



PROPERTY DIVISION UNDER SHARIA LAW OF WOMEN

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ABSTRACT

This research paper provides an in-depth analysis of the property rights of Muslim women under the Muslim Personal Law (Shariat) Application Act, 1937, with a critical focus on the far-reaching implications of property division on their economic independence and societal standing. Employing a robust blend of doctrinal and empirical research methodologies, the study draws on extensive secondary sources and meticulously designed surveys. The findings reveal a glaring dichotomy between the rights theoretically granted to Muslim women under the law and the harsh realities of their practical enforcement. Cultural traditions, deep-seated patriarchal norms, and societal pressures often serve as formidable barriers, systematically denying women their rightful access to property. The research underscores how this persistent inequity undermines their financial security and relegates them to a position of dependence, perpetuating cycles of gender-based discrimination. This paper sheds light on the urgent need for reform to bridge the gap between legal entitlements and lived experiences.

INTRODUCTION

1. **Brief Overview:** Under Muslim law, property distribution can occur in two ways: per capita or strip distribution. The per capita method, primarily used in Sunni law, ensures the estate is equally divided among all heirs, with each share depending on the number of heirs. In contrast, the per strip method, recognized in Shia law, allocates the estate based on the heir's familial branch, with inheritance amounts depending on the branch and the number of individuals within it.
2. **Statement of Problem:** The research investigates the discrepancy between the theoretical property rights granted to Muslim women under Sharia law and their practical implementation. Despite clear provisions for inheritance and property ownership, many

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Muslim women face significant challenges in realizing these rights due to cultural norms, lack of awareness, and legal obstacles. This study aims to identify and analyze these challenges and their impact on women's economic autonomy and social status.

3. **Relevance of Study:** The relevance of this study lies in its potential to inform policy reforms and legal practices that can better safeguard the property rights of Muslim women. By examining the effects of property division on women's economic autonomy and societal status, the research underscores the importance of aligning religious laws with contemporary gender equality standards. The findings aim to contribute to a broader understanding of women's rights within the framework of Islamic law, providing a basis for legal advocacy and educational initiatives that can empower Muslim women to fully exercise their property rights.
4. **Research Methodology:** This study employs a blend of doctrinal and non-doctrinal research methodologies. The doctrinal aspect draws from an extensive array of secondary sources, ensuring a comprehensive and robust theoretical foundation. In contrast, the non-doctrinal component leverages empirical data collected through meticulously designed and circulated Google forms, ensuring real-world relevance and applicability.

FINDINGS

MUSLIM WOMEN AND INHERITANCE IN INDIA

According to Muslim inheritance law, men and women are considered equal, but men receive double the share of women. This is because women receive Mehr upon marriage and are financially supported by their husbands, while men rely more on ancestral property. Thus, women's shares are halved. Men must provide for their wives and children, regardless of the wife's wealth. Therefore, women can inherit not only as daughters but also as wives and mothers.

1. Muslim Women's Property Rights After Divorce

- **Deferred Mehr:** A woman is entitled to her deferred Mehr after divorce.
- **Maintenance for Minor Children:** If a divorced woman has minor children, she can request maintenance from her former husband under Section 125 of the CrPC until she remarries.

- **Legal Maintenance:** Despite the Shariat not recognizing maintenance after divorce, the Indian legislature passed the Muslim Women (Protection of Rights on Divorce) Act, 1986. This act ensures a reasonable and fair provision for maintenance within the iddat period, maintenance for children, a Mehr amount, and properties given at or after marriage.

2. Muslim Women's Rights Over Her Children's Property

- **Inheritance from Deceased Son:** If a woman's son dies, she is entitled to one-sixth of his property.
- **Inheritance from Childless Deceased Son:** If the deceased son has no children, his mother receives one-third of his property.

3. **Rights to Property for Child in the Womb:** A child in a Muslim woman's womb is considered an eligible heir if born alive. If the child is not born alive, the share is nullified as if the heir never existed.

MARRIAGE AND MAHR

Mahr, or the bridal gift, was an important source of property for women. It could be paid in land or cash and was an obligatory part of the marriage contract. There were instances where women were given shares in family property as a part of their Mahr, especially if the full amount was not paid during their husband's lifetime.¹ In Islamic law, the concept of Mehr (or dowry) grants Muslim women a defined property right. The husband is obligated to pay Mehr to his wife at the time of marriage, either in cash or property or to pledge to pay it in the future. This Mehr becomes the woman's exclusive property, which she can use as she wishes. Its primary purpose is to ensure the woman's financial security.

