CHAPTER V

THE POSITION OF MUSLIM WOMEN IN ISLAMIC LAW AND INDIA

The right to property is vital for freedom and the development of a human, and is also accepted by a majority of the thinkers.\(^1\) The right to property by way of inheritance, in India, is a very complex and multifarious affair, owing to the diversification of practises and customary laws.

The most common way for women to get ownership of property is through inheritance. It is also a surer way of getting appreciation and respect in a family and society. Though the History records that framing of property laws has always been an exclusive male prerogative; therefore, these laws tend to be heavily loaded in favour of men, with little scope for questioning their inherent unequal character. Thereby, the whole concept of equality becomes merely academic, wherever provided even as a precondition.\(^2\)

The Muslim women Inheritance right in India are primarily based on the culture and religion and is a matter related to socio-economic issues rather than on the spirit of law and its implementation. And like the property rights of Hindu or Christian women, property rights of Muslim women are unjust and to a large extent. The property rights of Muslim women are struck in a triangle, denied in the name of religion and culture and supported by state by the policy of non-interference.

Despite that the principle of equality and freedom from all kind of discrimination is enshrined under the Indian constitution,\(^3\) the Muslim women face discrimination in

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\(^2\) Sona Khan “Inheritance of Indian Women: A Perspective” 27 (2) India International Centre Quarterly 139-154 (2000).

\(^3\) Article 14 of the Indian Constitution states: Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
the entire realm of family laws. The policy of Indian state of maintaining different public and private sphere has served to deny basic rights and equality to women and further more marginalize their interest,

This chapter tries to study the laws of inheritance regarding women as provided under the Shariat, and whether the charges levied against it that it tries to undermine the equal right as enshrined under the Indian constitution holds water or there lies a deficiency in understanding the deeper truth beyond what has been portrayed. Secondly whether there is a scope of modifying or amending Shariat laws in order to achieve the goal of gender equality in the property law regime.

A common picture which emerges when talking about rights of Muslim women is an uneducated, veiled, oppressed, ignorant woman, holding hand of multiple children. A woman with no voice or say in her own life, is subjected to whims and fancies of her father brother, husband or any other male relative. This oversimplification and generalization is mostly the result western notion of modernity and empowerment. A women veiled in burqa must be oppressed and ignorant, treated as property by the male counterparts with no sense of individuality or freedom. As opposed to a modern dressed women who must be well read and aware about her rights and freedom.

Furthermore despite the revolutionary changes brought by prophet of Islam in the abominable condition of women, and providing women with independent identity and

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 15 states:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes
equal rights in all spheres of life Islam in general has always been criticized from all corners for creating a "male-dominated" society.⁴

The prophet of Islam Throughout his life was surrounded by fierce and powerful women who played a pivotal role in his life and the foundation of the religion. “The Prophet's first wife, Khadija, supported his cause and became known as "the Mother of all believers."⁵ “Another of his wives, Aisha, is portrayed as a powerful influence, both on the Prophet and on his followers. The Prophet's daughter, Fatima, stood by him during his life and played a critical role in the political as well as social affair after his death.⁶

In spite of these strong feminine influences, there is a belief that women as a class do not fare well in Qur'an as well as the Shariat. The reason might be that everywhere around the globe the interpretation of the Qur'anic principles have been done by men (implying that no females were party to these discourse and discussion) and thus a general bias is created in favour men. Furthermore, the social norms and the patriarchal mindset prevalent in many countries have obscured many of the original purposes of the Qur'anic legislation.⁷ Former Prime Minister of Pakistan, Benazir Bhutto, claims “that the subjugation of women in Islam "has got nothing to do with the religion, but it has got very much to do with material or man-made

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⁶ Amina Wadud-Muhsin, Qur’an and Women, 128 (Liberal Islam: A Sourcebook, 1998). Wadud analysis of the Qur’an includes a discussion of how the Arabic language itself, which contains no neuter form, must be taken into account when determining whether certain passages reflect an intent to establish males—as opposed to humankind in general—in a position of superiority.
considerations." She concludes, "It is not Islam which is averse to women rulers, I think--it is men." 

In addition to a history of male interpretation and legislation, “the resurgence of Muslim fundamentalism in recent decades has had a profound impact on the status of women in affected societies. In general, countries in which fundamentalist rule has taken hold have adopted that severely restrict the rights of women to work outside the home to appear unveiled in public, and to protect their rights in the context of marriage and divorce.” A Muslim woman was given power as well as right to own as well as manage property, and was given right to inherit as a sharer in a deceased property. With education essential and obligatory on all Muslims, women became leaders in many fields, “including the intellectual pursuit of religious scholarship.”

By this brief analysis only, it becomes very clear that Muslim women were definitely not meant to play secondary role. Rather, Islam established equality and dignity to all. And the majority of personal laws practices are against the very notions, injunctions and principles of Islamic law.

Religion need to be understood in its own paradigm. Thus anyone wishing to understand Islam must first separate the religion from the cultural norms and style of a society. As Uzoamaka N. Okoye observed “Female genital mutilation is still [practiced] in certain pockets of Africa and Egypt, but viewed as an inconceivable horror by the vast majority of Muslims. Forced marriages may still take place in

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certain Indian, Pakistani and Bangladeshi communities, but would be anathema to Muslim women from other backgrounds.”

Therefore most Islamic feminists argue that women's rights under Islam cannot be made parallel the western movement for women's rights. "The majority of Muslim women who are attached to their religion will not be liberated through the use of a secular approach imposed from the outside by international bodies or from above by undemocratic governments." These feminists have argued that the “Qur'an advances the rights of women and that Prophet Muhammad surrounded himself with independent self sufficient women. They argue that pertinent problem is the fatwas of jurists which in general are diametrically opposed to Islamic teachings, the Qur'an and the Sahih Hadith of the Prophet Muhammad. Islamic feminists point to the many parts of the Qur'an that speak of the relations between the man and the woman as being that of mutuality and reciprocity.” Islamic feminists such as Azizah al-Azmeh argue that “there must be a separation of Islamic law from that of Islamic culture to understand that women's rights can exist under Shari'a”.

Furthermore that new generation of progressive muslim scholars such as Mohammad Arkoun, Khaled Abou El Fadl, Muhammad Shahrur, Nasr Abu Zayd, Amina Wadud, Mohammad Mojtahed Shabestari, Abdolkarim Soroush, Ziba Mir-Hosseini, and the

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12 Supra Note 9.
14 O mankind! Fear your Lord Who (initiated) your creation from a single soul, then from it created its mate, and from these two spread (the creation of) countless men and women.” (al-Qur’an, 4:1) This Verse clearly expounds that man or woman are created from a single entity and are basically equal genders. As a gender, one is not superior to the other. Further in another verse it is stated “And according to usage, women too have rights over men similar to the rights of men over women.” (al-Qur’an, 2:228)This Verse denotes that rights enjoyed by men are the duties of the women and the duties of men are the rights of women. This implies a similitude between both the genders. There is no right conferred on man that woman may be deprived of because she is a woman. For details see Abdur Rab Rediscovering Genuine Islam: The Case for a Quran-Only Understanding,(CreateSpace Independent Publishing Platform, 2014.)
former leader of the Sisters in Islam Anwar Zainah reengages the Quran from a perspective that was “sorely lacking in the classical Islamic scholarship”. Their contributions inform, and lead to, a gender-neutral, feminist movement in Islam. They think that the “moral teachings of the Quran do not really discriminate against women and that the verses that assign greater rights to men […] reflect a patriarchal context in which men were dominant and solely responsible for supporting women.” It is, therefore, imperative that the rules we apply serve the basic objectives of the law.

To understand the property rights of Muslim women in India it is necessary to understand the position and status of women in India in general and her position within the Muslim personal law practiced in India.

In order to venture into an exploration of modern Muslim women’s relationship to the property a deeper and critical understanding of unjust and discriminatory family law in relation to property, their unique position and experience at the intersection of gender discrimination and religious discrimination has to be taken into account. For this a critical reading of Shariat application Act 1937 as well as position of women in the scheme of succession under Islamic inheritance is required. In the first part we will analyse the Quranic provision of inheritance provided in the quran and can there be a change in the existing narrative of Islamic law of inheritance

**Position of Women under Islamic Law of inheritance in**

Under the Islamic law, Inheritance is an important branch of the family law. The Islamic Law of Inheritance is also known as the "science of the shares," or the "ilm al-fara'id". There is a saying in Islamic legal literature that knowledge of the laws of

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inheritance and its various shares constitutes “one-half of all knowledge”. The Islamic inheritance scheme contains one of the most comprehensive and detailed systems of succession known to the world. The Qur'an clearly defines its structure, and Islamic jurists have meticulously set forth all the detail.”  

Islam has defined in detail, and very clearly the principles and rules with regard to inheritance in the Holy Quran. The principles outlined in the Book are the founding regulation with regard to distribution of deceased property among his heirs. In the preceding chapters we have discussed the verses of Quran with regard to inheritance in general. The question to be answered is whether the Quran has dealt fairly with regard to inheritance of women heirs? Furthermore we need to analyse the Islamic law as practiced in India and how far it has provided equality and fairness to the women as a class.

The need is to analyse the Muslim women right to inheritance in the plurality of socio-legal construction of Islam, Muslim personal law and family, which has influenced the ideas of gender justice in institutional struggles over legal authority. It is also essential to understand Islam is not a homogeneous religion and there is a cross cutting identities of Muslim women based on class, language, region, sect etc.

The Muslim Law experienced in Indian sub-continent need to be viewed in the comparative perspective in order to be analysed and understood. As Subramaniam points out “Religious law is dynamic in many societies when incorporated into contemporary state institutions. Women gained greater rights over the last half century even while religious law and religious norms remained influential in diverse countries such as Italy, Chile, Tunisia, India, and Indonesia. Moreover, the versions of

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19 Narendra Subramanian “Legal Change And Gender Inequality: Changes In Muslim Family Law In India “ 33 (3) Law And Social Inquiry (2008)
Islamic law, which contemporary states recognize, vary considerably in the rights they grant women. While some contemporary Islamic states give women greater rights than in India (e.g., Tunisia, Libya, Jordan, Bangladesh, Indonesia), others give women fewer rights (e.g., Algeria, Nigeria, Sudan, Iran, and until recently, Morocco).\textsuperscript{20}

Also it is interesting to note that there are also countries which having Muslims as minority population gives greater rights as compared to India example Israel whereas some give fewer rights than India like Britain and Sri Lanka. This is in complete contradiction with the view expressed by many that it is difficult to promote women rights within the realm of Islamic law in countries where the Muslims are in minority and the Muslim scholars or the ulemas exerts pressure and more influence in Islamic law.\textsuperscript{21}

Moreover, the extent of women's rights does not correspond with the madhab (school of islamic law/jurisprudence) that governs particular groups, since the earlier texts of these schools are interpreted very differently, especially in contemporary state institutions. For instance, the school of Maliki law gives women many more rights in Tunisia and Libya than in Algeria, while the school of Hanafi law gives women more rights in Jordan and Iraq than in Pakistan and India. Thus while analysing the system of Islamic inheritance practiced in India all these factors have to be factored in.\textsuperscript{22}

As previously discussed in the earlier chapters the laws of inheritance in Quran consists of basically ten verses on which the jurist has build the entire inheritance
system. According to prominent Muslim Scholar Abdur Rab\textsuperscript{23}, “The traditional Muslim rules of inheritance are derived from the basic structure set out in the Qur’an, which was then elaborated and systematised by the various madhhab[s], or schools of law, through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shi’ite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities. Because human interpretations have played such a key role in shaping both the traditional inheritance rules and the modern codifications of inheritance laws, the standard articulation of these rules cannot be considered divinely revealed Shari‘a, but rather man-made fiqh”\textsuperscript{24}

Before entering into the debate whether the Islamic law can be modified or amended, it is pertinent to analyse the share of women given in the two major school of Islamic law.

