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Equality between men and women in rights and its impact on sustainable development (inheritance as an example)

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Abstract

Purpose: This study examines Islamic Sharia's impact on women's inheritance rights. The study also examines Islamic women's rights and equality. Theoretical Framework: The research is based on natural law, which guarantees equality for all, especially men and women. Islamic law protects the inheritance rights of all heirs, including women, based on the principle of inheritance equality as a right to Method: The study uses a qualitative research method and analyzes relevant literature and Islamic legal provisions related to women's inheritance rights. Results and Conclusion: According to the findings of the study, Islamic law prohibits gender discrimination and provides protection for women's inheritance. The study also came to the conclusion that there is no gender bias in the allocation of inheritances. It's possible that women will inherit less than men. According to the findings of the study, Islamic law is in favor of the inheritance rights of women and gender equality. Research Implications: This study emphasizes the need for more research on Islamic law's role in protecting women's inheritance rights. It also recommends including special demands for women's rights in academic curricula and holding seminars and workshops to demonstrate Islamic law's role in explaining women's right to inheritance without discrimination. Originality/Value: This study examines Islamic law on women's inheritance rights and its compatibility with the 1948 Universal Declaration of Human Rights. The study emphasizes Islamic law's protection of women's rights and inheritance equality.

Keywords: inheritance, sustainable development, man, female, amount of inheritance, inheritance share.

Introduction

The idea of natural law, which determines the right of equality for all people, is the basis from which the principles of justice and equality among members of society stem. Especially between men and women, and since the right is that privilege and interest that must be protected under the law, and there is no distinction between protecting the right being a right of a man or a woman, heavenly and man-made legislation came to protect it, and Islamic law was not immune to ensuring the protection of the right, and mandated and man-made discourses were directed at Equality for men or women, and since one of the rights is the right of inheritance for women and men in the estate, the Islamic Sharia established general rules that relate to public order in protecting the inheritance rights of all heirs, including men and women, and based on the principle of equality in inheritance as a right related to sustainable development,

In this research, we will take into account the social dimensions as well as the economic dimensions that Islamic law took in the distribution of inheritance in order to meet the needs of individuals while respecting Preserve the right of future generations, so we will discuss a number of provisions that are allocated to these resources.

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First: the research problem

Through this research, we raise a number of questions that we tried to answer, the most important of which are:

- Are the general rights of men and women equal in man-made legal rules?
- What is the importance of women in financial rights in Islamic law?
- Is the woman wronged in her right to inheritance, as some claim in distorting the principles of the Islamic religion?
- What are the acquired rights that women and men have increased or equaled in Islamic law?

Second: research methodology and structure

We decided that the analytical descriptive approach, and the extrapolation of legal texts, should be a starting point in the research subject, and we divided the research into two sections, as we devoted the first topic to the relationship between Islamic law and the Universal Declaration of Human Rights for the year (1948) and the legal status of women in their light, and in the second topic we devoted it to Differentiation and equality between men and women in the light of inheritance rules (Qadri, 2014, p. 114).

The first requirement: Islamic Sharia and the Universal Declaration of Human Rights for the year (1948)

The declaration of the Universal Declaration of Human Rights represents from the world's point of view a starting point for knowing the rights and duties of individuals. Article 1 of the Universal Declaration states: "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience, and they should act towards one another in a spirit of brotherhood (Koshy-Chenthittayil , Mendes & Laubenbacher, 2021).

The aforementioned text harmonizes with the spirit of Islamic law, as it came in complete harmony with the discourse of the Noble Qur'an in the Almighty's saying: "O people, indeed We created you from male and female, and made you into peoples and tribes so that you may know one another" (Al-Hujurat, 13).

The Holy Qur'an reveals in this Qur'an verse the content and meaning of the first article in the Universal Declaration of Human Rights, and the discourse in the Qur'an verse is addressed to all people without distinction of race or sex, and the emphasis is placed on the principle of equality in detail that you are created from one gender called male and another called female. However, this designation is neither beneficial nor harmful.

