inheritance is not value and virtue; but is binding responsibility and cannot be responsible for representing female characters from the perspective of Islam (Tabatabai, 1976: 218 & 229).

Dr. Gustave Le Bon says “inheritance laws in the Qur’an are based on fairness and justice (fairness). If readers read verses that are quoted in this regard, they acknowledge our theory. However, those derivatives those scholars (scholars and experts in of religion and religious laws of Islam) have extracted in this regard, all that is not mentioned in these verses, but is clearly mentioned with perfection. In short, when I compared these laws with the inheritance laws of England and France, actually by considering it about married women who say Islam is not fair with them, I realized that these figures have no basis; but comparing with our inheritance sentences (French), Women Rights are more respectful in Islam. Legal rights for women married provided from the Quran and religious books, are much higher than rights of women in Europe, Muslim women do not take only dowry, But their personal properties are also quite in their possession and are not required for the costs and expenses of the family to pay a single penny and every time they are divorced, they should take their clothes and expenditure and if the husband dies, the woman takes her expenses of his property for a year, in addition, a certain share of the remains of her husband’s wealth is given her. In addition to the rights that counted, Muslim respects their women very much and directions to the above mentioned, the east women’s status is satisfying and good to this foundation that all the fair tourists have acknowledged it” (Le Bonn, 2003: 524 & 495).

In any case one can account for the cause of this difference in inheritance related to financial costs and assignments which have been the sole responsibility of men and women do not have any assignments. Costs such as:

- *Dowry*: Islamic law is one of the financial rights which men must pay to women, dowry after the marriage contract is concluded every time the woman wants, she can demand the man her dowry and the man is required to pay it to the women.
- *Alimony*: Another one of financial rights that the man is responsible for during marital life is providing wife and children’s alimony or daily cost of food, clothing and housing and so on. The amount of the financial cost has a large proportion of the man’s assets so that if he wants to collect these costs over the life, perhaps it is dozens of times over his inheritance of woman’s inheritance. Just man is responsible for this cost, even if a woman is employed and has income or wealth and many properties, again

man is responsible for the life expenses. And in the absence of an asset or non-payment of man, woman does not have to pay these costs.

- *Payment of blood money the murder of error:* If a person does the murder of error, wise people are responsible for his blood money, and wise blood money is for men in this case and women pay nothing.
- *Jihad:* Another reason that is expressed for higher inheritance of man is war and jihad military service obligatory on men and women have no responsibilities in this regard.
- *Men's obligations and duties:* Duties and obligations which are men's responsibilities, make in practice, half of their income spend on women. The man must pay his wife's the cost of living, housing, clothing, food and other supplies based on her needs and the cost of living and the children are his responsibilities. Even if the dignity of woman and her position requires to employ a maid and she herself could not afford to pay her wages, again, paying salaries and wages of maid is man's responsibility and even woman can demand amount of money for working at home and breastfeeding her child from her husband. With this description, it is clear that being much of the woman's inheritance, requires balance between man's and woman's wealth and if in the meantime there are complaints shall be considered by men, not women, when women are realizing these things and faith understanding and belief exist in life, there will not be any protest on these rules of God, against the duties that the man has, the woman is exempted from paying any costs and even to meet their expenses such as clothing and food, and ... has no obligation, therefore, in practice, the woman who takes on a greater share of the property. In addition, when the men inherit more than women, again spend for their wives and children and they have more welfare.

## CONCLUSION

1. Family law specially woman and wife's inheritance discussion has been considered by different nations and religions during the history and has been done according to current law and cultural history, religion and government of each time.
2. Comparing this category in the past nations and states causes to find out some weak and strong points and legislators and jurists pay attention to them and do more appropriate act.
3. Each academy wants to make human blissful, it should pay attention to his or her individual and social aspect specially, all divine religions and Islam religion has paid attention to mettle, creation, individual and social and spiritual needs of man and woman particularly so that it caused women

benefit from inheritance and also has determined justly appropriate and reasonable rights and interests for women like the men by considering differences and duties of each.

4. Because men's expenditure and needs for money are more than women, Islam has determined men's inheritance more than women to create balance between their revenue and expenditure according to divided principle of property on the basis of need.
5. Differences in duties and responsibilities are based on present of difference in man's and woman's body and spirit and these differences are not accomplishment, because none of accomplishment is not provided to be a man and the woman is not deprived from any accomplishment, woman is free to achieve virtues like man but there are differences between man and woman that is necessary to have different rights between them due to these ongoing differences.
6. It should be considered that woman has legal presence with all triple categories of inheritance and receives all her share from entire of categorized phases. It is not always like this that woman's inheritance is always less than man, but sometimes is equal with man and sometimes less than that and sometimes is more than man's share.
7. Husband and wife can inherit from each other provided that permanent marriage contract is done correctly between them and this marriage should be when one of the spouses dies and act of sexual relation is not condition for being correct marriage and when marriage contract is done with correct condition, it is concluded with the establishment of the inheritance between spouses.

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