

Inheritance Reform on Rights @ Home website

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**Introduction**

Inheritance rights are crucial for Muslim women because distribution and control of property and assets significantly affect their ability to enjoy stable and fulfilling lives and to exercise other rights. Without assets derived from inheritance, women are disadvantaged, cannot lead independent lives, and cannot even ensure that they and their families can support themselves. Inheritance distribution is closely tied up with provisions in many **Muslim family laws**, and must be conceived from a just and equitable perspective in order to ensure there is fairness and justice in other aspects of family life. Although very vocal **defences of the traditional inheritance laws** have been argued, these are problematic both in terms of justice and in the context of the modern era. There are a number of compelling **justifications for reform** that have been proposed by Islamic scholars.

This section includes a brief overview of the **major Qur’anic verses on inheritance**, **traditional rules of inheritance** derived from those verses and hadith by the major schools of law, some **examples** of how those rules affect women, a sample of standard **defences of those traditional rules** and explanations of why the defences are problematic, potential **prospects for reform**, and **examples of reform efforts** from various Muslim countries around the world. There is also a list of **resources** that can provide more information on inheritance rules, examples of how people defend the traditional inheritance rules, and ideas for reform.

**MAJOR QUR’ANIC VERSES ON INHERITANCE**

There are a number of verses on inheritance in the Qur’an, as laid out below in English translation (M. Asad). While these verses appear to be quite detailed and comprehensive, there was also a great deal of juristic elaboration and systematisation through the different schools of law, as well as some differences as to the interpretations of certain terms, such as the interpretation of the word “*walad*” (child), and its implications for agnatic siblings or male relatives. These different interpretations and implications are discussed in other sections.

Some verses also appear to provide for a certain flexibility, e.g., Surah an-Nisa 4:8, and many verses also appear to stress the importance of honouring the testamentary bequests that have been made by the deceased by emphasising the priority to be given to bequests.

- **Surah an-Nisa 4:7**

Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether it be little or much – a share ordained by God.

- **Surah an-Nisa 4:8**

And when [other] near of kin and orphans and needy persons are present at the distribution [of inheritance], give them something thereof for their sustenance, and speak unto them in a kindly way.

- **Surah an-Nisa 4:11**

Concerning (the inheritance of) your children, God enjoins [this] upon you: The male shall have the equal of two females' share; but if there are more than two females, they shall have two-thirds of what (their parents leave behind; and if there is only one, she shall have one-half thereof. And as for the parents [of the deceased], each of them shall have one-sixth of what he leaves behind, in the event of his having [left] a child (*walad*); but if he has left no child (*walad*) and his parents are his [only] heirs, then his mother shall have one-third; and if he has brothers and sisters, then his mother shall have one-sixth after [the deduction of] any bequests he may have made, or any debt [he may have incurred]. As for your parents and your children – you know not which of them is deserving of benefit from you: [therefore this] ordinance from God. Verily God is all-knowing, wise.

- **Surah an-Nisa 4:12 – 4:14**

And you shall inherit one half of what your wives leave behind, provided they have left no child (*walad*), but if they have left a child (*walad*), then you shall have one-quarter of what they leave behind, after [the deduction of] any bequests they may have made, or any debt [they may have incurred]. And your widows shall have one-quarter of what you leave behind, provided you have left no child (*walad*), but if you have left a child (*walad*), then they shall have one-eighth of what you leave behind, after [the deduction of] any bequest you may have made, or any debt [you may have incurred]. And if a man or woman has no heir in the direct line, but has a brother or a sister, then each of them two shall inherit one-sixth; but if there are more than two, then they shall have in one-third [of the inheritance], after [the deduction] of any bequest that may have been made, or any debt [that may have been incurred], neither of which having been intended to harm [the heirs]. [This is] an injunction from God; and God is all-knowing, forbearing. **(4:13)** These are the bounds (*hudud*) set by God. And whoever pays heed unto God and His Apostle, him will He bring into gardens through which running waters flow, therein to

abide: and this is a triumph supreme. **(4:14)** And whoever rebels against God and His Apostle and transgresses His bounds, him will He commit unto fire, therein to abide; and shameful suffering awaits him.

- **Surah an-Nisa 4:33**

And unto everyone have We appointed heirs to what he may leave behind; parents and near kinsfolk, and those to whom you have pledged your troth; give them, therefore, their share. Behold, God is indeed a witness unto everything.

- **Surah an-Nisa 4:176**

They will ask thee to enlighten them. Say: "God enlightens you [thus] about the laws concerning [inheritance from] those who leave no heir in the direct line (*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.

## **TRADITIONAL RULES OF INHERITANCE**

The inheritance rules revealed to the Prophet (s.a.w.) were major reforms from the pre-Islamic customary practices. In those customary practices, females and minors were excluded from inheritance; the nearest adult male agnate (one who trace his relationship to the deceased only through males) inherited the entire estate of the deceased; and descendants (sons) were preferred to ascendants (fathers and grandfathers). Among the more major reforms of Islam were provisions that allowed women and children to inherit, required that inheritance shares be given to both parents and children, and an emphasis on the family relationship over that of the tribe.

The traditional Muslim rules of inheritance are derived from the basic structure set out in the Qur'an, which was then elaborated and systematised by the various *madhhab*, or schools of law, through jurisprudential methods and interpretations. Many modern Muslim nation-states have adapted these rules from one of the major Sunni or Shi'ite schools of law, have combined rules from two or more different schools, or have created modern inheritance laws based loosely on traditional jurisprudence but suited for modern realities. Because human interpretations have played such a key role in shaping both the traditional inheritance rules and the modern codifications of inheritance laws, the standard articulation of these rules cannot be considered divinely revealed *Shari'a*, but rather man-made *fiqh*. ***Since Muslim inheritance rules are incredibly complicated and there are significant differences between the major schools of law and between the laws of modern Muslim nations, the following is simply a general overview of the basic traditional rules.*** You can find more **examples** of how these rules affect women under the different schools, and many of the **resources** used for this article provide more detailed explanations and examples.

