



## Balancing Faith and Rights: Addressing Abuse of Sharia-Based Inheritance Law In Non-Islamic Legal Systems

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### Abstract

In India, Muslim Personal Law (Sharia-based) inheritance rules are frequently applied in social contexts that lack the ethical and institutional supports presumed in an ideal Islamic society. This gap facilitates the misuse of inheritance norms to the detriment of legally entitled yet socially vulnerable heirs—particularly women, elderly widows, and orphans through the denial of shares, coercion, administrative obstruction, and the exploitation of guardianship arrangements and intra-family power asymmetries. The aim of this article is to examine the structure of Islamic inheritance in the Qur'an and Hadith, its implementation and disputes in Indian courts, and the legal, socio-economic impacts of its application in a non-Islamic system, including state interventions and community strategies to circumvent inheritance distributions. Employing a qualitative, descriptive design grounded in documentary and doctrinal analysis, the study synthesizes Qur'anic and Hadith provisions, selected contemporary references (including Saudi Arabia's 2022 Family Law as a comparative articulation of *farā'id* rules), and selected Indian judicial decisions and scholarly works to identify recurrent patterns of dispute, exploitation, and institutional response. The findings indicate that Islamic inheritance is often perceived as impractical under prevailing conditions because certain allocations may grant substantial shares to the deceased's parents, while the widow and children who shoulder continuing livelihood needs may receive comparatively less. These parental shares may subsequently devolve to their heirs (including the deceased's siblings), effectively shifting estate benefits to parties who may not assume responsibility for the surviving dependents. Indian courts therefore confront a dual mandate: applying Muslim personal law while delivering social justice amid heavy caseloads and persistent misuse of inheritance rules. This article recommends promoting reforms at both the community and state levels, with a focus on strengthening rights awareness, enforcing heirs' obligations, protecting widows and orphans, improving administrative oversight, and developing Sharia-compliant mechanisms such as transparent *hibah* (inter vivos gifts), so that state intervention becomes a last resort.

**Keywords:** Islam, Sharia Inheritance Laws, Women's Rights, Muslim Society, Constitutional Rights, National Inheritance Laws.

## Introduction

The systematic exploitation of Muslim women's rights in India under various socio-legal and cultural pretexts is a well-known but inadequately addressed issue. While Muslim leadership often defends the preservation of Muslim Personal Law, it has shown both unwillingness and ineffectiveness in rectifying its imperfect application, including the matters of inheritance. The foundational responsibilities that accompany property ownership are frequently neglected, resulting in the societal marginalization of Muslim women. In the context of Islamic inheritance law, especially women in their familial roles as wives, mothers, daughters, and sisters are commonly subjected to inequitable treatment. They are either deprived of their rightful share of inheritance or allocated portions insufficient for sustaining their social and economic security. This issue is further compounded by the absence of cohesive familial support systems, despite the fact that male heirs receive a larger share precisely because of their supposed duty to support female relatives. When such support is withheld, the justice intended by Islamic law is undermined.

Islam, as a religion, does not confine itself solely to the spiritual realm but also mandates transformation in the economic and social structures of its adherents, even in countries where non-Muslim cultures predominate. Inevitably, non-Muslim cultural norms come into conflict with Islamic Sharia-based principles, which originated in the socio-legal context of Arab society. This clash often results in economic and social disarray for Muslims residing in non-Muslim countries, particularly when Sharia laws are applied without the supporting conditions characteristic of a fully Islamic society.

At the heart of this issue lies a fundamental mismatch between the structural features of the ideal Islamic society of the Prophet Muhammad's (PBUH) era and contemporary realities. These modern contexts are characterized by liberal ideologies, cultural integration with non-Muslim communities, and progressive discourses particularly those centered on women's empowerment, which emphasize gender equality and the right of women to define their own life paths. The end result is the collapse of longstanding familial support system of patriarchal dominance but give rise to greed in the absence of emotional attachments between the relations and mutual respect.

Media frequently reports distressing cases of deteriorating family relationships and property disputes, contributing to an overburdened judicial system. Relatives often accuse one another of encroaching upon their legal rights. Commonly highlighted cases include the mistreatment of elderly parents by their children following retirement or the death of the primary earner; brothers inheriting the majority of property while leaving sisters with minimal or no share; disputes over ancestral property where women's claims are rejected; and orphans being exploited by relatives who misuse their property under the guise of guardianship. The underlying cause of such exploitation is frequently the dominance of patriarchal and cultural norms over the ethical and equitable principles of religious inheritance laws. These norms inhibit legal or social resistance and render vulnerable individuals especially women and orphans reliant on relatives who often regard them as financial burdens.

Consequently, their rightful claims are ignored, and their presence is viewed not as a responsibility, but as an unwanted drain on family resources.

Contemporary social and cultural structures increasingly promote the unitary or nuclear family model, in which the husband, wife, and children form the core, while elderly family members, particularly grandparents are relegated to peripheral roles and often depend on others for emotional and physical care. Although traditionally sons are expected to provide care in old age, current realities reveal that even having multiple sons does not guarantee support, as responsibility is often deflected from one sibling to another. The situation is even more precarious for parents with only daughters, who are often excluded from inheritance-based security. Tensions within families tend to escalate following the death of the primary earner, especially when property is left for distribution. Under Islamic inheritance law, the wife typically receives one-eighth of the estate, which is insufficient to sustain her in old age, particularly when she has no independent income and faces strained relationships with heirs who may no longer feel obliged to care for her after receiving their shares.

This reflects a deeper socio-legal issue in Muslim societies, while Islamic inheritance law grants specific rights, its ethical foundation also assigns corresponding responsibilities particularly to male heirs, who are traditionally seen as financial providers and protectors of women. When these responsibilities are disregarded, the intended balance of justice is disrupted. This paper explores cases where Muslim inheritance law significantly tests the required social and religious reforms in order to implement the true objective of Islamic law of inheritance. The economic hardship faced by women who have devoted their lives to their families becomes particularly evident after the death of their husbands, when they are relegated to a marginal role. In most cases, even sons, daughters, and in-laws receive a more favorable share of the inherited property.

This paper does not question the intentions or principles of Islamic inheritance law, which remains ideally suited for an Islamic society governed by Sharia-compliant social and familial structures. Rather, it explores the complexities surrounding the law's implementation in Muslim communities residing within non-Muslim societies. In these contexts, cultural assimilation and altered social dynamics pose significant obstacles to the just application of Islamic inheritance rules. This paper also explores how these laws, when removed from their original socio-religious framework, may be misused to the detriment of legally entitled but socially weaker inheritors, most notably women, elderly widows and orphans.