\textbf{Inheritance of women under Shia school}

Islam has acknowledged woman in every aspect and relation whether as a wife or mother, sister or daughter. She was entitled to receive a certain share in the property of the deceased kin, a share which was dependent upon their degree of closeness and their own number in that category. This was their share and no one in any way can deprive them of this share, not even by making will or otherwise in favour of any other relative. It is been accepted in all the schools of law that a person cannot will

\textsuperscript{23} Who is been supported by current generation of Islamic legal scholars like Amina Wadud, Mir-Hosseini, Ziba, Mahmood Shahrur etc

more than 1/3 of their property\textsuperscript{25} so that there is no effect on the rights of their heirs men or women.\textsuperscript{26}

Under the Shia law of inheritance, there is no departure from the injunctions of the Quran as they believed that after the advent of Islam, all the customs and rules practiced in pre-Islamic Arabia has been abolished completely. As Lucy Carroll\textsuperscript{27} observes “All blood relatives of a Shia deceased are integrated into a single all-embracing hierarchy of heirs in which priority is primarily based on proximity to the propositus (the deceased) and in which males and females equally related to the propositus are similarly situated.”

Under the Shia law the heirs are divided into three classes depending on their nearness to the propitious – class I heirs consisting of deceased parents, children and children of deceased children. They are the preferential heirs and exclude all the other classes. Class II comprises of grandparents (includes both maternal as well as paternal) and brothers and sisters. They inherit only in the absence of class I heirs. The last are class III heirs which includes deceased uncle and aunts (both maternal and paternal) and in their absence their descendants.\textsuperscript{28} These heirs are referred to as “heirs by consanguinity or blood” and termed as heirs by Nasab.

Now let us see the shares women have been given under the Shia law of succession:

\textbf{Wife:} As per the provisions of Quran a widowed wife is an heir and she can never be excluded. Under the Shia scheme of inheritance she is regarded as heir by affinity or \textit{Sabab} she is thus not placed under the three classes but have a separate position. The

\textsuperscript{25} The rules with regard to will also differ in accordance with school of law one belong to. In shia law a person can bequeath 1/3 of property to both heirs as well as non-heir but under the Sunni law a will cannot be made in the favour of an heir and if a will is made then it requires consent from all the heirs else, the will cannot be enforced. Faiz Badrudin Tyabji, \textit{Muslim Law} (N.M.Tripathi LTD, Bombay, 4\textsuperscript{th} Edn, 1968)


\textsuperscript{28} Tahir Mahmood, \textit{Muslim Law in India and Abroad} 92-93 (Universal Law Publication, New Delhi, 2016)
share of wife is 1/8 in presence of children whereas in absence of children her share is fixed to ¼. This is based on the Quranic verse provided in the chapter IV\(^{29}\). The widowed wife has to be of a *sahih* marriage, under Shia law there is no place of irregular marriages and all such marriages are treated as *batil* (void) and women not entitled to inherit. Also though Muta marriage is valid under Shia law, wife of Muta marriage not entitled to inherit. Here children means biological children and includes children of deceased children.\(^{30}\) Also under Shia law a childless widow\(^{31}\) is not entitled to inherit her husband's immovable assets, she will be given her share from the moveable assets of the husband.\(^{32}\) If the wife is the sole surviving relative of the propositus, under the classical law, the residue would escheat to the State; the husband, however, in similar circumstances would take precedence over the State treasury and inherit the entire estate of his wife.\(^{33}\) In *Aga Mahomed Jaffar v. Koolsom Bebee*\(^{34}\) it was held by the Privy Council that the expression "lands" is not confined to agricultural lands but includes lands forming building-sites. The rigour of the rule is mitigated to a limited extent by the holding in *Abdul Hamid Khan v. Peer Mirza*\(^{35}\) that a childless widow is in the absence of other heirs entitled, in addition to her one-fourth of the remainder of the husband's property by the doctrine of return. This decision gives effect to the view expressed by Sir Ameer Ali that, as there is now no

\(^{29}\) "And for them one-fourth of what you leave behind if you did not have a child, but if you have a child then for them one-eighth of what you leave behind" IV:12. Tahir Mahmood “Quranic verses

\(^{30}\) Widowed husbands would receive one-fourth of the estate of the wife, if she left a child. Again, child here means a biological child, or any agnatic grandchild however low. He would receive one-half if she left no such child.

\(^{31}\) She is 'childless' in regard to P if she has no children by him (although she may have children by a previous marriage), or if all the children she bore him predeceased him. There is no equivalent rule restricting the right of the childless husband to the landed property of his wife, although the husband's share as an heir is greater than the wife.

\(^{32}\) The Ismaili Shias apparently do not follow this rule. See Tahir Mahmood, *Muslim Law Of India* 268 (LexisNexis Butterworth, New Delhi, 3\(^{rd}\) Edn, 2002)

\(^{33}\) *Supra* note 27 at 87-124

\(^{34}\) 25 Cal. 9 (1897) (P.C.)

\(^{35}\) . (1935 I.L.R. 10 Luck. 550)
machinery to take charge of the person's share the residue should return to the wife.\textsuperscript{36}
Furthermore in a situation where a person dies leaving behind a wife and his brother, the wife shall only be entitled to \(\frac{1}{4}\) of the property and the residue will go to the brother, which simply is unfair as a wife has closer relation as well as more moral right to get more property from her deceased husband.\textsuperscript{37} Under the present social conditions in India also, wife most often will be a non-earning member whereas brothers in all probability shall be earning or potential earning members.

According to hobble “generally in primitive societies the claims of genetic relatives are greater than those of the spouse. The tie of a married person in most primitive societies is stronger to his kinship group than to his marriage partner”.\textsuperscript{38} Thus the position of a widow of a deceased in the Islamic law of inheritance, taken as such, is archaic

**Mother:** she is placed in class I heirs and cannot be excluded. She has right over the property though her share changes. Her share is \(\frac{1}{6}\) in general but varies if with the presence or absence of deceased children, brother and sister.

1. Her share is \(\frac{1}{6}\) of the property in presence of deceased children or grandchildren

2. Her share is \(\frac{1}{3}\) of the property if there are no children of the deceased and there is no or only one brother or sister.

3. Her share is \(\frac{1}{6}\) of the property if the deceased have left two or more brothers or sisters.\textsuperscript{39}

\textsuperscript{36} Syed Ameer Ali, *Mohammadan Law* (English Book Store, New Delhi, 4\textsuperscript{th} Edn, 1985)
\textsuperscript{37} Supra note 36
\textsuperscript{38} Supra note 36
\textsuperscript{39} Quran 4:11 To each of his parents, one-sixth of what he leaves, if he has any children; but if he has no children, then his parents will inherit him, the mother receiving one-third. But if he has any brothers (or sisters), then his mother receives one-sixth. (The distribution in all cases) after any will he had made or any debt he had incurred [is taken care of]. Your parents and your children—you know not who of them is nearest to you in terms of benefit. A directive from God; God surely is All-Aware, Wise. Supra note 29
Under inheritance law in presence of deceased children the share of mother and father are equal that is 1/6 its only in absence of children that the share of father is greater than the mother, in absence of children the father will be entitled to rest of the property. This is said to be based on the principle that if there are siblings the maintenance is on the father or till the time he is alive; he is bound to maintain his wife.

**Daughters:** she is placed in the class I heirs and can never be excluded, in essence in her presence except son and parents of the deceased all the others are excluded. Her share is ½ if is one in number and 2/3 if two or more in absence of Son. With son she inherits in the ratio of 2:1. Apart from daughters son Daughter (hls) and daughters daughter(HLS) shall also be given share in absence of any children, and they shall inherit per stripes, with males taking double the share. For example: A person dies leaving behind a daughter from daughter and one son and daughter from a son. In this case the share of daughters daughter shall be 1/3 as would have been her mother share, whereas the 2/3 share of the son shall be divided between the son’s children in ratio of 2:1.

**Sister:** a sister is a class II heir and she can only inherit in the absence of class I heirs. Her share is ½ if she is alone and 2/3 if there are two or more. With brother she will take in the ratio of 2:1, double being the share of the brother. The position of consanguine sister is same as full sister. The uterine brother /sister inherit 1/6 when one and 1/3 when two, though they are excluded by the grandparents and full relations.

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40 Quran IV:11 God commands you, with respect to your children, that the male shall inherit the equivalent of the share of two females. If there are only females – two or more, then they should receive two-thirds of what he leaves; but if there is only one female, she is entitled to one-half. Supra note 29
41 Supra note 26
42 Supra note 27.
Grandmother: she is again a class II heir and inherits in absence of class I heirs. She is neither excluded by the siblings of deceased nor can she exclude the siblings. Grandmother includes both the paternal as well as maternal. Her share is fixed as the share of sister\(^{43}\) on the paternal side and uterine sister\(^{44}\) on the maternal side. These are share of women under Shia law

**Inheritance of women under Sunni school**

Under the Sunni law the heirs are classified into three categories: Quranic heirs or sharers also known as “zaw-il-faraez”, residuries or agnatic heirs (asabat), and Distant Kindred (zaw-il-arham). As analysed by Prof. Richard Kimber “In a classical Sunni jurisprudence the Qur'anic rules do not by themselves constitute a system. The defining systematic feature of Sunni inheritance law is the residuary entitlement of the 'asaba or male agnatic blood relatives of the deceased, and this entitlement is derived not from the Qur'an but from Sunna. The Qur'anic rules are interpreted and applied in such a way that they mitigate but do not challenge the principle of male agnatic succession. The mitigation is in favour of female agnates, male and female non-agnates, and spouses, all of whom would otherwise be excluded.”\(^{45}\) As Sachacht has also put in his classical work “the object of these (Qur'anic) regulations is simply to supplement the law regarding the rights of the 'asaba; they are not a reorganisation of the whole law.”\(^{46}\) Thus according to Sunni principles of inheritance agnates are always given preference over cognates. In these three classes of heir- the sharers and residuary inherit together and excludes the distant kindred. Sharers are mainly the spouse ascendants and descendants of the deceased and are 12 in number out of which.

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\(^{43}\) While the grandfather shall take the share of the brother.

\(^{44}\) While the grandfather shall take the share of the uterine brother


\(^{46}\) Joseph Sachcht, An Introduction To Islamic Law, 200 (Claredon press 1982)
seven are female heirs, residuary are the agnates and distant kindred includes the cognatic heirs. Under Sunni law of inheritance like the Shia law the share of female relatives are specifically provided. This was done in order to elevate her position but also simultaneously safeguard their economic and social interest. Women inherit under Law in following Position:

**Mother:** she occupies a safe position in table of heir. She is the all-time inheritor of the deceased property and her place fall under Quranic heirs so her place is secured. The true legal position regarding mother’s right to inheritance is that her share is $1/6$ in all cases but varies if with the existence of children, brother or sister that is:

1. When there are agnatic descendants, she takes $1/6$ of the property
   - When neither father nor agnatic and nor brothers and sisters she takes $1/3$ of the property
2. When coexisting with father but neither agnatic nor brother or sister she take $1/3$ of the property
3. When no agnatic descendants but father co-existing with two or more brothers or sisters she takes $1/6$ of the property

The father of the deceased inherit both as the sharer and residuary. He has a fixed share of $1/6$ when there is son of the deceased, in all other cases he inherit as share as well as residuary.

**Widow wife:** wife is included under the Quranic heirs, and she can be excluded by none. Her share is fixed to be $1/8$ in presence of children or grandchildren of the

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47 A person whose relation to the deceased can be traced without the intervention of female links. e.g. son’s daughter
48 When there is intervention of female link when tracing the relation from the deceased.
49 Supra note 36.
50 IV:1 Holy Quran
deceased and ¼ in absence of children.\textsuperscript{52} Unlike shia law, a Sunni childless widow does not suffer from any disability and can inherit her husband landed as well as immovable property.\textsuperscript{53}

**Daughter:** she is entitled to share in the inheritance of her parents along with her brothers, although the proportion of her brother and sister is different, the distinction is founded on the relative position of her brother and sister”.\textsuperscript{54} A daughter is a Quranic heir and has definite share in the inheritance. If there is one the share of daughter is ½ if two or more her share is 2/3 in absence of son. In the presence of son she inherits with him as a residuary in the ratio of 2:1.\textsuperscript{55}

**Son daughter:** The daughter here also includes a son daughter. The share of one son daughter is ½ and two or more is 2/3 where there is no child of the deceased as well as no son’s son, with son’s son she takes as a residuary. She is excluded by son or two or more daughters. If she exist with one daughter and no son, her share is 1/6.\textsuperscript{56} Under Sunni law daughters children have no right in the property of their grandfather because of the rule of giving preference to agnates over cognates.