Most of the schools agree that before anything is distributed to the heirs, the funeral expenses, the deceased's debts, the deferred portion of a wife's *mahr* and any bequests made by the deceased are paid out of the estate. The various schools differ on the order to pay these expenses and debts. In the Sunni schools of law, bequests are limited to one-third of an estate and cannot be granted to an heir unless the other heirs permit it. The Jaafari Shi'ite school allows bequest in favour of an heir as long as it does not exceed one-third of the estate.

In the general Sunni rules, there are three classes of heirs:

- the heirs specified in the Qur'an to receive fixed shares of the estate, who are called "sharers";
- agnatic heirs, or those who trace their relationship to the deceased only through males, who are known as *'asaba* or "residuaries" and take no fixed share but receive the residue after the fixed shares are claimed by the sharers; and
- more distant relatives of the deceased, often called "distant kindred", who inherit if there are no sharers nor residuaries.

Not all of these heirs will necessarily inherit, and certain classes of heirs or closer kin may exclude those of other classes or those in the same class who are more distant relatives of the deceased.

There are twelve heirs designated in the Qur'an to receive fixed shares of the deceased's estate: the father, mother, husband, wife, grandfather, grandmother, daughter, son's daughter, full sister, paternal half-sister, maternal half-sister, and maternal half-brother. (Sons are not considered "Qur'anic heirs" because they are classified as "residuaries", the class which is discussed below.) The shares received by these "sharers" range from 1/8 to 2/3 of the estate for designated individuals or groups of individuals. Although the sharers inherit first, they generally do not take all of the inheritance. Instead, they receive their fixed portions and the rest of the estate is passed to the male agnates (residuaries).

After the fixed shares are distributed, the balance of the estate goes to the residuaries. The agnatic heirs in the residuary class are generally male, including the deceased's son(s), any son of that son (howsoever low), his father (in certain instances), his brother, and his paternal uncle. When there is a male counterpart who has the same relationship to the deceased, certain of the women sharers, such as the deceased's daughter, son's daughter, sister, and paternal half-sister, turn into *'asaba* or residuary heirs and receive one-half of the share of their male counterpart instead of the fixed share laid out in the Qur'an. The relatives who are nearer in degree to the deceased generally exclude those farther in degree, and those of full blood relationships with the deceased are preferred over those related only through the father.

If there are no other relatives that fall into the sharer or residuary classes, the estate passes to the third category, the other more distant relatives.

Under Sunni rules, if the amount of shares to be given to these sharers exceeds the total estate, then the shares of certain heirs are reduced (*'awl*) through established rules. If the amount to be distributed is less than the total estate and there are no residuaries or distant kindred, the different schools have different rules as to whether the “return” (*radd*) goes to the public treasury (*bayt al-mal*) or back to the sharers. For the Hanafi and Hanbali schools, the rules generally are that women sharers can inherit the remainder in the absence of residuaries. Under the Shafi'i and Maliki rules, women only get their fixed share, and cannot receive the remainder even if there is no one else to inherit it. For instance, if the deceased leaves a daughter and no male agnatic relatives, under the Shafi'i and Maliki rules, the daughter would only inherit 1/2, and the remaining 1/2 of the estate would go to the public treasury and not back to the daughter.

In the Sunni schools, orphaned grandchildren, or the children of the deceased's son or daughter who predeceased the deceased, are not allowed to inherit when there is a surviving son. This means that a son could inherit everything from his parents while his orphaned nieces and nephews (and their predeceased parent) inherit nothing. The schools differ in the rules if there is a surviving daughter, in part depending on whether the predeceased child was a son or daughter and whether the grandchildren are male or female. Adopted children are excluded from inheriting from their adoptive families.

The Shi'ite rules of inheritance, as typified in the Jaafari school, differ significantly from the Sunni rules of the Hanafi, Shafi'i, Maliki, and Hanbali schools. The main differences are as follows:

- Offspring from the mother's side are treated equally with those from the father's side, so half-brothers and sisters from either parent are treated equally;
- Relations that derive from the female's side are on par with relations from the male's side. Whereas in the Sunni rules, residuaries are limited to agnatic males (male relatives who do not have a female interrupting the chain of relations from the deceased), except when certain female sharers turn into residuaries and receive one-half what their male counterparts receive, the Jaafari rules do not view a female's kinship relations as less important than a male's. Therefore, females and cognate relatives who only inherit in the last class in the Sunni schools are incorporated into the general structure of Jaafari rules.
- A sole surviving daughter can take the entire estate in the same way that a sole surviving son can take all the inheritance in Sunni law. The technical legal reason about the grounds through which the daughter inherits is slightly different from how the son inherits.
- There is no reduction of shares (*'awl*) or return (*radd*) in Jaafari rules of inheritance.

Therefore, in Jaafari rules the three classes of heirs are (1) those who are solely sharers; (2) those who are sharers and can also be residuaries, such as daughters and full or half-sisters; and (3) those who are always residuaries, such as sons. One major practical effect of these differences in rules is that women are much more fully integrated into the inheritance scheme than in the major Sunni schools.

## EXAMPLES OF HOW THESE RULES AFFECT WOMEN

Because the composition of families can differ so much, there are many combinations of how an estate may be divided among the deceased's relatives. Though there are examples of situations where women generally inherit the same amount or more than men, it is often where the woman is a closer relation to the deceased than the man (a daughter versus a paternal uncle) or in the absence of (male) residuaries. In the major Sunni schools' rules of inheritance, women and those related to the deceased through women are often excluded from inheritance or do not receive the remainder of the estate because it goes to a more distant male agnate. In the Jaafari schools, by contrast, males and females and their descendents are both equally entitled to inherit.