The paper discusses Islamic inheritance law and how it is misused to exploit legal inheritors, particularly women who are often neglected during the inheritance process in the absence of an ideal Islamic society. It further examines how this absence creates issues that even modern legal systems find difficult to address, as doing so would require interfering with or bypassing the Islamic legal framework. The foundation of the Islamic law of inheritance is the Quran and Hadith. The paper first explores literature that explains Islamic inheritance laws. The Family Law 2022, as outlined by the Government of Saudi Arabia, is taken as a primary reference, alongside the Quran and relevant

Hadith compilations, to understand how inheritance should be distributed in various circumstances. These sources also provide insights into the structure of Islamic society at the time of revelation, particularly the roles of men and women in different capacities.<sup>1</sup> This context is further elaborated by Raihanah Abdullah, Abdullah, Zaenul Mahmudi, who acknowledges the evolving status of women and the need for legal reform to accommodate such social changes.<sup>2</sup>

The exploitation of Muslim women is also discussed by Swamy, whose study highlights how Indian law has bypassed Islamic legal provisions applicable to Muslims in India, particularly in matters such as the maintenance of minor children and women in cases of divorce. He argues that the misuse of Muslim Personal Law in India has contributed significantly to the destitute condition of many Muslim women.<sup>3</sup> The administrative obstacles faced by women during their struggle to claim their legal rights and inheritance was well explained by Abida Yaseen.<sup>4</sup> The need to raise awareness about the obligations associated with inheritance and advocates for the establishment of *Bait-ul-Maal* (a charitable fund) in regions where it is absent, to manage unclaimed Muslim property in the absence of rightful inheritors is emphasized by Adelina Zuleika.<sup>5</sup>

Khatun elaborates that the Quran and Hadith do not promote gender-based discrimination but instead emphasize justice and equity.<sup>6</sup> However, she highlights that women's rights are often violated by their own family members due to prevailing social practices. She identifies four primary factors responsible for such discrimination: social, cultural, political, and economic. Social and cultural pressures frequently compel women to forgo the property rights that Islam has granted them. Various inheritance calculations under different circumstances, including the doctrines of '*Aul*' and '*Radd*', were examined by Arif, along with the case of *Kalalah*, which, according to Hazrat Abu Bakr (RA), refers to a person who dies childless and whose father and grandfather had predeceased him.<sup>7</sup>

Muhammad Lutfi Hakim research highlights how certain village communities bypass Islamic inheritance laws in favor of ancestral customs, such as granting daughters twice the share instead of the prescribed male-favored distribution in Islam, based on the rationale that daughters tend to be more

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<sup>1</sup> Family Law. Government of Kingdom of Saudi Arabia, 2022.

<sup>2</sup> Raihanah Abdullah, Wirdati Mohd Radzi, Fuadah Johari, Golam Dastagir. "The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society." *Asian Women* 30, no. 1 (2014).

<sup>3</sup> Swamy, Divyani. "Property Division under Sharia Law of Women." *Journal of Legal Research and Juridical Sciences* 4, no. 3 (04 2025).

<sup>4</sup> Abida Yaseen, Ali Shouzab, Taimoor Raza Sultan. "Inheritance of a Daughter: An Analysis Based on Islam and Laws Prevalent in Pakistan." *Pak. Journal of Int'L Affairs* 5, no. 2 (2022).

<sup>5</sup> Adelina Zuleika, Ni Putu Desinthy. "Islamic Inheritance Law (Faraid) and its Economic Implication." *Tazkia Islamic Finance and Business Review* 8, no. 1 (n.d.).

<sup>6</sup> Khatun, Najmun. "Women's Rights to Inheritance and Property Ownership in Islam." *International Journal of Applied Ethics* 9 (2023).

<sup>7</sup> Arif, Mir. "Inheritance (Al- Farā'id) and Succession (Al-Mira'th) Under Islamic Law ." *International Journal of Creative Research Thoughts* 10, no. 2 (2022).

supportive of their parents.<sup>8</sup> Zaenul Mahmudi study focuses on how social change can influence inheritance practices, particularly regarding heirs deemed more deserving than what is prescribed under Islamic law. He explores the use of *hibah* (gift deeds) as a legal mechanism to bypass Sharia laws of inheritance and presents the differing views of the two main Islamic schools of thought on the matter.<sup>9</sup>

Fatima discusses a law that was introduced to protect the interests of orphaned grandchildren, which was later repealed due to opposition on the grounds that it conflicted with Islamic Sharia. She also cites important judicial rulings where the *Bayt-ul-Maal* (public treasury) or the state was entrusted with the care of such grandchildren, especially when the grandparents lacked sufficient income to support them.<sup>10</sup> Abdullah presents similar arguments, emphasizing that the *Bayt-ul-Maal* should actively function to safeguard the welfare of underprivileged Muslims. The research also references selected Indian court cases involving disputes to examine the complex nature of applying Islamic law in India. It aims to clarify the legal hurdles and challenges faced by Muslims in the implementation of Islamic inheritance laws, how these challenges affect individuals, and how familial bonds are often disregarded, contrary to the true spirit of Islamic legal principles. Among the numerous Muslim property dispute cases, the focus is on highlighting those that illustrate the impact of the Indian judicial system on the application of Islamic inheritance law, both at the individual level and within society at large.<sup>11</sup>

### **Methodology**

The paper adopts a qualitative approach, employing a descriptive method to highlight key insights from the gathered material. The research focuses on three main aspects to reach a meaningful conclusion: First, how inheritance in Islam is defined in the Quran and Hadith, along with its basic principles. Second, how Indian courts are overburdened with inheritance disputes within the Muslim community, and how Muslim Personal Law is applied by these courts in accordance with interpretations of Islamic law. Third, the ramifications of applying Islamic inheritance laws to Muslims residing in a non-Muslim country, who are adjusted to a socially, economically, and religiously moderate lifestyle, influenced by a mixed culture, and living in a Muslim society that is far from the ideal described in the Quran and Hadith. The paper begins with the introduction, literature review, and methodology in section one.

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<sup>8</sup> Muhammad Lutfi Hakim, Mutmainah. "Inheritance Portion of The Heir of Women is More Than Men in Islamic Legal Perspective." *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 6, no. 1 (2021).

<sup>9</sup> Zaenul Mahmudi, M. Fauzan Zenrif, Abdul Haris, Ahsin Dinal Mustafa, Noer Yasin. "The Charity Values within Islamic Law of Inheritance in Malang: *Maqāṣid al-Sharī'ah* and Social Construction Perspectives." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024).

<sup>10</sup> Fatima, Haseeb. "Inheritance Rights of Orphaned Grandchildren under Section 4 of Muslim Family Law Ordinance, 1961 and its Alternative Solutions." *Law and Policy Review* 3, no. 2 (2024).