The Mehr is solely the woman's entitlement and cannot be inherited by her parents or guardians. Thus, it remains her personal property. A husband can give an entire property to his wife as Mehr, making it exclusively hers. If the husband fails to provide the agreed Mehr, the wife has the right to withhold marital obligations or even refuse to cohabit with him. The only

¹ Rafat Bilgrami, *Property Rights of Muslim Women in Mughal India*, Proceedings of the Indian History Congress, 1987, Vol. 48 (1987), pp. 261-270 Published by: Indian History Congress Stable, jstor, org(last visited on 29th July,2024)

circumstance under which the Mehr can be lawfully claimed by the husband, parents, or others is if the woman voluntarily transfers her share.²

RELEVANT CASE LAWS

1. *Mohd. Ahmad Khan v. Shah Bano Begum*³AIR 1985 SC 945

In the case in question, the issue was to what extent a Muslim husband's liability extends to maintain his divorced wife under Section 125 of the Criminal Procedure Code (Cr. P.C...) 1973. The court delved into various precedents and interpretations of the Quranic verses to support the view that a Muslim woman who has been divorced by her husband is entitled to maintenance even after the period of Iddat. The court further emphasized the provision for maintenance under Section 125 of the CrPC. It is not dependent on the religion of the spouses, highlighting its nature as a secular law applicable to all individuals regardless of their religious affiliations. This judgment sparked significant debate and controversy regarding Muslim women's rights to claim maintenance from their husbands post-divorce. The controversy ultimately led to the enactment of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

2. *Bushara Ali v. Irfan Ahammed & Ors.*⁴

Bushara was allotted 7/152 shares in her ancestral property, whereas her male counterparts were granted 14/152 shares. She thus challenged Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, as being violative of Article 15 of the Constitution.

MUSLIM WOMEN AND INHERITANCE IN MALAYSIA

The Qur'an significantly improved women's inheritance rights compared to pre-Islamic customs, explicitly granting them rights through key verses in Surah an-Nisa (4:4, 4:11, 4:12, and 4:176), which ensure daughters receive a share of inheritance, widows are included in inheritance laws, and women's rights to inheritance are established to protect them from victimization. Additionally, men are required to provide a matrimonial gift (mahr) to their brides, which becomes the wife's property and remains with her even after divorce. Muslim

² Women's right to property under Muslim Law, 24 March 2023, freelaw.in/legalarticles, (last visited on 30th July, 2024)

³ AIR 1985 SC 945

⁴ SLP/4554/2023

women are entitled to full maintenance during marriage, with their financial rights encompassing dower (mahr) at marriage, maintenance during the marriage, shares of inheritance from both families and the unique provision of Harta Sepencharian in Malaysia, which recognizes jointly acquired property. Women's inheritance rights are secured through specific Qur'anic provisions, ensuring they receive a fair share of property and are protected from deprivation. So, women have defined shares and are not deprived of their inheritance rights, with female heirs including the mother, grandmother, daughter, son's daughter, sister, paternal sister, and maternal sister, all receiving fair shares predetermined by the Quran.⁵

INHERITANCE LAW IN THE UAE

The Muslim Personal Law (Shariat) Application Act, 1937, governs the property rights of Muslim women in India, applying Sharia provisions to inheritance, which are detailed and complex, aiming to ensure a fair distribution among legitimate heirs, including women. Sharia law specifies fixed shares for female heirs, ensuring they receive a part of the inheritance: a daughter receives half if she is the only child, and a sister receives half if there are no brothers, descendants, father, or paternal grandfather; a wife receives one-fourth if the deceased has no descendants and one-eighth if there are descendants; two or more daughters share two-thirds if there is no son, and two or more sisters share two-thirds if there are no brothers, descendants, father, or paternal grandfather; the mother receives one-third if there are no descendants, brothers, or sisters, and one-sixth if there are descendants or two or more siblings of the deceased. The law protects the rights of Muslim women by mandating fixed shares, ensuring they cannot be completely disinherited, and restricting the bequeathal of more than one-third of the assets through a will, thereby safeguarding the inheritance rights of women. Certain heirs, including women, are considered forced heirs under Sharia law, receiving their fixed shares first, even if it means there is little left for other heirs, ensuring women's inheritance rights are upheld. After distributing the fixed shares, any remaining assets are divided among the residuary heirs, and if there are no residuary heirs, the remaining assets are divided among the forced heirs, providing an additional safeguard for women's inheritance rights. While sons receive a share equivalent to that of two daughters, daughters still have guaranteed inheritance

⁵ Raihanah Abdullah, Wirdati Mohd Radzi, Fuadah Johar, Golam Dastagir, *The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society*, <https://www.e-asianwomen.org/> (last visited on 30th July, 2024)

rights, ensuring they are recognized as rightful heirs, even though their share is smaller than that of sons.⁶

Under Sharia law, property division can significantly impact women's economic autonomy and status in society. While Sharia law, based on the Qur'an and the Sunnah, grants women rights to own, manage, and trade property independently, these provisions are often not fully implemented in many Muslim countries due to various pre- and post-Islamic cultural practices

