

The Islamic Legal Provisions for Women's Share in the Inheritance System: A Reflection on Malaysian Society

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Abstract

Characterized as divinely ordained, the Islamic law of inheritance defines women's rights to property of the deceased with specific roles and responsibilities for each individual. Obviously, the Islamic law of inheritance is a major contribution to the legal system of the world, compared to the customary laws in the pre-Islamic Arab society that denied any proprietary right by way of inheritance to female relatives including daughters. However, the jurisprudential inquiry into the legal nature of inheritance rights of women entails a close analysis of various factors, including the contemporary socio-economic conditions of Muslim women. This paper revisits the historical and social aspects of the Islamic legal provisions with regard to inheritance rights in an effort to determine if the legal provision has merits to be implemented in light of the changing socio-economic conditions of women in Muslim majority states. It argues that a much clearer position that reflects the changing role of women needs to be postulated, though the challenge is to determine whether the Islamic epistemological position allows any room for restructuring the Islamic legal provision from the perspective of the current situation of Muslim nations such as Malaysia. An examination of the position of Muslim women's rights to property on the basis of the ontological, epistemological, and methodological aspects of legal rulings in Islam prompts us to call for a novel method of thinking, understanding, and implementing the Islamic inheritance provisions against the backdrop of the present globalized but stereotyped Muslim world. To that end, it concludes with the suggestion of enacting what can be called in modern terms "by-laws" within the Islamic framework in juxtaposition with the existing law of Islamic society in general, and that of Malaysia in particular.

Key words

Muslim women, inheritance law, Islamic law, Malaysia

Introduction

Women in modern times occupy a large percentage of the workforces in management and professional positions. With the rapid development of global economy more women tend to be moving away from their traditional roles of housewives and childcare providers to identify themselves as professionals and wage earners in order to eke out additional income for their families, a role which even a few years ago rested solely upon men's shoulders in Muslim nations. According to the International Labour Organization (ILO), the number of women in the labour market will increase from 38 percent in 1970 to over 41 percent by the year 2020 (A. Omar & Davidson, 2001).

It is noted that women's participation in the global workforce is a direct response to the increasing pressure of modernized society, which is dominated by what may be called 'capitalist economy' and 'industrialisation' (Giddens, 1990), 'rationalization' (McClennan, 1992) and even 'secularization' (Hamilton, 1992). Put simply, this is 'modernity,' which Eisenstadt (1966) cited in Kiely & Marfleet (1998) as "The process of change towards those types of social, economic and political systems that have developed in Western Europe and North America" (Eisenstadt, 1966, p. 1).

Eisenstadt's definition suggests that for societies to be 'modern' and 'developed,' nation states or societies must initiate a changing process reflecting the social, economic and political systems such as those found in the Western world. Interestingly, religious matters as a facet of social life are being discussed more openly in recent years in the context of the changing patterns of modern social and economic life. As one of the fastest growing religions in the world today (Nagata, 1994), Islam is concerned with issues that need reconsideration. Muslims believe that Islam is not just a religion but also a complete social order and 'a way of life' for them. However, more often than not, Islam is charged with not holding a favourable position for women, though Hashim (1999) remarks that "...although these charges are levelled at all major religions, Islam in particular has a reputation for being 'anti-woman' and for supporting a segregated social system where women are economically and politically marginalised" (Hashim, 1999, p. 7).

Muslim scholars generally disagree with such a view, arguing that the

Qur'an provides for equal rights of both sexes. Muslims are normally suspicious of feminist movements, for they see feminists' emphasis on equal rights as opposed to the Islamic notion of the complementary roles and functions of both sexes, with corresponding rights and duties that they believe further reflect each sex's particular strengths and weaknesses (Hashim, 1999). The changing political borders and the aftermath of modernization processes (for instance through the colonization of many Third World countries in the modern period) pose further dilemmas for nation-states with predominantly Muslim population to maintain the *Shari'ah* as the law of the land against the onslaught of post-colonialist, Western legal systems. In effect, it is the legal system that is one of the most controversial issues in Islam, particularly with regard to the gender problem. The constitutions of many Muslim states have inherited a marked legacy from the Western imperialists and Islam is often declared as the 'Official Religion,'¹ but with no real legal jurisdiction over the life of Muslims. However, Muslims can draw from the *Shari'ah* law directly concerning personal and family matters, such as marriage and divorce, settlement of divorce (property), guardianship of infants and children, conversion and other non-public matters. In some countries, Islamic criminal law is being practiced and enforced. Interestingly, Muslim women are, perhaps unsurprisingly, most affected by the administration of this selective implementation of Islamic personal laws as well as Islamic criminal law. Many feminist movements in Muslim societies² seem to have arisen from the reaction of Muslim women over the 'injustices' they have undergone for ages under the law in question (Abdullah & Khairuddin, 2009).