<sup>11</sup> Abdullah, Mohamad Asmadi bin. "The Entitlement of the Bayt Al Mal to a Muslim Praepositus Estates; An Analysis on the Right of a Muslim to Bequeath without Obtaining a Consent From the Bayt Al Mal." *International Journal of Social Science and Humanity Studies* 4, no. 1 (2012)

Section two discusses inheritance as explained in the Quran and Hadith, focusing on key principles and the rules governing the distribution of property among heirs. Section three presents selected Indian court cases related to Muslim inheritance, offering an in-depth analysis to understand the societal position of Muslims in relation to their religious obligations. The objective is to identify the various disputes that arise from the application of Muslim inheritance law in a society that is moderately religious but seeks Islamic inheritance primarily for its perceived benefits, particularly its tendency to favor male family members. Section four provides an in-depth analysis of the various complications that arise from the application of Islamic inheritance law without establishing the appropriate environment in which these instructions become valid and effective. It examines the reasons why males receive a larger share of the property, the violation of women's rights by their families and relatives, and the administrative and social pressures that prevent women from claiming their legal rights. Within this section, the paper also explores how the Indian government responds when Muslim laws are used to deny women their rights as they frame laws that override Muslim laws, thereby invalidating the freedoms granted under Islam due to their misuse by certain community members. It also discusses how one can support a relative or a specific family member without violating the rules of inheritance. Additionally, it addresses how certain Muslim communities, following ancestral customs, deny male members their prescribed Islamic share of property and instead transfer it to daughters. Section five, the concluding section, summarizes the analysis and provides recommendations for Muslim communities facing an identity crisis in a society that differs fundamentally from the ideal Islamic framework. These suggestions aim to ensure that the intended outcomes of Islamic law can still be achieved under present social conditions.

### **Inheritance in Muslims as Per the Quran and Hadith**

Islam places utmost importance on family relationships and regards them as the nucleus of society. A Muslim is instructed to prepare a will in accordance with inheritance laws, with the obligation to be considerate towards parents and other family members. The purpose of a will is to provide financial security in the event of one's death, and it also helps preserve family bonds by preventing disputes over property shares. The Quran instructs Muslims to grant every rightful heir their share, regardless of gender or the size of the estate Verse 04:07, without any bias or prejudice toward any legal heir. In general, every close relative has an appointed share as an heir (Verse 04:33), and a person is expected to honor this by remembering them while making a will. The Quran also encourages rewarding those who supported the deceased during their lifetime as a form of return gift Verse 02:180. Responsibility for women is entrusted to men, who are described as protectors and maintainers Verse 04:34. In return, women are expected to be obedient and to guard their husband's property in the best manner, it includes safeguarding his dignity, reputation, and wealth in his absence.

## Rules of Inheritance in the Quran and Hadith

The rules of inheritance are outlined in Surah Al-Nissa. In these verses, familial relations are described and categorized. Those whose shares are never excluded are called Al-Fara'id,<sup>12</sup> it includes the husband, wife, father, mother, and daughter and are considered *primary heirs* Raihanah Abdullah.<sup>13</sup> Their shares are fixed and determined based on the specific circumstances of the inheritance. The books of Hadith also mention Asabah (e.g., son, father, brother, uncle), who inherit the remaining estate after the fixed shares of the primary heirs have been allocated.<sup>14</sup> According to the preference rules, brothers and uncles only inherit if the son or father is not present to claim the inheritance. The Verse 04:11 states that inheritance distribution is to occur only after the payment of all debts and outstanding financial obligations of the deceased Family Law 2022.<sup>15</sup> It further declares that a male receives a share equal to that of two females. If the deceased leaves no children and only the parents are alive, the mother receives one-third. However, if the deceased has siblings, the mother's share is reduced to one-sixth.

The Quran, Verse 04:12 specifies that the wife's share is one-fourth if there are no children, and one-eighth if there are children. Similarly, a husband receives one-half of his deceased wife's estate if there are no children, and one-fourth if there are. This explanation is further confirmed in Sahih Al Bukhari, Hadith 6733, 1997 the share of a single daughter is two-thirds, and a person is permitted to give charity from only up to one-third of their property. Even that, as the Prophet (PBUH) explained, is considered generous, as it is better to leave one's heirs financially secure than to leave them dependent on others for survival.<sup>16</sup>

If a man or woman leaves no ascendants or descendants but only a brother or sister, then each will receive one-sixth. However, if there are more than two siblings, they will collectively share one-third of the estate. In the case of an unmarried person, Verse 04:176 states that if he leaves behind a sister, she will receive half of the inheritance. If a woman dies and leaves behind a brother, he will inherit her estate. If there are two or more sisters, they will share two-thirds of the inheritance. If there are both brothers and sisters, the division will be such that the male receives a share equal to that of two females.

Another Hadith Sahih Al Bukhari, (Hadith 6734 & 6741) 1997) states that if a daughter and a sister are the only legal heirs, the estate should be distributed with one-half going to the daughter and the other half to the

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<sup>12</sup> Imam Bukhari, *Sahih Al Bukhari*, Hadith 6723, 6735. Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors, Kingdom of Saudi Arabia., 1997.

<sup>13</sup> Raihanah Abdullah, Wirdati Mohd Radzi, Fuadah Johari, Golam Dastagir. "The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society." *Asian Women* 30, no. 1 (2014).

<sup>14</sup> Imam Bukhari, *Sahih Al Bukhari*, Hadith 6739. Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors, 1997.

<sup>15</sup> Family Law. Government of Kingdom of Saudi Arabia, 2022.

<sup>16</sup> Imam Bukhari, *Sahih Al Bukhari*, (Hadith 6733). Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors, Kingdom of Saudi Arabia, 1997.

sister.<sup>17</sup> In a case where there is another legal heir, such as a son's daughter, the ruling according to the Hadith Sahih Al Bukhari. (Hadith 6736) 1997) is, one-half to the daughter, one-sixth to the son's daughter, and the remaining share to the sister.<sup>18</sup> In the case of a grandchild Sahih Al Bukhari. (Chapter 7), if none of the deceased's own children are alive, the grandchild is treated as a direct heir and receives the same share as a child. In such cases, the grandchild blocks those relatives who would not inherit if the deceased's own children were alive.<sup>19</sup>

Analyzes the concepts of 'Aul' and 'Rudd':

- In the case of 'Aul', the total allocated shares exceed unity (1), so the shares must be reduced proportionally.
- In the case of 'Rudd', the total shares are less than unity, so the remaining estate is redistributed among the heirs in proportion to their original shares.<sup>20</sup>

If the deceased leaves no beneficiaries, or if all beneficiaries have received their shares and there is still a remainder after applying the rules of Aul and Rudd, and the leftover amount cannot be distributed under the rule of residuary heirs, or no one comes forward to claim the property, then the inheritance is transferred to the *Bayt-ul-Maal* (a public treasury established for the welfare of the Muslim community). The residuary rules applied on the property remain undistributed after giving inheritors their fixed share, the remaining share will be offered to Asabah on the basis of case conditions. The basic rules of inheritance distribution in Islam remain the same, but variations arise due to different interpretations under different circumstances and among different sects.<sup>21</sup>

### **Case of Orphans Guardianship and inheritance**

In the Quran, Verse 06:152 and 17:34 instruct every person who serves as a guardian of orphans not to touch the property of the orphans except to improve or safeguard it, until the orphan's reach maturity and are capable of managing their inheritance. The guardian is strictly warned not to use the orphan's property for personal gain, as he is accountable for how he handles the property entrusted to him as a caretaker and protector on behalf of the orphan.