The following examples (taken from *Encyclopedia of Islamic Law* 1996) demonstrate how the traditional rules of different schools can result in different amounts of inheritance for different relatives of the deceased, and how under some laws women cannot inherit the entire estate even if they are the closest relatives by far or even the only relatives:

- The deceased person leaves behind a daughter and a full or agnate brother. In the Sunni schools, the daughter receives  $1/2$  and the brother receives  $1/2$ . In the Jaafari school, the daughter receives the whole estate.
- The deceased person leaves a daughter, mother and one or more male agnatic relatives. In the Sunni schools, the mother receives  $1/6$ , the daughter receives  $3/6$  ( $1/2$ ), and the remaining  $2/6$  goes to the paternal grandfather if there is one; if there is not, it goes to the full brother; if there is no full brother, the remainder goes to the next nearest male agnatic relative, regardless of how close they were to the deceased person. If there are no residuaries, the remainder is divided between the mother and daughter ( $1/4$  of the remainder to the mother,  $3/4$  to the daughter) in the Hanafi and Hanbali schools. Under the Shafi'i and Maliki schools, the remaining  $2/6$  of the estate would go to the public treasury (*bayt al-mal*) and the mother and daughter would not receive it. Under the rules of the Jaafari school, the mother receives  $1/4$ , the daughter receives  $3/4$ , and the residuaries receive nothing.
- The deceased person leaves parents and a (predeceased) daughter's children. In the Sunni schools, the mother would receive  $2/6$ , the father  $4/6$ , and the daughter's children would receive nothing. Under the Jaafari school, the mother would receive  $1/6$ , the father  $2/6$ , and the daughter's children would receive  $3/6$  (the  $1/2$  of the estate the daughter would have taken had she still been alive).
- The deceased person leaves his or her paternal and maternal grandfathers. Under the Sunni schools, the paternal grandfather would receive the entire estate, and the maternal grandfather, because he is related through a woman, would receive nothing. Under the Jaafari rules, the paternal grandfather received  $3/4$  and the maternal grandfather receives  $1/4$ .
- The deceased person leaves paternal and maternal grandmothers. Under the Sunni schools, the two grandmothers will together inherit  $1/6$ , and the remaining  $5/6$  will go to the highest in the order of male agnate residuaries. If there are none, under

the Hanafi and Hanbali schools, the remainder reverts to the grandmothers; under the Shafi'i and Maliki schools, the remaining 5/6 goes to the public treasury. In the Jaafari rules, the maternal grandmother receives 1/3 and the paternal grandmother receives 2/3.

- The deceased person leaves a (predeceased) son's daughter and (predeceased) daughter's daughter. Under the rules of the four Sunni schools, the son's daughter is entitled to half and the remainder goes to a residuary; the daughter's daughter receives nothing. Under the Jaafari rules, each will receive the share of the person through whom they are related to the deceased, so the son's daughter receives 2/3 and the daughter's daughter receives 1/3.
- The deceased person leaves behind a daughter and a son's daughter. Under the rules of the Sunni schools, the daughter gets 3/6 (1/2) and the son's daughter receives 1/6, while the remainder of the estate goes to the nearest male agnatic residuary. Under the Jaafari rules, the daughter takes the whole estate and the son's daughter receives nothing.
- The deceased person leaves a full or agnate paternal uncle and a similar aunt. Under the Sunni rules, the uncle receives the whole estate and the aunt receives nothing. Under the Jaafari rules, the uncle receives 2/3 and the aunt receives 1/3.
- The deceased person leaves behind a daughter and a full or agnate paternal uncle. Under the rules of the Sunni school, the daughter receives 1/2 and the uncle receives 1/2. Under the Jaafari rules, the daughter receives the entire estate.
- The deceased person leaves a paternal uncle's daughter and a full or agnate paternal uncle's son. Under the rules of the Sunni schools, the uncle's son receives the entire estate and the uncle's daughter receives nothing, even if she is the full sister of the uncle's son. Under the Jaafari rules, the uncle's daughter receives 1/3 and the uncle's son receives 2/3.

These examples not only show the difference in rules between the traditional rules from different schools, but also demonstrate how women are often excluded from inheriting, even if they have the same relationship to the deceased person as the men who do inherit, or are not able to inherit the remainder beyond their fixed shares, even if the remainder does not go to anyone in the family but instead to the public treasury (*bayt al-mal*).

#### STANDARD DEFENCES OF TRADITIONAL RULES AND WHY THESE ARGUMENTS ARE FLAWED

In response to the growing realisation that the traditional inheritance rules are problematic in the realities of the modern era, there have been a calls for reform around the world. In response to the calls for reform, certain people have begun to defend the traditional rules. Such defences take a few standard forms. But, as shown below, these defences, while displaying some grains of truth, are fundamentally flawed based on the principles of justice and equity and with regard to the realities of the modern era.

**(1) Standard defence** : The rules are much less discriminatory than those of the pre-Islamic era.

**Response :** While it is very true that revelations relating to inheritance drastically improved the position of women, and that the Islamic situation of inheritance was by far the most progressive and comprehensive in the world for hundreds of years, those reforms happened 1400 years ago. In addition, a number of aspects of the Sunni rules (e.g., the primacy of agnatic heirs) are derived from pre-Islamic inheritance rules, not the revelations as laid out in the Qur'an. These have not been reformed, just incorporated into the man-made system that was formalised by the classical jurists one thousand years ago. Islam is a religion for all times and places because it is dynamic and sensitive to the changing needs of times and societies. Our understanding cannot remain stagnant, especially if it includes aspects that are unjust or unfair.

**(2) Standard defence :** These rules were divinely revealed to the Prophet (s.a.w.), therefore cannot be changed or reformed.

**Response :** While some rules in the inheritance system were divinely revealed, the specific rules that are followed today were by and large crafted by humans through human interpretation. The diversity in the different schools is proof of this human interpretation – if the rules were divinely revealed, there would not be five very different versions of them.

An example of how the five major schools differ can be seen in the case of the maximum amount of an estate female heirs can inherit. In the Shafi'i and Maliki schools, daughters and sisters can inherit a maximum of 2/3 of the estate; the residue would go to agnatic males, and, if there are none, to the public treasury. For the Hanbali and Hanafi schools, if there are no agnatic males, the female heirs can inherit the residue – it would not go to the public treasury. In the Jaafari school, one or more daughters can inherit the entire estate outright if there is no son. Agnatic males have no special rights, so either female or male relatives could inherit as residuaries.

Even some of the rules that were divinely revealed were interpreted in different ways by different classical schools of law, thus affecting the way the inheritance system developed. For instance, Surah an-Nisa' 4:176 states that a collateral such as the brother of the deceased will inherit only if the deceased dies without "a child (*walad*)". Although *walad* often refers to a daughter or a son, including in other inheritance verses, most classical Sunni scholars interpreted it in this verse to refer to sons or agnatic grandsons only. This means that agnatic siblings are entitled to a share of the inheritance when the deceased is survived by a daughter, but not when the deceased is survived by a son. This reflects a preference for agnatic males in the traditional rules of inheritance. The Shi'ite schools, by contrast, interpret *walad* in the standard way to refer to a child of either sex, such that a collateral is excluded by the presence of either a daughter or a son of the deceased.