Muslim Women's Rights to Inheritance (*Mirath*)

In the pre-Islamic Arab world, women in general were deprived of fundamental human rights, except for those with high status. John L.

¹ Such as the case of the Malaysian Constitution; Article 2 proclaims in effect that Islam is the official religion of the Federation although other religions are not hindered from being practiced.

² A vast number of works had documented the 'plight' of women in predominantly Middle Eastern Muslim societies. See for example Rippenburg 1998; Stowasser 1998; Roded 1999.

Esposito (2001) has shared the views of other scholars and argued that the status of women was inferior during the *Jabilyyyah* (literally meaning “ignorance”) period. The inferior status ascribed to women during this period was evident through the practices and customs of the *Jabilyyyah* people in matters concerning family and social life.³ During the pre-Islamic period, the customary laws in Arab society did not allow female relatives including daughters to enjoy any proprietary right by way of inheritance. Not only that, but the wife was completely deprived of any right whatsoever in the property of her deceased husband, not to mention, cognates, who were totally excluded. The Qur’an has indeed clearly provided a respectable status to women. Fazlur Rahman (2003) explains this as follows:

The teaching of the Qur’an on the subject of women is a part of its effort to improve the condition of, and strengthen the weaker segments of society in pre-Islamic Arabia—orphans, slaves, the poor, women, etc. – segments which had been abused by the stronger elements in the society.⁴

Islam introduced some outstanding changes in the Arab world including changes that improved the dignity of women. Of the major improvements over the customary Arab laws some important features include a female’s right to inheritance, a widow’s inclusion in the inheritance law, and a daughter being an heir, etc. It is often argued the goal of the reforms brought about by the Qur’an is to ensure that women are not victimized. Of course, these reforms have raised the status of women by establishing certain rules and regulations in relation to the family institution.⁵ This shows that the Qur’an did not introduce

³ Esposito, John L., *Women in Muslim Family Law*, pp. 14-15; Stowasser, B.F., “The Status of Women in Early Islam,” in Freda Hussain (ed.), *Muslim Women*, Croom Helm, 1984, p. 15; Fazlur Rahman, “Status of Women in the Qur’an,” in Guity Nashat (ed.), *Women and Revolution in Iran*, Westview Press Inc., 1983, p. 37.

⁴ Rahman, Fazlur, “Status of Women in the *Qur’an*,” in Guity Nashat, *Women and Revolution in Iran*, p. 37.

⁵ Ali, Ameer, *The Spirit of Islam*, p. 227. See also Esposito, John L., *Women in Muslim Family Law*, p. 13.

polygamy but rather reformed the practice. As for the legal inheritance on the women, four verses of the Surah an-Nisa' of the Qur'ān are often quoted, these being 4, 11, 12, and 176. Of these, the verse seven states that (Ibn Kathir, 2000):

Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much—a legal share (Q. IV, p. 7).

The aforesaid verse precisely reveals to us that Islam provides a legal provision for women on the rights of inheritance. Furthermore, the male must provide his bride with a matrimonial gift, and this usually takes the form of tangible or intangible property, which shall belong to the wife, even if she happens to be divorced in her later life. In sum, a married Muslim woman's financial rights are ascertained from a variety of sources on many contingent conditions – her dower (mahr) at the start of her married life, full maintenance during her married life and share of inheritance from her family, which excludes her share from her husband's property as well as the unique provision of Harta Sepencharian (Malay: property jointly acquired) for Muslim women in Malaysia (Abdullah, Martinez, & Radzi, 2010). Thus, the Muslim women's right to property tends to be equitably secured.

Islamic Legal Provisions for Muslim Women's Share in the Inheritance System

The Islamic legal provision for inheritance is a complicated law. Islamic law of inheritance ordains the share of inheritance, which an heir is entitled to, as a predetermined percentage. For instance, the wife's share is determined at $\frac{1}{4}$ of a portion of the property, if the deceased husband left no child and $\frac{1}{8}$ shares if the deceased left a child. There are six portions preordained in the Qur'ān cited as fractions of $\frac{1}{2}$, $\frac{1}{3}$, $\frac{2}{3}$, $\frac{1}{4}$, $\frac{1}{6}$ and $\frac{1}{8}$ (Wan Harun, 2006, p. 82). The much-talked about source of this share system lies in two verses of the Qur'ān (IV, pp. 11-12), the first of which states:

God (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, then their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased leaves children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased leaves brothers (or sisters) the mother has a sixth. The distribution in all cases is after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God... (Q. IV, p. 11).