It is recommended that a separate record be maintained for the orphan's property. However, if the property is small or of such a nature that it must be mixed with the guardian's own property in order to protect or manage it more

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<sup>17</sup> Imam Bukhari, *Sahih Al Bukhari*, (Hadith 6734 & 6741). Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors, Kingdom of Saudi Arabia., 1997.

<sup>18</sup> Imam Bukhari, *Sahih Al Bukhari*, (Hadith 6736). Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors, , 1997.

<sup>19</sup> Imam Bukhari, *Sahih Al Bukhari*, (Chapter 7). Translated by Muhammad Muhsin Khan. Vol. 8. 9 vols. DARUSSALAM Publishers and Distributors,, 1997.

<sup>20</sup> Arif, Mir. "Inheritance (Al- Farā'id) and Succession (Al-Mira'th) Under Islamic Law ." International Journal of Creative Research Thoughts 10, no. 2 (2022).

<sup>21</sup> "Faraidh-The Islamic Law of Inheritance ." Islamic Religious Council of Singapore. n.d. <https://syariahcourt.gov.sg/-/media/Project/Syariah-Court/Public-Website/Inheritance/Overview/Faraidh-Brochure.pdf>.

effectively, this is permissible. As Verse 02:220 states, it is allowed to do whatever is in the best interest of the orphan, including mixing properties, provided it helps the guardian manage and safeguard the orphan's assets better. Still, the guardian must always remember that the orphans are his close relatives, deserving of care and protection.

This allowance is made so that a guardian does not have to bear the extra burden of maintaining both his and the orphan's property separately, especially when doing so is not economically or practically feasible. A guardian must not consume the orphan's property with the intention of denying them their rights once they reach maturity and are entitled to claim their inheritance. It is preferable that the guardian takes nothing from the orphan's property. However, if the guardian is in a financially weak position, he may use only the amount necessary as reasonable compensation for his care and services, as permitted in the Verse 04:06. The guardian must return the remaining property once the orphan reaches maturity and should take witnesses at the time of returning the property to ensure transparency and fairness.

### **Warning to Muslims Who Are Guardian to Any Orphan Not To Indulge In Corrupt Practices**

The Quran Verse 04:02 commands every guardian to return all property to the children under their guardianship once they reach maturity. Guardians are instructed not to substitute their own inferior goods for the orphan's valuable assets, nor to mix their property with the orphan's in an attempt to profit economically. This may apply in cases involving consumable items that must be used or sold before they lose value; however, when the time comes to return the property, it must be restored at equal value.

In Verse 04:10, those guardians who unjustly consume an orphan's property are warned that they are "eating fire into their bellies," and that Hell will be their final destination. Verse 02:188 addresses corrupt practices by individuals who use part of the property to bribe authorities in order to claim ownership of what is not rightfully theirs. This verse is particularly relevant in modern times, where bribery is often used in government offices to usurp property, especially from orphans, close relatives, and the mentally impaired. Meanwhile, Verse 04:05 clearly instructs that if a person is mentally weak or incapable of managing their own affairs, their property should not be handed over to them. Instead, the guardian must ensure that their needs are met and that they are treated with kindness and care.

### **The General Instructions In The Quran To Give Charity And A Share From Inheritance For Destitute And Not To Indulge In Activities That Destruct Soul Like Vanity Or Greed.**

If there are orphans and the poor (Verse 04:08), or any relatives, destitute, or beggars (Verse 51:19) whom a person knows, he is instructed to show mercy and give them charity. He should reflect on how he would feel if his own family were in the same destitute condition (Verse 04:09). A person is permitted to allocate up to one-third of his property as he sees fit, while the remaining two-thirds must be distributed according to the rules outlined in the Quran. Every person who holds any property, whether private or public, it must

be used for the benefit of the society. Vanity (Verse 04:29) and greed are discouraged, even while promoting trade and business activity. A believer is warned that property should not become a cause for harming others or for self-destruction by violating religious and moral laws out of selfish desire.

### **The Selected Indian Court Cases of Muslim Inheritance to Highlight The Position of Muslim Personal Law of Inheritance Application And Its Repercussion In The Society.**

The complex nature of the Muslim law of inheritance arises when individual or ancestral property, entangled in generational relationships, requires a deep understanding of Islamic Sharia law. Muslim society is predominantly patriarchal, where women often remain silent, sacrificing their rights to preserve family ties, especially after the death of a male guardian. In many cases, undignified treatment of widows, preference for male children, neglect of girls' rights, and discriminatory practices in education and family welfare are not rooted in Islamic teachings, but rather reflect the biases of an underdeveloped society still practicing outdated social taboos.

Sharia-based distribution may, at times, limit the financial security and independence of women, especially in strained family relationships. Unlike some other traditions where inheritance passes first to the wife and subsequently to the children and close relatives, offering a worldly incentive to care for aging parents, Sharia law emphasizes duty over desire. It assumes that the male inheritor will willingly take on his financial responsibilities and distribute the inheritance according to the prescribed legal framework, rather than based on emotional or strategic motivations.

Many times, brothers encroach upon their sister's share, forcing her to approach the Indian courts to claim her rightful inheritance. One of the common justifications for denying daughters or sisters their share in property is the belief that, after marriage, a woman belongs to her in-laws' household, and that she has already received her share in the form of dower, which may include money, jewelry, household goods, and luxury items given to the bride as part of customary practice in the Indian subcontinent. In some cases, the dower is even more than the woman's legal share of the inherited property. Additionally, it is argued that she is entitled to a share in her husband's property.<sup>22</sup>

In a judgment based on Muslim inheritance law, the Indian High Court stated that a daughter is entitled to a single share, while a son receives a double share. However, the court rejected the argument that the dower given during the daughter's marriage constitutes her share of the father's property. According to Islamic law, the only valid dower (mahr) is that which is given by the husband to the wife as a form of financial security and is specified in the Nikahnama (marriage contract).<sup>23</sup>

Muslim orphans are often subjected to exploitation, with their properties taken away under the pretext of upbringing. By the time they grow up, they

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<sup>22</sup> Mukhtar Ahmad & Ors. vs Mahmudi Khatoon & Ors. on 19 May, 2010. Jharkhand High Court, 2010.

<sup>23</sup> "Mohammed Gani vs Parthamuthu Sowra on 21 January, 2008." The Madurai Bench of Madras High Court, 2008.

are left with nothing from their inherited property, as it has often been disposed of long ago, leaving nothing for them to claim. In the following subsections, scenarios and relevant Indian court cases involving the application of Islamic Sharia inheritance law are discussed. The objective is to emphasize that the issue lies not with Sharia law itself, but with its application within a different societal context. There is an urgent need for discussion, particularly in light of a social environment that is not conducive to fair inheritance, especially in the absence of amicable relationships among relatives. Often, those inheritors who receive a larger share, due to the responsibilities assigned to them after the death of the property owner, fail to fulfill their duties, and there is no effective monitoring mechanism to ensure justice.

### **Scenarios Where Strained Relationships Lead to Unjust Exploitation and Economic Hardship for Islamic Legal Heirs**

This section discusses various situations where strained family relationships result in economic hardship and exploitation, particularly for Islamic legal heirs who are unable to earn a livelihood or form new relationships due to advanced age or social taboos prevalent in society.