IMPACT ON ECONOMIC AUTONOMY

1. **Independent Ownership:** Sharia law permits women to own property independently of their husbands or male relatives. This ownership provides them with the means to generate income, invest, and build wealth. When these rights are upheld, women gain financial independence and stability, which can lead to greater economic security and opportunities for entrepreneurship.
2. **Right to Trade and Manage Property:** Women under Sharia law have the right to trade, buy, and sell property. This economic freedom allows women to participate in business activities, contributing to the overall economic development of their communities. When these rights are effectively enforced, women can engage in various economic ventures, leading to increased economic participation and empowerment.
3. **Access to Credit and Microfinance:** Women who have secure property rights are better positioned to access credit and microfinance services. These financial services enable women to start and expand businesses, generate income, and improve their families' living standards. The control over assets also enhances their bargaining power and decision-making abilities within households.

IMPACT ON SOCIAL STATUS

1. **Empowerment and Social Standing:** Enforcing women's property rights elevates their social status by recognizing their economic contributions and capabilities. Ownership of property can lead to greater respect and influence within the family and community, breaking traditional gender roles and stereotypes.

⁶ [Hassan Elhais](#), *Inheritance Law in the UAE: Procedures and its Implementation*, February 2, 2023, [lexology.com](#) (last visited on 1st July, 2024)

2. **Protection Against Domestic Violence:** Property ownership provides women with a sense of security and leverage in domestic relationships. Women with control over assets are less vulnerable to domestic violence and can leave abusive relationships with greater ease, knowing they have financial resources to support themselves.
3. **Impact on Families and Children:** Women's economic empowerment has a ripple effect on their families and children. Research shows that women who control financial resources are more likely to invest in their children's education, health, and well-being, leading to improved family outcomes and intergenerational benefits.⁷

AN ANALYSIS OF AN EMPIRICAL STUDY

A recent survey aimed to understand the awareness and perception of property division under Sharia law revealed various insights. Out of 16 respondents, 81.3% were aware of Sharia law's guidelines on property and inheritance, with most learning about it from family or community (71.4%), while others referenced books or literature (21.4%). When asked about the fairness of current practices, opinions were divided, with 53.3% believing they were not fair to women and 46.7% thinking they were fair. The challenges faced by women regarding property rights included a lack of awareness of their rights (37.5%), cultural practices overriding Sharia principles (25%), and family disputes (12.5%). There was a unanimous agreement (100%) on the need for more education about women's property rights under Sharia law. Regarding personal experiences, half of the respondents had gone through the process of property division according to Sharia law, and 62.6% had either personally experienced or heard of situations where Sharia property division rules were not followed.

CHALLENGES FACED BY WOMEN

Although women had recognized rights, the practical implementation of these rights was sometimes hindered by societal norms and family pressures. For example, joint family systems often meant that women's shares were not physically separated, leading to potential disputes.

1. Women often relied on male family members or legal representatives to manage their property, which could limit their direct control and decision-making power.

⁷Azhar Aslam and Shaista Kazmi, *Muslim women and property rights*, 16 July 2009, <https://iea.org.uk/>, (last visited on 1st, July, 2024)

2. Literacy and purdah further restricted some women's ability to actively manage their assets, necessitating reliance on male representatives.
3. Women like Kaneez Fatima have faced protracted legal battles to secure their rights, often leading to years of waiting and uncertainty. The lengthy court processes can deter women from pursuing legal action altogether.⁸
4. The other significant factor is religious knowledge which prevents women from inheriting once their parents have passed away. It denies inheritance to women of a lesser economic status from their families. However, some Muslim countries, such as Turkey and Tunisia, are trying to accord women equal rights regarding inheritance issues. But they are failing because they do not understand the Shariah in practice and the fundamental rights of women provided by Islam. Islamic society sometimes acts to motivate women without understanding the principles and beliefs of Islam. Women's situations and statuses are indeed changing throughout the world, especially among Muslim countries, but not based on any Islamic beliefs and values.
5. **Perception of Rights:** There exists a misunderstanding that Sharia law inherently grants equal rights to women. However, the practical application of these laws often results in women receiving lesser shares compared to their male counterparts.

CONCLUSION

The study reveals that while Sharia law theoretically provides robust property rights to Muslim women, practical barriers often prevent these rights from being fully realized. Cultural practices, family pressures, and lack of awareness are significant obstacles. However, increasing education about women's property rights under Sharia law and ensuring better implementation can enhance women's economic autonomy and improve their status in society. Legal reforms and community awareness programs are essential for bridging the gap between the theoretical rights and practical experiences of Muslim women. The research underscores the importance of continuous efforts to empower women and uphold their rights by Sharia law and modern legal standards.

⁸ Md Asghar Khan, *Equality of Rights But...': Are Muslim Women Getting Their Fair Share of Property Rights?* 18th April, 2023, <https://www.outlookindia.com/>, (last visited on 1st August ,2024)

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