

An analysis of the rationale behind the distribution of shares in terms of the Islamic law of intestate succession

SUMMARY

There are 35 verses in Al Quraan that refer to succession. A daughter always inherits half the share of a son in terms of the Islamic law of intestate succession. (See Khan *The Noble Qur'an – English Translation of the Meanings and Commentary* 1404H (4) 11 where it states that “Allah commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females...”). The reason why females (at times) inherit less favourably than males in terms of the Islamic law of intestate succession is not clearly stated in the primary sources of Islamic law. This note analyses the question as to whether the discrimination against females is consistent throughout the Islamic law of intestate succession. It also analyses the possible rationale behind the unequal distribution. The note concludes with an overall analysis and concluding remarks.

1 Introduction

A daughter always inherits half the share of a son in terms of the Islamic law of intestate succession. (See Khan *The Noble Qur'an – English Translation of the Meanings and Commentary* 1404H (4)11 where it states that “Allah commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females...”). The reason why females (at times) inherit less favourably than males in terms of the Islamic law of intestate succession is not clearly stated in the primary sources of Islamic law. It should be noted that the law of intestate succession applies the estate of a deceased person not governed by a will.

Al Quraan is one of the primary sources of Islamic law that is applicable to Muslims. There are 35 verses in Al Quraan that refer to succession laws. (See Hussain *The Islamic Law of Succession* (2005) 29). There are, however, only three verses in Al Quraan that provide specific details of succession laws. These three verses are Al Quraan (4) 11, 12, & 176. Prophetic traditions are the second primary source of Islamic law. These traditions elaborate and clarify how these succession law verses should be interpreted and applied to various scenarios.

Al Quraan 4(11) states that “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.” (See Khan 1404H (4) 11).

Al Quraan (4) 12 states “[i]n that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.” (See Khan 1404H (4) 12).

Al Quraan (4) 176 states that “[t]hey ask you for a legal verdict. Say: ‘Allah directs (thus) about Al-Kalalah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.’” (See Khan 1404H (4) 176).

This note investigates the question as to whether the discrimination against females is consistent throughout the Islamic law of intestate succession. It also analyses the possible rationale behind the unequal distribution. The note concludes with an overall analysis and concluding remarks.

2 The consistency of discrimination against females

It can be firmly stated that discrimination against females in terms of the Islamic law of intestate succession is not consistent. This can be illustrated through a few examples. A father and mother would inherit equal shares where, for example, X dies leaving behind a mother, a father, and a son as the only intestate beneficiaries. The mother would inherit 1/6, (See Khan 1404H (4) 11 where it states that “... [f]or parents, a sixth share of inheritance to each if the deceased left children...”), the father would inherit 1/6, (See Khan 1404H (4) 11 where it states that “... [f]or parents, a sixth share of inheritance to each if the deceased left children...”), and the son would inherit the residue which is 4/6. (See Khan *The Translation of the Meanings of Sahih Al Bukhari 2004* (724) vol 8, 477 where it states that “[t]he Prophet said, ‘Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.’”).

A uterine brother and uterine sister would inherit equal shares where, for example, X dies leaving behind a uterine brother, a uterine sister, and a full brother as the only intestate beneficiaries. The uterine brother would inherit $1/6$, (See Khan 1404H (4) 12 where it states that "...[i]f the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth..."), the uterine sister would inherit $1/6$, (See Khan 1404H (4) 12 where it states that "...[i]f the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth..."), and the full brother would inherit the residue which is $4/6$. (See Khan (2004) vol 8, 477 where it states that "[t]he Prophet said, 'Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.'").

A daughter would indirectly inherit more favourably than a son where, for example X dies leaving behind a mother, father, widower and a child as the only intestate beneficiaries. The first calculation is based on the child being male and the second calculation is based on the child being female. The mother would inherit $1/6 = 4/24$, (See Khan 1404H (4) 11 where it states that "... [f]or parents, a sixth share of inheritance to each if the deceased left children..."), the father would inherit $1/6 = 4/24$, (See Khan 1404H (4) 11 where it states that "... [f]or parents, a sixth share of inheritance to each if the deceased left children..."), the widower would inherit $1/4 = 6/24$, (See Khan 1404H (4) 12 where it states that "... [i]n that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts..."), and the son would inherit the residue which is $10/24$. (See Khan (2004) vol 8, 477 where it states that "[t]he Prophet said, 'Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.'"). The calculation is now based on the child being female. The mother would inherit $1/6 = 4/24$, (See Khan 1404H (4) 11 where it states that "... [f]or parents, a sixth share of inheritance to each if the deceased left children..."), the father would inherit $1/6 = 4/24$, (See Khan 1404H (4) 11 where it states that "... [f]or parents, a sixth share of inheritance to each if the deceased left children..."), the widower would inherit $1/4 = 6/24$, (See Khan 1404H (4) 12 where it states that "... [i]n that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts..."), and the daughter would inherit $1/2 = 12/24$. (See Khan 1404H (4) 11 where it states that "...if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half..."). The doctrine of increase would find application and the new denominator would be 26. It should be noted that the doctrine of increase refers to a situation where the numerator of

an equation is more than its denominator. The mother in this instance would inherit $\frac{4}{26}$, the father would inherit $\frac{4}{26}$, the widower would inherit $\frac{6}{26}$, and the daughter would inherit $\frac{1}{2} = \frac{12}{26}$. $\frac{12}{26}$ is greater than $\frac{10}{24}$ that a son would inherit. It would therefore be favourable for the child to be female.