#### **Case 1: When the Deceased Husband has no Children and is Survived by His Wife and Parents Only**

According to Sharia inheritance law, if a man dies leaving behind a wife and both parents, the distribution of his estate is as follows:

- The wife receives one-fourth ( $\frac{1}{4}$ ) of the property.
- The mother receives one-third ( $\frac{1}{3}$ ).
- The father receives one-sixth ( $\frac{1}{6}$ ) as a prescribed share, plus the residue of the estate.

This legal framework assumes cordial family relationships. However, if the relationship between the wife and her in-laws is strained, and her family was living separately from them with limited interaction, complications may arise. After her husband's death, she is entitled only to one-fourth of the estate for the rest of her life. If she lacks financial support from her own family, is unable to remarry, or is not in a position to earn a living, she may face significant hardship.

In an Islamic society, such a woman may receive support from both her natal family and her in-laws. Additionally, if she falls within the marriageable age, remarriage could provide financial and emotional support. However, in South Asian societies, this is often difficult due to the cultural emphasis on dowry and physical appearance, which tend to weigh heavily against remarriage prospects. This issue is illustrated in the case of Iliaz Khan vs The Tahsildar 2021, where the court directed a government official (Tahsildar) to include the names of the deceased's brother and sister as legal heirs, alongside the deceased's wife, for property distribution. The strained relationship was evident, as both the brother and sister approached the Indian court to claim a share of the property, despite the legal position of the wife. In such cases, mutual care and respect are often absent, and the surviving wife may face not

only financial difficulties but also emotional and social distress due to her tense relationship with her in-laws.<sup>24</sup>

**Case 2: When the Widow and Her Daughter Are the Only Inheritors**

**In such a case, the widow receives one-eighth (1/8) of the property, while the daughter receives one-half (1/2) and also inherits the remaining residue, as the only surviving heir.**

This means that the widow will receive only one-eighth of the estate, while seven-eighths will go to the daughter. If the daughter is married and living with her husband in her in-laws' home, a major portion of the property effectively falls under the control of her husband. In the South Asian context, it is a common social practice that sons-in-law are not expected to care for their mothers-in-law. If the relationship between the widow and her son-in-law is strained, the husband may control the property through his wife while assuming none of the responsibilities that come with it. At the same time, the daughter, due to social taboos and cultural expectations, may feel powerless to go against her husband's wishes. As a result, the widow may find herself in a difficult position, especially if she has no independent source of income and lacks support from her own relatives.

**Case 3: When the Widow, Son, Daughter, Mother-in-Law, and Father-in-Law of the Deceased Are the Inheritors**

The widow receives one-eighth (1/8), while the deceased's mother and father each receive one-sixth (1/6), and the son receives twice the share of the daughter as per rule. In this case, although each person receives their prescribed share, the sum received by others is significantly more than the share of the widow. The son receives the largest portion, followed by the daughter, while the mother and father of the deceased receive equal shares, which together amount to more than the daughter's share and come close to that of the son. In situations where the relationship is strained and the in-laws and children abandon the widow, the small share she receives may not be sufficient to support her life. She receives the lowest portion, despite being the one who deserves the highest care and support.

**Case 4: When the Widow, Deceased's Mother, and Brother Are the Inheritors**

As per the Sharia rule, the wife receives one-fourth (1/4), the deceased's mother receives one-sixth (1/6), and the deceased's brother receives the residue. In the presence of siblings and in the absence of children and the father-in-law, the mother-in-law receives one-sixth of the property due to the presence of siblings. However, the widow still receives only one-fourth of the inherited property, and the remaining portion goes to the brother-in-law. He may have separate family responsibilities of his own, and if there is no amicable relationship with the sister-in-law, he may take the money but refuse the responsibility that comes with it. This can lead to economic difficulties for the deceased's wife.

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<sup>24</sup> Iliaz Khan ... vs The Tahsildar. Madras High Court, 2021.

### **Case 5: When the Widow, Deceased's Mother, Brother, and Sister Are the Inheritors**

The wife receives one-fourth (1/4), the deceased's mother receives one-sixth (1/6), and the residue is divided between the brother and sister, with the deceased's brother receiving twice the share of the sister. The established principle is to give primary shareholders their fixed share, and then distribute the remaining portion among other relatives, where a male receives twice the amount of a female relative. In this case, 75% of the property is taken by the deceased's in-laws, the brother, sister, and mother. According to social norms, both the brother and sister may have their own families to support. Expecting them to take on the additional responsibility of caring for their sister-in-law for life is an ideal scenario but not realistic, especially in the South Asian region where poverty and overpopulation are widespread, and every fourth family struggles to meet basic needs.

### **Case 6: Unequal Treatment in Spouse's Death Under Islamic Inheritance and the Reason for it.**

In the case of a wife's death, if the couple has no children, the husband receives half of her property. The other half goes to her parents or, if they are not alive, to her brother and sister, with the brother receiving twice the share of the sister. This situation is not equivalent to the case of a husband's death without children, where the wife receives only one-fourth of the property, while the husband receives half when the wife dies. The reasoning behind this is that Islamic society is traditionally structured around the male member, who is expected to lead, earn, and take responsibility for family members. However, the structure of Muslim society is changing and increasingly resembles Western or non-Islamic societies, where women contribute equally and do not require male protection in the same way that Sharia laws assume. Therefore, either Islamic laws need to accommodate these changes or society must be guided to align with the ideal Islamic structure, where women's new roles and the respect they deserve are given due consideration.

### **Discussion on Selective Indian Court Cases on Muslim Disputes and the Application of Muslim Inheritance Law**

Indian courts are overloaded with cases related to the partition of property, where disputes arise due to strained relationships and the denial of legal rights to certain parties. In most cases, women are deprived of property rights on various grounds. In the case of Sabra Begum vs Aminuddin, the wife of the deceased and her two minor children were denied their share of the property. The defendants argued that, due to a condition related to a predeceased son, the plaintiffs were not entitled to inheritance. Additionally, the in-laws sold part of the property to a tenant residing in the disputed premises. The court rejected the defendants' argument and ruled that the plaintiff must be granted her rightful share according to Muslim inheritance law.<sup>25</sup>

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<sup>25</sup> Sabra Begum vs Aminuddin on 4 February, 2025. Delhi District Court, 2025.

