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ISLAMIC LAW OF INHERITANCE AND WOMEN:
THE MYTH OF MISOGYNY

- Samreen Hussain

Abstract

To understand the property rights of Muslim women in India, it is necessary to understand the position and status of women in Islam, as well as in the Muslim Personal Law practiced in India. The Indian Muslim women is caught between the loyalties toward her religion and community and her own desire for a better future with greater and equal rights and freedoms within the family and society. She is still governed by separate code of religious family law, which is not codified and is outdated. Under this code, Muslim women continue to suffer humiliations and disadvantages. Another feature of this code is that it is regarded to be God-made and divine and, thus, immutable and forever.

In this article, an attempt has been made to study the laws of inheritance regarding women as provided under the Sunni Islamic law, and whether the charges levied against it that it tries to undermine equal rights 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 scope for modifying or amending Shariat laws in order to achieve the goal of gender equality in the property law regime.

The article is divided into four parts; the first part analyses the position of women in the Islamic and pre-Islamic Arabia. In the second part, the inheritance rights with respect to Muslim women is analysed, and the immutability of the traditional inheritance laws is seen from the critical modern lens. The third part deals with the Shariat Application Act and its problems. In the last part, some suggestions have been made to improve the property rights of Indian women.

“Learn the laws of inheritance, and teach them to the people; for they are one half of useful knowledge.”
INTRODUCTION

The fact that the right to property is vital for freedom and development of a human is well known to all and is also accepted by a majority of the thinkers. The right to property by way of inheritance, in India, is a very complex and multifarious affair, owing to the diversification of practices and customary laws.

The rights of Muslim women have evolved out of a constant struggle between the religionist and the secular forces. And like the property rights of Hindu or Christian women, property rights of Muslim women are unjust and inequitable to an extent.

The Constitution of India guarantees to all citizens the fundamental rights of equality and freedom from all kinds of discrimination; despite this, the Muslim women face discrimination in the entire realm of family laws. The policy of the Indian state of maintaining different public and private spheres has served to deny basic rights and equality to women and, furthermore, marginalize their interest.


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

(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 places 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.
This article 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 equal rights as enshrined under the Indian constitution holds water or there lies a deficiency in understanding the deeper truth beyond what has been portrayed. Secondly, it studies whether there is a scope for modifying or amending Shariat laws in order to achieve the goal of gender equality in the property law regime. For this purpose, the position of women and law relating to inheritance in Islamic law has been analysed to highlight the difference between the Quranic injunctions and how they are interpreted and applied to deny women her rightful claims. And, to see that there is possibility of reform and amendment in the current scheme of Islamic inheritance law, and that the problem exists in the Muslim Community as a whole, and not in Islamic Law per se.

POSITION OF WOMEN IN ISLAMIC AND PRE-ISLAMIC SOCIETY

A common picture which emerges when talking about rights of Muslim women is that of an uneducated, veiled, oppressed, ignorant woman, holding the hands of multiple children. A woman with no voice or say in her own life, who is subjected to the whims and fancies of her father brother, husband or any other male relative. This oversimplification and generalization is mostly the result of western notions 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 modernly dressed women who must be well read and aware about her rights and freedoms.

Furthermore, Islam has been criticized by most as having created a "male-dominated" society. But, before venturing into the debate on inequalities in Islam, as well as in the inheritance laws, there is a need to understand the Islamic Society.

In the pre-Islamic society, the pagan Arabs' social and political structure was defined by their tribal membership and was dominated by men. Women
played little or no part in the religious, social or political affairs of the tribe. Women were regarded as property of men and were owned and abused like any other property. In marriages, the consent of women was neither asked nor required. She was bought and sold like a piece of meat or chattel by her father, brother or another male relative. Men had absolute right over their body and soul. Men had all the power to divorce or retain the wife without providing for their maintenance or upkeep. Furthermore, as women were looked upon as an encumbrance, female infanticide was a common practice. Women had no right to inherit and could only dream of owning or disposing of property.