**(3) Standard defence :** Women do not always receive half the amount of inheritance as men; in fact, they sometimes receive the same amount or more or they are entitled to inherit while men are not. Women make up the majority (8 out of 12) of the "sharer" class.

**Response :** While it is true that in individual cases and when comparing people who have different relationships to the deceased (e.g. children of the deceased versus siblings of the deceased), women can inherit as much or more than men, women generally inherit only half compared to men who have the same relationship (e.g. just children of the deceased). For example, the deceased person's daughter is likely to inherit as much or more than the deceased person's brother, but they have very different relationships with the deceased. In contrast, the deceased person's son is guaranteed to inherit twice that of the deceased person's daughter, even though they have the exact same relationship (children of the deceased). Although women make up 8 of the 12 sharers, not all of the sharers necessarily inherit because they are excluded by other (usually male) heirs if they exist, and certain males (e.g., sons) will automatically inherit twice what the female sharers inherit even though they are not categorised as "sharers".

In addition, in the Sunni rules, after the shares have initially been distributed to the "sharers", the rest of the inheritance passes to the residuary class, which includes only agnatic heirs. This means that under the Sunni rules women and people who are related to the deceased person through women (such as a daughter's son) are completely excluded unless they are categorised as "sharers", they are converted to "residuary" status by the presence of a male counterpart (in which case they receive only half of what the male counterpart receives), or there are no residuaries and the inheritance goes to the "distant kindred" class. Because women are not residuaries, thus cannot receive the balance of inheritance after the sharers have been granted their shares, a sole surviving daughter cannot inherit the entire estate like a sole surviving son can, a mother cannot get an extra portion of the inheritance like a father can, etc. Fathers can receive double the amount of their counterpart sharers (mothers) because they can receive inheritance both as sharers and as residuaries.

**(4) Standard defence :** Women will have secure lives regardless of the amount they inherit because their brothers, uncles, male cousins, nephews, etc., will take care of them out of the inheritance that they received from the women's fathers, husbands, brothers, sons, etc.

**Response :** Family structures in modern times are vastly different than they were one hundred, five hundred or one thousand years ago. One justification for the sole surviving daughter receiving only her 1/2 share, with the rest going to a distant male agnatic relative such as the paternal uncle's son's son, was that that residuary heir would continue to help support the daughter. But whereas hundreds of years ago, extended families spent their entire lives in close proximity and mutual reliance, the rise of the nuclear family and decline of close relations with extended networks of uncles, cousins, etc. means that extended families can no longer serve as reliable support mechanisms. In addition, the idea that uncles, cousins, etc. will fulfil their responsibilities to take care of women is only theoretical. This idea has no grounding in reality, since the men do not support those who are given lesser shares of inheritance and there is no accountability from the State or communities to ensure that the men fulfil their responsibilities.

**(5) Standard defence** : Men have an obligation to support their wives and families, plus must give their wives *mahr* when they marry. Women receive the *mahr*, receive inheritance, are financially supported in their families and marriages and can earn money for themselves, but are not required to share any of their assets, earnings or inheritance with others. 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.

**Response** : While men are technically obligated under traditional Muslim law to provide for their wives, sisters, and children in Muslim family laws, in reality women today often contribute to family expenses and even support their husbands and children. With women increasingly better educated, working more, earning more than men and filling the role of head of household, women are increasingly contributing to or providing for all of the family expenses. But the changing norms also mean that the arguments about men supporting their families, thus being entitled to larger shares of inheritance than their sisters or other female relatives, hold little weight in the modern era.

The related argument is that men must pay women *mahr* upon marriage, and that gift is a significant amount of assets that remains hers alone to spend, save, or use as a means of support. While the *mahr* granted to a woman upon marriage still remains her property, the amount of *mahr* given upon marriage in modern times is often a symbolic or token amount that cannot be used as a means of support and does not require that the man give up a large portion of his inheritance. For instance, in Malaysia, state authorities have set minimum amounts of around USD20 or less. Many men in Malaysia accept this minimal amount as all that is required for them to pay.

These defences are intimately tied to traditional Muslim family laws such that the arguments are circular: men must receive greater shares of inheritance because they are obligated to support their wives and families and pay *mahr* to their wives; they must support their wives and families and pay *mahr* because they receive greater amounts of inheritance; women cannot receive greater shares of inheritance because they are supported by their husbands, fathers, brothers or sons; they must be supported by the men in their lives because they do not receive enough inheritance. In reality, however, men are neither completely supporting their wives and families nor providing reasonable amounts of *mahr* such that a woman would be able to support herself with that money.

**(6) Standard defence** : At least daughters, wives and mothers are guaranteed to receive *something*; if the system was based entirely on bequests, they might be excluded from the will entirely.

**Response** : There is a danger of that, if the system were to be based entirely on bequests. Most people advocating for reform, however, are not challenging the basic structure of the system of shares, but the ways in which the shares and the residuary are distributed.

(7) **Standard defence** : If people really care about being fair to the women in their family, they can divide their estates equally and give their daughters, wives, mothers, and sisters gifts while they are still living (*hiba*, or *inter vivos* gifts).

**Response:** While it is true that *inter vivos* gifts are one way to make things fairer for women, this is not a systemic solution. In fact, it is simply an admission that the system is flawed and that people need to circumvent it to ensure fairness and justice. In addition, many people are not well enough informed about how to make such gifts or do not have enough foresight to realise how the rules of inheritance will affect their wives and daughters. They are told that they do not need to make a will because the inheritance laws are comprehensive or that they can only give away one-third of their estate (though only to non-heirs) and do not know about the possibility of *hiba*.

Based on all of the standard arguments, the defenders argue that even though women are given half the share of men, but their financial situation in the long term is stable and guaranteed. But all of the explanations demonstrate that women's financial situation is *not* guaranteed in modern times as it arguably might have been in an earlier era.