In another case, the children refused to acknowledge their stepmother after the death of their father, despite the plaintiff possessing legal documents such as the service book naming her as the wife, the Nikahnama (marriage certificate), and an election identity card.<sup>26</sup> The court ruled in favor of the plaintiff and held that she was entitled to a one-eighth share of the property. However, in the case of Sabra vs Noor Hasan, the woman failed to present a Nikahnama or witnesses to prove her marriage at the relevant time. Although she had a child whose school certificates bore the father's name, the court concluded that she had failed to establish her marital status and therefore lost all her rights as a wife.<sup>27</sup>

The Islamic inheritance law does not recognize the adoption of a child as creating a legal heir. In Abdul Rehman Mir vs Steel Authority Of India, the court rejected the appeal and ruled that the case would be conducted under Muslim law.<sup>28</sup> In another instance, Rahisuddin vs Fatima & Others, a brother approached the court seeking his share in the property of his deceased brother. The defendants included his sister-in-law (the widow), his sister, and the deceased sister's children. He requested a partition and claimed that the document transferring the property was forged through the misuse of a power of attorney, thereby denying him his rightful share. However, the presence of a will and the plaintiff's prolonged silence before initiating legal action were held against him.<sup>29</sup>

In A. Rahaman Gul Mohammed vs 01-OS. Farzana Murtuza, a dispute arose between siblings over two properties. The first property was in the name of their deceased father, while the second was in their mother's name. The mother had executed a gift deed transferring her property to her daughters, which the plaintiff challenged as illegal and intended to deprive him of his rightful share.<sup>30</sup> The court ordered the partition of the properties in accordance with Muslim inheritance law. In the case of Mansoor Saheb (Dead) & ORS Vs Salima (D) By LRS. & ORS, the children of the deceased second wife were denied their rightful share by their uncles. As they were entitled to their mother's share, they appropriately approached the court to claim their inheritance.<sup>31</sup>

In the case of Arman Ali & Ors vs Asraf Ali Sk. & Ors, the relatives initially reached a mutual agreement regarding the partition of property. However, they later approached the court under the Muslim law of inheritance.<sup>32</sup> The court rejected the application due to the absence of any valid reason or legal disability explaining the delay in initiating the legal proceedings. Under Muslim personal law governing marriages, if a married Muslim converts to another religion, the marriage contract is immediately dissolved. In the case of Krishna

<sup>26</sup> Adib Fatema Nomani vs Aquib Siddiqui on 30 September. Delhi District Court, 2024.

<sup>27</sup> "Sabra vs Noor Hasan on 23 August." 2018.

<sup>28</sup> Abdul Rehman Mir vs Steel Authority Of India Limited & Ors. Jammu & Kashmir High Court, 2015.

<sup>29</sup> Rahisuddin vs Fatima & Others 1/24 on 19 October, 2020. North-East, Karkardooma Courts, Delhi , 2020.

<sup>30</sup> "A. Rahaman Gul Mohammed vs 01-OS. Farzana Murtuza." 2021.

<sup>31</sup> Mansoor Saheb (Dead) & ORS Vs Salima (D) By LRS. & ORS. Supreme Court of India , 2009.

<sup>32</sup> Sk. Arman Ali & Ors vs Asraf Ali Sk. & Ors. Calcutta High Court, 2022.

Das Choudhury & Ors vs Mustt. Prabin Rahman, a Muslim man converted to Hinduism without informing his Muslim wife and children and began living with his second Hindu wife, with whom he had children. Upon his death, the first wife and her children claimed rights to his body and inheritance. The court ruled in favor of the second wife, holding that the first marriage had been nullified due to the husband's conversion, thereby leaving the first wife without any claim to the deceased's estate.<sup>33</sup>

Despite the Quran and Hadith clearly emphasizing the unity of Muslims, differing interpretations of Islamic teachings have led to the formation of various sects and cults. These groups often adopt ritual practices that deviate from the original message of Islam, contributing to the fragmentation of the community. One such example is the Mapilla community, as addressed in Mukkattumbrath Ayisumma vs Vayyaprath Pazhae Bangalayil in the state of Malabar. Within this community, the inheritance system follows the *Marumakathayam* law, which deviates from the Islamic inheritance system. This customary law developed due to specific historical conditions prevailing in the region.<sup>34</sup>

In its judgment, the honorable court concluded that the right to partition after the death of an individual cannot be resolved or governed solely by customary law. Instead, the legal heir is entitled to claim inheritance in accordance with Islamic inheritance law. Furthermore, the Muslim Personal Law (Sharia) Application Act overrides any regional or local customs that conflict with Sharia principles.

In another case, Umar Lebbai vs Ambasamudram Taluk Inam, Pottalpuddur, the issue pertained to the Lebbai community in the state of Tamil Nadu. The community derives its name from the Arabic expression "Labbayak," meaning "here I am," and is characterized by a distinct cultural and linguistic identity. The case involved a Waqf (donated) property associated with a shrine, including its income and the right to perform religious services as a Lebbai (in-charge or Imam), which had traditionally been passed down to descendants of the donor's family. The plaintiff argued that, in the presence of qualified male descendants, the management of the property should not be handed over to outsiders, even though female descendants were traditionally excluded from performing the role of *Lebbai*. The court ruled that the Waqf property in question should not be administered by outsiders while eligible family descendants are available.<sup>35</sup>

In a similar Waqf (property given in charity to a trust)-related dispute, Hafiz Abdul Hameed & Ors. vs Hafiz Mohd. Suleman & Ors, the plaintiff approached the court to assert ownership rights over a property. The dispute centered around a deed presented as Waqf alal aulad (a waqf for descendants), which the plaintiff contended was invalid and not binding upon him. The court held that the plaintiff was required to prove his legal ownership and property rights independently, rather than relying on the contested deed. All these cases

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<sup>33</sup> Krishna Das Choudhury & Ors vs Mustt. Prabin Rahman. Gauhati High Court, 2015.

<sup>34</sup> Mukkattumbrath Ayisumma vs Vayyaprath Pazhae Bangalayil. Madras High Court, 1952.

<sup>35</sup> Umar Lebbai vs Ambasamudram Taluk Inam, Pottalpuddur. Madras High Court, 1965.

related to Muslim inheritance, including instances where property is donated with the condition that descendants will manage it, face numerous challenges over time. As the number of descendants increases, human greed often plays a significant role. Despite the severe warnings in the Quran, many Muslims exploit others and deny them their rightful shares. Not all individuals seek legal recourse through the courts; many, particularly women, refrain from pursuing justice, either out of deference to family relationships or due to social and economic pressures that hinder their ability to engage in legal battles.<sup>36</sup>

### Legal, Economic, and Social Ramifications of the Application of Islamic Inheritance Law in a Non-Islamic Country

Muslim personal law is applicable to all Indian Muslims under the Indian Constitution, and the Islamic law of inheritance is an integral part of it. A Muslim cannot demand the distribution of property in any manner other than that prescribed by Islamic law, regardless of strained familial relationships, as illustrated through various court cases in the previous section. Adelina Zuleika points out that many Muslims remain unaware of their religious obligations concerning the distribution of inheritance. Khatun further highlights how women's rights are frequently violated within their own families, both in their parental homes and in their marital households, attributing this to prevailing social, cultural, economic, and political factors in both rural and urban contexts. Their research emphasizes that the willful neglect in implementing Islamic inheritance law, in accordance with its intended spirit, coupled with the broader socio-religious decline in the Muslim community, leads to the deterioration of familial relationships.<sup>37</sup>

Raihanah Abdullah notes that during the Prophet Muhammad's (PBUH) time, a man was responsible for the welfare of women, while women retained the freedom to use their personal wealth as they wished. This historical context is comparable to the present-day situation, where economically active woman earns and own wealth but may voluntarily contribute to the welfare of the family.<sup>38</sup>

In contemporary Muslim societies, strained family dynamics often create a paradoxical situation, for instance, a mother-in-law may receive a larger share of inheritance than the widow of a deceased man. This arrangement may have been more acceptable in earlier Islamic contexts, where widows were commonly supported by their children and in-laws and had realistic opportunities for remarriage. Such social conditions were prevalent in the early Islamic period and in societies where there was a shortage of women of marriageable age. Islam permits up to four marriages, on the condition that the husband treats all wives equally and justly. A practical rationale behind this was the high male mortality during times of war, which left many women without support. While elderly mothers might pass the age of marriage, widows

<sup>36</sup> Hafiz Abdul Hameed & Ors. vs Hafiz Mohd. Suleman & Ors. Delhi District Court, 2011.