By virtue of the distinction between you on the basis of diligence and perseverance in work, and the effects produced by each individual, regardless of his color, gender, sect and religion (Al-Tabatabai, 2002, p 326).

The sanctity of discrimination against women is one of the basic principles referred to by human rights, as the various international treaties related to human rights referred to the rejection of the idea of discrimination on the basis of sex and gender, and this principle was confirmed in the Universal Declaration of Human Rights, as this declaration explicitly stated in its second article the saying Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, Wealth, birth, or any other status", it is clear from the aforementioned text that gender is mentioned as one of the prohibited principles for distinguishing

between societies (The Universal Declaration of Human Rights, 1948).

As for the Special Committee on the International Covenant on Civil and Political Rights for Human Rights, formed by No. (68) for the year 2000, it clarified in its general report No. 28 related to Article (3) of the Universal Declaration of Human Rights a concept beyond equality between the human race, as it relied on providing the necessary and targeted measures on States in order to perpetuate equality and protection for women, as the clarification came as follows: (With regard to equality between women and men, the concerned countries should not only adopt precautionary measures for protection, but rather they must take positive measures in various fields, in order to achieve the goal Enabling women to enjoy their full rights in an effective manner, on the basis of justice and equality (Al-Shazly, 2010, p. 44).

The principle of discrimination against women is not limited to the aforementioned declaration, but there are other international conventions specialized in preventing discrimination against women, including: The Convention on the Political Rights of Women, the Elimination of Discrimination against Women, and the Second Additional Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in the Continent. Africa, as this protocol was adopted in 2003, and the African protocol is a distinguished and milestone step in the efforts exerted to enhance respect for the presence of women in society (Leah, 2009, p. 117).

As for the level of Islamic law, it has established the rule of equality between human beings, regardless of their color, gender, race and sect. The principle of equality is one of the lofty principles established in Islamic law (Butler et al, 2021).

Equality in Islamic Sharia Many immoral customs and outdated traditions that have no basis were rooted in the time of ignorance and contradict the equality established in Islam, and Islam found a new constitution that denied all wrong values taken towards women, as it established a system based on respect for man without discrimination, and warned From differentiating between genders, whether male or female, so he is fair to women according to the aforementioned basis, and removes the injustice of ignorance from her, preserving her dignity, humanity, affection and feelings, and raising her status, and did not underestimate her right, but made her equal in human value with men, and the letters of the Noble Qur'an to members of society in addressing Everyone without discrimination, even those who disagree with the doctrine of Islam, is sufficient to lift discrimination against any person, regardless of his orientation, as we find the Qur'an discourses beginning with (O people, O people! Those who believe, oh man), (And they shall have the same as those who owe them with kindness) (Al-Baqarah, 228).

So the Islamic law followed a clear approach in stating the rights and duties of equality between men and women through its Quran texts and also in the honorable The Prophet's platform, so fairness was the clear characteristic of women, and protection Her right and meeting her legitimate demands is one of her priorities, and she was recognized as an effective individual in society (Al-Rifai and Al-Azizi, 2006).

As for her right to inheritance, the verses of inheritance were clear and fair in giving her right to it from their share, thus Islam nullified the injustice and oppression that befell women before Islam, as they were forbidden and deprived of it, and inheritance was limited to males only, so the Quranic verses and the hadiths of the Prophet were clear in Giving her imposed right of inheritance, and Islamic law warned against robbing the right of inheritance in general, and for women in particular. Indeed, almost all Arab laws derived provisions of inheritance from Islamic law (Iraqi Personal Status Law, 1959), and legal rules were established in accordance

with the details of Islamic law, contrary to the Universal Declaration of Human Rights Who has not been exposed to this clear right of women (Al-Takroui, p.14).

