

Short View to the women's Inheritance in the View of Islamic Sharia

Assistant Professor. Hisamudin Rahimzai

Shaikh Zayed University, Khost Afghanistan Faculty of Sharia (Islamic Law) Department of Jurisprudence.

Abstract: There is also violence against the women's economically System, which Trouble them in our society. Economical violence is also one of the violence that bothers women in our society. There are many types of economical violence. One of the major type is not giving women their rights although LEGAL AND INHERITAGE SYSTEM OF ISLAM deserve them for inheritance. Verses (11-12) and (176), Surah Al-Nesaa of Holy Quran mentioned wife, daughter, sister and mother eligible for inheritance and says that they deserve inheritance in particular conditions. On the other hand, in our Community people ignore the rights of Women inheritance or do not completely give them the rights of inheritance, and that is completely opposite with the clear text of holy Qur'an.

Keywords: Definition, reason, circumstances, pillars Chosen parts of woman's inheritance

Date of Submission: 03-08-2019

Date of Acceptance: 19-08-2019

I. INTRODUCTION

Violence against women is not only beating and abusing them but they suffer different kinds of violence in our society. Whether it is physical, verbal, sexual, economical or so on, which influence the individual, social, sanitary and economical life of women. Economical violence is one of the considerable violence against women which deprives women from economical freedom and rights.

Economical violence is also one of the considerable violence which deprives female from economical rights and independence. Economical violence against women prevents them from the right of inheritance, alimony, education, working, teaching, business or similar other economical issues, but we only discuss about the inheritance right of women in our society in this article.

Objective

Readers will be able to:

- 1- Know violence against women.
- 2- Readers will fully understand Definition, reasons, circumstances, pillars & obstacles of woman's inheritance.
- 3- The readers will be able to understand women-related situations, Chosen parts in the legacy of inheritance.
- 4- Readers will know wisdom and philosophy in two separate parts of men against women.

Research Methodology

While the research is a library, then the completion of this study will be benefited from the following terms and interests of human ability:

- A - First use of original Reference during the study.
- B- Comparison of Afghan enforcement law in completing the Research.
- C- During the Research, references are used according to the (Green Book) system, which is Useable in legal writing.

1. Definition of Inheritance

Heritage is of the principle of knowledge & account that both of them are present and are known as the legacy of every person's inheritance.¹

Or in other words: inheritance right is a civil rights department, which is the collection of rules and regulations of the law, which regulates the legacy of inheritance after the death of Legator.²

2. Reasons for Inheritance

There are three reasons for inheritance without any opposing ideas, which include:

⁽¹⁾ Sirajuddin Mohammad bin Abdul rashid Al- sjawandi (2009). Al- Sirajee fil Miras, Ed (2nd) peshawer, Al Bushea Book store, page 4.

⁽²⁾ Hisamudin Rahimzai (1395 s) Inheritance law. (3rd). khost: Rahimi Bookstore, page 12.

1- The first reason for inheritance is a real relative, which involves True genealogy, Children, parents, Sisters, brothers & uncles.

Wifehood: The second reason for the legacy of inheritance is wifehood, if there is a valid marriage between them.

3- Causal relationship: the third cause inheritance is Causal relationship (slavery Inheritance) that emancipator give the legacy to the slavery.³

The reasons for inheritance in the Civil Law (2001) article of Afghanistan are: Wifehood & real relative are highlighted, and there is no mention of Causal relationship (slavery Inheritance).⁴

3. Pillars of Inheritance

The inheritance pillars are three:

1- legator: someone who leaves goods, property or wealth.

2- Inheritor: a person who has been given something by someone who is dead by existence of the reasons for inheritance.

3- Legacy: money or property that are Left from someone after they die. If it is wealth or immovable property.⁵

4. Terms and conditions of Inheritance

The jurisprudence scholars has described three types of conditions for women's inheritance rights in the legacy.

1- Death of legator: Women are eligible for inheritance in case their legators death is real, verdict or hypothetical.

2- Life of Inheritor: Woman is eligible for inheritance in case her life is proved real or hypothetical during death of legator.

3- Non-existence of Inheritance obstacles.

5. Obstacles of Inheritance

Islamic scholars have describes three obstacles without any discrepancy between legator and heir:

1- Slave.

2- Killing of legator.

3- Difference in religion between legator and Inheritor.⁶

6. Rights related to women in heritage

In addition to political, family, training, work, teaching, property and other financial and non-financial rights, women are fully given rights in inheritance as well.

Islamic & legacy law has shown their rights in inheritance.