Islam brought about a radical change in the abominable treatment of women. Qur'an gave women equal and independent identity in all spheres of life, political, social, as well as spiritual, and along with this, it taught men that women were their equal and created from the same soul. Marriage became sacrament contract between a man and a woman in which the consent was mandatory, and the marriage gift commonly referred to as Mahr (Dower) was to be paid to the bride, and not to her father. Monogamy was made as the rule, and restricted and conditional polygamy was allowed only in cases where it was possible to treat wives equally in each and every aspect. In divorce proceedings, the participation of women became mandatory and maintenance was obligatory on the husbands in instances of divorce. Women were also given right and power to divorce. Practices like female infanticide and inheriting a

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5 Ibid.
6 Id at 6.
8 Apart from right of Talaq provided to husband, women were given divorce rights in the form of khula and talaq-e-tafweed. A mutual consent divorce was also introduced in the name of mubaraat.
widow by the heirs of the deceased along with his property were abolished. The women were given inheritance rights as well as the right to own and dispose of her property without any incumbent or hindrances. The Prophet replaced the concept of tribe with the family as the primary social unit.9

Throughout his life, the prophet of Islam was surrounded by fierce and powerful women who played a pivotal role in the life of the Prophet and the foundation of the religion. “The Prophet’s first wife, Khadija, supported his cause and became known as “the Mother of all believers.” Another of his wives, A’isha, 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 political role after his death.”10 Despite these strong feminine influences, there is a belief that women as a class do not fare well in Qur’an as well as in the Shari’a. 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 this discourse and discussion), and thus a general bias is created in favour men.11 Furthermore, the social norms or the patriarchal mindset prevalent in many countries have obscured many of the original purposes of the Qur’anic legislation.12 Former Prime Minister of Pakistan, Benazir Bhutto, claims “that the subjugation of women in Islam “has got nothing to do with the religion,

9 Supra note 7
10 Amina Wadud-Muhsin, Qur’an and Women, in LIBERAL ISLAM: A SOURCEBOOK 128 1998). Wadud-Muhsin’s 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.
but it has got very much to do with material or man-made 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 rules that severely restrict the rights of women to work outside the home, to appear unveiled in public, or to protect their rights in the context of marriage and divorce." Thus, the rights of women in these male-dominated cultures have become virtually non-existent. Yet, ironically, even these fundamentalist regimes illustrate a grudging recognition of women's innate power, as their motivating theory seems to be that "... women harbour the seeds of destruction of all society, and to avoid this, they and their sexuality must be carefully controlled."  

A Muslim woman was given power as well as the right to own, as well as manage, property and was given the right to inherit as a sharer in a deceased's 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, it becomes very clear that Muslim women were definitely not meant to play a docile role in society. Rather, Islam established equality and dignity for both men and women. And, the personal laws, practices are against the very notions, injunctions and principles of Islamic law.

Religion needs to be understood in its own paradigm. Thus, anyone wishing to understand Islam must first separate religion from the cultural norms and style of a society. As according to Uzoamaka N. Okoye, "Female genital mutilation

15 Id at 313.
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is still [practiced] in certain pockets of Africa and Egypt, but is viewed as an inconceivable horror by the vast majority of Muslims. Forced marriages may still take place in 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 to 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 fatwas of jurists are in many ways 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.”

The verdict of Islamic jurisprudence is just the practical expression of the dictates of the faith. Women, according to Sharia, are counterparts of men. And in Islamic jurisprudence, there is no separate order of regulations for them.

19 Id. at 313
20 “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.)
There are, however, a few limited secondary regulations where a distinction is drawn between the two sexes.\textsuperscript{21} But, these are intended purely to enable both to give a genuine expression of their faith in accordance with their respective human nature. Islamic feminists, such as Azizah al-Hibri, 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.”\textsuperscript{22}

To understand the property rights of the Muslim woman in India, it is necessary to understand the position and status of women in India in general and their position within the Muslim Personal law practiced in India in particular. The Indian Muslim woman is caught between the loyalties toward her religion and community and her own desire for a better future with greater and equal rights and freedoms within the family and society.\textsuperscript{23}

Muslim women continue to struggle for their rights at the crossroads and margins of Indian and Indian-Muslim society. Though it could be said there is some progress in Islamic law, Muslim women are still governed by a separate code of religious family law which is not codified and is outdated. Under this

\textsuperscript{21} This statement is in reference to following verses of the Quran, “Men, however, have an advantage over them.” (\textit{al-Qur’an}, 2:228) Here the Qur’an refers to man’s superiority by virtue of his responsibility of protection and maintenance of woman and fulfilment of their rights. Nature has made him stronger, more responsible and tolerant with reference to mundane matters of life. So man is held superior to woman in the grade of responsibility. The second verse is: “Men are guardians and managers over women.” (\textit{al-Qur’an}, 4:34) Social and societal structure of Islam is based on family system which can be secure if made subservient (to) natural discipline. This Verse denotes support, protection and supervision according to the Arabic usage of the word “Qawawam” The relation between rights and duties in Islam is reciprocal and cannot be compartmentalized. However, man has been made more responsible in connection with the performance of social and economic obligations. Maintenance of woman is the basic responsibility of man in the Islamic Law. At no place has this responsibility been placed on woman. Thus, the Quran does not really discriminate against women, and the verses that assign greater rights to men reflect a patriarchal context in which men were dominant and solely responsible for supporting women.” \textit{Supra} note 12.