According to what was mentioned above, the inheritance of women in Islam is considered an established right for them, however, it differs in terms of the legal status of women and has multiple forms (Kaur et al.,2017).

And the differentiation between a man and a woman, whether this differentiation is on the part of the man or on the part of the woman, is not the general rule in the distribution of shares of inheritance; In certain cases, the woman inherits the same as the man, or his inheritance may be more or less than him, or the situation may reach the point of preventing him from inheriting, so he inherits and does not, so we see that masculinity and femininity are not a complete criterion in the distribution of inheritance, as we will see in the next section.

The system of women's inheritance in Islam is an integral part of the integrated system of financial rights for women and men. Thus, it is not possible to take the financial right apart from both of them, and the foundation of that right is based on the basis of justice and equality. However, preferences in terms of inheritance over others are based on foundations and considerations that we can summarize as follows:

First: The details and specificities in the provisions of inheritance revealed by the wise legislator prompt the Muslim before submission and obedience to whom he owes, which is God Almighty and His revealed rulings, or a female that imagines favoritism for one individual at the expense of another individual (Muhammad, 2006, p. 454).

Second: The Islamic system of inheritance is based on justice and not on the principle of justice, which is taken into account by the most general laws. As justice gives people their rights in proportion to their burdens and duties; In the light of these principles, the inheritance system in Islamic law proceeds as an integral part of its general philosophy in determining financial rights and duties, and thus it works to distribute financial rights and responsibilities entrusted to the individual, and thus the disparity in distribution if it is less or more according to that, the presence or absence of each of the man and the woman.

For example, the man has to pay the dowry and bear the expenses towards his family, offset by the exemption of the woman from these obligations, and yet she has the right to dispose of what the man gives her in her money in what she deems appropriate for the family and her (Al-Bakri and Al-Bashir, 2009, p. 41), (Khairallah, 2011, p. 4).

The application of the principle of fairness and justice in the aforementioned paragraph is observed according to the realistic circumstances that surround the man, and this is precisely the application of the principle of realistic justice that the people of law seek.

Third: If we want to compare the Islamic system of inheritance with some European laws, and take as an example the mother's neighborhood, because she represents part of the system of the female Islamic legislator, inheriting her supposed share of a third, one-sixth, or all of the money, whether there is an inheriting descendant or not, while we do not find this division in the inheritance.

In many European laws, with the presence of children or one of the spouses, French law has taken the division of the heirs into five sections or degrees, in which the inheritance does not pass to the next degree except by losing the previous degree, and the parents of the deceased are considered to be of the second degree, as the presence of children or the husband prevents the mother from the inheritance, and this distribution is not found in Islamic law, as

you noticed the mother's share as a female, so she must have a share whether there are children or not (British inheritance law, 1962).

The second topic: Differentiation and equality between men and women in the light of inheritance rules

The transfer of inheritance from the ancestor to the general successor is not generally linked to the will of a person, but even fetuses in the wombs of their mothers are included in this transfer, and this fully applies to the woman's inheritance, as the father, brother or husband can no longer prevent the woman from her right to inherit, as the Inheritance in Islamic law and man-made laws is a social and financial system and the duty to transfer from the successor to the ancestor, and from this successor is the woman's right to it (Talozi, 2018, p. 64).

Inheritance in Islam is linked according to the theory of compulsory transfer of property, contrary to the rule that says that nothing may be included in another property, as the compulsory succession in the transfer of inheritance in the Islamic system is not linked to the person's acceptance or rejection, but rather the transfer in it compulsorily and with a known amount, and this amount (Hauser et al, 2022).

