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## LAW JOURNAL

Vol. 9, 2013.

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# 'TO THE MALE, THE EQUIVALENT PORTION OF TWO FEMALES': A JURISPRUDENTIAL ASSESSMENT OF THE STATUS AND PROTECTION OF FEMALE HEIRS IN ISLAMIC LAW<sup>1</sup>

## Abstract

There appears to be a stereotype among western and oriental scholars that Islamic law discriminates between male and female heirs in its scheme of distribution because the Quran says 'to the male, the equivalent portion of two females'. However, a critical analysis of the inheritance system in Islamic law shows that contrary to this assertion, female heirs' status are more enhanced and protected under Islamic law than every other known intestacy system be it western, indigenous or statutory. This paper disprove this stereotype by examining the status of female heirs under the indigenous and statutory intestate systems and Islamic law to see which of these systems puts female heirs in better position. Case studies shall be presented to show that it is not in all cases that a male gets the equivalent portion of two female in Islamic law of inheritance. Cases where a female gets more than a male and where they share equally shall also be presented. At the end of the paper, meaningful recommendations shall be suggested.

## I Introduction

Islamic law is believed by Muslims to be imbued with eternal justice and perfection. Despite this fact, there are several protests from some western scholars and orientalist against its efficacy and some Muslims are of similar attitudes.

One area that is a subject of attack is the area of the status of women in Islam. With particular reference to inheritance, it is widely believed that the Islamic law of inheritance is unjust to women. In fact, some have described Islam as a misogynist religion<sup>2</sup>. A western scholar puts the injustice of Shariah against women thus:

<sup>1</sup> A O Yekini, LL.B, B.L, LL.M, Department of Jurisprudence & International Law, Lagos State University, Ojo.

<sup>2</sup> Saracen, 'Islam: A Misogynist Religion? A Look at Family Law, Inheritance and Divorce Rights in Islam' This can be accessed from <http://saracenarabianknight.blogspot.com/2007/08/islam-misorgynist-religionlook-at.html> (accessed on 12/02/08)

“While both a male and female ascendants and descendants can inherit, a woman has half the share of a man... This means that the more female kin a woman has, the less she and they inherit. Also, a woman who is permanently divorced from her husband has no claim to inheritance. Once again, the woman is apparently disfavoured, regardless of marital status in this case”<sup>3</sup>

A critical look at the Islamic law of inheritance reveals that such position must have been held at least *per incuriam*. This is so because Islamic legal system is so sophisticated to the extent that if one is not an expert in any of its branches or sub-branches, one cannot make any meaningful contribution to it. Hence, it may not be surprising that those who are making these propositions of inequality of the Islamic law in the treatment of women are making wrong conclusions because they have no proper understanding of the law.

This paper is intended to disprove this negative stereotype about Islamic law of inheritance. It will show how Islamic law has treated women and how it has given protection to them more than any other legal system of the world be it indigenous, religious or secular.

## II The meaning of Islamic Law

Islamic law is also known as *Shariah*. It has been described as a law derived on the theological foundations of Islam – foundations that declare that God exists and that God has sent, by way of revelation, all the rules and guidelines that humans need to prosper in this world and in the afterlife<sup>4</sup>.

Etymologically, *shari'ah* is derived from the Arabic word “shara'a” meaning ‘to follow a good path’, ‘to enter’, ‘to commence’. It also means ‘a watering

<sup>3</sup> N. Honarvar, ‘Behind the Veil: Women's Rights in Islamic Societies’, *Journal of the American Academy of Religion*, 1988: 47(4):517-537

<sup>4</sup> As a legal system, the basic feature of Islamic law is that it is a divine law. Apart from being a divine law, it is a universal legal system, in fact, more universal than the common and civil law. It is a law that applies to all Muslims irrespective of ethnicity, race or nationality. Islamic law is a faith-based legal system. Hence, its traces will be found wherever there are adherents of the Islamic faith. As it were today, there is hardly any country in the world that does not have a Muslim community. Islamic law is also essentially rigid in nature as the primary sources are very sacrosanct. They are not made by man and it goes logically that it may not be amenable by man. However, there are certain aspects of the law that mankind is allowed to vary as circumstances determine.

place<sup>5</sup>. Shariah has been given various definitions from several Islamic scholars.