Even if the rules are theoretically fair for women in modern times, which can be debated, the rules are not upheld in practice. In Pakistan, for example, the National Commission on the Status of Women is engaged in a research project on "Women's Right to Inheritance and its Implementation", which found that there have been "serious repercussions on women's rights and status" with regard to inheritance. Multiple tactics are used to evade providing inheritance rights to women, including not registering the births of baby girls; not allowing women to manage their property independently; compelling women to withdraw their rights to inheritance in favour of male members of the family; forcing women to marry within the family or using other methods to preserve property and assets within the family. Note that the Supreme Court of Pakistan in *Ghulam Ali v Ghulam Sarwar Naqvi*, PLD 1990 S.C. 1, ruled that women must be afforded protection from coercion, undue influence, and exploitation at the hands of their male relatives in inheritance matters and laid down a number of principles to protect the inheritance rights of women.

## PROSPECTS FOR REFORM

- **Many of the traditional rules are man-made and not the revelations or *sunnah* of the Prophet (s.a.w.)**
- **The revelations in the Qur'an about inheritance were the only first stages of what was meant to be progressive reform**
- **The language of Qur'an is not mandatory; Mohammed Shahrour's "Theory of Limits"**
- **Changed circumstances, modern realities**
- **Conformity with actual practices**
- **International law requirements**

There are a number of possibilities and justifications for reform of the inheritance laws, from doctrinal, social, and international and domestic law perspectives:

- ***Many of the traditional rules are man-made and not the revelations or sunnah of the Prophet (s.a.w.)***

While the Qur'an includes a large number of revelations relating to many aspects of inheritance, it by no means provides details on all dimensions of the subject. The intricacies of the rules of inheritance began to take 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.

It is generally accepted that while the rules of inheritance are based on and structured around the revelations received by the Prophet (s.a.w.), for at least the Sunni schools that structure was superimposed on the inheritance customs of the pre-Islamic tribes and society. Those customs that were not explicitly rejected or re-written, such as the primacy of agnatic heirs, were considered to be impliedly endorsed and thus were maintained after the time of the Prophet. This is in contrast to the Shi'ite Ja'fari school, where the pre-existing custom favouring agnatic heirs was rejected.

Classical jurists and their ideas, assumptions, and life experiences profoundly influenced the development of *fiqh*, including the traditional rules of inheritance. For example, in *A History of Islamic Law*, N.J. Coulson explains that early schools of law in Medina and Kufa in the early decades of the second century of Islam (from A.D. 720 on) relied on existing social circumstances and expectations to shape the rules of inheritance:

[L]egal thought was naturally influenced by prevailing local conditions, and many of the differences between Medinan and Kufan doctrine are explained ... by the different societies of the two centres.

Although the schemes of inheritance adopted by both schools shared the same fundamental rules, in so far as this subject had been regulated in some detail by the Qur'an, the precedents of the Prophet and those of his immediate successors, there arose significant differences on points which had not been so settled. Where no Qur'anic heir or agnate relative ('*asaba*) had survived the propositus [deceased], the Kufan jurists admitted non-agnate relatives (e.g. daughters' and sisters' children) to succession. Such relatives (known as *dhawu' l-arham*) were never allowed to inherit in Medina. Both these views may be said to be reasonable interpretations of the Qur'an, the Medinan view resting on the fact that such relatives were not specifically granted rights of succession by the Qur'an, and the Kufan view on the fact that, by recognising the rights of women relatives, the Qur'an implied the rights of relatives connected with the propositus through them. But it was the natural tendency in the patrilineal society of Medina to deny such relatives rights of inheritance; while it was equally natural for society in Kufa to admit their rights. For women enjoyed a higher estimation in the cosmopolitan society in Kufa, one concrete result of which – their capacity to contract their own marriage – has already

been observed. In short, the Qur'an was interpreted by both schools in light of existing social circumstances. (pp.48-49)

Furthermore, diversity in the four major Sunni schools of law, between these schools and the major Shi'ite school, and diversity in codifications of law in modern Muslim countries demonstrates that the laws and traditional rules are not divine and absolute, but can and have been interpreted and changed throughout the centuries.

Because many 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 the law that provides structure and order for the faith's believers must grow and change to be relevant to the changing times. 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.

- ***The revelations in the Qur'an about inheritance were the only first stages of what was meant to be progressive reform***

Many of the revelations in the Qur'an were by nature reform-oriented, transforming key aspects of pre-Islamic customary law and society rather than implementing a comprehensive law. The Prophet often received a series of progressive revelations, each building on or superseding customary laws and earlier revelations.

According to N.J. Coulson in *A History of Islamic Law*, the references in the Qur'an and Sunnah related to inheritance provide examples of the progressive, supplementary nature of Islamic law. Before the time of the Prophet, rules and customs related to property and inheritance were focused on supporting and strengthening the tribe, which was defined exclusively by its male descendents. To ensure that property was kept within the tribe, only male relatives of the deceased, generally the relative closest in relation, could inherit such property. The order for inheritance started with male descendents, then the deceased's father and his brothers and nephews, the paternal grandfather, uncles, and their descendents. Although property was occasionally bequeathed to other close relatives, females, and minor children were generally excluded from rights of inheritance.

The Qur'anic revelations gradually changed the status quo, first in requiring Muslims to give shares to men and to women from what parents and near kindred leave (Surah an-Nisa' 4:7), providing some property distribution to females. The revelations also signalled a shift in prominence from the tribe to the family unit. A later series of revelations responded to the circumstances of the times, namely the deaths of many early Muslims in battles. These revelations laid out specific shares to be granted to different categories of relations, primarily relations who had formerly been excluded from receiving inheritance. It also privileged both parents where primarily (male) descendents were privileged before.

The reforms that took place in the early years of Islam are clearly progressive, changing with the needs of the society. They were meant in part to protect women, requiring that at least a minimum share, as specified in Qur'an, be given to women who were closely related to the deceased. The more detailed rules that were laid out by the Sunni classical jurists allowed many pre-Islamic customs to continue, and also reflected the needs, customs and expectations of the society in which they lived instead of continuing the progressive reform that was started during the time of the Prophet. Over 1000 years have passed, and the modern world is incredibly different than it was during the early centuries of Islam. The *ummah* should take up the example of progressive reform and work to ensure that the rules of inheritance reflect the needs of the people today.