**Sister:** she is a Quranic heir. Her share is ½ when one and 2/3 when two or more in absence of son, son’s child, father, true grandfather and brother. In presence of brother she becomes a residuary. When a sister exists with daughters she becomes a residuary. For example a person dies leaving behind a daughter, mother and two sisters. The share of mother in presence of daughter is 1/6, the share of one daughter is ½ and the rest will be taken by the two sisters as residuary in equal proportion.

\textsuperscript{52} Sura IV:7 Holy Quran
\textsuperscript{53} The share of husband is ¼ in presence of children and ½ when there is no child or child’s child. IV:7 Lucy Caroll.”The Hanafi Law of Intestate Succession: A Simplified Approach” 17(4) Modern Asian Studies, (1983)
\textsuperscript{54} Supra note 36.
\textsuperscript{55} IV:11 Holy Quran
\textsuperscript{56} Supra note 28
**True Grandmother**\(^{57}\): she inherits only in few cases. Her share is 1/6 in presence of child or son’s child and 1/3 in their absence. She is excluded by mother, father and true grandfather.

Thus in short these are the shares of women in Islam

**Comparative analysis of Shia and Sunni School of inheritance**

Thus it can be gathered that the traditional scheme of inheritance is neither a unified position nor a unified law. As coulson\(^{58}\) says “perhaps the most striking and significant divergence between the Sunni and Shi’i legal systems as a whole lies in their respective laws of inheritance. Imami inheritance law rejects in principle the systematic discrimination in favour of male agnate’s characteristic of Sunni inheritance” According to professor cheema\(^{59}\) “These differences are so deep rooted that it is near impossible to bridge them. It does not mean that there is no space which is characterized by similarity. At least there are quite a few spaces where these different legal traditions rely on the same types of shares and suggest the same sort of solutions to practical problems.” Despite being certain similarity, the jurisprudential difference is so vast that it is not possible to explain these in single elaboration and requires different chapters to ponder on.

As earlier stated the starting point of difference between the Shia and Sunni school is the primacy given to Quranic revelation by shia school and abrogating the earlier practices completely, whereas the Sunni school has treated Quranic provision in supplement with the historical practices of the pre-Islamic Arabia. As according to DS Powers\(^{60}\) “From an early date this structure of Sunni inheritance law was both

\(^{57}\) Implies only paternal grandmother.

\(^{58}\) N.J Coulson, *Succession in the Muslim Family* 108 (Cambridge University Press, London 1971)


explained and sanctioned by what Sunni scholars believed was its history. Unmitigated male agnatic succession was said to have been Jahili practice, which the Qur'anic rules had then mitigated in accordance with a more enlightened attitude towards women, in particular. This is now known as the 'superimposition theory', and is still widely accepted".

Thus we see that the major difference between the two schools of law in regard to inheritance is the preference given to agnic heirs by the Sunni jurisprudence, whereas under the Ithna Asharia Law there is no difference between the agnic and cognate heirs and both have been placed on the same footing. Thus under the Shia law no heirs are ever excluded on the basis that he/she is related to the deceased by a female link. And between the same classes of the heirs there is no difference except that the share of male shall be double of the female. Therefore under the Shia law the daughters children have same rights as the sons, whereas under the Sunni law the daughters children are placed in the category of distant kindred and can only inherit in the absence of sharers and residuary.

Another distinct feature of Shia law is that there is no difference between the maternal and paternal grandparents. Both are class II heirs and inherit in absence of class I heirs along with the siblings of the deceased.\(^\text{61}\) Though under the Sunni law paternal or as regarded as true grandfather excludes everyone even the true grandmother as taken as father figure. Also in absence of son and son’s son and father, the true grandfather becomes a residuary.\(^\text{62}\) For example: A person dies leaving behind a wife, daughter and paternal grandfather and paternal grandmother. In Sunni law: wife =\(1/8\) her Quranic share, daughter \(\frac{1}{2}\) her Quranic share, true grandmother will be excluded because of the presence of true grandfather, and the true grandfather will take the

\(^{61}\) Supra note 58 at 118

\(^{62}\) Ibid
residue. Whereas under the Shia law: wife = 1/8 her Quranic share, daughter ½ her 
Quranic share, and grandfather as well as grandmother shall be excluded because of 
the presence of daughter. The daughter will take the rest of the property under 
doctrine of radd.63

Also under the Shia law we do not find the importance of residuary as in the Sunni 
law. This could be better understood by the example: A person dies leaving behind a 
daughter and full brother. Under the Sunni law daughter will take ½ as her Quranic 
share and ½ will go to the full brother as a residuary. Whereas under Shia law full 
brother is excluded from the inheritance as daughter is a class I heir and full brother is 
a Class II heir, the daughter will get ½ of the properties as her share and the other half 
under the doctrine of radd.

Thus this is an another distinguishing feature of Imamia succession, the emphasis on 
the nuclear family and direct descendants, if a person has died leaving behind a child 
or child’s child (HLS) no other blood relative can inherit anything except the parents 
of the propitious.64

In both the schools the rule that nearer in degree excludes the remoter is accepted but 
the implications of this rule are quite different in the both systems. For instance, a true 
grandfather of remoter degree cannot be excluded by any grandmother of nearer 
degree in Sunni law. In Shia law, the grandmother excludes the grandfather’s father. 
The reason for this difference is that Shia law does not differentiate between males 
and females in excluding the remoter relations: female relatives are as effective in this 
regard as male relatives are in Sunni law.65

63 Wife will get any property by radd as in presence of blood relatives, spouses not entitled to return. Supra note 28
64 Supra note 58
Thus Shia law apart from the male heirs getting double the female is more equal and provides better position to female heirs in general.

Since Muslim inheritance rules are incredibly complicated and there are significant differences between the major schools of law and between the laws of modern Muslim nations, the following is simply a general overview of the basic traditional rules. As the composition of family differs from one situation to another, there can be different situations where sometime a female may inherit as equal to male, sometime even more than the men. But it is not uncommon that women though when in equal relationship to the deceased as the men or even closer are excluded or is given much less than what is due to her, though this is rarely happens in Shia school.

To understand the situation better we will take examples of situations where the female is inheriting equal, more, less or excluded despite of the same class in both schools of inheritance.

Example 1:

A person dies; she is survived by her husband and one sister. Under both schools the share of husband will be ½ as Quranic heir in absence of children. The share of sister will be ½ as she is alone.

Example 2:

A person dies leaving behind mother, daughter and a full brother. Under the sunni law mother share shall be 1/6, daughter ½ and full brother will take the rest as residuary. Whereas under shia law mother share 1/6, daughter will get ½ and full brother shall be excluded by the daughter. Rest of the property divided between the mother and daughter pro rata.

The examples are from the Encyclopedia of Islamic Law 1996 and Tahir Mahmood 2016.
Example 3:
A person is survived by his paternal grandmother, brother and daughters daughter. Under the sunni law the grandmother will get 1/3 as there is no child or son ‘child. The brother will take the 2/3 as residuary. Under shia law, the daughters daughter will take whole of the estate being a class I heir and grandmother and brother being class II heirs.

Example 4:
A person dies leaving behind mother, father and daughter’s son. Under Sunni law the mother will get 1/3 as her Quranic share and father will take 2/3 as residuary. Daughter’s daughter shall be excluded as he is distant kindred. Whereas under shia law, the mother and father will get 1/6 each their Quranic share and rest 2/3 property will be taken by Daughter’s daughter.

Example 5:
A person is survived by paternal grandfather and maternal grandmother and grandfather. Under sunni law paternal grandfather being the true grandfather will exclude the other two completely and take the whole estate. Under shia law the share of paternal grandfather will 2/3 and 1/3 shall be shared by maternal grandmother and grandfather equally

Example 6:
A person is survived by a son’s daughter and daughter’s daughter. Under the Sunni school, the son’s daughter is entitled to half and the remainder goes to a residuary; the daughter’s daughter receives nothing. Under the shia school, each will receive the share of the person through whom they are related to the decedent, so the son’s daughter will get 2/3 and daughter’s daughter 1/3.
Example 7:
A person is survived by a daughter and a son’s daughter and a full brother son. Under the Sunni schools, the daughter gets 1/2 and the son’s daughter receives 1/6 and will, while the remainder of the estate goes to full brother son. Under the Shia rules, the daughter takes the whole estate and the son’s daughter and full brother son receives nothing.

Example 8:
A person is survived by husband, mother and father. Under sunni school, the husband share is ½, the mother will get 1/6 and father rest of the property, whereas under shia law, husband ½, mother 1/3 and father rest of the property.

Example 9:
A person is survived a daughter and a full or agnate paternal uncle. Under the Sunni school, the daughter receives 1/2 and the uncle receives 1/2. Under the Shia school, the daughter receives the entire estate.

Example 10:
A person is survived a paternal uncle’s daughter and a paternal uncle’s son. Under the Sunni schools, the uncle’s son receives the entire estate and the uncle’s daughter receives nothing, even if she is the full sister of the uncle’s son. Under Shia law, the uncle’s daughter receives 1/3 and the uncle’s son receives 2/3.

Example 11:
A person is survived by wife and full brother so. Under both the schools, the wife will receive ¼ her Quranic heir and rest of the property will go to the brother’s son as residuary.

These examples not only show the difference in rules between the traditional rules
from different schools, but also demonstrate how women are often excluded from inheriting, even if they have the same relationship to the deceased as the men who do inherit, or are not able to inherit the remainder beyond their fixed shares, even if the remainder goes to someone much far removed and sometime even not in the family but goes to the state.

**Gender Disparity within the Islamic System of Inheritance**

Thus by relying on express provisions of the Qur'an, Muslim jurists developed elaborate rules of intestate succession. A fundamental rule was that a male heir receives twice the share of a similarly situated female heir. This rule is required to be observed in the following cases:

1. When the deceased left behind children of mixed gender- sons and daughters. (4:11);
2. When the deceased have left parents one or both without any children. (4:11);
3. When the deceased have left behind a spouse (4:12); and
4. When the deceased have left brothers and sisters (full and consanguine) and no children or parents. (4:176).

Two important exceptions made to the above rule are worth noting

- In the case when only parents (both or one) survive along with the deceased’s children, each parent gets one sixth of the inheritance; if only one parent survives, he or she gets one sixth. The rest goes to the children. (4:11)\(^{67}\)

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\(^{67}\) Supra note 46
In the case when the deceased has no descendant or ascendant heirs, but has a uterine brother or a sister, each one equally shares one sixth of the inheritance; if they are more than two, they share equally in a third (4:12).  

As according to Richard Kimber “The phrase 'the male shall have the same share as two females', taken out of context, is the linchpin of the entire Sunni system. It not only appears to endorse in a general way the system's discrimination in favour of males, but also provides a specific Qur'anic anchor for the Sunni device of ta'slb. By this device female agnates, if they happen to inherit in competition with their male equivalents, are converted from ahl al-fard'id entitled to large Qur'anic shares into 'asaba entitled like male agnates to a share of the residue. But once converted they receive, as the Qur'an seems to lay down, only half the eventual share of the residue of their male equivalents”. to understand what Richard says lets take example of a mother’s share in deceased property. She is regarded as a Quranic heirs and her share are accordingly fixed, if she exist with children her share is 1/6, if without children her share is 1/3. The mother is regarded as Quranic heir or non-residuary heir. If these verses are interpreted literally then in a situation where a woman dies leaving behind a husband and parents. The share of husband shall be ½ as a Quranic heir or non-residuary heir, the share of mother will be 1/3 as a Quranic heir and in this case the father will be left with only 1/6 as his residuary share. Under Sunni law this was regarded to be incorrect and by method of tasib, it was agreed upon the here 1/3 means 1/3 of the residual property.

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68 Ibid.
69 Supra note 45
70 Ibn ‘Abbas is said to have accepted this unwelcome outcome, but the majority of the Sunnis decided that in this particular case the mothers' third must be a third of the residue after all, giving her a sixth. estate and the father a much more satisfactory third. In effect the Sunni device of ta'slb is applied, despite the fact that ta'slb applies strictly to agnates, which the mother by definition is not. The caliph ‘Umar b. al- Khat.tb had to be invoked to justify this serious anomaly in the Sunni system.. see DS power studies 55-56
The exceptions made in the Inheritance Law suggest that the distinction made in general between male and female heirs giving the former double the share of the latter is not essentially inherent in the Quranic Law itself. The provision giving preference to the male over the female rather responds to the particular socio-economic milieu of the time when the husband took full socio-economic responsibility to support the wife and the family as a whole. If this situation changes, then there must be room for changes in the rules of the Inheritance Law.  