The known is set according to a specific system that includes the female and the male, and perhaps the Islamic jurisprudential rule that states: "For the male is like the share of two females" is also not absolute, but it is possible that the inheritance right of the female is greater and higher than what is for the male, and in order to discuss the discrepancy between the inheritance of women and men, we present This discrepancy is as follows:

The first subsection: Increasing the share of the male over the share of the female

The estimated inheritance in Islamic countries is governed by the general rules found in the Qur'an and the Sunnah of the Prophet, and perhaps one of the most obvious manifestations of the increase in the share of the male over the share of the female is the inheritance divided between brothers, as the Qur'an verse in Surat Al-Nisa, verse (11) is a starting point and a basis for the division of inheritance between males and females, as It says: "God commands you concerning your children, for the male is like the share of the two females," as the disparity between the male and the female is clear through it, and the meaning of the Qur'an verse is that the female, together with the male, is given half of what the male is given, or the male is given twice of her share, regardless of the reasons given.

Mentioned in many Muslim interpretations in including the weakest share for the female, this is one of the dozens of inheritance provisions, and it is specific to the meeting of brothers and sisters only.

It is not fair to rely on the meaning of distributing the double share of the male in isolation from what the Islamic Shari'a ordered to give her a larger share than what the male takes. An equal or double share than the male, and this is what we will notice in the subsequent hypotheses (Freihat, 2012, p. 337).

It is worth mentioning that the distribution of inheritance in Islam in general is not linked to masculinity or femininity, but was determined according to heavenly considerations that cannot be explained. spending for those who support them; Therefore, they went to the point of increasing the share of the male in this hypothesis because of the circumstance of support by the male for his family of wife and children and those under his care such as brothers and sisters, in contrast to the female who does not need the extra cost of caring for her family or those who need her care and as a result of these circumstances surrounding the male and

female. The female now takes her full share of the inheritance and remains under the care of her brother, for example in this hypothesis, and she does not have to support anyone at all (Daboubi, 2020, p. 177).

The second section: the equality of the female share with the male share in Islam

Equality is not limited to inheritance only, but Islamic law called for equality in responsibilities and rights, and in this section we discuss the most prominent citizens in which the rights of men and women are equal, and the speech here is not limited to the wife or sister only, but includes everyone to whom the term female or woman applies, they are as follows:

1. If the father and mother meet with what they represent of their right to inheritance, given that the mother represents the woman and the father represents the male in the case of the presence of the inheriting descendant, and the inheriting descendant means the children, even if they are descended, then the mother and the father will get each one of them according to the shares in the inheritance system one-sixth for each one. In application of the noble Qur'an verse, "And for his parents, each one of them shall have a sixth of what he leaves if he had a child" (Nisa, 11), and the sixth that is given to the woman with her title, or can it exceed the prescribed limit if the child is not the guardian (Al-Khalidi, 2012, p. 174).
2. The brother and sister are maternal or sisters with brothers and sisters through the mother, as Islam did not leave the brothers from the mother without inheritance as some heavenly or man-made laws do. With the brothers from the mother, it is the brothers born from one mother and different fathers, as the Islamic system determined the share of each of them with a sixth as well (Al-Rifai, 2007, p.48).
3. The daughter is with her uncle or the closest agnate to the father (with the absence of the guardian). In the agnate inheritance that differs from the caste system, the daughter inherits half of the inheritance on the condition that there is no brother with her in the inheritance, and the presence of her uncle or cousin and the like from the agnates, so she is given The daughter's share amounting to half, and the agnate is given the other half because of his relatives with the dead, and what is meant by the uncle is the brother of the dead from his mother and father (Al-Sartawi, 2009, p. 151) , (Ibrahim, 1987, pp. 308-430).

Section Three: The share of the female is greater than the share of the male

In the Islamic system of inheritance, the female has been treated fairly in general, with little respect in determining her share of the inheritance, and the woman in particular.