- ***The language of Qur'an is not mandatory; Mohammed Shahrour's "Theory of Limits"***

In terms of Surah an-Nisa' 4:11, which says that a male child shall inherit twice as much as a female, some argue that the traditional interpretation, as laid out in the traditional rules of inheritance, is incorrect. Instead of requiring that the male child *always* receive twice that of the female, means that the male can interpret no more than twice the female or that the female must inherit at least one half of the male. For instance, a committee member involved in reviewing Indonesia's inheritance laws argued that "the language of the Koran is not necessarily mandatory. The provision stating that the daughter's share is one half that of the son should be interpreted to mean that daughter's share must be at least half that of her brother. The Koran does not, however, preclude equal shares for males and females if social realities warrant such a distribution and the Muslim community desires it" (Cammack 2000, p. 7).

Related to this idea, Mohammed Shahrour, an engineer from Syria, proposed in his book entitled *al-Kitab wal-Qur'an: Qira'a Mu'asira* a theory called the "Theory of Limits", meaning the limits (*hudud*) divinely ordained in the Qur'an and the *sunnah*. According to this theory, the Qur'an and the *sunnah* set a Lower Limit (minimum) and an Upper Limit (maximum) for all human actions, and man-made legislation and rules are permitted anywhere in between those Limits. Nothing that falls below the Lower Limit or exceeds the Upper Limit is permitted – this is the mandatory aspect of the revelations. However, actions that fall above the Lower Limit and below the Upper Limit are allowed.

The Theory of Limits is based on two other attributes that Shahrour calls straightness (*istiqama*) and curvature (*hanifiyya*). *Istiqama* means following a straight path, and *hanifiyya* can be considered deviation from a straight path. Curvature is natural in human life, and social norms, customs and traditions tend to change from one society to another and over time. Therefore, the straightness is necessary to maintain social order over time. The Lower and Upper Limits represent the straightness needed to contain the natural curvature, and the two act in relation to one another.

There are six types of Limits, which consist of the Lower Limits alone, the Upper Limits alone or the Lower and Upper Limits having some relationship with one another. These are discussed in more detail in Hallaq (1997, pp.245-253) and Shahrour (2000).

The type of Limits related to inheritance is the third type, when the Lower and Upper Limits (maximum and minimum limits) are conjoined. In Qur'an 4:11, it is stated that regarding inheritance provisions for children, "to the male, a portion equal to that of two females". Shahrour's theory holds that instead of laying out an inflexible, rigid amount or share for male and female, this section of the verse sets the Upper Limit (maximum) for men and Lower Limit (minimum) for women in which the man's share cannot be more than 66.6 percent and the woman's cannot be less than 33.3 percent of the estate. Within those bounds, a woman could inherit more than the Lower Limit, or minimum, and a man could inherit less than the Upper Limit, or maximum, depending on their circumstances, as long as both limits are not breached. This type of limit could be applied to all of the inheritance provisions that are set forth in the Qur'an.

This fits within the idea of protecting women's right to inheritance by setting a minimum amount that the women *must* receive and the maximum that a man *may* receive, but providing that she *may* receive more and he *may* receive less than those minimum and maximum amounts.

As Hallaq describes, "The percentage allocated to each is determined in accordance with the objective conditions existing in a particular society at a particular time". There is movement and curvature within the fixed, straight limits set forth. A legislature could thus create human inheritance legislation that is more consistent with women's roles in today's societies as long as it fits within these divine minimum and maximum limits.

- *Changed circumstances, modern realities*

Although many defend the traditional rules by arguing that males are obligated to provide for women and their families, thus the rules accord a support mechanism for women, those arguments do not actually happen in practice and are not just and equitable for men and women in the 21st century.

First, family relationships and structures have changed, just as they were changing in the early days of Islam from the dominance of the tribe to the increased importance of the *ummah* and the family within that. Today, the extended family is less common because of an increase in the importance of the nuclear family. For this reason, it no longer makes sense for a (male) second cousin to receive the bulk of the inheritance as an agnatic heir and prevent a closer (female) relation like a daughter from receiving more of the inheritance or exclude a closer female relation like a granddaughter or niece from receiving any inheritance at all. That second cousin is not as likely to support the women as they might have been during the days when extended families lived in close proximity to one another and played a more central role in social relations.

Second, the argument that men and women have different social roles and obligations is technically still accurate, but in real life is quickly becoming outdated. In modern societies, women are better educated, earn money in the paid economy and are regularly expected (even if not technically obligated) to contribute to the household economy. An

Indonesian who participated in the committee reviewing Indonesia's inheritance laws argued for reform by saying that

... giving equal shares to sons and daughters is not inconsistent with the Koranic text by granting the assumption of the defenders of the two to one distribution that the rationale for the differential treatment of males and females has its source in the different social roles and obligations of men and women. The justification for granting men the larger share is not because of their sex per se, but because they bear the financial burden of supporting the family. In Southeast Asia, however, Muslim women frequently contribute as much or more to the household economy as men. Thus, the purpose or effective cause of the rule is not present. (Cammack 2000, p.7)

A revision in the rules of inheritance would reflect the reality of the modern era and modern economy, where women contribute to their families and households.

In addition, the argument that men must pay large amounts of *mahr*, thus sons need the double shares of inheritance in a way that daughters do not, is no longer accurate in many modern contexts. In Malaysia, for example, state authorities have set a minimum amount of *mahr* at around USD20 or less, which barely allows the woman to buy a pair of shoes! Many men accept this minimal amount as all that is required of them. Although the men often pay an additional amount, it is often given to the family to pay wedding expenses so the woman cannot keep it as her own to supplement her inheritance shares or use as a potential support mechanism. In addition, in many countries, young men arrange temporary or *misyar* marriages to avoid taking on the financial responsibility of supporting her. In cases and situations such as these, women do not receive enough *mahr* or financial support to compensate for them receiving half of what their brothers receive in inheritance and ensure that they are in a secure financial situation.

- ***Conformity with actual practices***

As mentioned above, one of the standard defences of the inheritance rules is that if people want to treat their daughters and sons fairly, they can divide their estates equally and grant the shares to their sons and daughters during their lifetimes (the law of gifts is called *hiba*). *Waqf*, the permanent dedication of property for religious or charitable purposes or for the benefit of the founder and his descendants, can also be used to share property equally among male and female children and provide support for them after the founder's death.