Prof. Abdul Rahman Doi defines it as 'an Arabic word meaning "the path to be followed. It is the path not only leading to Allah the Most High, but the path believed by all Muslims to be the path shown by Allah, the Creator Himself"<sup>6</sup>

An Egyptian Scholar, Shaltut, gave a comprehensive meaning of *Shariah* as 'those institutions which Allah has ordained in full or in essence to guide the individual in his relationship to God, his fellow Muslims, his fellow men, and the rest of the Universe'<sup>7</sup>

From all the definitions given above, it could be summarized that Shariah refers to the laws of God imposed on man in order to direct his affairs. The laws are divine, eternal and universal. It goes beyond boundaries, borders and races.

The purpose of *Shariah* 'is the realization and security of the general good or interests of people by promoting their welfare as individuals and as a collective body and keeping harm and injury away from them'<sup>8</sup>. In its encompassing nature, it deals with every aspect of the day to day life including politics, economics, banking, business, contracts, family, sexuality, hygiene and social issues.<sup>9</sup>

### III Women and Intestate Succession Under Nigerian Laws

Nigeria operates a pluralistic legal system no doubt. This is unconnected to the ethno-religious diversity of the people of Nigeria. Prior to the advent of the colonial masters, various indigenous communities have their respective customary laws in force. These laws varied from community to community and they all co-exist side by side. In the Northern part of the country, the Islamic law is applicable alongside the Hausa/Fulani indigenous law<sup>10</sup>.

<sup>5</sup> J. Akintola, *Shariah in Nigeria: an Eschatological Desideratum*, (Lagos: Sebiotimo Publishers, 2001)

<sup>6</sup> A I Doi, *Shariah, The Islamic Law*, (London: Ta Ha publishers, 1404 AH, 1983), p.2

<sup>7</sup> M. Shaltut, *Al-Islam*, (Cairo: Al-Azhar Press, 1959), p5

<sup>8</sup> W. Hamid, *Islam, The Natural Way*, (Florida: MELS publishers, 1989), p35

<sup>9</sup> S.H.A. Malik, 'Shariah: A legal system and way of life', *Perspectives in Islamic Law and Jurisprudence: Essays in Honour of Justice (Dr) Muritala Okunola*, (M. Oloyede ed.), (Ibadan: NAMLAS IBADAN publication), p 25

<sup>10</sup> M.T. Ladan, *A Handbook On Shariah implementation In Northern Nigeria: Women and Children's Right Focus*, (Kaduna: LEADS Nigeria publication, 2005), p.2

This legal pluralism has greatly affected the area of law of succession especially the intestate system. Intestate succession<sup>11</sup> has always been problematic in Nigeria. This is adduced to the multiple and divergent systems of distribution attributed to the various laws in force. The English law has a system of distribution under laws like Statutes of Distribution Act, 1679 Administration of Estate Act, 1859 Intestate Estate Act 1890, and many more<sup>12</sup>.

Under Nigeria legislations, we have extant laws like the Marriage Act, the Administration of Estate Laws of the Western Region (which is applicable in the States that were created from the old western region), the Administration and Succession Law of the Eastern States etc. With the customary law system, there existed well compacted judicial authorities on various system of succession under various customary laws as exemplified in cases like *Administration General v. Egbuna*<sup>13</sup>, *Cole v. Cole*<sup>14</sup>, *Lewis v. Bankole*<sup>15</sup>, *Danmole v. Dawodu*<sup>16</sup> et cetra. The distribution under these various systems will be subsequently considered with particular reference to how women have been treated.