Thus it can be argued that these traditional rules of inheritance create a biased and problematic scenario in the modern societies. And yet for the past several decades these have been defended by people on one or the other grounds. But truth is that all these defences are fundamentally flawed in its application to the modern realities as well as are far removed from the logical point of view.

The most common defence given is that the Islam for the first time gave women absolute right to ownership and property and these laws are great departure from the pre-Islamic principles and customs. Without doubt it is been accepted as well as appreciated that Islam was the first religion which brought drastic changes in the status and position of women in the society and that the Islamic law of inheritance remained the most progressive and comprehensive in the world for hundreds of years. But in addition to this, a number of aspects of pre-Islamic Arabia inheritance rules (e.g., the primacy of agnatic heirs) were added which were not laid out in the Qur’an anywhere. These have not been reformed, just incorporated into the man-made system that was formalised by the classical jurists one thousand years ago. It is believed that Islam is a religion for all times and places because it is dynamic and

\footnote{Supra note 24}

\footnote{In all the four sunni schools, the preference to agnates over cognates is a mandatory accepted rule. Supra note 28}
sensitive to the changing needs of times and societies. It cannot remain stagnant, especially if it includes aspects that are unjust or unfair.  

Also on a close reading of the Quranic injunctions about the surviving relatives inheritance rights in the deceased person property, one significant conclusion that emerges is that the primary intention of the Holy Quran was to provide financial assistance to the deceased relatively weaker and disadvantageous relatives, by giving them larger portion shares of his or her inheritable property. The direction is definitely egalitarian. Even if we see the Islamic inheritance rules in its pure textual context, there is ample scope available for bringing out positive reforms, like judiciously using the existing provision of living will and distributing a part of property of the deceased to the weak and vulnerable relatives and other deserving people.  

As Shaheen Sardar Ali points out “The Quran’s overall egalitarian approach or direction is worth more attention than the actual extent of such reforms indicated in the shares of the Inheritance Law, which were nonetheless quite remarkable in a seventh century context. What is important to note is that these reforms were grafted onto an existing predominantly patriarchal legal system.”

Another defence used by the conventionalist is that these provisions were revealed to Prophet of Islam and therefore they can neither be amended nor reformed. It is true that some of the provisions were revealed but the majority of the classical inheritance law is man-made and result of human interpretations. The proof of this interpretation

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74 Holy Quran II:180  “It is prescribed for you that, should death approach any of you, if he leaves any assets, it is best that he leave a bequest for his parents and near relatives according to normal usage – a truthful obligation (haq) on the part of the righteous” is an important verse in this regard.
76 Ibid.
is the diversity in the different schools— if the rules were divinely revealed, there
would not be five very different versions of them.78

An example can be how the five major schools interpret the maximum amount of the
estate which can be given to a female as an heir. According to Shaifei79 and Maliki80
school, the daughters/ sisters can inherit maximum up to 2/381 of the estate, and the
rest shall go to the nearest agnatic male heir and if there is no agnatic male the
property will go to the estate. On the other hand Hambali82 and Hanafi schools
believes that in absence of male agnatic heir, the females can inherit the residue,
meaning the whole estate. On the contrary the Shia school argues that females can
inherit the entire estate as they give no preference to male agnatic heirs. Both males as
well as females can be residuary.83

According to powers84 “Even some of the rules that were divinely revealed were
interpreted in different ways by different classical schools of law, thus affecting the
way the inheritance system developed. For instance, Surah an- Nisa’ 4:176 states that
a collateral such as the brother of the deceased will inherit only if the deceased dies
without “a child (walad)”. Although walad often refers to a daughter or a son,
including in other inheritance verses, most classical Sunni scholars interpreted it in

78 Martha Mundy, “The Family, Inheritance, and Islam: A Re-examination of the Sociology of Fara’id
Law”, 98 -122 in supra note 13.
79 One of the four school of Sunni law, it was founded by the Arab scholar Al-Shafi’i, a pupil of al-
Malik, in the early 9th century According to the Shafi’i school the paramount sources of legal authority
are the Qur’an and the Sunnah. Of less authority are the Ijma’ of the community and thought of
scholars (Ijtihad) exercised through qiyas. Supra note 76
80 It was founded by Malik ibn Anas in the 8th century. The Maliki school of jurisprudence relies on
the Quran and Sunnah as primary sources. ... The Maliki school is one of the largest group of Sunni
Muslims, comparable to the Shafi’i madhhab in adherents, but smaller than the Hanafi school. Supra
note 76
81 Which is her Quranic share if they are more than two; they are not treated as residuary in absence of
a son.
82 The smallest school of Sunni law it was founded by Ahmad ibn Hanbal in ninth-century Baghdad.
The official school in Saudi Arabia and Qatar, Ritualistically, the Hanbali school is the most
conservative of the Sunni law schools, but it is the most liberal in most commercial matters supra note
76
83 Supra note 58
84 Supra note 60.
this verse to refer to sons or agnatic grandsons only.” This means that agnatic siblings are entitled to a share of the inheritance when the deceased is survived by a daughter, but not when the deceased is survived by a son. This reflects a preference for agnatic males in the traditional rules of inheritance. The Shi’ite schools, by contrast, interpret *walad* in the standard way to refer to a child of either sex, such that collateral is excluded by the presence of either a daughter or a son of the deceased.

Furthermore, when these conventionalist scholars resist change on the ground that God’s will should prevail at all times and places, they forget that apart from modern scholars their own mentor Abu-Al-Mawadi disagreed with this notion and said that “the Quran needs reinterpretation in the context of changing reality.” Also, their argument is seriously flawed since they fail to recognize the vital difference between the moral objectives and principles of the Quran that should not change and those aspects that require constant updating to keep up with the moral intent of the Quran.

As feminist leader Zainah Anwar observes: “For too long, Muslim women who demanded reform to discriminatory laws and practices have been told, “this is God’s law” and therefore not open to negotiation and change. […] Evidently, the problem is not with Islam. It is the position that men in authority take in order to preserve their privilege. […] To conflate patriarchal laws and practices is nothing more than tactical power play.”

One more defence which vehemently put forward is that it is only four cases where a women inherit less than men, whereas there are many examples where she inherit equal or in fact more than the men and also she forms the majority in sharers(8 out of

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87 Supra note 4 at 151
88 The four cases are: Son and daughter, brother and sister, husband and wife and mother and father.
But this argument is a logical fallacy as those are the four cases which in reality, comprise of the most important familial relation, she is treated less than her counterpart. Yes she get more property when she inherits with her father’s brother but do they share the same relationship with the deceased, but as son and daughter of same man they share same relationship and yet she accorded half of what is given to her brother.

In addition to this under the Sunni schools after the shares has been distributed the rest of the property goes to the residuary, who is always a agnatic heir how far removed he may be and any person tracing link from the women is removed (Daughter’s children) they are put in a class of distant kindred and if there are no residuary then they shall be capable of inheriting. For example: A person dies leaving behind his daughter’s son and his full brother’s son. The full brother son will inherit everything and his own grandson or daughter will get nothing. Also husband get more in the property of the wife than the wife vice-versa, father is given double the property than mother both as sharer as well as residuary. Another frequent and common defence used is that Islam has put obligation on the men to provide for their wife as well as families and in addition have to pay mahr to the wife on the contrary there is no obligations\ on women to provide for maintenance for the families and they are in fact supported by their father, brothers, uncles, husband etc and they use their inheritance on themselves as well as any amount earned by them is their absolute property. As zainab chodhary argues “If a man were to receive 100 gold bars in the inheritance and his sister only 50, she will get another 25-50 in mahr, while he will have to give away 25-50 to his wife for mahr, making their situations equal in the

89 Supra note 18 at 551.
90 Supra note 84.
91 Sural al nissa 4 and 11 of the Holy Quran.
This argument fell short in the modern society where women are working and contributing equally to the household and maintaining children as well as families. With increase in education, women are working more as well earning equal and at times more than men and equally shouldering the responsibilities of family and household.

These changing norms mean that the argument that men require more inheritance as they support their families and maintains children and wives holds little weight in the current socio-economic conditions. Furthermore the argument that the *mahr* amount given to her at the time of marriage can be used as support is not feasible in the modern times where it has often become symbolic or token amount that cannot be used as a means of support and for which a man doesn’t have to part away with lot of inheritance. For example in Malaysia, the government authorities have set a minimum amount of USD 20 or less. A large majority of Malaysian men believes that this is the only amount they need to pay. As far as India is concerned, it is believed that *mahr* is an amount payable at divorce or the death. Thus in reality the men are

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94 Supra note 85
96 Section 3 of MWD Act 1986: . Mahr or other properties of Muslim woman to be given to her at the time of divorce.—

(1) Notwithstanding anything contained in any other law for the time being in force, a divorced woman shall be entitled to—

(a) a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband;
(b) where she herself maintains the children born to her before or after her divorce, a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective dates of birth of such children;
(c) an amount equal to the sum of *mahr* or dower agreed to be paid to her at the time of her marriage or at any time thereafter according to Muslim law; and
(d) all the properties given to her before or at the time of marriage or after the marriage by her relatives or friends or the husband or any relatives of the husband or his friends.

(2) Where a reasonable and fair provision and maintenance or the amount of *mahr* or dower due has not been made or paid or the properties referred to in sub-section (1) have not been delivered to a divorced woman on her divorce, she or any one duly authorised by her may, on her behalf, make
neither completely supporting their wives as well as the family and nor they are providing substantial amount of *mahr* to the wife.

Another argument of that a woman in general will always have a secure future whatever be her inheritance amount is also an outdated view which is not supported by the current family structures practiced in Muslim communities worldwide. It was 100 years back that the distant family also used to live nearby but in today’s modern era the nuclear family has replaced the extended family, unmarried and divorced women live alone so this argument of extended family (male relatives) taking care and thus entitled to inherit is a toothless tiger. As Reda Zaireg\(^7\) puts it, while discussing the Moroccan case, “Islamic law governing inheritance has been drawn taking into consideration the extended family model, which has now disappeared and been replaced with the nuclear family model. Moreover, men before had to meet the needs of the women of their clan, but nowadays they no longer have a monopoly over family finances. In such scenarios, the current discrimination between males and females in sharing inheritance would clearly appear out of date.”

There is one more very interesting defence taken by the conventional scholars that if a people really care about providing fair and equal rights to women then can easily used

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\(^3\) Where an application has been made under sub-section (2) by a divorced woman, the Magistrate may, if he is satisfied that—

(a) her husband having sufficient means, has failed or neglected to make or pay her within the iddat period a reasonable and fair provision and maintenance for her and the children; or

(b) the amount equal to the sum of mahr or dower has not been paid or that the properties referred to in clause (d) of sub-section (1) have not been delivered to her. make an order, within one month of the date of the filing of the application, directing her former husband to pay such reasonable and fair provision and maintenance to the divorced woman as he may determine as fit and proper having regard to the needs of the divorced woman, the standard of life enjoyed by her during her marriage and the means of her former husband or, as the case may be, for the payment of such mahr or dower or the delivery of such properties referred to in clause (d) of sub-section (1) to the divorced woman: Provided that if the Magistrate finds it impracticable to dispose of the application within the said period, he may, for reasons to be recorded by him, dispose of the application after the said period.

the instrument of hiba\textsuperscript{98} and gifts to provide for the sisters and daughters, and that the inheritance system should be studied along with the principles of gift and will.\textsuperscript{99} First and the foremost this cannot be regarded as a systematic solution. In fact, it simply an admission that the system is flawed and that people need to circumvent it to ensure fairness and justice. In addition, many people are not well enough informed about how to make such gifts or do not have enough foresight to realise how the rules of inheritance will affect their wives and daughters. They are told that they do not need to make a will because the inheritance laws are comprehensive or that they can only give away one-third of their estate, and do not know about the possibility of hiba.\textsuperscript{100}

Thus most of the defenders of the traditional system argues that despite women getting half the inheritance they are financially secured and they have long term stability, which might have been true in earlier era but in current condition nothing short of discrimination

\textit{Can Islamic inheritance law as prescribed by Shariat amended/modified?}

With the advent of Islam and revelation of Quran on the Prophet of Islam radical departures were made in the socio-economic conditions of women, for being an object to inherit she became capable of having inheritance in her own name. Muslim modernists such as Fazlur Rahman\textsuperscript{101} have argued that the rule of the Qur'an should not be interpreted as an eternally binding rule of law, but instead should be viewed in the context of numerous reforms that the Qur'an made improving the overall social status of women. He argues that that Muslims need to pay attention to the major

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\textsuperscript{98} Islamic gifts: A hiba (or gift) is a transfer of property, made immediately, and without any exchange, by one person to another, and accepted by or on behalf of the latter. It is thus the conferring of property without consideration/ \\
\textsuperscript{99} Supra note 26 at 133. \\
\textsuperscript{100} Supra note 77 at 123 \\
\end{flushleft}
socio-moral objectives of the Quran, which are “the moral conduct of man and the establishment of an order of socioeconomic justice and essential human egalitarianism. With changing time and context, human perceptions of what constitute justice also change. Even though the Quran did not declare an outright ban on human slavery, no sane person would say today that we should have slavery in our modern society”.\(^{102}\) thus when Quranic legislation are read in this context it can easily argued that the aim of the Qur'an with respect to social relations was one of equality, but its specific rules represented the practical limit of how far such reforms could be taken in light of the circumstances of seventh-century Arabia.