An article on inheritance practices and reform in Indonesia (Cammack 2000) describes the experience of Indonesia's Religion Minister, Munawir Sjadzali, when he consulted a prominent alim about arranging for the distribution of his own property among his children:

Munawir told the ulama that he had six children, three sons and three daughters. All three sons had been educated overseas, paid for out of his own resources, whereas the education of his daughters had cost far less. If, Munawir said, his sons were to receive

twice the inheritance of his daughters, he would consider this grossly unfair. The ulama responded by relating how he had handled his own estate. Instead of waiting until he died for his property to be divided among his heirs, he distributed the bulk of his wealth to his children by way of gift, giving sons and daughters equal shares, leaving only a small amount to be distributed according to Islamic inheritance rules. Other religious leaders, according to the ulama, used the same or similar methods to evade the application of the rule granting sons a double share. Munawir considered this telling of the Islamic attitude toward Islamic law. The fact that the country's religious leaders did not themselves follow the rule granting males a double share indicated that traditional Islamic legal rules were inconsistent with Islamic legal sensibilities, and demonstrated the need for a "reactualization" of traditional doctrines. (p. 7)

In another example of real-life practices, in Pakistan, Sunni men who have only daughters sometimes declare themselves Shi'ites before their deaths so that their daughter(s) can inherit their entire estate. This is because in Sunni law if there is only one daughter and no son, she inherits half the estate; if there is more than one daughter but no son, the daughters inherit two-thirds of the estate to be shared equally between them. The remaining one-half or one-third go to male agnates as residuaries. Therefore, daughters cannot inherit the entire estate under Sunni law. In Ja'fari law, if there is one daughter, she inherits the entire estate; if more than one daughter, they inherit the entire estate between them.

The fact that ulama and the defenders of traditional inheritance rules promote these practices as more fair and equal ways to distribute property indicates that those people believe that the rules of inheritance are not fair and equal for sons and daughters. It is inconceivable that religious scholars will go to great lengths and advise others to do the same to circumvent the traditional rules, yet those rules remain unchanged. As Munawir believed, this demonstrates a need to reform the traditional rules to make them consistent with Islamic legal, religious and ethical sensibilities.

- ***International law requirements***

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which most Muslim countries have signed (albeit mostly with reservations), lays out a broad definition of discrimination that includes both direct and indirect discrimination that is committed by state or non-state actors. States parties to the Convention have an affirmative legal obligation to ensure that women have both de jure (in law) and de facto (in fact) equality with men. Even if the traditional Muslim inheritance rules provided for equal inheritance rights between men and women, States parties to the Convention are also responsible for ensuring that women are able to enjoy these rights – that they actually receive the property they've inherited, that they are not compelled to give up their rights by other members of their families, etc.

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

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

This directly addresses the standard defence of traditional inheritance rules that men are required to support women, so therefore men must receive greater shares of inheritance. The Committee continued in paragraphs 34 and 35:

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

There are many countries where the law and practice concerning inheritance and property result in serious discrimination against women. As a result of this uneven treatment, women may receive a smaller share of the husband's or father's property at his death than would widowers and sons. In some instances, women are granted limited and controlled rights and receive income only from the deceased's property. Often inheritance rights for widows do not reflect the principles of equal ownership of property acquired during marriage. Such provisions contravene the Convention and should be abolished.

A number of other international human rights instruments apply to the issue of inheritance. For instance, the Human Rights Committee, the Committee that monitors compliance of the International Covenant on Civil and Political Rights (ICCPR), stated in General Comment Number 28, "Women should have equal inheritance rights to those of men when the dissolution of marriage is caused by the death of one of the spouses" (2000, para. 26). General Comment Number 16 of the Committee on Economic, Social and Cultural Rights echoes this statement: "Implementing article 3, in relation to article 10, requires States parties ... to ensure that women have equal rights to marital property and inheritance upon their husband's death" (2005, para. 27). In the Beijing Platform for Action, governments also agreed to mobilise in order to "protect women's rights to full and equal access to economic resources, including the right of inheritance and the right to land ownership".

Islam is clearly a religion of justice, fairness and equality, principles that also form the basis of international human rights law. By recognising the core ethical and spiritual values of Qur'anic revelation, the egalitarian aspects of Islam and the inherent dynamism

that allows the religion to be sensitive to the changing needs of society, Islam and human rights norms can be acknowledged to be entirely compatible.

#### EXAMPLES OF REFORM FROM MUSLIM COUNTRIES AROUND THE WORLD

- **Daughters excluding collateral male agnates**
- **Indonesian law reform and case law related to male-female equality**
- **Somalia inheritance reform**
- **Reforms to concept of *radd* (return)**
- **Orphaned grandchildren**
- **Adopted children and parents**
- **Bequests**

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

- **Daughters excluding collateral male agnates**

In the Sunni schools of law, one daughter can inherit up to one-half of the estate and two or more daughters can share in two-thirds of the estates, but the remainder must revert to a male agnate residuary, regardless of how close or distant a relative he is. Iraq adopted the Shi'ite rules of inheritance, which allows female descendants to exclude such collateral male agnates (Esposito 2001). In reforms in 1959, Tunisia also adopted a rule that allows daughters and sons' daughters to exclude collateral heirs (Esposito 2001; Collectif 95 Magheb-Egalité 2006).

- **Indonesian law reform and case law related to male-female equality**

In the past 25 years, Indonesia has been standardising and reforming its Muslim family and inheritance laws. In the late 1980s and early 1990s, the laws were compiled into a document entitled *Kompilasi Hukum Islam* (Compilation of Islamic Laws). In the process of this compilation, the Government's Religion Minister presented a proposal to equalise inheritance between men and women so as to bring it into line with Indonesian *adat*, or customary law, and theoretical arguments of Indonesian scholars. According to Mark Cammack (2000), "The primary justification put forward by the government in support of the proposal was that treating male and female relatives equally is consistent with Southeast Asian social realities and Indonesian legal sensibilities." This proposal failed before it was actually outlined in a formal draft.