\textsuperscript{22} \textit{Ibid.}

code, Muslim women continue to suffer humiliations and disadvantages. Another feature of this code is that it is regarded to be God-made and divine and, thus, immutable and forever. According to Islamic Scholar Asghar Ali Engineer, it is a result of colonial percept and interpretation, 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.

As a result, the post-colonial Indian state has adopted what can only be referred to as a colonial construct of the Muslim Law. On top of it, the Indian state has adopted a dual system of equality which Subramanian defines as “establishing a formal equality within the public sphere and guarantees religious freedom and protection to a minority within private spheres.” Majority of the feminist scholars have argued that that type of stark distinction between the public and private spheres has resulted in discrimination of women, as the area of family law is governed by religion-based personal laws.

Inheritance under Islamic Law

MARRIAGE AS THE CONTEXT FOR SUCCESSION RIGHTS

Marriage is considered to be one of the most important institutions of Islam. The succession rights of Muslim women cannot be understood completely


25 A traditional Hanafi school text in Arabic compiled in the 12th century, the standard translation is found in Hamilton the Hedaya or guide: A commentary on the musulman law (1891). Cited in David Pearl and Werner Menski, Muslim Family Law, 32, (sweet and Maxwell 3rd edition, 2015).

26 Supra note 24

27 Narendra Subramanian “Legal Change and Gender Inequality: Changes in Muslim Family Law in India” 33(3) Social Enquiry (2008)

without understanding the property rights of women within a marriage. As discussed, the prophet, after the advent of Islam, brought considerable change in the marriage laws prevalent in those eras. First and foremost was that consent of women was necessary for a valid marriage, and secondly, was the introduction of the concept of *Mahr* or dower, which means that a certain property is to be paid to the wife at the time of marriage as a token of respect.\(^{29}\) This right given to the wife can in no circumstances be repudiated.\(^{30}\) This *Mahr* can be specified or unspecified, prompt or deferred. Prompt dower is to be paid at the time of marriage, whereas deferred dower can be asked for at any point in a marriage and became payable at the time death of the husband.\(^{31}\) She behaves like an unsecured creditor in cases of deferred dower. Also, during the subsistence of a marriage, it is the duty of the husband to take care of all the needs and necessities of a family. The wife is not obligated to spend any amount even if she is earning.\(^{32}\)

Inheritance is an important branch of the family law of the Muslims. The Islamic Law of Inheritance is also known as the "science of the shares" or the "ilm al-fara'iq." "There is a saying in Islamic legal literature that knowledge of the laws of 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 details."\(^{33}\)

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29 Quran IV: 4- "You must give your wives their dower as a legal obligation; but if they forgo anything out of dower by their free will, then you accept it and enjoy it as a gift."
31 Tahir Mahmood *Muslim Law in India and Abroad*, 115 (Universal Law publication, New Delhi, 2nd Edition, 2016)
Islam has outlined specifically the regulations concerning inheritance via the Holy Quran. The regulation set in the Book is used as the basis of distribution of the deceased’s properties in Islam. The question is whether or not Islam dealt fairly with this matter, especially with regard to the distribution to women heirs? Firstly, whether or not Muslim women can inherit at all out of what is left behind by their family is not an issue, as the Holy Quran clearly stated:

“From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property is small or large, a determinate share.”

And, that is the clear revolution brought by Islam, as compared to the situation prior to the Islamic era. Before the Quranic injunction on inheritance, the Arabs tradition, in line with the early civilizations in the world, gave the entitlement on inheritance of the deceased’s properties exclusively to the male relatives. While the *jahiliyah* tradition in Arabs during that time considered a woman as an object that can be inherited and can be easily abused, Islam improved the status of a woman with regard to inheritance by giving her the right to inherit properties from her family.