**a. Intestate Succession under the Statute Law**

Intestate succession under statute law is principally governed by the Marriage Act. The Act governs the estate of any person who marries under the Act and dies intestate. In the wordings of the Act, it is provided as follows:

“where any person who is subject to customary law contracts a marriage in accordance with the provisions of this Ordinance, and such person dies intestate, subsequently to the commencement of this ordinance, leaving a widow, or husband or any issue of such marriage...the personal property of such intestate and also any real property of which the said intestate might have deposed by Will, shall

<sup>11</sup> Intestate succession occurs where a deceased without a will or where he left a will but but some estates were not covered by the will (partial intestacy)

<sup>12</sup> These Acts are ordinarily applicable in Nigeria as a Statute of general Application except where they have been excluded by any particular law.

<sup>1</sup> 1945 18 NLR

<sup>14</sup> 1898 1 NLR 15

<sup>15</sup> (1908) 1 NLR 81

<sup>16</sup> (1958) 1 All NLR 702

be distributed in accordance with the provision of the law of England”<sup>17</sup>

Under the current democratic dispensation, the constitutional power to make law on succession is vested in the State governments<sup>18</sup>. To that extent, one may argue convincingly that the succession laws referenced under the Marriage Act may no longer be apply.

### I. Eastern States

Following from the constitutional provision presented above, States in the eastern part of the country precisely Anambra, Enugu and Ebonyi have responded to the situation by the adoption of the Administration and Succession (Estate of Deceased Persons) Law of 1987<sup>19</sup>. This will be used as a model for the intestate succession rules in the eastern States.

The detailed rule is provided in s.120 of the law as follows:

i. If a deceased leaves husband or wife but no children, parents or brothers or sisters of the full blood, the residuary estate shall be held on trust for the surviving spouse absolutely.

It should be noted that where the surviving spouse is the wife and there are full brothers or sisters, her interest shall be for life or until she remarries (whichever occur first). Thereafter, her interest shall devolve on the full brothers or sisters.

ii. If the deceased left a spouse and children, one third will go to the spouse. The residue of the estate goes to the children in equal shares absolutely and whatever comes back from the wife.

iii. If deceased left a husband or wife as well as one or more of the following: parents, full brothers or sisters but does not leave a child, the surviving spouse

<sup>17</sup> S.36, Marriage Act, CAP \_\_, LFN 2004. There has been much controversy on the relevance and applicability of this section of the Marriage Act. The controversy stems from the fact that the Act provides that its application is limited to the ‘Colony’. Legal scholars have interpreted ‘the Colony’ to refer to ‘the Colony of Lagos’. See Kasumu and Salacuse, *Nigerian Family Law*, (London: Butterworth publishers, 1966); E. I Nwogugu, *Family Law in Nigeria*, (Lagos: Heinemann Publishers, 1990). The law of England refers to under the Marriage Act are Statutes of Distribution Act.1670 Administration of Estate Act, 1859 Intestate Estate Act 1890. These distribution method under these Acts are very similar with the Administration of Estate Laws in the various states.

<sup>18</sup> Succession under the 1979 and 1999 Constitution (as amended) is a residual matter. It is listed neither on the exclusive legislative list nor the concurrent legislative list. See Second Schedule to the 1999 Constitution as amended.

<sup>19</sup> E. I. Nwogugu, *op. cit.*, p6

gets two third and the remaining one third shall be for the full brothers and sisters and in their absence, their children and afterwards parents.

iv. If deceased left children but no spouse, the children shall get two third equally, the parents get one sixth and the full brothers and sisters get one sixth.

v. If deceased left no spouse and children but both parents, the parents shall get two third equally and absolutely, the full brothers and sisters get the remaining one third if any otherwise, it goes back to the parents.

vi. The next situation is *impairi material* wit'h (5) above except that here the law provides for the fact that if it is one of the parents that survived the deceased, the same ratio will still be applicable.

vii. If the deceased left no spouse, parent and issue, the estate will be held in trust for the following people in the following order and manner:

- a. Full brothers and sisters
- b. Half brothers and sisters
- c. Grand parents
- d. Uncles and Aunts

viii. Where nobody is available to get the estate under the provisions highlighted above, then the estate is vested in the Head of Family who is expected to make provision for dependants of the intestate whether kindred or not.