However, as described by Cammack (2000), in a 1994 decision of the Indonesian Supreme Court (*H. Nur Said bin Amaq Mu'minah*, Reg. No. 86 K/AG/1994) that considered the inheritance rights of a daughter in competition with collateral relations, the Court said that either a male or female child of the deceased could exclude collaterals.

The case was based on an interpretation of Surah an-Nisa' 4:176, which allows collaterals to inherit in the absence of a "child" of the deceased. Although the Arabic word for child (*walad*) often refers to a child of either sex, and has been interpreted as such in other inheritance verses, a majority of Sunni scholars have interpreted the word *walad* in verse 176 as referring to male children only, such that agnatic siblings are entitled to a share of the inheritance when the deceased is survived by a daughter, but not when the deceased is survived by a son. As Cammack (2000) explains,

This interpretation of the Koran was necessary in order to preserve consistency with a well known Tradition in which the Prophet divided the deceased's estate between his daughters and their uncle, the deceased's brother. It was also consistent with the general principle that Koranic heirs do not exclude other relatives of the inner family (Coulson, 1971: 36-37). Most importantly, though, interpreting the word "child" in verse 176 to refer to sons but not daughters had the effect of systematically advantaging male relatives.

In the *Kompilasi Hukum Islam*, the absence of a child is required for collaterals to inherit, but the Indonesian word for child (*anak*) is, like *walad*, also gender-neutral. The lower courts followed the traditional Sunni rules, but the Supreme Court reversed. According to Cammack (2000),

In a very brief and conclusory decision, the Court stated simply that "so long as the deceased is survived by children, either male or female, the rights of inheritance of the deceased's blood relations, except for parents and spouse, are foreclosed". The only reasoning or authority cited in support of this interpretation was a brief reference to the views of Ibnu Abbas, one of the companions of the Prophet, who construed the word *walad* in Koran 4: 176 as embracing both male and female children.

If this is an indication of the direction in which Indonesia is heading with regard to inheritance rules, there are possibilities for neutralising the systematic advantage provided to male relatives by the traditional human interpretations of the Qur'an, like the interpretation of the word *walad* in Surah an-Nisa' 4:176.

- **Somalia inheritance reform**

In Somalia, males and females are now completely equal with regard to inheritance rights. When there are no children or grandchildren, the widow or widower inherits one-half of the estate. When children or grandchildren exist, this amount is reduced to one-fourth of the estate. If the deceased leaves only a parent, only a sibling or only a single child, the parent or sibling or child, regardless of gender, inherits the entire estate (Esposito 2001).

- **Reforms to concept of *radd* (return)**

In the traditional Maliki rule about the return of excess property, if the amount of shares to be distributed to the sharers is less than 100% of the estate and there is no residuary, the *radd* (return) goes to *bayt al-mal*, the public treasury. Tunisia rejected this rule and

allows wives to take a portion of the extra shares. Sudan, Egypt, Syria, India, and Pakistan have adopted similar rules (Esposito 2001).

- **Orphaned grandchildren**

According to all four of the Sunni schools, the deceased's orphaned grandson or granddaughter (orphaned by the death of the deceased's son or daughter) is totally excluded from inheriting if a son exists. The son excludes his nieces and nephews, and, in the traditional tribal society, was expected to support them as he would support his own children. But this is less likely to happen in modern societies where the nuclear family is emphasised and each nuclear family is an independent branch of the extended family.

In the Shafi'i and Maliki rules, a predeceased daughter's children are excluded even if no other son or daughter exists. The portion of the estate that would have gone to the daughter (and then to her children), had she still been alive, goes to male agnates instead. If there are no sharers or residuaries, the estate will go to the public treasury (*bayt al-mal*).

In 1946, Egypt addressed this problem by providing for an obligatory bequest for the orphaned grandchild. Syria, Morocco, and Tunisia have similar systems, though Syria's applies only to the children of the deceased's son and not his daughter. Tunisia limits the need for obligatory requests to cases where the grandchild was not already named to receive a bequest. The total amount of the obligatory bequest for all grandchildren cannot equal more than one-third of the estate (Esposito 2001). In the 1961 Muslim Family Laws Ordinance, Pakistan provided for representational succession by lineal descendants (Esposito 2001).

Morocco originally adopted a system of obligatory bequests for orphaned grandchildren but limited it to the children of a predeceased son. In Morocco's 2004 reforms to its *Moudawana* (Family Code), the children of either sons or daughters take an obligatory amount, according to the total size of the estate. According to Femmes du Maroc, a women's non-governmental organisation, the old practice was based on obsolete tribal custom, not on religious or legal grounds, and had the effect of unfairly benefiting male heirs only (Weingartner 2005).

The Indonesian *Kompilasi Hukum Islam* (Compilation of Islamic Laws) provides for representation of pre-deceased heirs in article 185: "An heir who dies before the deceased may be represented by his children", but "The share of the representative may not exceed the share of an heir of the same degree [of relationship] as the person represented" (Cammack 2000, pp.12-13).

- **Adopted children and adoptive parents**

Relationships based on adoption are generally excluded from traditional Islamic inheritance rules. In Indonesia's *Kompilasi Hukum Islam* (Compilation of Islamic Laws), however, an adopted child must receive an obligatory bequest of up to one-third of the estate when the child has not been named in an express bequest by the adoptive parents.

The adoptive parents also receive an obligatory bequest out of their child's estate. In Islamic Southeast Asia, it is common to raise children outside of the birth home, so the obligatory bequest provides for fair inheritance distribution to the adopted children. This rule derived from the Egyptian law providing for obligatory bequests for orphaned grandchildren (Cammack 2000).

- **Bequests**

Under the traditional Sunni rules of inheritance, bequests of up to one-third of the estate can be made, but not to an heir unless (for some schools) the other heirs agree. As an attempt to expand the rights of individuals to dispose of their property according to their wishes, Egypt, Sudan, and Iraq adopted the Shi'ite law of inheritance, which allows heirs to receive a bequest of up to one-third of the estate without the consent of the other heirs (Hallaq 1997; Esposito 2001). In addition, Tunisia and Somalia allow bequests to be made in favour of an heir or beyond the one-third limit if other heirs agree to it. Tunisia also requires a bequest be carried out for the entire estate if there are no heirs or creditors so that the estate does not go to the public treasury (Esposito 2001).

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