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

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35 The period before the advent of Islam, the meaning of the word *jahiliya* is ‘ignorance.” But according to European authors like Goldziher and Charles Lyall the word basically means wildness or intrepidity.
INHERITANCE OF WOMEN UNDER QURAN

Islam began with a rational refreshingly humane law on women's property rights, unparalleled in the annals of the socio-legal history of the land. Islam in the 7th A.D. declared that:\(^{36}\)

“To the men belongs, what they earn, and to women, what they earn”\(^{37}\)

Islam acknowledged her human qualities in all cases, whether she is a wife or mother, sister or daughter. She receives a certain share of the deceased kin's property, a share which depends on her degree of relationship to the deceased and the number of heirs. This is her share, and no one can take it or disinherit her; even if the deceased wanted to deprive her by making a will to other relations or in favour of any other cause, the law will not allow to do so. Any proprietor is permitted to make his will within the limits of one-third of his property. So he may not affect the rights of heirs, men or women.\(^{38}\)

Under Islam,\(^{39}\) the shares of female relatives are specifically provided. This was done in order to elevate her position, but also simultaneously safeguard her economic and social interest. Women inherit under Islamic Law in following Positions:

\(^{36}\) In most of religion world-wide, women had no or very little inheritance. Under Hindu law, according to the ancient texts, women have no right in the inheritance. Same goes for the Jewish as well as Christian women. For further discussion on this topic, see Poonam Pradhan Saxena, family law lectures family law II (lexis nesis 2016), David Pearl and Werner Menski, Muslim Family Law (Brite Books, Lahore, 1998), Noel J. Coulson, A History of Islamic Law, (Edinburgh: Edinburgh University Press 1964), Shruti Pandey “Property Rights of Indian Women” 2 Journal of NHRC 10-24 (2003). Mary F. Radford “The Inheritance Rights of Women Under Jewish and Islamic Law” 23 B.C. Int’l & Comp. L. Rev. 135 (2000), Flavia Agnes, Law, Gender and Inequality, 20-21 (Oxford University Press, New Delhi, 2004).

\(^{37}\) Surah-An-Nisa: 32 Supra note 20


\(^{39}\) Here, in this paper, we are only dealing with the Sunni School of inheritance, which is the majority school, and most of the followers in India are Sunnis.
Mother: She occupies a safe position in the table of heirs. She is the all-time inheritor of the deceased’s property, as her place falls under the Quranic heirs. Surah 11 of Al Nissa provides:

“And, for his parents, for each of them, there is one-sixth of the inheritance if he has a child, but if he does not have a child and the parents are the heirs, then for the mother one-third, if he has brothers (or sisters) then for the mother one-sixth.”

So, 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 takes 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.

In these latter two cases, and any other cases where the estate is not exhausted, the father, if alive, takes as both a Sharer and a Residuary, although the father’s

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40 Under the Islamic law (Hanafi system) there are three types of heirs: Quranic heirs or Dhawul-Furud (Sharers), they are 12 in number out of which 7 are females. Agnatic Heir or Asabar (Residuaries); Uterine Heirs or dhawul-arham (Distant Kindered).
41 Surah-an-nisa: 11 in supra note 40.
42 A person whose relation to the deceased can be traced without the intervention of female links. E.g., son’s daughter.
43 Tahir Mahmood, Muslim Law 312 (LexisNexis Butterworth, New Delhi 3rd edn, 2002)
44 Sharer means as Quranic heirs. Supra Note 39
45 Residuary means as Agnatic heirs. Supra Note 39. A father is in the third place in the scheme of residuary and can only be excluded in presence of Son or son’s son. When exist with son or son’s son, he inherits as a sharer or Quranic heir from where he can never be excluded.
specific share is not mentioned, both parents are mentioned in the beginning of the verse. Applying principles of Qur'anic interpretation, it follows that the latter clauses determine the shares of both the father and mother, even though only the mother is mentioned. So, the father would receive his one-third or one-sixth, depending on the situation. He would then change clauses and take the remainder as Residuary, because he is the agnate relative closest in degree to the deceased, excluding all collaterals. This verse emphasizes the equality of a husband and wife, both living, inheriting equally from their children as father and mother. Also, it especially highlights the mandatory share to the mother.46

Widow wife: Wife is also included under the Quranic heirs, and she can be excluded by none. According to Quranic injunction:

“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,"47

Her share is fixed to be 1/8 in presence of children or grandchildren of the deceased and ¼ in absence of children.48

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.49 A daughter is a Quranic heir and has definite share in the inheritance. She does not, however, by reason suffer from any disability to deal her share of the property and is absolute master of her inheritance. According to Quranic Injunction:

46 Ibid
47 IV:12 in supra note 34.
48 Sura IV:7 Right in the property of parents and relatives are determined by law; also for women; all of them must be given their shares; verily God shall be witness to everything: All of these shares will be out of what is left; after the payments of legacies and debts; your parent and children are your nearest kin; and their shares are ordained by God; verily God is all knowing all wise
"If Daughters (two or more), their Share is two-thirds of the inheritance; if only one, her share is half."\textsuperscript{50}

Under Quran, the daughter is primary heir and inherits in two capacities:

1. Daughter
2. Son's Daughter

A single daughter or two or more Daughters without Son, inherit as class I heir. If daughter or daughters co-exist with son or sons, she inherits as agnatic heir of class II. son's Daughter.