It should always be kept in mind that though there are certain verses in Quran dealing with the inheritance law, the entire scheme of inheritance is not revelation or even Sunnah of the prophet; they are not part of Shariat but are result of *Fiqh*. The intricacies of the rules of inheritance which are followed has taken shape in the years after the death of the Prophet (s.a.w.), with a comprehensive code laid out by the classical jurists during the formative period of Islamic law.\(^{103}\)

It is accepted that though the principles and rules of inheritance are based and structured around the Quranic injunctions, one of the major school- Sunni believed that this new rules and principles are to be followed along with the pre-Islamic inheritance customs and the custom which were not expressly rejected or re-written were to be followed in addition to the Quranic provisions.( primacy of the agnatic heirs).\(^{104}\) This is in complete contrast to the second school-shia school, which believed that after these revelations, all the other rules are completely abrogated. Furthermore what we do regard as Islamic law of inheritance is the interpretation of

\(^{102}\) *Ibid*

\(^{103}\) Mohammad Mustafa Ali Khan *Islamic Law of Inheritance : A New Approach*, 23 (1989, Kitab Bhawan, New Delhi)

\(^{104}\) *Ibid.*
classical jurist, whom ideas, assumptions and life experiences greatly influenced the development of fiqh. 105 According to Coulson106 “Legal thought was naturally influenced by prevailing local conditions, and many of the differences between Medinan and Kufan doctrine are explained … by the different societies of the two centres” He further explain by aptly giving the example of preference of agnates over cognates. “Although the schemes of inheritance adopted by both schools shared the same fundamental rules, in so far as this subject had been regulated in some detail by the Qur’an, the precedents of the Prophet and those of his immediate successors, there arose significant differences on points which had not been so settled. Where no Qur’anic heir or agnate relative (‘asaba) had survived the propositus, the Kufan jurists admitted non-agnate relatives (e.g. daughters’ and sisters’ children) to succession. Such relatives (known as dhawū ‘l-arhām) were never allowed to inherit in Medina.”107

As Coulson108 regards both the views of interpretation are reasonable in accordance to the economic and social conditions of both the centres. Medinite rested their view that as the shares of such relatives are not specified in the Quran therefore they are excluded, whereas according to kufans by recognising the right of women, the quran has also recognised rights of relatives related to them. He regard this tendency of patrilineal society of medina to give preference to male over female. Whereas such interpretation was abhorred in the cosmopolitan society of Kufa, where women enjoins greater rights and freedom.109 Thus in short, the Quran was interpreted by

105 Id at, 25
106 Supra note 58 at 48
107 Supra note 58
108 Supra note 58
109 In Kufa women participated more in political as well as cultural life of the society, furthermore they were given much more right and independence with regard to marriage and divorce. Adult women have the capacity to contract her own marriage. Supra note 58
both schools in light of existing social circumstances.¹¹⁰

Thus diversity in the four major Sunni schools of law, between these schools and the major Shi’ite school, demonstrates that the laws and traditional rules are not divine and absolute, but can and have been interpreted and changed throughout the centuries.¹¹¹

As a lot of aspects of the rules of inheritance were derived through human interpretation, they can be reformed through human interpretation. Islam is a dynamic religion for all times and places, and thus its laws should also be dynamic so as to be applied to the needs of changing societies. As Amina wadud¹¹² aps says “While we cannot say that these scholars were “wrong” in their interpretations, considering the circumstances of their lives and societies, we would be wrong if we follow the classical scholars blindly instead of doing what is best for our time and society.”

Most of the modern Islamic author believes that most of the revelations in Quran were by nature reform oriented, the primary intention thus was to repeal or transform the major aspects of pre-Islamic customary law and society. Its aim was never to give a comprehend law. Most often prophet used to receive a revelation which was either to build upon or supersede an existing custom or an earlier revelation.¹¹³ According prof. Coulson¹¹⁴ the inheritance rules provided in the Quran and the Sunnah are the examples of the progressive, supplementary nature of Islamic law. Before the advent of Islam, most of the rules and customs governing property rights were a medium of strengthening the tribe, which were exclusively defined by the male descendants. The main objective of these revelation was that the property should remain within the

¹¹⁰ Supra note 58
¹¹¹ Supra 24
¹¹² Amina Wadud in her book Quran And Women : Rereading The Scared Text From A Women Perspective (OUP, USA, 1999).
¹¹⁴ Supra note 58
tri, therefore the closest male descendants was chosen to inherit the property of the deceased.

The prophet in accordance with the Quranic revelation changed the status quo, the first was the requirement for all, Muslims to give share to both men women, form what has been left by their parents and near relatives.115 The revelation also marks a shift in the set up of society – from being tribal to family units.

The reforms that took place in the early years of Islam are clearly progressive, changing with the needs of the society. They were meant in part to protect women, requiring that at least a minimum share, as specified in Qur’an, be given to women who were closely related to the deceased. The more detailed rules that were laid out by the Sunni classical jurists allowed many pre-Islamic customs to continue, and also reflected the needs, customs and expectations of the society in which they lived instead of continuing the progressive reform that was started during the time of the Prophet.116

Over 1000 years have passed, and the modern world is incredibly different than it was during the early centuries of Islam. The ummah should take up the example of progressive reform and work to ensure that the rules of inheritance reflect the needs of the people today.

The most problematic of the verse is 4:11 which says that male child should have double of female. A lot of modern scholars have argued that this interpretation is in itself incorrect and to further selfish objectives and motives. According to Richard Kimber “The phrase 'the male shall have the same share as two females', taken out of context, is the linchpin of the entire Sunni system. It not only appears to endorse in a general way the system's discrimination in favour of males, but also provides a

115 4:11 quran
116 Supra note 92
specific Qur'anic anchor for the Sunni device of *tasib*. By this device female agnates, if they happen to inherit in competition with their male equivalents, are converted from *ahl al-fard'id* entitled to large Qur'anic shares into 'asaba’ entitled like male agnates to a share of the residue. But once converted they receive, as the Qur'an seems to lay down, only half the eventual share of the residue of their male equivalent.”\(^{117}\)

It has been argued that instead of requiring that the male child *always* receive twice that of the female, it can be interpreted that the male cannot receive more than twice the female or that the female must inherit at least one half of the male.\(^{118}\) For instance, a committee member involved in reviewing Indonesia’s inheritance laws argued that “the language of the Koran is not necessarily mandatory. The provision stating that the daughter's share is one half that of the son should be interpreted to mean that daughter's share must be at least half that of her brother. The Koran does not, however, preclude equal shares for males and females if social realities warrant such a distribution and the Muslim community desires it.”\(^{119}\)

On the same line Mohammad Shahrour,\(^{120}\) an engineer from Syria has proposed a theory called “Theory of limits” (*hudud*), which means that the Quranic laws set limits within which societies with socio-cultural diversity can set their own rules or laws.” The theory of limits, according to Shahrur, allows flexibility in regulating various Quranic laws, including inheritance, according to socio-cultural diversity.\(^{121}\)

According to his theory there are lower limit and upper limits provided in the Quran and Sunnah for all human actions as well as man-made rules and legislation. Those actions which fall within these limits, implying neither less nor more than the set

\(^{117}\) Supra note 45  
\(^{118}\) Supra note 103  
\(^{119}\) Supra note 93  
\(^{121}\) Ibid.
limits are accepted and permitted by the Quran. Shahour has basically based his entire theory of limits on two attributes- straightness (istiqama) and curvature (hanafiyya). Istiqama means following a straight path, and hanafiyya can be considered deviation from a straight path. He aptly points out that “Curvature is natural in human life, and social norms, customs and traditions tend to change from one society to another and over time. Therefore, the straightness is necessary to maintain social order over time. The Lower and Upper Limits represent the straightness needed to contain the natural curvature, and the two act in relation to one another”. He classifies limits into six types – which are lower or upper limits alone or lower or upper limit together with some connection with each other.

He regards the inheritance verse to be coming under third type of limit where both the lower and upper limit has been provided. In Qur’an 4:11, it is stated that regarding inheritance provisions for children, “to the male, a portion equal to that of two females”. According to Sharhour “instead of laying out an inflexible, rigid amount or share for male and female, this section of the verse sets the Upper Limit (maximum) for men and Lower Limit (minimum) for women in which the man’s share cannot be more than 66.6 percent and the woman’s cannot be less than 33.3 percent of the estate. Within those bounds, a woman could inherit more than the Lower Limit, or minimum, and a man could inherit less than the Upper Limit, or maximum, depending on their circumstances, as long as both limits are not breached. This type of limit

122 For example: in regard to women attire, he considers the minimum limit of women attire to be satr-a-juyb (sur-al- Nur-31) or covering the chest and genitals so as not to be naked. Its maximum limit is covering the whole body excluding face and palms of the hand, the women who does not wear Hijab has in fact fulfilled Allah’s stipulation. On the contrary those women who cover their whole body including their face are considered to have gone beyond allah limits, as they have gone beyond what is prescribed in the Quran as maximum limit. Thus those women who cover their whole body along with their faces are actually non-Islamic. Mohammed Shahrour, “The Concept of Freedom in Islam”, 20 May 2005, available at <http://www.libyaforum.org/english/index.php?option=content&task=view&id=588&Itemid=30>. Accessed 20th march 2018.

123 Supra note 116

124 Supra note 116
could be applied to all of the inheritance provisions that are set forth in the Qur’an.125 Thus the Shahour states that there is a minimum amount fixed which is to be given to the women, similarly a maximum amount is also provided for the men, and thus by applying his theory, it is possible to give more to the women and reduce the share of the man.

Thus the legislatures have the power to make legislation taking into account the current need of the societies “as long as it fits within these divine minimum and maximum limits”.126

Thus to say that laws of inheritance are immutable and not subject to change is not only a incorrect position but it also source of gender bias and denies women her rightful status and position as envisioned by the prophet and the Holy Quran.