Almighty Allah^(g) says regarding this issue:

(لِلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا)

Men receive a share of what their parents and relatives leave, and women receive a share of what their parents and relatives leave; whether it is little or much— these shares have been selected by Holly Allah (g).⁸

In this verse, Allah has generally showed that male and female, both receive specific shares of whatever is left from dead, whether it is less or much; and Allah (g) has explained these related shares in detail for each Inheritor in Surah Al-Nessa verses # (11-12) and (176).

Looking at conditions, pillars and causes to inheritance whereas obstacles are not existing there, women are called eligible for inheritance in considering specific conditions, although males are called eligible for double share in some conditions which is not violence against female, because there are logical reasons regarding this issue in Islamic Law.

6. 1. Women conditions in heritage

We also mentioned earlier that whenever women are not given rights in heritage, it is considered to be economical violence against women whereas no violence against women is present in Islam. Because it is clearly explained in Surah Al-Nessa, verses # (11-12) that female can get right of heritage as wife, daughter, sister, mother and grandmother and related conditions are considered as bellow.

6. 1.1. Wives Inheritance:

Wives even one or four, do not have more than one-fourth or one-eighth share of whatever is left from their husband.

⁽³⁾ wahbat-ul-Zohaili(____). Alfiqha-ul-Islami waadllatho, vol 7, Soria, Darulfikar, pages 249

⁽⁴⁾. Afghanistan Republic of Afghnistan Civil law (2009). Issue 353, 2001 Article.

⁽⁵⁾ Ali bin Mohammad Al zobaidi (____). Al-jowharat-ul- Naira, Vol(2), Peshawer,hqania book store, page 655.

⁽⁶⁾ Sirajuddin Mohammad bin Abdul rashid Al- sjawandi (2009). Al- Sirajeefil Miras, Ed(2nd) · peshawer, Al Bushea Book store, page 4.

⁽⁷⁾ Quraan{ Al-Nisa, Verse 7 }.

⁽⁸⁾ Sultan Aziz (2012). Aziz- ul- afaseer, Vol(3), Peshawer, Darul- knoze Book store, page 78.

One-fourth part of legacy: One-fourth is given to wife whenever no children are left from husband.

One-eighth part of legacy: one-eighth is given to wife whenever children are left from husband...⁹

6. 1. 2. Full-blood daughters' Inheritance

Daughters have three conditions for inheritance

A - Half of Legacy: Whenever daughter is single with no other sister or brother, she is given half of legacy.

B. Two-thirds: Two-third is given to daughters when she has another sister but no any brother.

G-Blood relationship: Daughters get inheritance based on blood relationship, when there is a dead son with them, who is her brother. In blood relationship case, son has two-third share against daughters. (This is the rule of legacy system).

6. 1. 3. Granddaughters (Son's daughters) Inheritance

Granddaughters have five (5) conditions for inheritance, the first three conditions are similar to the condition of daughters in case full-blood daughters and sons are not present.

d- Sixth part: The Sixth part of legacy is given to granddaughter if the dead has one daughter but if the daughter & Granddaughter doesn't have any full blood-brother.

E- Prevention of inheritance: If there are legator's sons and two or more daughters, so inheritance is not available to the granddaughters.¹⁰

6. 1. 4. Condition of full-blood sisters Inheritance

A - Half of Legacy: Half of legacy is given if the sister is single, with no brother, no legator's sons & father.

B- Two-thirds of Legacy: Two-thirds is given when the sister has one another, but no brother, no legator's sons & father.

C- Blood relationship: The full-blood sisters get the inheritance based on blood relationship, when there is a dead brother with them, who is her brother. In blood relationship case, brother has two-third part against sister. (This is the rule of legacy system)

D- Blood relationship with others: The full sisters get the inheritance based on blood relationship with others, when there is a daughter/s with them, in case, if there is no full-blood brother, male children and father. In this case daughter has half of legacy and sister get left over from daughter. (This is the rule of legacy system)

F- Prevention of inheritance: If there are legator's sons & father, so inheritance is not available to the full sisters.

6. 1. 5. Paternal sisters Inheritance

Paternal sisters have six (6) conditions for inheritance, the first four conditions are like the full-blood sisters, in case they are not present.

E- Sixth part: The Sixth part of legacy is given if the death has one full sister with paternal sisters, but the full-blood sister & paternal sisters do not have any full blood-brother, father and sons.

F- Prevention of inheritance: If sons or father of dead are present, inheritance is not available to the full sisters.

6. 1. 6. Maternal sisters Inheritance

Maternal sisters have three (3) conditions for inheritance:

A- Sixth part: Whenever maternal sister is single with no other maternal sister, maternal brother, also do not have any dead's daughter, sons and fathers.