\textbf{Sister:} She is a Quranic heir. Her share is $\frac{1}{2}$ when one and $\frac{2}{3}$ when two or more in absence of son, son's child, father, true grandfather and brother.\textsuperscript{51} 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 $\frac{1}{6}$, the share of one daughter is $\frac{1}{2}$, and the rest will be taken by the two sisters as residuary in equal proportion. The situation of full and consanguine sister is the same. However, they are excluded in the presence of agnatic ascendants or agnatic descendants.\textsuperscript{52} Consanguine sisters are excluded in the case of full sisters; however, a consanguine brother converts the consanguine sister as residuary. In the presence of daughters or son's daughters, sister becomes residuary, provided they are not excluded otherwise.\textsuperscript{53}

Thus, in short, these were the shares of women in Islam.

\textsuperscript{50} IV:11 in \textit{supra} note 34.

\textsuperscript{51} IV:176 – God enlightens you [thus] about the laws concerning [inheritance from] those who leave no heir in the direct line (\textit{walad}): If a man dies childless and has a sister, she shall inherit one-half of what he has left, just as he shall inherit from her if she dies childless. But, if there are two sisters, both [together] shall have two-thirds of what he has left; and if there are brothers and sisters, then the male shall have the equal of two females' shares. God makes [all this] clear unto you, lest you go astray; and God knows everything.


\textsuperscript{53} \textit{Ibid}
Now that the basic rules have been established, it will be helpful to consider some applications of the aforementioned rules to other common hypothetical examples, where men and women, of same class and not of the same class, are inheriting.

**Example 1:**

A woman dies, leaving no children or agnatic grandchildren. Her only survivors are her husband and one full sister. In the distribution of her estate, her husband, a Quranically defined Sharer, will take one-half since she left no children. Then, her full sister, another defined Sharer in the absence of children and parents of the deceased, will also take one-half. Here is a situation where a decedent's estate is divided equally between one man and one woman.

**Example 2:**

A woman dies, leaving only her husband, one daughter, and one full brother. The husband receives one-fourth of the estate because of the presence of a child. The daughter, an only child, takes one-half of the estate. The remaining one-fourth goes to the decedent's brother. Here, the female has taken twice the share of both her father and her uncle.

**Example 3:**

A woman dies, leaving only her husband, her mother, her father, and one daughter. In apportioning her estate, his husband will take one-fourth because of the presence of the daughter. The deceased's mother and father will each take a one-sixth share, again because of the presence of the deceased's child. The daughter's defined share is one-half of the entire estate because she is the only child. The final distribution is as follows: $H=1/4; M=1/6; F=1/6; D=1/2$

In this situation then, the daughter, a female, is receiving twice the share of her father, and three times the share of her grandfather, both males.
Example 4:

A person dies leaving behind a daughter and a brother’s son. In this case, the daughter will only get half whereas the brother’s son will get other half as residuary, despite so removed from the deceased, his share is equivalent to the daughter.

Example 5:

A person dies leaving behind daughter and son. Here, because of the presence of son, daughter will become a residuary, and the property will be divided in the ratio of 2:1. So, the final shares will be daughter = 1/3 and Son = 2/3.

Example 6:

A person dies leaving behind a brother and sister. Again, due to the presence of brother, the sister shall become a residuary, and the property will be divided in the ratio of 2:1.

We see that though there are circumstances where the females are getting equal or more than the males, but the situations which are most common and where the male and female are in same relationship to the deceased, or even when more closer to the deceased, are given less property than their male counterpart on account of the principle that “male should always inherit double of the females.”

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

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54 He is the male agnatic heir. Only in absence of male agnatic heirs of the deceased, the property can go completely to the females.
"residue of their male equivalents." To understand what Richard says, let's take the example of a mother's share in deceased's property. She is regarded as a Quranic heir and her share is accordingly fixed; if she exists 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 women dies leaving behind a husband and parents, the share of husband shall be ½ as a Quranic heir or non-residuary heir, and 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.

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 their application to the modern realities and are far removed from the logical point of view, as well.

55 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 most common defence given is that the Islam for the first time gave women absolute right to ownership and property, and these laws were a great departure from the pre-Islamic principles and customs. Without doubt, it is accepted as well as appreciated that Islam was the first religion which bought drastic change in the status and position of women in society. 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 are 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.