The notion of gender equality in the spiritual sense as supported by numerous verses in the Quran127 has also entered into the legal discourse and the jurists have assumed that in the absence of evidence to the contrary, legal texts—whether granting rights or imposing obligations—apply equally to both men and women.128

**Muslim Personal Law (Shariat Application) Act**

Muslim law during the colonial rule was uncodified, thus the Anglo—Indian courts for adjudication recognised customary laws on the Muslim communities, most of which denied inheritance to women. The courts as well as the colonial masters while administering the questions related to Muslim law and women inheritance to property

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125 Ibid.
126 Ibid.
127 O mankind! Fear your Lord Who (initiated) your creation from a single soul, then from it created its mate, and from these two spread (the creation of) countless men and women.” (al-Qur’an, 4:1). This Verse clearly expounds that man or woman are created from a single entity and are basically equal genders. As a gender, one is not superior to the other “And according to usage, women too have rights over men similar to the rights of men over women.”(al-Qur’an, 2:228) this Verse denotes that rights enjoyed by men are the duties of the women and the duties of men are the rights of women. This implies a similitude between both the genders. There is no right conferred on man that woman may be deprived of because she is a woman
128 Supra note 24
followed no consistent policy and the decision were uneven.\textsuperscript{129} Sometimes the courts confirmed the rights\textsuperscript{130} sometimes enhanced, and sometimes completely denied them.\textsuperscript{131}

The prevailing customs undermined the position of women as in most communities women were denied most of rights including inheritance. The Shariat Application Act, 1937 aimed at correcting such defects.\textsuperscript{132}

In the Shariat act there is no precise definition of Muslim but also it does not from its purview exclude any particular sect or community. Therefore wherever this act is in application\textsuperscript{133} it applies to all the communities as well as sect- Shia and Sunni alike. Furthermore the act has neither defined the expression “Muslim personal law” nor the word “Shariat” used in its title as well as provisions of the Act. The act has also made no reference to different school of thought\textsuperscript{134} present in the Muslim community. By tradition, followers of each school of Muslim law are governed by their own law.\textsuperscript{135}

This silence of Shariat act can be very well used by the courts to ensure justice to Muslim litigants. A liberal interpretation of the act by the courts will help in picking principles from various school of thought as to be applied in every case in a way that it will result in justice and fair to all concerns.\textsuperscript{136}

\begin{thebibliography}{99}
\item 129 Alan Metcalf, \textit{Land, Land lord and British Raj} 220, (Berkeley. N.Y. 1979)
\item 130 See \textit{Murtuza Bibi} v Jumna Blbi 12 ILR264 (Alld).
\item 131 \textit{Khanum Jan} v Jan Blbi 4 SD AR 210 (CAL.).
\item 132 In an interesting analysis, Anderson (1996) has detailed the process of the making of mpl in India as a British effort to facilitate achievement of two broad goals: to extract economic surplus in the form of revenue from the agrarian economy, and second, to maintain effective political control with minimal military. See Eleanor Newbigin \textit{The Hindu Family and Emergence of Modern India} (Cambridge University Press, Cambridge, 2013)
\item 133 The shariat act is not applicable in the state of Goa Daman and Diu. Furthermore it is only partially applicable in Pondicherry. After 2007 Jammu and Kashmir has also passed their version of Shariat application act. \textit{Supra} note 28
\item 134 Four school of Sunni law and three school of Shia law.
\item 135 \textit{Supra} note 28
\item 136 \textit{Ibid.}
\end{thebibliography}
The Shariat Act made ineffective, in their application to the Muslims, the provision found in some provisional civil courts laws\textsuperscript{137} under section 2\textsuperscript{138} however, specifically excludes from its purview “All questions relating to Agricultural Land: and charities, Charitable institution and religious endowments.”

The object of section 2 was firstly to abrogate custom and usage which may be contrary to principles of Muslim law and secondly grant certain exceptions.\textsuperscript{139}

There is a long list of subject specified in the section 2 of the Shariat Act which the courts must apply on Muslims in accordance to Muslim Law

1. Intestate succession except with regard to agriculture property. This is a mandatory provision.

2. Special property of female

3. Marriage, dower, maintenance and dissolution of marriage.

Section 2 of the Shariat application act 1937 refer to “special property” of the females including personal property inherited or obtained under any contract or gift or any other provision of law and compulsorily subjects all such property to Islamic law. In Islamic law all inherited property is held by women in absolute ownership. As regards “property obtained under contract or gift”, the terms of contracts or gift,

\textsuperscript{137}Some of these laws are:

\begin{enumerate}
\item Bombay Regulation IV of 1827
\item Punjab Laws Acts 1872
\item Central Provinces Laws Act 1875
\item Oudh Laws Act 1976
\end{enumerate}

\textsuperscript{138}“Notwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under any contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)”

\textsuperscript{139}The power of testamentary succession enjoyed by few communities was not taken away. Thus they may follow accustom which allow disposition of whole property by way of will, which is clearly un-Islamic.
unless they are contrary to basic policies of Islamic law on women, would govern the
rights in it. 140
Section 3 141 of the act mentions “will, legacies and adoption” and an option is given
to the individuals whether they want to be govern by Muslim law or customs. If he
want to be govern by the Act he is required to give a declaration in a prescribed form
to the prescribed authority that he is a Muslim, who is competent to contract and is the
reside in territories where the act extends.
Now if the Basic idea behind the Shariat Act was to abrogate customs which were
contrary to Muslim Law, it appears curious to say the least, that many things have
been left on the sweet wish of the parties to follow the Muslim law or not. Whatever
might have been the reason for the inclusion of this provision, it is in direct negation
of the Act itself. The provision of section is illogical and also unconstitutional. Under
the Islamic laws of will a person can only bequeath 1/3 of his property, the remaining
2/3 is required to be devolved in accordance to the rules of Islamic inheritance. But
with the application of this provision a person can bequeath her entire property by
pleading custom, which in turn defeat the provision of mandatory application of
Islamic law of inheritance.
The courts have rightly held that any custom or practice which excludes females from
inheritance even if proved cannot be allowed as it shall be against the very purpose of

140 Tahir Mahmood, “Islamic Laws and Muslim Women in Modern India” 6 Religion and Law Review
34 (1997).
141 Power to make a declaration.—(1) Any person who satisfies the prescribed authority—(a) that he is
a Muslim; and(b) that he is competent to contract within the meaning of section 11 of the Indian
Contract Act, 1872 (9 of 1872); and(c) that he is a resident of [the territories to which this Act
extends], may by declaration in the prescribed form and filed before the prescribed authority declare
that he desires to obtain the benefit of [the provisions of this section], and thereafter the provisions of
section 2 shall apply to the declarant and all his minor children and their descendants as if in addition to
the matters enumerated therein adoption, wills and legacies were also specified.
(2) Where the prescribed authority refuses to accept a declaration under sub- section (1), the person
desiring to make the same may appeal to such officer as the State Government may, by general or
special order, appoint in this behalf, and such office may, if he is satisfied that the appellant is entitled
to make the declaration, order the prescribed authority to accept the same.
Shariat application act.\textsuperscript{142} It should be noted that there are lot of elements included in this personal law, which are not based on the Shariat, and which are applied as a matter of "justice, equity and good conscience" and yet others were abolished - for instance, the judge need not necessarily be a Muslim; or apostasy to be punished by death penalty or in case of adultery women be stoned to death, or prohibition on marriage of Muslims to non-Muslims etc.

This proves that MPL in this country is not "non-negotiable", and progressive reforms can be demanded and be made from time to time. Moreover, there have actually been some changes made post-independence

Apart from Shariat application Act there are some parallel local acts for communities like memons and mapilla\textsuperscript{143} Muslims which are governed by their own versions of Shariat\textsuperscript{144} the Cutchi Memon who were also unhappy with the individual option given in the application act and demanded the laws of inheritance should be applied generally to all Muslims without option. Thus this led to the passing of Cutchi Memon act of 1938, which completely nullified the effect of section 3 of the sharat act and made it mandatory for Cutchi Memons to be governed by Mohammedan law in all the matters of succession and inheritance.\textsuperscript{145}

Whereas the Mapillas community especially the tribes following the Marumakatyam law are governed by their own Mappila Marumakatayam act and it has been held in

\textsuperscript{142} Mohammad Sandhukhan v Ratnam AIR1958 Mad 144.
\textsuperscript{143} They are the affluent and politically active group among the Muslims of south India. They follow matrilineral joint family system. And our governed by Muslim Marumakkattayam Act 1963
\textsuperscript{144} Before independence, there were two acts related to property- Mappila succession Act 1918 related to intestate succession and Mappila Wills Act 1928 related to testamentary succession. These two acts were later reenacted under the title Muslim Successions Act, which remained in force till 1956. This was then repealed and replaced with the central Shariat Act by the Miscellaneous Personal Laws (Extension) Act 1959.
\textsuperscript{145} Section 2 of cutchi memon act 1938, upheld in cases like Hamid v Mohd. Yunus AIR 1940 Mad 153, Haji Abdullah Sait V Commissioner Of Income Tax (1989) 177ITR 77 (Kar)
several cases\textsuperscript{146} by the Madras High Court, that the Shariat Act did not have the effect of abolishing the Mappila Marumakatayam law of matrilineal joint families. With the enactment of Kerala Joint Family Abolition Act 1975, all the joint families whether matrilineal or patrilineal have been abolished but interestingly the long list of repeal local act does not include Muslim Marukatayam Act 1939. It seems very unreasonable that though the parent law has been abolished for an entire majority community, a small section of Muslim community continues to follow it despite that their own personal law non-recognition of joint family system. Recently in a Lakshadweep case this viewpoint has been supported and the continuation of this act to be unconstitutional

It is very clear from the above discussion that Muslim Personal Law is in need of a serious revamp. There is contradiction between the provisions as well as the parallel laws working alongside.

\textit{Indian Muslim Women and Application of Inheritance Laws}

The Indian Muslim women in general is caught between the loyalties toward her religion and community and her own desire for a better future with greater and equal rights and freedom within the family and society. As Zoya Hasan Points\textsuperscript{147} out “"Muslim women are triply disadvantaged--as members of a minority, as women, and most of all as poor women. On one hand, traditionalists within Muslim communities in India seek to universalize and ossify interpretations and practices of Islam that maintain women's status as second-class members with far fewer rights than men. Resistance to conservative interpretations of Islam is cast as disloyalty and can call

\begin{footnotes}
\textsuperscript{146} Abdul Rahim V. Avoomma AIR 1956 Mad 244, Khan Bahadur Kheloth v. Wealth Tax Officer Calicut, AIR 1966 Ker. 77.  \\
\textsuperscript{147} Zoya Hasan (ed.), \textit{Forging Identities : Gender, Communities and State}, 43 kali for Women New Delhi (1994).
\end{footnotes}
into question the very identity of a Muslim woman within her community. On the other hand, loyalty to religious interpretations and to principles that is clearly gender-bias calls into question Muslim women's commitment to emancipation and gender justice.” 148

In spite of this fierce opposition, Muslim women continue to struggle for their rights at the crossroads and margins of Indian and Indian-Muslim society. Though there could be said to some progress, Muslim women are still governed by separate code of religious family law that, which is neither properly codified as well as is outdated. Under this code, Muslim women continue to suffer the humiliations and disadvantages. Another feature of this code is that it is regarded to be God-made and divine and thus immutable and forever. This according to Islamic Scholar Asghar ali engineer is result of colonial percept and interoperation as the Muslim personal law understood in today's era is neither divine nor immutable. It is in essence a combination of substantive law based on the Hidayah and Anglo Saxon law as administered in British courts during the colonial rule.149 As a result the post – colonial Indian state has adopted what can be only referred to as colonial construct of the Muslim Law. On top of it Indian state has adopted a dual system of equality which Narain150 defines as “establishing a formal equality within the public sphere and guarantees religious freedom and protection to minority within private spheres”. Majority of the feminist scholars have argued that that type of stark distinction between the public and private sphere has resulted in discrimination of women as the area of family law is governed by religion-based personal laws.151

The problem of Muslim women is not just of unequal inheritance rights but her

148 Cyra Akira Chodhary “Misappropriated Liberty: Identity, Gender Justice, and Muslim Personal Law Reform In India” 17 Colum. J. Gender & L. (2008)
150 Supra note 19.
identity in totality. As for Muslims in India, the personal law is not just the law governing their family matters but a symbol of their identity and their distinct heritage and genealogy. The division used by the British state for their administration by codifying the laws on basis of religion became the bedrock of Muslim identity in the Indian state which was further intensified and reinforced during the independence movement. Muslims started to perceive themselves as separate political identity group with specific, common needs for representation and security in increasingly defined and created by majoritarian discourse.152

According to Cyra Akira Chaudhary three points need to understand while trying to figure out the status of a Muslim women in India “First, there is a tendency to lay the blame for the partition of India on Muslims. The common perception is that either Muslims were manipulated by the British into their separatism, or they saw themselves as so different from other Indians that they could not share a homeland. In either case, a consequent suspicion exists that Muslims who remain in India are disloyal and always harbor a desire to escape to Pakistan. The prejudice of these ideas continues to colour the experience of Indian-Muslims. The second point is that, for traditional Indian-Muslims, the Muslim Personal Law has become a key symbolic element of identity and an important political right which is guarded vigorously whenever attempts at reform are made. The third is that women, as bearers of community honour and identity, occupy a specific space within religious communities, defined by identity politics and the violence of partition.”153 Thus bringing reform within as well as outside communities proves to be a herculean task.