There is no doubt that the Qur'an lays down the policies of how the women will inherit deceased persons' property. However, the controversial rule is that the female share is half the male, except for the cases in which the mother receives a share equal to that of the father. The majority of the *culama* rationalize that in order to understand the reason behind the rule one must take into account the fact that a husband or a male's financial obligations surpass those of the female. In Islam, the man is believed to be primarily responsible for his family—in all matters of daily necessities right up to the family's safety, security and future. In addition, the man is also responsible for the welfare of his parents, as well as other female members of his family for as long as they remain unmarried. Islam does not deprive any inheritor of their legal right to property. As there is provision for women, so is for men as to the right to property of the deceased, though there is a difference of ratio between them (Fattah, 2004, p. 1121). As for the clarity of the distribution of property, the Qur'an also lays down:

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants

nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allāh (Q. IV, p. 12).

In the above distribution system enshrined in the Qurʿān, which is an injunction by definition of Islamic law, an important provision is “...after payment of legacies and debts.” It is also to be noted that in the passage “In what ye leave” and in the clause “...if ye leave a child,” by the term “ye” is meant “husbands.” On the other hand, the term “they” in the passage “...if they leave no child” is directed at “wives.” On the basis of the above verses, shares of the predetermined heirs could be categorized as follows in Table 1.

Table 1 *Epistemological Evidence of Inheritance Shares Based on the Qurʿān (IV, p. 11-12)*

Share Portion	Epistemological Evidence from the Qurʿān
$\frac{1}{2}$	<i>God (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females</i>
$\frac{1}{3}$	<i>if no children, and the parents are the (only) heirs, the mother has a third</i>
$\frac{2}{3}$	<i>if only daughters, two or more, their share is two-thirds of the inheritance</i>
$\frac{1}{4}$	<i>but if they leave a child, ye get a fourth; after payment of legacies and debts</i>
$\frac{1}{6}$	<i>if the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth</i>
$\frac{1}{8}$	<i>if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts</i>

[Wan Harun, (2006, p. 82), with slight modification]

As can be seen from the above, there are twelve sharers in number: husband, wife, father, mother, daughter, son's daughter, true grandfather, true grandmother, full sister, consanguine sister, uterine sister, and uterine brother. The gender-based classification of these sharers as male and female, shows that the female heirs outnumber the male ones, as the former are eight in number, while the latter, only four.

Furthermore, all these twelve sharers can be categorized as primary heirs and secondary heirs. Among the twelve sharers five heirs are never excluded and they belong to the primary category of heir. They are husband, wife, father, mother, and daughter. On the other hand, seven heirs may be totally excluded under certain circumstances, and thus they belong to the secondary category of heir. They are true grandfather, true grandmother, son's daughter, full sister, consanguine sister, uterine sister, and uterine brother. However, of the twelve sharers, son's daughter, grandfather and grandmother are not explicitly mentioned in the Qur'an; rather, they are added to the list as substitute heirs on the basis of *al-qiyās* (similarities between the new and the old cases treated in either the Qur'an or Ḥadīth) introduced in the source of *fiqh* (Islamic jurisprudence) during the era of the Righteous Caliphs (632-661).

So, we see that all legal female heirs are essentially predetermined portion (*furudh*); for instance, a daughter will get $\frac{1}{2}$ of the inheritance, whereas several daughters will inherit $\frac{2}{3}$ of the property. This contradicts the legal heirs that inherit through *‘asabah* (undetermined) shares applied to such cases in which the share portion is not predetermined and the heirs shall inherit only after all predetermined portions (*furudh*) have been disposed of and there remains a surplus of the inheritance property left (Wan Harun, 2006, p. 84).

Analyzing the above verses, Jalaludin as-Sayuti (2004, p. 194) articulates the reason behind the revelation (*‘asabah an-Nuzul*) of these particular verses (11-12) of Surah an-Nisa'. According to him, during the *Jahiliyyah* period, inheritance was not distributed to women or to sons, who were not adults, or old enough to go for war. The case of ‘Abdur Rahman (a kin of Hasan bin Thabit) – a famous poet, can be cited here. When he passed away, he left behind a wife, Ummu Kuhhah and five daughters. The relatives of the deceased came to claim rights over his property. Ummu Kuhhah came to see the Prophet about the matter and subsequently these particular verses were revealed to the Prophet in relation to the inheritance rights of daughters. Another example was cited by Jalaludin as-Sayuti (2004, p. 194) narrated by Ahmad, Abu Daud, Tirmizi and al-Hakim, which tells about the wife of Saad bin Al-Rabi, who came to the Prophet and said: “O Messenger of God, these two girls are the daughters of Saad bin Al-Rabi who has fought alongside you in the Battle of Uhud and become martyred in the said battle. The

uncle of the two girls has come and taken his entire legacy with nothing left.” The Prophet thus said, “God will determine His Laws.” As such, the verse eleven of Surah an-Nisa’, which elucidates laws concerning her inheritance shares for women, was revealed to the Prophet. This shows the practical necessity of the revelation of Islamic laws.