Also on a close reading of the Quranic injunctions about the surviving relatives' inheritance rights in the deceased person's property, one significant conclusion that emerges is that the primary intention of the Holy Quran was to provide financial assistance to the deceased's relatively weaker and disadvantaged relatives, by giving them a 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 the property of the deceased to the weak and vulnerable relatives and other deserving people.

57 In all the four sunni schools, the preference to agnates over cognates is a mandatory accepted rule. Lucy Carroll, "The Hanafi Law of Intestate Succession: A Simplified Approach "4 Modern Asian Studies, Vol. (1983)

58 Important verse in this regard is IV: 8 "when the share in the estate of deceased are worked out; if there are non-heir relatives and orphans or indigent; they should be given something out of the estate; fear God and speak to them with sympathy" Tahir Mahmood Law in the Quran: A draft Code (universal law publication, 2nd edition 1996)

59 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" and important verse in this regard is IV: 8 "when the share in the estate of deceased are worked out; if there are non-heir relatives and orphans or indigent; they should be given something out of the estate; fear God and speak to them with sympathy." See Shaheen Sardar Ali, "Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before man?" Boston: Kluwer Law International (2000)
One more defence which is vehemently put forward is that it is only in four cases where a woman inherits less than men, whereas there are many examples where she inherits equal or in fact more than the men and, also, she forms the majority in sharers (8 out of 12). But, this argument is a logical fallacy, as those are the four cases which, in reality, comprise of the most important familial relations, and she is treated less than her counterpart. Yes, she gets 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 the same relationship, and yet she is accorded half of what is given to her brother.

This is applied and regarded to be valid on the ground 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 are 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 Chudhary 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 end.” 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 as 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 maintain children and wives holds little weight in

60 The four cases are: Son and daughter, brother and sister, husband and wife and mother and father.


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 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 believe 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 at the death. Thus, in reality the men are neither completely supporting their wives or the family, nor providing substantial amount of Mahr to the wife.

And the most important defence used is 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 the result of human interpretation.


65 Section 3 of MWD Act 1986 which states 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 iddah 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.

66 Supra Note 3

The proof of this interpretation is the diversity in the different schools\textsuperscript{68} – if the rules were divinely revealed, there would not be five very different versions of them.\textsuperscript{69}

With regard to the Quranic laws being immutable, Muslim modernists such as Fazlur Rahman\textsuperscript{70} 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 Muslims need to pay attention to the major 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 times 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.”\textsuperscript{71} Thus, when Quranic legislations are read in this context, it can easily be 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.

\textsuperscript{68} Under Islamic law there are two Major schools - Shia and Sunni School, which are further divided into three and four schools, respectively. And, all these schools apply the laws of inheritance differently. An example can be given of how the five major schools interpret the maximum amount of the estate which can be given to a female as an heir. According to Shaifei and Maliki school, the daughters/ sisters can inherit maximum up to 2/3 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, Hambali and Hanafi schools believe 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. It is not possible to discuss this in detail in this paper. Hamid Khan, *Islamic Law of Inheritance: A Comparative Study with Focus on Recent Reforms in the Muslim Countries*, Karachi: Pakistan Law House Platinum Publishing (1998).


\textsuperscript{71} *Ibid*
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 have 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.

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 Wadud aptly 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.”

Thus, to say that laws of inheritance are immutable and not subject to change is not only an incorrect position, but it is also a source of gender bias and denies women their 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 Quran 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.

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72 *Fiqh* is man-made law based on the knowledge of the Quran and Sunnah (the two important sources of Islamic Law). The word *fiqh* means intelligence and a *fuqih* is a jurist, who with knowledge and independent judgment arrives at a point of law. See AAA Fyzee *Outlines of Muhammadan Law* (Oxford India, 5th edition 2009).


75 *(al-Qur’an, 4:1). al-Qur’an, 2:228* supra note

76 *Supra Note 74*
MUSLIM PERSONAL LAW (SHARIAT APPLICATION) ACT

Since the Muslim Law was largely uncodified, the Anglo-Indian courts recognised the customary laws of the Indian communities, most of which denied inheritance to women. Like the courts, the politics of British raj pursued no consistent policy with regard to the property rights of the women. The impact of the Anglo Indian courts and administration on the questions relating to women’s inheritance and control of property was uneven. Sometimes the courts confirmed those rights, sometimes enhanced, and sometimes denied them. The custom could sometimes be invoked to abrogate rights which the Quran enjoined.

The position of women was seriously undermined by the then prevailing customs. Inheritance in particular has continued to be ruled by customs, often excluding women, among numerous communities of Muslim. The Shariat Application Act, 1937, aimed at correcting such defects.