3 Rationale behind the distribution of shares

Some authors have identified three rules that govern the distribution of shares within the Islamic law of intestate succession. (See Dar Al Ifta Al-Misriyyah ‘Do Women Take Unequal Shares of Inheritance in Islam?’ available at <http://eng.dar-alifta.org/foreign/ViewArticle.aspx?ID=120&> (accessed 28 November 2017)). The rules have been formulated upon closer inspection of how the Islamic law of intestate succession operates. The following should be noted. Descendant intestate beneficiaries generally inherit more favourably than ascendant and collateral intestate beneficiaries. Intestate beneficiaries with stronger intestate succession ties would generally inherit more favourably than intestate beneficiaries with weaker intestate succession ties. Intestate succession beneficiaries who have more financial Islamic law obligations generally inherit more favourably than intestate beneficiaries with less financial Islamic law obligations, in the event where they are of the same generation and have the same intestate succession tie. It should be noted that the three rules apply to the distribution of the intestate estate regardless of whether the intestate beneficiaries are male or female. (See Dar Al Ifta Al-Misriyyah).

A daughter belongs to the generation of “descendants” whereas a father belongs to the generation of “ascendants”. A daughter would therefore generally inherit more favourably than a father. This rule would apply, for example, where X dies leaving behind an intestate estate, and a father, a widow, and two daughters as the only intestate beneficiaries. The father would inherit $\frac{1}{6} = \frac{4}{24}$, (See Khan 1404H (4) 11 where it states that “... [f]or parents, a sixth share of inheritance to each if the deceased left children...”), the widow would inherit $\frac{1}{8} = \frac{3}{24}$, (See Khan 1404H (4) 12 where it states that “[i]n that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts.”), and each of the two daughters would equally share $\frac{2}{3} = \frac{16}{24}$. (See Khan 1404H (4) 11 where it states that “...if (there are) only daughters, two or more, their share is two thirds of the inheritance...”). The father would also inherit the remaining $\frac{1}{24}$ as a residuary beneficiary. (See Khan (2004) vol 8, 477 where it states that “[t]he Prophet said, ‘Give the Fara’id (the shares of the inheritance that are prescribed in the Qur’an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.’”). Each daughter would inherit $\frac{8}{24}$ which is more than the $\frac{5}{25}$ share that the father inherits.

A full sibling has a stronger intestate succession tie to the deceased than a half sibling. A full sister would therefore inherit more favourably

than a consanguine brother. This rule would apply, for example, where X dies leaving behind an intestate estate, and a daughter, a full sister and a consanguine brother as the only intestate beneficiaries. The daughter would inherit $1/2$, (See Khan 1404H (4) 11 where it states that "...if (there are) only daughters, two or more, their share is two thirds of the inheritance; if only one, her share is half..."), and the full sister would inherit the remainder. (See Khan (728) vol 8, 480 where it states that "Abu Musa was asked regarding (the inheritance of) a daughter, a son's daughter, and a sister". He said, "The daughter will take one-half and the sister will take one-half. If you go to Ibn Mas'ud, he will tell you the same." Ibn Mas'ud was asked and was told of Abu Musa's verdict. Ibn Mas'ud then said, "If I give the same verdict, I would stray and would not be of the rightly-guided. The verdict I will give in this case, will be the same as the Prophet did, i.e. one-half is for the daughter, and one-sixth for the son's daughter, i.e. both shares make two-thirds of the total property; and the rest is for the sister." Afterwards we came to Abu Musa and informed him of Ibn Mas'ud's verdict, whereupon he said, 'So, do not ask me for verdicts, as long as this learned man is among you"). It should be noted that the consanguine brother would not inherit as he has a weaker intestate succession tie to the deceased.

An intestate succession beneficiary who has more financial obligations in terms of Islamic law would generally (but not always) inherit more favourably than an intestate beneficiary with less financial obligations in terms of Islamic law, in the event where they are of the same generation and have the same intestate succession tie. (See Dar Al Ifta Al-Misriyyah for a discussion on this issue.) A son would inherit double the share of a daughter as he has more financial obligations in terms of Islamic law. This rule would apply, for example, where X dies leaving behind an intestate estate, and a son and a daughter as the only intestate beneficiaries. The son would inherit $2/3$ and the daughter would inherit $1/3$. (See Khan 1404H (4) 11 where it states that "Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females..."). There is no definitive evidence in the primary sources of Islamic law to back up the assumption that the reason why the son inherits more favourably than the daughter is because of his financial obligations. There is no direct link found in Islamic law between the Islamic law of intestate succession and the financial responsibilities of males. The argument is weakened by the fact that there are instances within the Islamic law of intestate succession where males and females inherit equally. There is, however, a basis for the financial obligations argument when one examines Islamic law as a whole. Males have more financial obligations than females in terms of Islamic law. Al Quraan (4) 4 states: "[a]nd give to the women (whom you marry) their Mahr (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful)." (See Khan 1404H (4) 4).