That said, Islamic inheritance laws are undoubtedly a very complex, comprehensive, and to some extent, confusing system of share apportionment. Explaining the matter for clarity, Souaiaia (2008) further divides the classes of heirs into three:

- (1) Those inheriting *fard* shares; (a) three males (father, grandfather, and maternal brother); (b) seven females (mother, grandmother, daughter, the daughter of the son, sister, paternal sister and maternal sister);
- (2) Those inheriting *‘asabah* shares; (a) the deceased’s issue (son and son of the son downwards), (b) the deceased’s ancestor (father and grandfather upwards), (c) the deceased’s father’s issue (full and half uncle downwards), and (d) the deceased’s grandfather’s issue (great full and half uncles downwards);
- (3) Those inheriting neither *fard* nor *‘asabah* shares such as son of the daughter, daughter of a brother, son of a sister and paternal and maternal aunts (Souaiaia, 2008, p. 63).

Indeed, the heirs of a deceased person specified in Islam can be of three types – sharers, agnatic heirs, and uterine heirs or distant kindred. The sharers, as mentioned before, tend to stand top on the priority list of property distribution, as they hold twelve in number, though they are categorized as primary and secondary heirs. But their shares are specifically fixed in the Qur’ān. Then the remaining property will be distributed among the *‘asabah* or agnatic heirs, who get the residue. In contrast, the uterine heirs or distant kindred may be eligible for the property, if and only when, the above-mentioned two groups are absent, save the spouse. These are blood relations, but are neither sharers, nor residuaries for, instance, daughter’s children, children of son’s daughter. Although these classes are already to receive a predetermined share, as Chaudhry (1998, p. 530) explains it as follows:

...not all possible heirs always inherit; some classes may exclude others, and some heirs within a class may exclude others within the same class. However, the spouse, parents, and children of the deceased cannot be excluded, although their shares may be decreased by the existence of more heirs.

As for the Qur'ānic distribution of shares between male and female, Ahmed Souaiaia (2008, p. 66) comments that this formula, although it seems to be “mathematically sound,” raises a few questions, most notably on the issue of the general applicability of this legal rule in all circumstances (such as the existence of other first class heirs). This leads to the issue of diminished share of female heirs due to the existence of other first class heirs. In what appears to be perceived inequality, Souaiaia (2008) further claims that the Qur'ānic exegetes provides a number of justification:

First, they said that women did not have to fight in wars and work outside to provide for the family. Men did: They fought more and worked more and he who works more and spends more (on the family) is in greater need for more; hence, the larger share in terms of inheritance. Secondly, they argue, men are more complete and more qualified to hold religious and political positions...Therefore, he who possesses such traits is deserving of more awards (Souaiaia, 2008, p. 67).

It is widely argued that the right to inheritance is justified by the double shares for men because of man's greater economic responsibility in the family system (Shah, 2006). Souaiaia (2008) further claims that these justifications are based neither on primary, nor on secondary sources of the *Shari'ah*, but rather on deductive reasoning to “justify their understanding of the verses dealing with inheritance.” Similarly, Shaheen Sardar Ali (2002) also contends that the perceived inequality of women's inheritance rights is due to the fact that women are not the provider of households- unlike men, who are specifically instructed by the *Shari'ah* to do so. In addition, Ali also mentions that a woman may opt not to

share her financial resources with her husband even if the husband is destitute. What she owns is hers to dispose of according to her wishes and she is not obligated to share it with her husband. Another justification for the diminished share of women in inheritance is the fact that at the start of the marriage contract, the husband is required to provide dower (*mahr*) to the wife (Ali, 2002, p. 73). During the Prophet's time, it was solely a man's responsibility to spend money on his wife, children, and other relatives (sisters, widows) and a woman was under no obligation to spend money on her family. Islam says that she gets less than a man to be spent on herself and also may keep her own property without spending it on her household. That women will inherit a smaller share, not because of their gender, but because of their economic contribution seems to be a sound argument. In the same vein, we argue that if women contribute equally to the family men are not burdened by discharging lion's share financial responsibilities. Furthermore, the Qur'an also allows us to make bequests for women in order to prevent economic injustice.