1. If a person dies and leaves behind: a daughter, a mother, and a father, and here the daughter (the woman) takes a greater share than the father of the deceased, so the daughter has two-thirds of the estate, obligatory and rejected, and the father gets one-sixth (the man), and the mother gets one-sixth of the estate (Al-Sistani, 2014, p. 301).
2. If the wife dies and leaves a son's daughter, a husband and a father, then the son's daughter gets half of the estate by default, and the husband gets a quarter of it, and the father gets one-sixth of the estate and the rest is returned to him, and with this division the share of the son's daughter will be more than the share of the deceased husband and greater than the share of his father as well.
3. If the wife dies and leaves behind a husband and a daughter, then the husband has a quarter of the estate, and the daughter gets half the estate by default, and the rest is returned to her, so the total of what she inherits becomes three quarters of the estate, and thus her share is greater than the share of the husband.

4. If a person dies and leaves behind a mother, a full sister, and a paternal brother, the division shall be for the mother one-sixth of the estate, and for the full sister half of the estate and the remainder for her paternal brother.
5. If a person dies and leaves a wife and sister to the father and nephew of a brother, then the wife has a quarter of the estate, and the sister to the father has half of the estate, and the rest goes to the nephew, and thus the share of the sister to the father is more than the share of her full nephew.
6. If the wife dies leaving behind two daughters, a husband, and a father, then the husband gets a quarter of the estate, and the father gets one-sixth of the estate by default, and the share of the two daughters is two-thirds of the estate, which is much greater than the share of the husband and father.

Section Four: The woman inherits but the man does not

In this section, we note that the woman takes over all the inheritance to the exclusion of the man, which is as follows:

1. If the deceased left a daughter and a brother to the mother, the daughter gets all the money and the brother has nothing from the mother.
2. If the deceased left a daughter, a full sister, and a full brother, then the daughter gets half of the estate, and the full sister gets the rest of the estate with the daughter, and the brother has nothing for the father; Because it is veiled withholding denial.
3. If the deceased left a daughter of a son and brothers of a mother, then the daughter of the son blocks the brothers from the mother with the veil of deprivation and prevents them from inheriting.

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3. If the wife dies and leaves behind a husband and a daughter, then the husband has a quarter of the estate, and the daughter gets half the estate by default, and the rest is returned to her, so the total of what she inherits becomes three quarters of the estate, and thus her share is greater than the share of the husband.
4. If a person dies and leaves behind a mother, a full sister, and a paternal brother, the division shall be for the mother one-sixth of the estate, and for the full sister half of the estate and the remainder for her paternal brother.

5. If a person dies and leaves a wife and sister to the father and nephew of a brother, then the wife has a quarter of the estate, and the sister to the father has half of the estate, and the rest goes to the nephew, and thus the share of the sister to the father is more than the share of her full nephew.

Findings and Recommendations First: the results

1. The sanctity of discrimination against women is one of the basic principles referred to by human rights and Islamic law, which considers this a violation of their rights.
2. Islam created a constitution that denied all wrong values taken towards women, as it established a system based on respect for human beings without discrimination, and warned against differentiating between genders, whether male or female. Her status, and he did not underestimate her right, but equated her with human value with a man.
3. The inheritance of a woman in Islam is considered an inalienable right for her, and whoever violates this right is considered a violation of the principles of the true heavenly religion.
4. The differentiation between a man and a woman, whether this differentiation is on the part of the man or on the part of the woman, is not a general rule in the distribution of shares of inheritance; In certain cases, the woman inherits the same as the man, or his inheritance may be more or less than him, or the situation in the woman's inheritance may reach the point of preventing the man from inheriting, so he inherits and does not inherit, and masculinity and femininity are not a complete criterion in the distribution of inheritance according to Islamic law.

Second: Recommendations

1. We recommend those in charge of university studies, whether undergraduate studies or postgraduate studies, to increase research and studies that would clarify and show the effective role of Islamic law in clarifying women's right to it.
2. Including in academic curricula, at various stages, special demands that concern women's rights, and show their role in society from the social and economic point of view.
3. We recommend those in charge of ministries and departments concerned with human rights and women's affairs to hold seminars and special workshops that show and explain the role of Islamic law in explaining women's right to inheritance and the work guaranteed by Islam without discrimination between them and men.

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