B- Third of maternal sister's Legacy: Third is given to maternal sister when she has another sister or brother; but the dead person doesn't have any children, father and grandfathers.

C- Prevention of inheritance: If sons, daughter, father or grandfather of dead are present, inheritance is not available to the full sisters.¹¹

6. 1. 7. Mother's Inheritance

Mother has three conditions for inheritance

A- Sixth of mother's Legacy: The sixth is given if the dead has children and more than one sister.

B- Third of mother's Legacy: Third is given if the dead person doesn't have any children and sisters.

G- Third of legacy: A mother is given third part after legacy is taken by the spouse in case the dead person doesn't have any children and sisters.¹²

⁹Sirajuddin Mohammad bin Abdul rashid Al- sjawandi (2009). Al- SirajeefilMiras, Ed(2nd) , peshawer, Al Bushea Book store, page, page 18.

¹⁰Sirajuddin Mohammad bin Abdul rashid Al- sjawandi (2009). Al- SirajeefilMiras, Ed (2nd) , peshawer, Al Bushea Book store, page 24.

(¹¹)Mh, bin salih bin Mh. Al- osaimin (2007). Tashilul- Fraiez, Vol (1), Birut, Dar abk al jowzi, page 55.

6. 1. 8. Grandmother's Inheritance

Real grandmother (Maternal or paternal) has two conditions for the legacy of the dead:

A- Sixth part: The Sixth part of legacy is given to grandmother if the death person doesn't have mother.

B- Prevention of inheritance: Grandmother cannot take any part in legacy in following condition.

Maternal and paternal grandmothers cannot take part in legacy of dead's mother and paternal

Grandmother cannot take part in legacy of dead's father.¹³

7. Philosophy of double shares of male against female in legacy system

According to the following reasons, in some cases male has double share or somewhat increase in shares against female in legacy system.

A- Men has a load of dower in marriage which is given to wife during marriage, therefore male has double right in share of legacy against female. If we pay full attention, when husband gives alimony to wives, it becomes much more than husband's legacy.

B -In Islamic Law men are obliged to prepare alimony, clothes, dress, residence and such other necessities of life for his children and wives whereas wives do not have the responsibility of such things. This is also one of the reasons that male should get double share of legacy as compare to females.

In Islamic Law the philosophy of difference in legacy between male and female is not only due to gender, but it is due to financial load which is over male in most conditions. In such case that he has the responsibility of family expenses, double share in legacy is also no sufficient for male, therefore, if we add up all these expenses to female, the share of female might get increase as compare to male.

If we carefully study the Islamic legacy system, it can be clear that sometimes female gender gets more than male, sometimes men and women are equal in particular situations and sometimes it is also possible that female takes share in legacy system and men are debarred at all.¹⁴

II. RESULTS

At the end of the research, we come to the following Results:

Without any doubt, any kind of violence against women is prohibited in Islam, whether it is physical, psychological, verbal and sexual oreconomical.

2- In addition to political, family, educational, religion, property and other financial and non-financial rights, female also has a complete share in the legacy right, but in a different ways.

3- In Quran, Surah Al-Nessa verses # (11-12) and (176) it is clearly indicated that females have a complete right in the legacy system as wives, daughters, sisters and mothers. Not giving them rights, is unawareness of people.

Difference in gender is not the only philosophy or standard which shows difference in legacy system between male and female, but it is due to financial load that is the dower during marriage which is over male and similarly alimony is one of the other responsibility which is over male in Islamic Law.

III. DISCUSSION

In this research causes, conditions, reasons, pillars, circumstances and logics have been presented for female legacy rights. Also reasons for illegality of any violence against female have been presented. In addition, logics for difference in shares between male and female are also indicated in this research. In spite of above conditions, females are still facing different kinds of violence in Afghan society which is mostly economical violence.

During the discussion, the mentioned problems in this research are taken into consideration:

1- In this study, it became clear that during the era of ignorance (Pagan state of the Arabs before Islam) only powerful men were entitled to get inheritance. Women and children had no shares in inheritance, therefore some widows complained to Prophet Mohammad (All Prayers and Blessings of Allah be upon him) and the following verse of Holy Quran got revealed:

(لِّلرِّجَالِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ وَلِلنِّسَاءِ نَصِيبٌ مِّمَّا تَرَكَ الْوَالِدَانُ وَالْأَقْرَبُونَ مِمَّا قَلَّ مِنْهُ أَوْ كَثُرَ نَصِيبًا مَّفْرُوضًا)

Men receive a share of what their parents and relatives leave, and women receive a share of what their parents and relatives leave; it can be little or much—a legal share

2- Presence of extensive corruption in legal and judicial organizations has led to the fact that women can not refer to the mentioned organizations regarding their inheritance rights, if they refer to these organizations, they will be taken bribe

⁽¹²⁾ Osman bin Ali Fakhrudin Al zoaili (1992). *Tabieen-ul- Hqaieq*, Vol(6), Birut , Darul- Marif Book store, page 230.