<sup>37</sup> Khatun, Najmun. "Women's Rights to Inheritance and Property Ownership in Islam." *International Journal of Applied Ethics* 9 (2023).

<sup>38</sup> Raihanah Abdullah, Wirdati Mohd Radzi, Fuadah Johari, Golam Dastagir. "The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society." *Asian Women* 30, no. 1 (2014).

were given opportunities to remarry and were treated with respect and dignity. The case of the Punjab and Haryana states in India is particularly significant and similar, where the sex ratio is skewed due to a strong societal preference for male children. Illegal sex determination practices have led to widespread female feticide and infanticide. As a result of these crimes, the female population has drastically declined, to the extent that in many villages, men are bringing brides from other states. These women often speak different languages and come from economically disadvantaged backgrounds.<sup>39</sup>

Abida Yaseen investigates the administrative obstacles that prevent women from inheriting property according to Muslim laws. Her research highlights how corruption and social pressure work against women, rendering them unable to assert their rights. This occurs despite the Quran explicitly condemning corruption, as seen in Verse 02:188, which applies to officials who accept bribes to prepare forged documents in favor of individuals who are either not entitled to inherit or who receive more than what is prescribed under Sharia law.<sup>40</sup>

The paper by Fatima addresses the plight of orphans in the application of Islamic inheritance law, as their situation reflects the harsh realities within Muslim societies. In Pakistan, a law was introduced to protect the interests of orphaned grandchildren by granting them a share in the inheritance of their deceased grandparents, representing the predeceased son or daughter. However, the law was criticized for deviating from the prescriptions of the Quran and the authentic Hadith, and was ultimately overturned by the Shariah court. During the period in which the law was applied, several issues emerged. One such issue was that a grandfather is not legally obligated to provide maintenance to orphaned minors, especially in cases where his income is limited and insufficient to support them. In such instances, the court ruled that the *Bayt-ul-Maal* (public charity fund) should be responsible for providing maintenance to these orphans.<sup>41</sup>

### **Disregarding Muslim Inheritance Law Based on Social Conditions for the Greater Good of Society**

Research by Muhammad Lutfi Hakim highlights the importance of customary laws that, in some contexts, override Islamic Shariah laws through mutual agreements rooted in ancestral traditions. For instance, in certain Muslim communities, daughter receive twice the share compared to male child, as daughters are perceived to be more likely to support their parents. Similar instances of equal distribution have also been observed among certain Javanese

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<sup>39</sup> Ahmed, Masood. "Women's Journey Through Life: Analyzing Crime and Discrimination at Each Stage." Figshare. Aug. 2025. [https://figshare.com/articles/preprint/Women\\_s\\_Journey\\_Through\\_Life\\_Analyzing\\_Crime\\_and\\_Discrimination\\_at\\_Each\\_Stage/29876615?file=57069071](https://figshare.com/articles/preprint/Women_s_Journey_Through_Life_Analyzing_Crime_and_Discrimination_at_Each_Stage/29876615?file=57069071).

<sup>40</sup> Abida Yaseen, Ali Shouzab, Taimoor Raza Sultan. "Inheritance of a Daughter: An Analysis Based on Islam and Laws Prevalent in Pakistan." Pak. Journal of Int'L Affairs 5, no. 2 (2022).

<sup>41</sup> Fatima, Haseeb. "Inheritance Rights of Orphaned Grandchildren under Section 4 of Muslim Family Law Ordinance, 1961 and its Alternative Solutions." Law and Policy Review 3, no. 2 (2024).

Muslim ethnic groups. In these cases, traditional village societies entrust women with responsibilities that are typically assigned to men under Islamic inheritance law.<sup>42</sup>

Due to social challenges and the obligations imposed by Islamic inheritance law, some individuals, fearing potential injustice to specific heirs, such as wives or daughters opt for alternatives. They are concerned that those entitled to larger shares may not adequately care for vulnerable heirs after the individual's death. As a result, some choose to execute a *hibah* (gift) deed during their lifetime Zaenul Mahmudi 2024, transferring part or even all of their property to those they deem deserving.<sup>43</sup>

Islamic law permits an individual to bequeath up to one-third of their estate to any person of their choosing, while the remaining two-thirds must be distributed in accordance with Islamic inheritance rules. However, there is no restriction if the property is transferred as a gift during the person's lifetime to any recipient, thereby bypassing the inheritance structure that applies after death.

Raihanah Abdullah also recommends *hibah* (gift) as a legitimate means for the transfer of property. She argues that Muslim-majority nations need to recognize the contributions of women and establish a more women-friendly legal system that ensures greater financial security. Her suggestions emphasize that women's empowerment should involve the development of legal mechanisms to protect their rights without violating Quranic injunctions. These mechanisms may include court interventions, where women can present circumstantial evidence to demonstrate that male heirs have neglected their responsibilities as guardians or have been incapable of providing financial, social, physical, or emotional support during times of need. The establishment of Bayt-ul-Maal (public treasuries for charity) serves as the legal heir in cases where a Muslim individual dies without any surviving relatives to claim the inheritance. These funds are intended to benefit the broader Muslim community, particularly orphans and women who have been neglected by their families and lack the means for survival.<sup>44</sup>

### **Government Interventions in Muslim Sharia Law Due to the Inability of Muslim Leaders and Institutions to Address the Exploitation of the Weaker Sections and to Apply Sharia Law in Its Original Intent**

The Government of India, through The Muslim Women (Protection of Rights on Marriage) Act, 2019, criminalized the practice of triple talaq (Instant Divorce), making it a non-bailable offence punishable by up to three years of imprisonment. Numerous cases have highlighted how women have been

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<sup>42</sup> Muhammad Lutfi Hakim, Mutmainah. "Inheritance Portion of The Heir of Women is More Than Men in Islamic Legal Perspective." *Jurnal Mahkamah: Kajian Ilmu Hukum dan Hukum Islam* 6, no. 1 (2021).

<sup>43</sup> Zaenul Mahmudi, M. Fauzan Zenrif, Abdul Haris, Ahsin Dinal Mustafa, Noer Yasin. "The Charity Values within Islamic Law of Inheritance in Malang: *Maqāṣid al-Sharī'ah* and Social Construction Perspectives." *Samarah: Jurnal Hukum Keluarga dan Hukum Islam* 8, no. 3 (2024).