Payment of a dower is a financial obligation upon a male and not a female in terms of Islamic law. It is stated in Al Quraan (4) 34 that “[m]en are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means...” (See Khan 1404H (4) 34). It should be noted that responsibility of financial support does not lie with females.

The financial obligation placed on males can be further explained by way of an example. X dies, leaving behind an intestate estate of R900 000.00. He also leaves behind a son and daughter who are both on the verge of marriage as his only relatives. The son would inherit R600 000.00 whereas the daughter would inherit R300 000.00. (See Khan 1404H (4) 11 where it states “Allah commands you as regards your children’s (inheritance); to the male, a portion equal to that of two females...”). The son is required, in terms of Islamic law, to pay a dower to his future wife. (See Al Juzayree *Al Fiqh ‘Alaa Al Madhaahib Al Arba’ah* (2000) vol 4, 85-86; and Khan 1404H (4) 4). There is no stipulation as to what the maximum amount that may be requested by his future wife may be. It could possibly be more than the R600 000.00 he inherited. Arrangements could even be made for the dower to be paid off in instalments in the event where he does not have the cash at hand. The obligation does not lie with the daughter as far as her marriage is concerned. She is entitled to request a dower of her choice from her future husband. Al Quraan (4) 20 states that “... and you have given one of them a Cantar (of gold i.e. a great amount) as Mahr [dower], take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin?” (See Khan 1404H (4) 20).

The son is further required in terms of Islamic law to maintain his wife (or wives) and his future children born from the marriage. The financial obligation does not lie with his wife (or wives). (See Al Juzayree *Al Fiqh ‘Alaa Al Madhaahib Al Arba’ah* (2000) vol 4, 497-498). The daughter in this scenario is not required to maintain herself, her husband, and/or her future children born from the marriage. She may even claim arrear maintenance from her husband in the event where he has not maintained her in the marriage if it subsequently ends in a divorce. A male intestate beneficiary who inherits double the share of his female counterpart could argue that the Islamic law of dower and maintenance favours females while the law of intestate succession at times (but not always) favours males and that the balance is then restored.

The above can clearly be seen when analysing the primary sources of Islamic law in this regard. (See Khan 1404H (4) 11 where it states that “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.”; Khan 1404H (4) 12 where it states “[i]n that which your wives leave, your share is a half if they have no child; but if they leave a child, you get a fourth of that which they leave after payment of legacies that they may have bequeathed or debts. In that which you leave, their (your wives) share is a fourth if you leave no child; but if you leave a child, they get an eighth of that which you leave after payment of legacies that you may have bequeathed or debts. If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies he (or she) may have bequeathed or debts, so that no loss is caused (to anyone). This is a Commandment from Allah; and Allah is Ever All-Knowing, Most-Forbearing.”; Khan 1404H (4) 176 where it states “[t]hey ask you for a legal verdict. Say: ‘Allah directs (thus) about Al-Kalalah (those who leave neither descendants nor ascendants as heirs). If it is a man that dies, leaving a sister, but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance; if there are brothers and sisters, the male will have twice the share of the female. (Thus) does Allah make clear to you (His Law) lest you go astray. And Allah is the All-Knower of everything.”; Khan (2004) vol 8, 477 where it states that “[t]he Prophet said, ‘Give the Fara’id (the shares of the inheritance that are prescribed in the Qur’an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased.”; Khan 1404H (4) 34 where it states that “[m]en are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means...”; Khan 1404H (4) 4 where it states that “[a]nd give to the women (whom you marry) their Mahr (obligatory bridal money given by the husband to his wife at the time of marriage) with a good heart, but if they, of their own good pleasure, remit any part of it to you, take it, and enjoy it without fear of any harm (as Allah has made it lawful).”; and Khan 1404H (4) 20 where it states that “... and you have given one of them a Cantar (of gold i.e. a great amount) as Mahr [dower], take not the least bit of it back; would you take it wrongfully without a right and (with) a manifest sin?”).

It should be noted that a female intestate beneficiary who inherits half the share of her male counterpart could argue that males (at times) do not fulfil their religious obligations regarding maintaining their dependants as is required in terms of Islamic law. There is therefore a need for Muslim males to do as required in terms of Islamic law in order to restore balance.

4 Conclusion

The note analysed the position of females within the Islamic law of intestate succession. The findings show that discrimination against females is not consistent as there are instances where males and females inherit equal shares and other instances where females inherit more than males. The findings of this note show that rationale behind the unequal distribution of shares in terms of the Islamic law of intestate succession is not clearly stated within Islamic law. The findings show that the instances where males inherit more favourably than females could be based on the extra financial obligations placed on males in terms of Islamic law. It is therefore recommended that Muslim males must fulfil their obligations imposed on them in terms of Islamic law in order to restore balance.

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