Reconsidering The Islamic Legal Provisions for Muslim Women's Share in the Inheritance System

As more Muslim societies and nations are responding to globalization and modernization through changes in socio-economic and socio-legal systems, there have been numerous calls by various sectors of the Muslim societies to reconsider the legal rulings, especially in light of the above justifications. Ali (2002), for instance, argues that the situations described above are subject to changing realities of a society, as well as the socio-economic circumstances of the present day, and are therefore weak justifications. She also questions whether men are always the bread-winners of families as there are many instances in which cases women are put in the position as the head of the families and have to take on the responsibility and meeting entire household expenses, such as the case of single mothers or widowed women. On the justification of women receiving a dower that diminishes her right of inheritance, Ali (2002) goes on to say that it is often the case whereby the amount of dower stipulated in the marriage contract is invariably less than the equivalent share in inheritance.

It is clear that Islam has determined a precise share for woman in the Islamic inheritance system. Based on 2:1 share between male and female, we may claim that one-third of the entire wealth of an economy is to be owned by the women. However, there is a strong prejudice against the social and economic role of women. The share of women to inheritance becomes meaningful only when their right to own their share is ensured. It is now time for the Muslim jurists to reconsider their set of biased assumptions from the perspective of the 21st century, so that the wealth, that the law of inheritance transfers to women, is not reversed to men on one pretext or another. And for economists, the necessity of reconsideration of the oft-applauded redistribution role of the law of inheritance lies in good-will. Until the law of inheritance is conceived in a non-contradictory social setting the redistribution effects of the law of inheritance may be accepted with serious reservation (Khan, 1989).

Legal Reconsideration in the Changing Perspective

To a Muslim, Islam is not just a ritualistic set of beliefs and norms; rather, it is a well-formulated system of law that applies to states and their subjects. Notwithstanding, it is the worldview of the universe, within which a Muslim lives and conducts his/her daily activities. Islamic law has both moral and legal values embedded in its provisions. However, the expression of limitations is traceable in the Scriptures. These tend to function as the check and balance placed on the human endeavor of freedom to secure, if necessary, “a scheme of ordered liberty” and to prevent arbitrary and despotic limitations on human freedom (Ramadan, 1961, p. 46).

Islamic law is unique in the sense that there are parts of Islamic law that are self-explanatory in nature. However, there are also aspects that are enforceable by some sort of external forces such as education, training programmes, character building, changing people’s mindset, and the like. Furthermore, a Muslim society may require mobilization of public opinion, the general will of the society, enactment of new provisions in conformity with the *Shari’ah* law for the betterment of women in question, as we believe, a substantial part of the Islamic system of law can operate only through the coercive powers and authority of the state.

Thus, not only the Qur'an and the Ḥadīth, but *ijtihad* (individual reasoning in accordance with the *Shari'ah* principles), *ijma'* (consensus), and *qiyas* (similarities) as well have been recognized as significant sources of Islamic law.

Some argue that there are two distinct areas within which the Islamic law operates; the religious, ritual and devotional (*cibadah*) matters and the human relational (*mu'amalah*) matters (Chaudhry, 1998). The laws in relation to *cibadah* matters are fixed and unchanging, in contrast, the laws in relation to *mu'amalah* matters are subject to, insofar as it is allowed, reinterpretation and the exercise of individual reasoning (*ijtihad*) according to the changing situations and corresponding needs of the society.

However, any change to the Islamic law, according to Chaudhry (1998) is subject to certain conditions, most importantly, that the change must not violate the general objectives of the law itself while preserving the well-being of the community and the individual. Applying this concept to the changing conditions of the Muslim society on the issue of women's share in inheritance, the determination of the objectives of the law is paramount. The law on maintenance of family requires that a man must be responsible for the family's sustenance. The objective of the law is clear, that is, to protect the well-being of the family. Women assuming responsibility for maintaining the family does not preclude the male members of the family from doing their part. However, with this change in the social demographics becoming more prevalent due to a variety of reasons, the Muslim society must reconsider the fact that the women are not entrusted with the responsibility in the first instance and must then conceptualize a new provision to facilitate these new roles of Muslim women. This in no way abrogate the original function of the male members of the society but is a legal recourse to address the perceived injustice in the distribution of inheritance shares. The Muslim policy makers are thus entrusted with the task to formulate a system that will facilitate Muslim women who had to assume the roles of men in the society, especially in the economic sense. It may take on a variety of forms, even as a form of penalty against the men for failure to provide for the women members of the society.