The Shariat Act made ineffective, in their application to the Muslims, the provision found in some provisional civil courts laws under section 2 however,

77 Alan Metcalf, Land, Land lord and British Raj 220, (Berkeley. N.Y. 1979)
78 See Murtuza Bibi v Jumna Bibi 12 ILR264 (Alld).
79 Khanum Jan v Jan Bibi 4 SD AR 210 (CAL.).
80 Muhammad Kamil v Imtiaz Fatima (1908)36 IA 210
81 Some of these laws are:
1. Bombay Regulation IV of 1827
2. Punjab Laws Acts1872
3. Central Provinces Laws Act 1875
82 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 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)
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specifically excludes from its purview “all questions relating to Agricultural Land, and charities, Charitable institutions 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, to grant certain exceptions.83

Section 2 of the Shariat application act 1937 refers 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, unless they are contrary to basic policies of Islamic law on women, would govern the rights in it.84

Section 385 of the act mentions “will, legacies and adoption,” and an option is given to the individuals whether they want to be governed by Muslim law or customs. If he wants to be governed 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 resident in territories where the act extends.

83 The power of testamentary succession enjoyed by few communities was not taken away. Thus, they may follow a custom which allows disposition of whole property by way of will, which is clearly un-Islamic.


85 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, 9 1872 of 1872); and(c) that he is a resident of4 [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 of3 [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 officer may, if he is satisfied that the appellant is entitled to make the declaration, order the prescribed authority to accept the same.
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 the 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 defeats 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 Shariat application act. It should be noted that there are a 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 Muslim Personal law 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 muslims which are governed by their own versions of Shariat, like Cutchi Memons who were unhappy with...

86 Mohammad Sandhukhan v. Ratnam AIR1958 Mad 144.
87 Supra note 31 at 51.
88 They are the affluent and politically active group among the Muslims of South India. They follow matrilineal joint family system. And, are governed by Muslim Marumakkatayam Act, 1963
89 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,
the individual option given in the Shariat 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 Shariat act and made it mandatory for Cutchi Memons to be governed by Mohammedan law in all the matters of succession and inheritance.90

Whereas the Mappilas community, especially the tribes following the marumakatyam law, are governed by their own Mappila Marumakatyam act, and it has been held in several cases91 by the Madras High Court that the Shariat Act did not have the effect of abolishing the Mappila Marumakatyam 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 repealed local acts does not include Muslim Marukatayam Act 1963. 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 the fact that in their own personal law, there is no concept of joint family system. Recently, in a Lakshadweep case92 decided by the Kerala High Court, this viewpoint has been supported and the continuation of this act held to be unconstitutional.

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

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91 Abdul Rahim v. Avooamma AIR 1956 Mad 244, Khan Bahadur Kheloth v. Wealth Tax Officer Calicut, Air 1966 Ker. 77.

92 Pushthiapura Sheik Koya Thangal v. PP Koyamma Koya, MANU/KE/2542/2012
CONCLUSION AND SUGGESTIONS

We see that in India there is an increasing demand both among the Theologists as well as legislature that the Shariat Application Act should be amended and women be given property rights in agriculture land also to make it in complete consonance with Islamic law. Under Islam, there is no distinction between agricultural or other property. Therefore, no distinction should be made. But, as we already discussed whether this amendment in the Act will improve the condition of women is doubtful, when it has been perceived that Islam in itself does not give equal property rights to women.

Another important facet to be understood is the dilemma faced by the present generation of the Muslims because of the belief that the Laws of Holy Quran are not man-made and thus cannot be changed or modified by humans. This makes the position of Muslim women very dicey, as if she agrees with the present system of law, she tends to compromise with her rights, and if she goes against the established law, she is not respecting her faith and going against the commandment of Allah. Thus, there needs to be awareness in this regard that the inheritance rules are neither divine nor immutable. The legislatures have the authority as well as power to bring about gender equal inheritance laws.

Prophet Mohammad (SAW) brought a revolutionary change in the status of women of that time and for many years. The reforms brought by Prophet of Islam regarding the status of women were pathbreaking, and keeping in mind the society of that time, it is not possible to bring absolute changes in one's ideas and beliefs overnight. They need to be slowly and gradually moulded and changed. So, in the longer run, they are accepted and respected by the society at large.\(^3\) It is believed that Islam is a religion for all times and places because it is dynamic and sensitive to the changing needs of times and societies. It cannot remain stagnant, especially if it includes aspects that are unjust or unfair.\(^4\)


\(^4\) Ibid.
Islam needs to be understood as a social reform movement by Muhammad to teach the barbaric Arabs the laws of humanity and to respect everyone, whether women or vulnerable. The Prophet of Islam paved the path for emancipation of women and was a social reformer in every sense. What he started was the beginning of the reform and not the end. Prophet of Islam propagated the idea of equality all his life. In the last sermon at hajj, he clearly stated:

“All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab, nor a non-Arab has any superiority over an Arab; also a White has no superiority over a Black, nor a Black has any superiority over a White except by piety and good action. Learn that every Muslim is a brother to every Muslim and that the Muslims constitute one brotherhood. Nothing shall be legitimate to a Muslim which belongs to a fellow Muslim unless it was given freely and willingly.”