It will be observed that a wife under this Law does not own an allotted estate absolutely. Her interest expires upon her death or where she remarries. Thereafter, the estate vests in the children or full brothers and sisters of the deceased as the case may be. Also, inheritance is due principally to spouse, children and parents. There is no provision for full sisters, half sisters and maternal sisters. Likewise, people in the same category whether male or female shares equally

## II. Western States

In the States that comprise the former western region, i.e Lagos, Ogun, Oyo, Osun, Ekiti and Ondo, the Administration of Estate Law, 1959 of the former

Western region is applicable to the distribution of the estate of whoever marries under the Marriage Act and dies intestate<sup>20</sup>.

The detailed rules of distribution are well spelt out under s.49 of the Law. They are presented as follow:

- i. if an intestate left a husband or wife but no issue, parent, full brothers and sisters, the residuary of the estate will be held on trust for the surviving husband or wife absolutely<sup>21</sup>.
- ii. If the intestate left a husband or wife and issue, the surviving spouse will take the personal chattels absolutely. One third of the estate goes to surviving spouse while the remaining two third goes to the children.
- iii. If the intestate left a husband or wife and parents, and full brothers and sisters but no issue, the spouse gets one half absolutely (less personal chattels). The remaining one half goes to the parent(s) and in their absence, the full brothers and sisters.
- iv. If the intestate leaves issue but no husband or wife, the children take all.

It is also observed here that heirs in the same category receive equal shares irrespective of sex and age. The same position applies to father and mother, full brothers and sisters. Again, there is no provision for half sisters and the mother only gets a share where there is no issue left. A mother also cuts off a sister whether full or half from inheritance.

#### **b. Intestate Succession under Customary Law**

There are several ethnic groups in Nigeria with their different and distinct customs and values. However, these ethnic groups could be streamlined into three major categories. They are the Ibos, Yorubas and Hausas. The intestate succession of these three major ethnic groups will be used to represent the customary intestate succession laws in Nigeria.

##### **i. Igbo**

The Igbos dominate the Eastern part of the country which spans across States like Enugu, Imo, Abia, Akwa Ibom, Anambra among others. Although there

<sup>20</sup> The Western region did not receive English Law that falls within the legislative competence of the region

<sup>21</sup> This is fundamentally different from the Eastern Statute which does not allow the wife to inherit property absolutely

are some few differences among the individual component ethnic group, the principles are majorly the same. The Igbo customary law of succession is also similar to what is obtainable in the Benin area of the old Mid-Western Region of the country.

Under the Igbo customary law, the principle of Primogeniture<sup>22</sup> is the golden rule. Upon the death of the intestate, the estate of the deceased is vested in the eldest son who is known as 'Okpala' or 'Diokpa' or 'Diokpala'. The eldest son automatically becomes the head of family. He inherits the personal chattels of the intestate. These include furniture, wearing apparels and other article of dressing. Where a sum of money is left behind, it is inherited by all the sons in common<sup>23</sup>.

For real estate, the eldest son is entitled absolutely to the family house and the surrounding compound<sup>24</sup>. Other lands and houses are held together by all the sons in common.

Female children and widows have no right of inheritance in Igbo land. For the widow, she is regarded as a property. A learned Igbo author while commenting on the successions laws of the Igbo has this to say:

"Personal property including wives and slaves descends to the eldest son as heir, or failing a son, to the eldest brother or male relative"<sup>25</sup>

It must be noted that, the widow is not a stranger in the family. On the death of the intestate, she is allowed to remain in possession of the house until she dies or re-marries. However, she cannot deal with the property without obtaining the consent of the family. In the case of *Nezianya v Okagbue*<sup>26</sup>, this position was given judicial recognition. Recently in *Nzekwu v Nzekwu*<sup>27</sup> the Supreme Court has affirmed that the interest of a widow in the house is possessory and not proprietary.

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<sup>22</sup> This is a principle of inheritance where the first son inherits all the estate of the deceased

<sup>23</sup> E. I. Nwogugu, *op. cit.*, p 401

<sup>24</sup> *ibid*

<sup>25</sup> *Obi. S.N.C. Ibo Law of property: cited in Ezeilo, J., op. cit., p12*

<sup>26</sup> (1963) 1 All NLR 352

<sup>27</sup> (1989) 2 NWLR 373.