Methodological Reconsideration in the Changing Perspective

Given the socio-cultural pattern of the Arab society in which the Islamic law was enacted, it may be argued that the discourse of ownership relies on its utility rather than its actual possession (Hasan, 1995). Some argue that the fundamental problem in Islamic economy is not the limited economic supply due to the unlimited demand for it (Arif, 1985). Rather, the fundamental issue in Islamic economy is the fact that economic resources are a trust (*amanah*) from God to mankind and the question of how this responsibility should be properly managed to obtain success (*al-falah*). Arif goes on that property or economic resource in Islam is a form of trust from God in that even though man appears to own it physically, the real function of a man is to become a trustee to the property on earth. As such, in Islam, material wealth alone is not guaranteed for the attainment of success, if the way in which the property is obtained is through a process that is abhorred by God (Kader, 2001, p. 4).

In this context, let us have a look at the methodological approach that attempts to reconcile the requirements of a modern life with the established legal provisions – a system that postulates the position of women as heirs. This can be formulated through paradigmatic discussions from an Islamic perspective as follows:

1. Ontological position: What is out there to know? What do we believe constitutes the social reality?
2. Epistemological position: What can we know (the theory of knowledge) and how can we know what we know?
3. Methodological position: How can we go for acquiring that knowledge?

From the ontological point of view, what we believe constitute the social reality in Islam must be based on the primary sources (the Qur'ān and the Ḥadīth). We accept this being an unequivocal social reality based on the concept of *Tawḥīd* (the Oneness of God) [Qur'ān, XX:6].

The verse has an ontological evidence of the totality of ownership that belongs to God as described earlier by Arif (1985). Similarly, the ontological evidence of the provisions that secure inheritance for wom-

en has been discussed in the previous sections, which was through the verses 11-12, Surah al-Nisa'. Epistemologically, based on the said verses as well as the '*asabah an-Nuzul*', the socio-economic conditions within which the women during the Prophetic times operated are vastly different from the modern women in the global village of modern society. Modern Muslim women are more actively pursuing economic activities and owning material wealth. This goes back to the ontological position about the ownership of material wealth that was discussed in the previous section. In Islamic economy, as mentioned earlier, the question is about the total ownership of matters that belong only to God.

Based on this analysis, we may suggest a paradigmatic position for Muslim women's inheritance shares. As table 2 illustrates.

Table 2 Islamic Paradigmatic Positions on Women's Inheritance Shares

Paradigmatic Positions		Islamic Paradigmatic Positions
Ontological Position	What is out there to know? What do we believe constitutes the social reality?	Our social reality is based on the concept of Tawhīd (the Oneness of God)
Epistemological position	What can we know (the theory of knowledge) and how can we know what we know?	We know this based on the primary and secondary sources of the Islamic Law
Methodological position	How can we go for acquiring that knowledge?	<ul style="list-style-type: none"> • Islamic-based model of methodology • New interpretation (<i>ijtihad</i>)

That circumstances necessitate new interpretation (*ijtihad*) of Islamic law by jurists is not new in Islam. For example, the introduction of the doctrine of "awol" along with that of "radd" can be cited here. This doctrine is not mentioned in the Qur'an and Ḥadīth, nor was it present during the time of the Prophet Muḥammad. Rather, this was introduced by a companion during the time of Caliph 'Umar Ibn Khaṭṭāb (born 586 CE) by way of *ijtihad*, which afterwards turned into a "by-law" by *ijma'*. The term "awol" literally means "increase." If the sum total of the shares exceeds the unity after distributing all the legal shares, then there arises the case of "awol," in which situation the share of each sharer will be decreased proportionately. For example, if there are two full sisters and a husband, their shares will be reduced to 3/7 and 4/7. The case of "radd," literally meaning "return," entails a situation in which

the sum total of the shares becomes less than the unity. What happens is that the residual property is returned in proportion to the sharers again.

The Malaysian Muslim Women Scenario

Muslim women comprise half of the current Malaysian workforce alongside Muslim men, sometimes becoming the major bread winner of the family, a position occupied traditionally by men. The question at this juncture is: with the change of time, roles and responsibilities of women, will the Islamic rights to inherit properties change that are philosophically based on the position of women as the manager of the Muslim household and not the provider?

Malaysia is a moderate Muslim majority country with a federalist system of democratic government. Essentially, the highest law of the land is the Federal Constitution, which is clearly secular in its orientation and implementation. However, the *Shari'ah* is still in practice, although it is relegated to the Muslim Personal Laws. Special Islamic Courts systems are also in place, which are separated from the civil Courts of Judicatures. Malaysia is unique in that for a decidedly secular constitutional nation-state, the administration of Muslim personal affairs, the *Shari'ah* is applicable through the canonization of Islamic legal principles in various Enactments and Ordinances. It must also be pointed out that the affairs of Muslims are under the jurisdiction of each and every State Rulers.