⁽¹³⁾ Mohammad bin Salihosaimin (1985). *TashilulFraiez*, Ed (3rd) Peshawer, Rashidia Book store, page 35.

⁽¹⁴⁾ Ali Ahmad Al- jorjawee (2009). *Hikmat-ul- Tashree*, vol (2) Ed (2nd) Peshawer, Rashidia Book store, page 265.

¹⁵ {Al- Nissa, 7 verse}.

from, much more than their inheritance. These illegal acts prohibit women from inheritance which have trampled their rights.

3- According to research, it is clear that west and western states still believe that giving extra share to male rather than to female is against human rights. They believe that male and female should have equal rights whereas they don't consider that male has much more responsibility than female. Such beliefs have arisen and found distrust between male and female in society.

4- During research, it became clear that Islamic Law has protected female rights which are based on justice and equity. Obligations and are also considered in women related rights. It is possible to end up distrusts and bring solutions to the above problems based on the following reasons.

6- Giving dowers, preparing alimony, clothing and residence to wives and children which are on male, cause to clarify the brains of ignorant people.

IV. CONCLUSION

We come into conclusion that the Holy religion of Islam strongly prevents women from any kind of violence and always insists on applying rules of inheritance system whether it is regarding male, female, children or adults. Also there are definite and proper reasons in the Holy Quran which recommends inheritance for the eligible people.

Now this, that why we are suffering from these illegal customs in this community? Why can't we promote the Islamic civilization? The reason is that we haven't applied and accepted all the rules and orders of Islamic Law over our selves. If we accept all orders and rules of Islamic Law, one hand, we will have a developed and sound society; on the other hand, we will prevent and end up negative thoughts.

V. RECOMMENDATIONS/ OFFERS

- 1-Public awareness in schools, universities, and public areas is essential for prevention of violence against women.
2. Educational research over inheritance of women in society.
3. Holding academic seminars and workshops for recognitions of the orders and rules of Islamic legacy system in order to stimulate and wake the emotions of youths in society.
- 4- The ministry of information and culture is obliged to broadcasting the definition of Islamic legacy system especially for women's inheritance in the society.
- 5- It is kindly requested from the Ministry of Hajj and religious affairs to submit duties in mosques to the Friday prayer orators in order to describe the provisions of women's inheritance in the society.

REFERENCES

- [1]. Holy Quran.
- [2]. Afghanistan Republic of Afghanistan Civil law (2009). Issue 353, Kabul, Ahmad Printing.
- [3]. Ali Ahmad Al- jorjawee (2009). Hikmat-ul- Tashree, vol (2) Ed (2nd) Peshawer, Rashidia Book store.
- [4]. Ali bin Mohammad Al- zobaidi (____). Al-jowharat-ul- Naira, Vol(2), Peshawer, hqania book stoor.
- [5]. Mohammad bin Salihosaimin (1985). TashilulFraieez, Ed (3rd) Peshawer, Rashidia Book store.
- [6]. Mh, bin salih bin Mh. Al- osaimin (2007). Tashilul- Fraieez, Vol (1), Birut, Dar abk al jowzi.
- [7]. Osman bin Ali Fakhruddin Al zoaili (1992). Tabieen-ul- Hqaeq, Vol (6), Birut, Darul- Marif Book store.
- [8]. HisamudinRahimzai (2016). Inheritance law. (3rd). khost: Rahimi Bookstore.
- [9]. Sirajuddin Mohammad bin Abdul rashid Al- sjawandi (2009). Al- SirajeefilMiras, Ed (2nd), peshawer, Al Bushea Book store.
- [10]. Sultan Aziz (2012). Aziz- ul- afaseer, Vol (3), Peshawer, Darul- knoze Book store.
- [11]. wahbat-ul-Zohaili(____). Alfiqha-ul-Islamiwaadllatho, vol 7, Soria, Darulfikar.

IOSR Journal Of Humanities And Social Science (IOSR-JHSS) is UGC approved Journal with SI. No. 5070, Journal no. 49323.

Hisamudin Rahimzai. "Short View to the women's Inheritance in the View of Islamic Sharia." IOSR Journal of Humanities and Social Science (IOSR-JHSS). vol. 24 no. 08, 2019, pp. 01-05.