The same situation is applicable to daughters. They are debarred from inheritance whether personal or real. The only situation where she could inherit is through the 'nrachi' institution<sup>28</sup>. This occurs where a woman lives in her father's house with a view to raise children. She will maintain the estate of the deceased until she bears her own son(s). The estate is afterwards transferred to her sons. This could occur where an intestate does not have a male child and he wants to maintain the continuation of the family line.<sup>29</sup>

Recent decisions of the Nigerian Courts however, have nullified the customary practice in Igboland that prevents a daughter from inheritance<sup>30</sup>. The 'nranchi' customary practice has also been held to be invalid on the basis of repugnancy and variance with the constitutional provision<sup>31</sup>.

## ii. Yoruba Customary Laws

The Yorubas are the linguistic cultural group that occupy the Western part of Nigeria. The area covered Lagos, Ogun, Oyo, Osun, Ekiti, Ondo and Kwara States. The succession laws among the Yorubas are more unified than the Igbo counterpart.

The system of inheritance of the Yorubas is very straight forward. On the death of the intestate, the estate of the deceased devolves on all his children to the exclusion of other relation. In *Adeseye v Taiwo*<sup>32</sup>, Jibowu Ag. FCJ observed thus:

"... real properties of a deceased person who had children surviving go to his children, and not to his uncles, aunts and cousins. There can therefore be no doubt that neither the plaintiffs nor the persons through who they claim blood relationship with Chief D. C Taiwo could inherit or take a share of his real property which by native law and custom, belongs to the children and descendants of the deceased<sup>33</sup>.

<sup>28</sup> A. Atsenuwa, 'Custom and Customary Law: Nigerian Courts and promises For Women's Right', *Contemporary Issues in the Administration of Justice: Essays in Honour of Atinuke Ige*, (Kenneth, I. ed.), (Lagos: Treasure Hall Consult publication, 2003)

<sup>29</sup> E. I. Nwogugu, *supra*

<sup>30</sup> *Mojekwu v mojekwu* (1997) 7 NWLR pt 512, 288

<sup>31</sup> *Mojekwu v Ejikeme* (2000) 5 NWLR 403

<sup>32</sup> (1956) 1 NSCC

<sup>33</sup> Emphasis mine

On the status of a widow, she does not have any right to succession. In fact, she was also regarded as a property worthy of inheritance. This is also given a judicial approval in the case of *Suberu v Sumonu*<sup>34</sup> where Jibowu FJ emphatically stressed as follow:

“... it is well settled rule of native law an custom of the Yoruba people that a wife could not inherit her husband's property since herself, like a chattel, to be inherited by a relation of her late husband”

Two systems of distribution have been judicially acknowledged under the Yoruba customary law. They are '*ori-ojori*' (per caita) and '*idi igi*' (per stripes). The '*ori-ojori*' is the instance where the estate of the deceased is divided according to the number of children. The '*idi-igi*' means distribution according to the number of wives so that the child (ren) takes what is shared to her mother. The case of *Danmole v Dawdu*<sup>35</sup> is the authority for this position. Also, in *Adeniji v Adeniji*<sup>36</sup> it has been held that the head of family has a right to determine which system of distribution to adopt.

### c. Hausa Customary Law

The Hausas are the linguistic cultural group which comprises the Hausas, Fulanis, Kanuris and so on. They occupy the Northern part of the country. The customary practice among the Hausas is a reflection of the Islamic law of inheritance.

## IV Women and Intestate Succession under Islamic Law

The period before Islam is usually regarded as the *jahiliyyah* period<sup>37</sup>. This period is characterized by many odious social practices. Generally, women are treated as property. There are records of live burying of female children; women are used as object of sex, in fact they are viewed as less human. It is not surprising that during this period, female children and women could not lay claim to inheritance because they are seen as object of inheritance (property).<sup>38</sup>

<sup>34</sup> (1957)1 NSCC 4

<sup>35</sup> (1958) 3 FSC 196 1 All NLR 702

<sup>36</sup> (1972) 7 NSCC 187

<sup>37</sup> This means, the days of ignorance or better put, the dark ages.