In the entire sermon the Prophet talks about superiority of one the Almighty and equality of all others.

**SUGGESTIONS**

*So therefore, before* we decide that there is a need to bring changes in the present personal law, the true spirit of Islamic law and, then, what exactly are the demands of Muslim women in India are to be understood, and whether by providing an equal share in property, the desired result be achieved.

It is to be seen that in our present society, Indian women are not in a position to take responsibility as well as maintenance of a family. Majority of the female population is still dependent on the male. First, what is needed is to reduce this dependency for which equal share is one way, but it cannot work until there is a change brought in the mindset as well as beliefs of the patrilineal society.

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96 Available at http://prophetmuhammadleadreship.org/textual_analysis_of_the_last_ser.htm.

97 See Srimati Basu *She has come to take her right: Indian, Women, Property and Propriety* 205 (State University of N.Y. Albany, 1999). Kalpana Kannabiran “The Need for a
Furthermore, the laws relating to dower and maintenance need to be unified and codified. The Supreme Court recently in deciding a maintenance case categorically held that a divorced wife has a right to be maintained in similar fashion as when she was a wife. This proactive approach of judiciary can go a long way in solving interpretational issues of Islamic law.

What is most required is that the Muslim women must overcome the patriarchal infusion of Islamic law to be able to assert their rights provided under Islamic law. Although the Qur'an and subsequently the Shari'a asserts difference between men and women, we also cannot ignore the Qur'an or the life of the Muhammad in the Sunnah and his relationships with his wives. Whether women can achieve equity under Islamic law will remain a question, particularly since the definition of equity also remains a question. Islamic women seemingly do not desire equity as defined by the feminist movement in the United States. What is desired is an adherence to the Shari'a. "Human rights principles regarding women as expressed in the International Bill of Human Rights are more consistent with the fundamental tenets of Islamic law."

In India, the problem has been that the courts as well as legislature have never tried to bring the laws in consonance with the true Islamic principles. The policy of not interfering with personal laws has cost Muslim women dearly. Islam, as it is understood and interpreted, violates rights and dignity of Muslim women.

Without understanding the true dictates of Islamic principles and blindly following the un-Islamic fatwas, Muslim ulemas have severely deteriorated the

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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 has become imperative to understand true Islamic law and its principles in order to start a discourse to bring about amendments and change the perspective of understood Muslim law. In Indian context, a sincere effort is required to codify the Islamic law.

Too much room for interpretation is leading to confusion and injustice. A combined effort is required from the side of state, learned ulemas and representations from Muslim community, including women representatives, so as to give them voice as to what their specific needs and requirements are. For this, Lessons can be taken from other Muslim countries which have codified and reformed Islamic law, providing equal rights and opportunities to women. We need to understand that Quran is a constitution on whose principles laws can be made taking into consideration the needs and requirements of present times.

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. He suggests that it is possible to reinterpret the Shariat so as to be consistent with the protection of women’s rights and with notions of universal human rights. The logical

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101 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, The Critical Analysis of Fatwas Issued on Muslim Women in India (Centre for the Study of Society and Secularism (CSSS), 2015).

102 Efforts have been taken in state of Tamil Nadu to codify Islamic law within the framework of Quran while keeping in mind the changing social and economic conditions by updating the two important sources of Islamic Law, Ijma and Qiyas. The same effort is required to be taken at national scale.

103 Philippines, Sudan, Egypt, Turkey, Iraq, Iran, Syria and many more. For details, see Supra note 31 208-211.
extension of this argument, applied to Muslim women in India, would be a call for the reform of Muslim personal laws by reading in human rights guarantees. It is suggested that to achieve more power for women, we must increase awareness of laws through educational institutions, general awareness and legal awareness programmes; sensitize Judiciary, administrators and legislators about implementation of laws in letter and spirit.

The problems are immense, both from society as well as creating a political will, but there has to be a start somewhere, and due to apprehension of difficulties, dignity cannot be denied to women.