In addition the India's approach to secularism underscores the tension between group life and rights and individual rights. The Indian secularism's willingness to

152 Supra note 19
153 Supra note 148
accommodate religion in the public sphere has permitted religion and religious racism to seep into the public secular domain and erode secular institutions. India as a country need to recognise and respects its cultural, linguistic and religious diversity.\textsuperscript{154} Thus the framers of constitution were put up with an important task of providing protection and respect to all, while the state remains a secular identity. The sensitivity towards religion is demonstrated by the fact that, in spite of secularism's importance to the framers of the Constitution, they declined to put it into the Constitution itself. As one prominent member of the constituent assembly remarked:

“The omission of the term "Secular" or "Secularism" is not accidental but was deliberate. It seems--that the Constitution Makers were apprehensive that, if the words "Secular" and "Secularism" were used in suitable places in the Constitution, they might unnecessarily introduce by implication the anti religious overtones associated with the doctrine of secularism as it had developed in Christian countries.”\textsuperscript{155}

Unfortunately, such solicitude towards religion has meant that the Indian courts have continued in the British vein of adjudicating religious personal laws, which often require them to interpret religious scripture and norms. The Indian constitution on one hand provides for equality and non-discrimination on the basis of sex religion\textsuperscript{156} on one hand and provides protection to religious and cultural minorities\textsuperscript{157} on other hand and making them capable of governing their own affairs. Unfortunately, the provisions conflict with each other. There is clearly no way to reconcile the

\textsuperscript{154} The secularism of India is very different from that of the United States. At the time of independence, there were two competing philosophies. Nehruvian secularism was more in line with the liberal secularism of the West while Gandhian secularism was based on pluralism and tolerance. There is no concept of the complete separation of religion and politics with the former squarely placed in the private sphere. Rather, India has chosen, for better or worse, to embrace its multiple cultures and religions and take an active role in religion by administering religious law and religious trusts and appointing religious personnel in some cases. Flavia Agnes, \textit{Law And Gender Inequality}, 94-106 (Oxford Pulication, 2004).

\textsuperscript{155} P.B Gajendragadkar, \textit{Secularism and the Constitution Of India} 52 (University of Bombay 1971)).

\textsuperscript{156} Article 14 and 15 of the constitution

\textsuperscript{157} Article 25-30 of the Constitution
Constitution's fundamental rights of individuals with the pre-constitutional personal laws that do discriminate (particularly against women). In fact in the case of *Bombay v. Narasu Appa Mali*, the Supreme Court in its judgment held that personal laws of Hindu code and the Muslim personal laws does not fall in the purview of Part III of the Constitution, thus giving personal law primacy over the fundamental rights.

As earlier discussed the Muslim women's formal rights in the area of family law clearly have not kept pace with those of women in other Indian communities or other nations. And they are still governed by an outdated code, which has not been reformed in last ninety years.

The argument is not whether the Muslim personal law discriminate women, but that there cannot be simple solution and what is required is more nuanced approach. The question to be asked is can the position of Muslim women be ameliorated in the current legal system or there is a requirement of elimination of Muslim personal law in order to ensure equality?

For long there have been voices from different groups of the society – right wing, liberal’s feminists, and traditionalist. For the right wing the most appropriate solution is the replacement of entire code with UCC as they challenges the unnecessary privilege given to the minorities, they have no interest as far the gender disparity is concern, but apart from them they are also some liberal feminist who believes that as religion in itself a male privilege, it is better to have UCC or atleast a opt-in code. the major problem faced by secular liberal feminist is the way the hindu right wing has supported UCC in order to secure the Hindu hegemony. This unavoidable alliance put them in a very uneasy position where in order to distance themselves from the

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158 A.I.R. 1952 S.C. 84
159 *Supra* note 148
right majoritarian either they need to support the rights of the minority which comes in conflict with their feminist principles or in favour of reform that are in essence half measures, as it is established that communities in general are primary sites for women subordination. The basic problem which generally plagues the secular feminist solution of the UCC is that firstly they to a large extent assume that states are capable of producing a neutral code that is fair and just across all religions and can also be accordingly administered. For this it is required that state should be robustly secular and neutral and have the trust of minority communities. With respect to Indian Muslims who have faced discrimination for decades accepting this and forgoing their own is not a feasible solution. And, secondly these position assumes and believe that there is a political will to enact and enforce gender equitable laws, which is as far removed from the truth. The classic example is the enactment of MWD act of 1986, which main aim was to nullify the Mohammad Ahmed Khan v Shah bano judgement. And the last is the belief that formal equality can improve the position of women. The problem with this belief is that when there is neither social equality nor political equality, this formal equality might prove disadvantageous to women. It has to be taken in to account that practices vary regionally and by class. We have to take into account the realities of Indian women and how this will affect their lives.

Apart from this there is two major problems with this opt in code, firstly this opt-in code preserves the public/private dichotomy where the Muslim women will abandon the Muslim law completely. Furthermore by this the state will allow Muslim

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161 MacKinnon correctly notes that constitutionally, India has a guarantee of both formal and substantive sex equality. However, the issue has never been one of constitutional inadequacy but rather of jurisprudence. Indian courts, as she also acknowledges, have been reluctant to enforce the constitutional guarantees in the area of family law. Yet, in addition to the unwillingness to rule in favour of sex equality, there has been a strain of anti-Muslim sentiment in personal law jurisprudence, not to mention a tendency to formulate secularism, that favours the majority religion
162 AIR 1986 SCC 4561
traditionalist to retain their hegemony and to give more credence that the religious law are unchangeable, thus failing to challenge the patriarchal norms throughout the society and a hope of equitable gender relations impossible. Another major problem with this code is that it presents the Muslim women with a choice to exit from the patriarchal religious law. But to opt for this secular law she need to convince her family, spouse and his family that it is beneficial for both of them to opt for secular law, which is an easier said done scenario. It will be very rare that a woman opts for secular law and jeopardize her religious and familial affiliations.163

It’s abundantly clear that the misapplication of Muslim personal law with the added patriarchal structure has put Muslim women at a great disadvantage. Thus as Vrinda Narain164 aptly sums it “This convergence of personal laws, religious identity and the conceptualization of women as markers of the cultural community has profound implications for the status of Muslim women in India.”

This entanglement of religious identity with the personal law and has led to a standstill in any reform within the law as well as from the outside. Seventy five years after the independence Muslim Personal law remains the only uncodified personal law. Most of the Indian muslim law scholars like Tahir mahmood,165 Salim akhtar166 argues that the problem does not lies in the Islamic law but with its misapplication, and second very important that MPL is immutable as it is derived from the Quran and there cannot be any change in the Quranic law. Both these argument are illogical and to an extent runs away from the true problem. Though it is true that the Islamic law which is applied in India is at fault, the provisions of Meht are not used properly or

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165 Supra note 22 and 28
166 Supra note 26.
customs prevails over the actual law, but it even if strict application as they perceive of Islamic law is done, in those circumstances also the equity and fairness is not possible, as the interpretation and construction by the patriarchal society still leaves a lot undone.\footnote{This belief of gender division of the roles, men as breadwinner and women as nurturer and caretaker.}

Till the point it is believed that the Muslim Personal Law is immutable, the road to reform is far away. As Feminist scholar Ziba Mir-Hosseini\footnote{Ziba Mir-Hosseini “Gender Relevant Legislative Change in Muslim and non-Muslim Countries: How the Door of Ijtihad Was Opened and Closed: A Comparative Analysis of Recent Family Law Reforms in Iran and Morocco” 64 Wash & Lee L. Rev. 1499 (2007)} aptly puts it, “Gender equality is a modern ideal, which has only recently, with the expansion of human rights and feminist discourses, become inherent to the generally accepted conceptions of justice.” she continues, “Contemporary notions of justice informed by the ideals of human rights, equality and personal freedom depart substantially from those that underpin rulings in classical fiqh (Islamic jurisprudence) and established understandings of the Shari’a. This disjunction is a central problem that permeates debates and struggles for an egalitarian family law in Muslim countries.” \footnote{Ibid}

Thus the argument of MPL being immutable does not hold water in the wake of above discussion\footnote{Interpretation of Quran as done by authors like Mahmoud Shahrou etc. As An-Naim has argued, Islamic texts can bear several different interpretations. A progressive hermeneutics would create the space for women to press for their rights under Islamic laws as an alternative to the unpredictable secularism of the state. Dr. Amina Wadud in her book \textit{Quran And Women : Rereading The Scared Text From A Women Perspective} in 1999 gave a gender inclusive reading of the Quranic principles.} and furthermore the colonial intervention as discussed has further diluted the Islamic law understood and applied in India. The personal law of Indian Muslims is in no sense a monolithic legal system. It is, in fact, an admixture of diverse traditional principles and divergent legislative provisions.\footnote{Supra note 28}
When we look at inheritance laws in Indian context this theoretical half is also denied. The Indian women are not just economically backward but also socially and educationally backward. Whereas the even those who are aware are not willing to ask are shot down by different mechanism. Certain observations in this regard

1. In most of the cases women are completely deprived of their inheritance property.  \(^{172}\)

2. In the name of culture, and not to create rift in the family also the social conditioning is such that most of women feels it is better not to ask her share and leave her inheritance to her brothers.  \(^{173}\) Those who ask for inheritance property from their brothers are considered odd in the culture and are made to suffer mentally and emotionally.

3. Most women are uncomfortable in going to courts and to take legal action against their families. They prefer to surrender than asserting their rights.  \(^{174}\)

The situation prevalent in India is much different from the Muslim dominated countries. The Indian constitution is based on the ethos of equality, justice and fairness to all.  \(^{175}\) We are a signatory to The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) though with reservations. It gives

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\(^{172}\) Zoya Hasan and Ritu Menon, Unequal Citizens : A Study of Muslim Women in India,(Oxford University Press, New Delhi 2006), Urusa Mohsin Women Property Rights In India with Latest Cases And Amendment (2010 Kalpaz Publication), Nitya Rao Good Women Do Not Inherit Land: Politics Of Land And Gender In India (Orient Blackswan New Delhi, 2008)

\(^{173}\) My own research in this regard mentioned in chapter I. \textit{Ibid.}

\(^{174}\) Chapter I of the thesis

\(^{175}\) Preamble to the Indian constitution We, The People Of India, Having Solemnly Resolved To Constitute India Into A 1 [Sovereign Socialist Secular Democratic Republic] And To Secure To All Its Citizens: Justice, Social, Economic And Political; Liberty Of Thought, Expression, Belief, Faith And Worship; Equality Of Status And Of Opportunity; And To Promote Among Them All Fraternity assuring The Dignity Of The Individual And The 2 [Unity And Integrity Of The Nation]; In Our Constituent assembly This Twenty-Sixth Day Of November, 1949, Do Here by adopt, Enact and Give To Ourselves This Constitution:.
a broad definition of Discrimination\textsuperscript{176} whether committed by state parties or non-state actors. India as party to the Convention have an affirmative legal obligation to ensure that women have both de jure (in law) and de facto (in fact) equality with men. Even if the traditional Muslim inheritance rules provided for equal inheritance rights between men and women, States parties to the Convention are also responsible for ensuring that women are able to enjoy these rights – that they actually receive the property they’ve inherited, that they are not compelled to give up their rights by other members of their families, etc.\textsuperscript{177}

The treaty body that oversees compliance with CEDAW, the Committee for the Elimination of Discrimination against Women, stated in paragraph 28 of General Recommendation No. 21 (13th session, 1994):

“In most countries, a significant proportion of the women are single or divorced and many have the sole responsibility to support a family. Any discrimination in the division of property that rests on the premise that the man alone is responsible for the support of the women and children of his family and that he can and will honourably discharge this responsibility is clearly unrealistic. Consequently, any law or custom that grants men a right to a greater share of property at the end of a marriage or de facto relationship, or on the death of a relative, is discriminatory and will have a serious impact on a woman's practical ability to divorce her husband, to support herself or her family and to live in dignity as an independent person.”\textsuperscript{178}

This directly addresses the standard defence of traditional inheritance rules that men are required to support women, so therefore men must receive greater shares of

\textsuperscript{176} Article I CEDAW 1981 “For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”

\textsuperscript{177} Supra note 75

\textsuperscript{178} Supra note 64
inheritance. The Committee continued in paragraphs 34 and 35:

“Reports of States parties should include comment on the legal or customary provisions relating to inheritance laws as they affect the status of women as provided in the Convention and in Economic and Social Council resolution 884 D (XXXIV), in which the Council recommended that States ensure that men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession. That provision has not been generally implemented.”179

A number of other international human rights instruments apply to the issue of inheritance. For instance the Human Rights Committee, the Committee that monitors compliance of the International Covenants on Civil and Political Rights (ICCPR), stated, “Women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses”180. The Committee on Economic, Social and Cultural Rights echoes this statement: “Implementing article 3, in relation to article 10, requires States parties … to ensure that women have equal rights to marital property and inheritance upon their husband’s death” 181(2005, para. 27). In the Beijing Platform for Action, governments also agreed to mobilise in order to “protect women’s rights to full and equal access to economic resources, including the right of inheritance and the right to land ownership”.182

Thus both in accordance to Islamic standard as well as obligation imposed by the International Covenants there is an incumbent duty upon the state to bring legislative reform within the Muslim Personal law as well as legislative reform to overall

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179 CEDAW, the Committee for the Elimination of Discrimination against Women, General Recommendation No. 21 (13th session, 1994):
180 Human Rights Committee Report General Comment Number 28 ICCPR (2000)
181 Human Rights Committee Report General Comment Number 16 ICESR (2005)
182 Supra note 75
ameliorate the conditions of Indian Muslim women.