<sup>38</sup> 'Financial Security and Inheritance Law':

<http://www.thewaytotruth.org/womaninislam/financial.html>, accessed on 16.04.08

It was these practices that Islam has come to abolish by the elevation of the status of women. Allah prohibited the inheritance of women against their wish and goes further to give them a prescribed share from the estate of a deceased. As at this period<sup>39</sup>, to the best of this writer's knowledge, there is no known legal system whether religious or secular that guarantees inheritance right of women.

The position under the jeudo-christain scriptures shows that the inheritance system under the biblical injunction denies women out rightly from inheritance while a daughter is debarred by any male heir even if it is just one<sup>40</sup>. This is the practice of the 'sister religion'. However, this law has been reformed today to give women some form of rights to inheritance<sup>41</sup>.

The Qur'an and the *Sunnah*<sup>42</sup> are the primary sources upon which all the legal rules of Islamic laws are based. On the aspect of law of succession, the Qur'an is the principal legislation. Allah in his infinite wisdom has prescribed in a number of verses the system of inheritance in Islam. The following verses are some of the Quranic law of inheritance.

" for men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much- an ordained share (by Allah)<sup>43</sup>

"For parents, a sixth share of inheritance to each if the deceased left children"<sup>44</sup>

"O you who believe, it is not lawful for you to inherit women by compulsion"<sup>45</sup>

"Allah instructs you concerning (the inheritance of) your children: a male receives a share equal to that of two females. But if they

<sup>39</sup> i.e around 610 AD when the message of Islam was given to the prophet for onward transmission to mankind.

<sup>40</sup> Mary, F. Radford, 'The inheritance Rights of Women under Jewish and Islamic law', [http://www.bc.edu/bc.org/arp/law/lwsch/journals/bcicl/23\\_2/01\\_TXT.htm](http://www.bc.edu/bc.org/arp/law/lwsch/journals/bcicl/23_2/01_TXT.htm) accessed on 02.02.08

<sup>41</sup> *Ibid.*

<sup>42</sup> *Sunnah* is the sayings and practices of prophet as recorded in various books of *ahadith*

<sup>43</sup> Quran 4 v. 7

<sup>44</sup> Quran 4 v. 19

<sup>45</sup> Quran 4 v.11

(the children) are only women,, and are more than (or equal to) two, their share is two thirds of that which he (the deceased) had left. And if there is only one woman, her share is half (of the estate). And for his parents, each one's share is a sixth of that which he left if he had children. But if he had no children, and the parents inherit from him, the mother's share is one third. And if he had siblings, the mother's share is a sixth...<sup>46</sup>

"You received one half of that which your wives leave if they have no child.. if they have a child, you receive one fourth of what they leave-after payment of any bequeathals that they had made or debts (that they had). And they receive one fourth of that which you leave if you have no child. If you have a child, they receive one eighth of what you leave-after payment of any bequeathals that you had made or debts (that you had). If the man or woman whose inheritance is in question has neither parents nor descendants, but has a (maternal) brother and /or sister, each one of them receives a sixth; and if they were more than two, they share a third after payment of any bequeathals that had been made or debts (that are owed) and that are not intended to cause harm (to legal heirs). This is a commandment from Allah. Allah is ever Knowing and Tolerant"<sup>47</sup>

"They ask you for a legal ruling. Say, "Allah gives you a ruling concerning a *kalalah* (not survived by descendants or parents). If it is a man that dies leaving no child but only a sister, she receives half of what (estate) he left. And he inherits her (completely) if she (dies first and) has no children. But if they are two sisters, they receive two-thirds of what he left. And if they are both brothers and sisters, a male receives the share of two females..."<sup>48</sup>

The verses presented above are some of the numerous verses of the Qur'an which clearly establish the succession laws of Islam. It is also interesting to note that this chapter of the Holy Qur'an is named after the women.