<sup>44</sup> Raihanah Abdullah, Wirdati Mohd Radzi, Fuadah Johari, Golam Dastagir. "The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society." *Asian Women* 30, no. 1 (2014).

divorced instantaneously through this practice, often leaving them without financial resources for themselves or their children. In many such cases, the children are forced to reside with their mothers, despite Sharia law assigning financial responsibility for children to the father.

However, the social structure often prioritizes the child's residence with the mother, considering it in the child's best interest. These circumstances are neither addressed at an institutional level nor are sufficient measures taken by society to protect Muslim women and children affected by broken marriages. A landmark case in this context is (Mohd. Ahmed Khan vs Shah Bano Begum And Ors 1985), in which an advocate by profession expelled his wife from their home and divorced her in 1978 after 46 years of marriage. At the time, Shah Bano was 62 years old and had five children. The case received significant public attention, as it underscored the suffering of Muslim women in the absence of community support and the failure to apply Sharia law in its true spirit.<sup>45</sup>

The Supreme Court ruled that, in addition to the dower (mehr), the divorced wife was entitled to a maintenance allowance to support her basic needs. This ruling effectively superseded the traditional interpretation of Sharia law in India and sparked widespread debate over the intersection of religious personal laws and constitutional rights.

Islam assigns the responsibility of caring for children to the father. Therefore, in the case of divorce, there is no separate provision for children under Islamic law, except that the father is required to pay the mother if the child is an infant and to provide her with an allowance if she takes care of the children. Swamy<sup>46</sup> notes that Indian law imposes additional financial obligations on the husband under Section 125 of the Criminal Procedure Code and the *Muslim Women (Protection of Rights on Divorce) Act, 1986*. In contrast, Islamic law only mandates the payment of *dower* (mehr), which is fixed at the time of marriage and must be paid at the time of divorce Family Law 2022.<sup>47</sup> Another significant step taken by the Indian government relates to the management of *Waqf* properties. These properties have been subjected to widespread encroachment and misuse, undermining their primary objective of serving the welfare of the Muslim community, which relies on the financial resources generated from such assets. To address these issues, the government introduced The WAQF (Amendment) Act, 2025, aiming to enhance efficiency, transparency, and accountability in the administration of Waqf properties. However, the Muslim community has expressed concerns that this legislation may result in government overreach, including the appointment of non-Muslims to govern Waqf management, thereby threatening religious autonomy.<sup>48</sup>

Indian courts are overburdened with disputes related to inheritance, and the Muslim community is no exception. In the case of Khuran Sunnath Society & Others vs Union Of India And Another, a writ petition was filed challenging

<sup>45</sup> "What is Shah Bano case?" [indianexpress.com](https://www.indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/). Aug. 23, 2017. <https://www.indianexpress.com/article/what-is/what-is-shah-bano-case-4809632/>.

<sup>46</sup> Swamy, Divyani. "Property Division under Sharia Law of Women." *Journal of Legal Research and Juridical Sciences* 4, no. 3 (04 2025).

<sup>47</sup> Family Law. Government of Kingdom of Saudi Arabia, 2022.

<sup>48</sup> "The WAQF (Amendment) Act, 2025." *Minority Affairs* . 2025. [https://www.minorityaffairs.gov.in/show\\_content.php?lang=1&level=2&ls\\_id=936&lid=1163](https://www.minorityaffairs.gov.in/show_content.php?lang=1&level=2&ls_id=936&lid=1163).

the inheritance practices under Muslim Sharia law. The petition argued that these practices violate Articles 14, 15, 19, 21, and 25 of the Indian Constitution, claiming they are discriminatory towards women and therefore void and unenforceable. The petition requested judicial intervention. However, the court declined to interfere and instead referred the matter to the legislature, stating that it is the responsibility of the legislative body to consider the issue and frame appropriate legislation. The Indian government has shown its intent for the implementation of a Uniform Civil Code, which would replace Muslim personal laws (Sharia) with a common legal framework applicable to all citizens. This shift would affect Muslims in all aspects of life and result in the resolution of their personal and family disputes under the Uniform Civil Code, without any reference to religious principles.<sup>49</sup>

### Conclusion

Muslim inheritance law lacks practicality under present social conditions. In a typical case, the distribution of a deceased person's property allocates one-eighth to the widow and one-sixth each to the deceased's father and mother. The remaining portion is distributed among the children. As a result, the in-laws receive one-third of the property, which will later be passed on to their own heirs after their demise. This implies that the deceased's siblings may indirectly receive a share of the deceased's property in the future, while the widow and children may end up inheriting only a small portion. Inheritance from the grandparents may be uncertain for the deceased's children, as it depends on various factors, including the grandparents' financial situation. Consequently, the wife and children of the deceased may not inherit the full estate, and in cases where family relationships are strained, the in-laws may benefit financially without bearing any responsibility for the deceased's dependents. Indian courts are overburdened with property disputes, and the judiciary faces a dilemma in applying Muslim inheritance law (based on Sharia). While the courts are required to adjudicate such cases in accordance with Muslim personal law, they are also expected to deliver social justice that reflects current societal realities. Ideally, the principles of justice and the provisions of Muslim inheritance law should align. However, the current state of Muslim society often falls short of this ideal, and the misuse of Muslim personal law remains widespread. There is a growing need for reform, either within the Muslim inheritance law itself or within the Muslim community. The responsibility for initiating social reform rests with religious leaders and their representatives, whereas the authority to reform Muslim personal law lies with the government. The Indian government has already initiated reforms by discarding various privileges granted under Muslim personal law that have led to exploitation. These include the abolition of the traditional procedure for divorce under Muslim law, making the pronouncement of triple talaq (instant divorce) illegal, the recognition of the right to maintenance for a divorced wife in addition to *mehr* (dower), which was not originally part of Sharia, and the regulation of *waqf* properties under a new legal framework. The inheritance

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<sup>49</sup> Khuran Sunnath Society & Others vs Union Of India And Another. Kerala High Court, 2015.

laws among Muslims also require the correct application of Sharia principles. In the absence of such application, the government cannot be expected to remain passive. Recently, the government has demonstrated its willingness to intervene by promoting the Common Civil Code. In various countries, Muslim communities have taken the initiative to reform or address issues arising from changes in social conditions under Sharia law. These include the use of *hibah* (gift deeds) to circumvent the obligations imposed by Islamic inheritance law, the application of ancestral community customs, agreed upon by heirs that grant a larger share of property to daughters, and growing demands for legal reforms to ensure that heirs fulfill the responsibilities associated with the property they inherit. In many cases, human greed drives the exploitation of familial relationships, contradicting the true intentions of Sharia principles. It is the responsibility of the Muslim community and religious leaders to implement social changes and religious reforms that reflect the true essence and objectives of Sharia inheritance laws, before the situation deteriorates to the extent that government intervention becomes necessary to address the injustices arising from the misuse of these laws.

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