Women have long been a major source of human capital in Malaysia, toiling in the fields alongside men during the pre-independence Malaya and evolving into production-line workers within the manufacturing sectors, as the nation became more industrially focused (Kaur, 1999; R. Omar, 1994). Today, many could be found working outside of home, be it in urban or rural areas (Foley, 2004; R. Omar, 2003). Women have equal rights to vote and are entitled to equal pay compared to men for an equal amount of work. In 2004, women constituted 47 percent of the total Malaysian labour force participation (Employment Summary Statistics, 2005). Islamic identity is fairly visible and intimately intertwined with the Malay ethnic culture. In fact, many of the traditional Malay cultural artefacts have been considerably changed, if not replaced

totally by Islamic religious symbols (Haque, 2003). The following is a brief historical description of Malay women.

In feudal times (circa 15th century AD), the Malays were generally divided into two groups: the ruling elite/aristocracy and the peasantry. Within this social structure, the roles of women were determined according to the social stratum. The noble ladies did not partake physically in any economic activities outside their palaces although many are known to have invested their wealth in the business sector through intermediaries, and such women appear to have shared their own independent income at the time. They were more concerned with bringing up the next generation of aristocracy and were sometimes involved in the politics of the palace. The peasant ladies were more actively involved in economic activities outside of their homes, such as engaging in property owning activities that were provided for them through Islam and the Malay *Adat* (customs), agriculture and trade.

In this respect, although on the rise, women's contribution was not considered a productive output as it is measured by using the modern and capitalistic gauge called 'money.' Ariffin (2000) argues that this is the main reason behind the presumed 'inactivity' and 'passive' nature of Malay Women in pre-independence times. It is not the case that they were not actively engaged in employment or work; rather, it is because their efforts to contribute to the national economy were not sufficiently recognized and rewarded. The patriarchal nature of Malay society was evident in terms of providing educational opportunities for women, and influenced the nature of women's involvement in external economic activities. The presumption loomed large that Malay women were just going to tend the family land, so there was no need to educate them. Rather, education was a privilege reserved for the Malay males who were traditionally responsible for moving away from home to work and succeed.

However, things have changed in the post-independence period. With the structuring of education systems, more women are now entering into and graduating from schools. Since then, as more opportunities have been made available for the masses to participate in the education systems more women in general and Malay women in particular have benefited. Ariffin (2000) adds that the side effect of the '*revolution of rising expectations*' among the educated women also plays a part in encour-

aging more women to educate themselves and to seek for better employment opportunities, securing financial stability and independent standard subsistence for these women. The nation's economic development and the shift of emphasis from primary to secondary industry also generated a diverse range of employment prospects for women. The *Malaysian Economic Reports 1999-2010*, which give a detailed account of labour force participation and employment ratio between female and male for a decade, illustrate that women in the workforce are close to half of the active male working population.

Malaysian women have equal access to education with more of them studying in local universities compared to men (R. Omar, 2003). The total number of women in professional, managerial, and administrative positions is steadily increasing annually, although these women are largely confined to the teaching and nursing professions or what Omar (2003) defines as 'soft subjects' or professions (R. Omar, 2003). This shows that while women play an important role in sustaining the country's human capital pool, the gender division of labour does still exist. While the women workforce facilitates the nation's economic growth especially in the unskilled or semi-skilled sectors, these very sectors render the women workforce to be generally secondary (Kaur, 1999).

Although women could be said to have a comfortable status in Malaysia, there are still areas that could be improved upon. With policies that are sensitive to the needs of women in general, the government continues to find ways that could further assist women in general and Malay women in particular. The establishment of the National Advisory Council for the Integration of Women in Development (NACIWID) is an example of some of the governmental efforts towards that end. Women play a major role in the development of the newly industrialised Malaysian nation. However, the legacy of patriarchal society and Western segmentation of women could not be totally abolished. As a result, many women are still burdened with double taxing, dual-role responsibilities – at home and in office, and with little choice, they are expected to soldier on, whatever the circumstances. Thus, it is widely argued that the position of women in Malaysia should be improved especially with a good, women-friendly legal system, and the implementation of just "Family and Personal Laws" that provides higher financial security and better legal protection than what Malaysian women

currently enjoy.