**Role of Judiciary**

The judiciary though have tried to play an important role in the emancipation of women and have given plethora of progressive judgement, in the field of Muslim law after the independence the decisions are few and far in between. Inheritance is one such field where the judiciary has followed the pre-independence position and has restrained as well as hesitated in providing their own construction and interpretation. The courts are confused with regard to the position of women in property right regime and thus sometimes allowed anti-customary customs to prevail and other times declined completely.  

The courts while deciding the case on the question of whether in Muslim Law there is concept of joint family, held that Joint Family as well as coparcenary are Hindu Law concept which has no place in the Islamic Family law system. And thus females can inherit.  

With regard to exclusion of women from the inheritance, different High Courts have given different decisions. For instance *Hooriya v Munna*  

and *Imam v. Amir* no customs were allowed to prevail which excludes women whereas in the case of *Bai Aisha v. Biban* and *Aziz Daq v. Mst Fazli* the customs were allowed to prevail. But the Supreme Court made a very interesting observation in the case of *Noor Bano* 

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183 Tahir mahmood “ Muslim Women in India: 4(1) Religion and law Review (1971(  
185 *AIR (1956)MB 56  
186 *AIR (1955) Mad 621  
187 *AIR (1956) BLR 47  
188 *AIR (1960) J&K*
v. Deputy Custom General E.P.\textsuperscript{189} it while relying on the Mulla’s text the Court while considering the succession of females in khoja community held that

“Effect of Shariat act is to abolish (except the agricultural land and other matters to which act does not apply) the customary law of succession of khojas”

Another interesting judgement was where the daughter was not allowed to leave her share before the succession opens and it was not treated as family arrangement\textsuperscript{190} furthermore Jammu and Kashmir High Court\textsuperscript{191} admitted the Islamic Law and awarded 1/3 share to daughter in opposition of customary law of inheritance. Jammu & Kashmir High Court has admitted the Islamic law and awarded 1/3 share to daughter. Before this case also though in the case of Mumtaz Begum v S. Amanatullah Khan\textsuperscript{192} though the daughters were given right in property of the father but the reason was non-proving of the custom and not contradiction with the Islamic law. But in the case Zulekha Bibi v Mst. Sabna Bibi\textsuperscript{193} it was held that in the absence of son, the daughter is entitled to share the property to the extent of half. This decision is to an extent in consonance with Islamic law. But this also shows how the women is denied their rightful claim in the property. In Jamil Ahmad v Vlth ADJ Moradabad,\textsuperscript{194} the court held that the provisions of the U.P. Zamindari Abolition and Land Reform Act, 1950, override the rules of the succession of Muslim law. Section 171 of U.P.Z.A.& L.R. Act of, 1950 is quite discriminatory which gives strong preference for male agnates and always got judicial support.

\textsuperscript{189} AIR (1966) SC1937
\textsuperscript{190} Abdul Kafoor v. Abdul Razaq AIR (1959) Mad. 131
\textsuperscript{191} AIR(1984)J&K27.
\textsuperscript{192} AIR(1973)J&K.28
\textsuperscript{193} (1987) 13 All LR 38 (All)
\textsuperscript{194} (2001) 8 sec 599.
In the case of *Ashabibi v Faziyabi*\(^{195}\) the question before the court was whether the widow of a predeceased son can inherit property left by mother-in-law. The facts of the case were that one Muslim lady died leaving behind his predeceased son’s widows and their children. The widows claimed share in the property of the lady on the basis on will which was made by the deceased and secondly on the ground that these properties were acquired with the help of the predeceased son. The court rejected both the contentions first on the ground of fraudulent will and other that in the Islamic law of inheritance there is neither birthright nor doctrine of representations. Thus the widows were not entitled to any inheritance. This appears to be a very harsh decision.

**Reforms in Muslim Countries**

A number of Muslim countries have also reformed various aspects of their inheritance laws to better serve the needs of modern society. The following are a few brief examples of how countries have addressed some of the unjust aspects of traditional inheritance rules.

**Indonesia**

Indonesia in the last 25 years has standardising and reforming its Muslim family and inheritance. In the late 1980s and early 1990s, the laws were compiled into a document entitled *Kompilasi*. The Indonesian Supreme Court in 1994 in *H. Nur Said bin Amaq Mu’minah*, considered the inheritance rights of a daughter in competition with collateral relations, the Court said that either a male or female child of the decedent could exclude collaterals. the Court stated simply that "so long as the deceased is survived by children, either male or female, the rights of inheritance of the deceased's blood relations, except for parents and spouse, are foreclosed". The only reasoning or authority cited in support of this interpretation was a brief reference to the views of

\(^{195}\) AIR (2004) Jant 467
Ibnu Abbas, one of the companions of the Prophet, who construed the word walad in Koran 4: 176 as embracing both male and female childr

**Somalia**

The inheritance rules in the state of Somalia have become gender neutral. Both male and female have equal rights in the property. When there is a childless widower or widow, they inherit 1/2 of the estate. If they co-exist with children (including grandchildren) they inherit ¼ of the estate. If the deceased is survived by only parents, only siblings or only child, all of them shall inherit the entire of the estate irrespective of the gender. Furthermore in case where there is no heir apart from the surviving spouse, he or she will get the whole property in preference to rule of escheat.

**Tunisia**

In Tunisian inheritance laws, now the daughters under the Sunni school if exist with other class I heirs and the estate is not exhausted, the daughter is entitled to get the residue. If there is only daughter she is entitled to get the entire estate. Same rules apply to son as well as grandson daughters. There is also a provision for obligatory bequest in favour of grandchildren whose parents are deceased; the share of those grandchildren shall be equivalent to the share of deceased parents. The share in these

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196 Supra note 28
197 Supra note 28. This rule is also there in the states of Algeria, Egypt, Jordan, Kuwait, Sudan and Syria.
198 In Iraq too similar enactments with regard to share of daughter is there Supra note 28.
199 Section 143-A of Code of personal status 1956 cl (1) states: if there is no agnatic heir and Quranic heirs do not exhaust the estate the residue will revert to the Quranic heirs in proportion to the shares. Supra Note 85
200 Section 143-A of Code of personal status 1956 cl (2) states: where there is a daughter or daughters or son daughters how low so ever, the residue of the estate shall revert to her or them even in presence of brothers and uncles among the estate and in preference to the state rights to escheat Supra Note 85
201 Reg. No. 86 K/AG/1994 cited in supra note 95
cases shall not exceed 1/3 of the whole estate for each person.\textsuperscript{202} Also these grandchildren will not be entitled to such bequest if the grandparents have already made a gift inter vivo or bequest in favour of these grandchildren and the amount is equivalent to the obligatory bequest. Though this obligatory bequest shall not be executes except in favour of the first generation of grandchildren and shall be divided on the basis on 2:1 ration where male shall get the double of female.\textsuperscript{203}

**Pakistan /Bangladesh**

In Pakistan too according to section 4\textsuperscript{204} of the Muslim Family Laws Ordinance 1961 if a person is survived by the children of pre-deceased children, they shall be entitle to get a share which there parents would have gotten if alive.

The concept of obligatory bequest is followed in different forms by a lot of Islamic as well as non Islamic countries like- Algeria, Jordan, Morocco, Syria, Egypt, Kuwait, Iraq, UAE, Philippines as well as Sri lanka.\textsuperscript{205}

Thus we can observe that a lot of Islamic Nation where shariah is a rule of law has made certain reforms in the traditional rule of inheritance. However, these progress in reform in the inheritance area remains very slow and confined to only a very few countries. Addressing this issue of inheritance is still considered taboo and presents a

\begin{footnotesize}
\begin{enumerate}
\item Section 191(1) of Code of personal status 1956 which state: if a person dies leaving grandchildren, male or female, whose link-parent died before him or with him, a bequest shall be binding on such person in favour of such grandchildren of an amount equivalent to the share which the link parent concerned would have received had he or she died right after such person deaths’, provided such bequest shall not exceed one-third of the whole estse. \textit{Supra Note 85}
\item Section 192 Code of personal status 1956 which state: Obligatory bequests shall not be effected except in favour of the first generation of grandchildren, male or female, and shall be divided between them, the male taking double the share of a female\textsuperscript{206}
\item \textsuperscript{204} “ in the event of the death of son and daughter of the propositus before the opening of the succession, the children of such son or daughter, if any living at the time the succession opens, shall per stripes receive a share equivalent to the shre which such son or daughter, as the case may be, would have received if alive. \textit{Supra Note 85}
\end{enumerate}
\end{footnotesize}
formidable challenge in many Muslim countries due to continuation of the Sharia Law and in the face of fierce opposition from the conservative Muslim clerics. Yet, change is possible and change is taking place in some countries toward gender non-discrimination, especially since many Muslim countries are signatories to the United Nations agreements and since the state constitutions of many of these countries have provisions that envisage gender-neutral treatment in all matters.\textsuperscript{206}

It is very clear from our discussion above that the traditional principles of inheritance followed can be modified as Shariat has the ability to be amended within the purview of the Quranic principles. Ibn Qayyim al-Jawziyya (1292-1350), a thirteenth century jurist and a great reformer of his time was much ahead of his time when he said, “Any rule that departs from justice to injustice, from kindness to harshness, from the common good to harm, or from rationality to absurdity cannot be part of [true] Shari’a.” \textsuperscript{207}

In India the problem has been the courts as well as legislature have never tried to bring laws in consonance with Islamic principles. The policy of non-interference in the personal law has cost dearly to the Muslim women Islam as it is understood and interperated today, violate rights and dignity of Muslim women. Without understanding the true dictates of Islamic principles and blindly following the un-Islamic fatwa’s\textsuperscript{208} Muslim ulemas has severely deteriorated the autonomy and life of Muslim women. There is no platform in the current discourse for her to speak her mind or assert her rights. Religion is used as a shield to counter the voices of equality, liberty and speech. Therefore in order to counter the forces of culture and religion it

\textsuperscript{206} Supra note 24
\textsuperscript{208} The Fatwa given in the Imrana Rape case in 2005, or different fatwas coming from different clerics from the attire to be worn to talking on phones to working and supporting family. See Shazia Sheikh \textit{The Critical Analysis of Fatwas Issued on Muslim Women in India}, (Centre for the Study of Society and Secularism (CSSS), 2015). Also see Sabiha Hussain Shariat Courts And Women’s Rights In India Centre For Women’s Development Studies, (New Delhi, March 2006)
has become imperative to understand true Islamic law and its principles in order to start discourse to bring about amendments and change the perspective of understood Muslim law.

As An-Na'im argues that “for human rights to have any legitimacy in the Islamic world they must be located within the framework of Islam, it is suggested that it is possible to reinterpret the Shariat so as to be consistent with protection of women's rights and with notions of universal human rights. The logical extension of this argument when applied to Muslim women in India, would be a call for the reform of Muslim personal laws by reading in human rights guarantees”\(^{209}\)

It is to be understood that the problems are immense both from the society as well as creating a political will but there have to be a start somewhere and due to apprehension of difficulties dignity cannot be denied to women