Conclusion

Compared to the pre-Islamic laws of the Arab world, Islam not only introduced the concept of economic empowerment of women, but also ensured a wife's right to her deceased husband's property. However, Islamic law of inheritance clearly makes a distinction between male and female in terms of their portion of property, despite the fact that it does not make any distinction between male's property and female's property. Notwithstanding, as against the other legal systems of disposal of property by way of making arbitrary 'will' that may lead to deprivation of blood relatives and favoritism of strangers, Islamic system of inheritance develops what may be called fair policies rather than laws, broadly speaking, toward the goal of establishing fairness and social justice.

Since Muslim women have been playing an important role in the development of Muslim nations in recent years regardless of their pursuit of paid or unpaid employment and other economic activities, it is important that their financial position be secured, in every circumstance, by Islamic law. Unfortunately, this is always not the case. The share of inheritance is based on the Qur'anic provisions that assigned specific portions based on the classes of heirs. Epistemologically, the share of inheritance seems to be fixed with no room for arbitrary exercise of testamentary power unlike the system that prevailed in the pre-Islamic Arab world. However, methodologically, the changing socio-economic conditions of women prompt the Muslim society to reconsider an Islamic-based methodology with scope of reinterpretation (*ijtihad*) to resolve the issues of perceived injustice in the distribution of inheritance shares. It may be possible to suggest a system that supports the women who assume the role and responsibility of the men as provider of household. This could be based on the ontological concept of total ownership of wealth by God, which renders responsibility and trust alongside the physical ownership of material wealth. Women, who assume the roles and responsibilities of men, are also considered as trustees of God's property, and, therefore, are in need of support, especially from the Muslim community, to be able to continue carrying out the task of providing financial support for the family. This concept of trust

(*amanah*) must be understood clearly by the Muslim society, so as to ensure that everyone can be relied upon to play a proper role and responsibility for the benefit of the Muslim community that itself needs changes within.

While the women's workforce facilitates a nation's economic growth especially in the unskilled or semi-skilled sectors, particularly in developing Muslim countries like Indonesia, Pakistan, and Bangladesh, the Muslim majority nations are yet to acknowledge and accept women's contribution with dignity. As such, Malaysian Muslim society in general and Muslim women in particular must be aware of the challenges and development of the local and global economy in order to address those challenges and apply the best developmental practices in their own lives to ensure that these individuals become financially self-sustaining. To this end, we might think of what can be called the "*hibal*" (voluntary gift) model, in which the parents may plan and manage their property before death in such ways that all children may receive equal distribution of wealth. But since Islam does not support an "arbitrary will system," the parents may provide circumstantial evidence under which the "*hibal*" might be justified. Our second model designates the claim of inheritance through the court proceedings in which the aggrieved party, basically the daughter, may claim a major portion of her parents' property, alleging that her brother (son of the deceased parents) miserably failed to discharge his responsibilities required by the Qur'an. This model can be called "*fadhhal*" – the "additional share," and would require the daughter, the claimant, to prove in the court with circumstantial evidence that the son of the deceased parents neglected his responsibilities to support their parents and the family financially, socially, physically, and emotionally. Subject to the court's verdict in her favor, the daughter might be entitled to an equal or even the whole share of the inheritance. Both the models apply to the case of the "victimized" daughter – the former before, and the latter after, the death of the parents. Since the Qur'anic justification of inequality of women's inheritance rights is more concerned with recognizing the economic contribution to the family than it is with wrangling over the gender issue, the time has now come to revisit and readjust this provision in the wake of empowerment opportunities of women entrepreneurship that helps them shoulder family responsibility with substantial financial contribution. This involves a

number of factors, such as individual needs, socio-economic conditions, discursive reasoning, mental readiness, changing patriarchal mindset, and so on.

Thus we argue that since there are scopes of formulating new “by-laws,” as in the cases of “awol” and “radd” in the wake of the necessity of changing circumstances, the Islamic-based methodology provides room for reinterpretation of law on the basis of need in changing situations and must be enhanced and encouraged among the Muslim community in an effort to effectively apply the Islamic law in Malaysia, where though women play an important role in sustaining the country’s human capital pool, the gender division of labor is shrouded in the patriarchal nature of the Malay society. Given the changing socio-economic condition in the 21st century with dramatic increase in women’s empowerment and financial liability in Muslim societies, the Muslim jurists are required to show a rare forward-looking flair as a way out to resolve this age-old issue by virtue of *qiyās*, *ijmāʿ*, and *ijtihād* in the milieu of *urfu* (local customs and traditions), *istihsān* (juristic preference of approval), and *maslah al-Mu’salah* (benefits acknowledged by the *Shari’ah*) without violating the Qur’anic injunctions. However, as Amina Wadud puts it, no theory is good unless we put it in practice.

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