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<sup>46</sup> Quran 4 v. 12

<sup>47</sup> Quran 4 v. 12

<sup>48</sup> Quran 4 v. 176

## Female Share in Islamic Law of Inheritance

The following female heirs have their shares fixed by the Qur'an together with their conditions. Their shares are to be settled first before any agnate<sup>49</sup> gets his share.

a. Daughters: where a deceased left a daughter, she gets one half ( $\frac{1}{2}$ ) of the estate. Where they are two or more and with no brother's son(s) competing with them, they get two third ( $\frac{2}{3}$ ) of the estate equally.<sup>50</sup>

b. Son's Daughter: Where she is the only surviving son's daughter and there is no son competing with her, then she gets one half ( $\frac{1}{2}$ ) of the estate. Where they are more than one and they neither have brother nor father, then they all get two third ( $\frac{2}{3}$ ) equally<sup>51</sup>. It should be noted that where one or more son's daughter competes with a daughter, they get one sixth ( $\frac{1}{6}$ )

c. Mother: Where the deceased has no child and there is no two or more brothers of the deceased (be it germane or paternal), she gets one third ( $\frac{1}{3}$ ). Where any of the group mentioned above is present, then she gets one sixth ( $\frac{1}{6}$ ).<sup>52</sup>

d. Wife: Where the deceased has no child, she gets one fourth ( $\frac{1}{4}$ ), otherwise, her share will be reduced to one eighth ( $\frac{1}{8}$ ).<sup>53</sup>

e. Germane Sister<sup>54</sup>: Where the deceased is not survived by a child, father and the germane sister is the only surviving one with no brother, she gets one half ( $\frac{1}{2}$ ). Where they are two or more with no brother competing with them, they all get two third ( $\frac{2}{3}$ ) equally.<sup>55</sup>

f. Consanguine Sister<sup>56</sup>: Where all the condition above in (e) are present and she is the only consanguine sister with no brother or germane sister, she gets one half ( $\frac{1}{2}$ ). However, where they are two or more with the same condition,

<sup>49</sup> Those who have no fixed share whether in the Qur'an or Sunnah

<sup>50</sup> Quran 4v11

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *ibid*

<sup>54</sup> i.e full sister of same father and mother to the deceased.

<sup>55</sup> Saryu B. A., 'A glimpse at Inheritance', *Al-Maslaha, Journal of Law and Religion*, Ilorin: NAMLAS UNILORIN publication, vol 4, 2007-08.

<sup>56</sup> A consanguine sister is a half sister, i.e same father but different mother

they all get two third (2/3) equally. Where she is the only consanguine sister and she has a consanguine brother, she gets one sixth (1/6).<sup>57</sup>

g. Uterine Sister<sup>58</sup>: Where the deceased is not survived by a child and father she is the uterine sister, she gets one sixth (1/6)<sup>59</sup>

h. Mother's Mother: where the deceased has a child and is not survived by his mother, then she gets one sixth (1/6)<sup>60</sup>.

## VI Practical Illustration of the Fairness of the Islamic law as Regards Women

This section will discuss various instances of distribution in Islamic law of succession with practical illustrations employed so as to make the concepts more illuminating and clear.

### a. Cases where a Female Inherits more than a Male

It is manifest that the biggest first-degree (fixed and mandatory) share of inheritance in Islam is two-third (2/3) and this share is granted to females not males as presented in the preceding discussion.

#### Case Study 1:

Where a woman is survived by a husband, father, mother and two (2) daughters or two sons leaving N60,000 (sixty thousand naira), the distribution is as follows:

Heir	Quranic share	Calculation	Amount
Husband	$\frac{1}{4}$	$\frac{3}{15} \times 60,000$	12,000
Father	$\frac{1}{6}$	$\frac{2}{15} \times 60,000$	8,000
Mother	$\frac{1}{6}$	$\frac{2}{15} \times 60,000$	8,000
2 daughters	$\frac{2}{3}$	$\frac{8}{15} \times 60,000$	32,000

Husband	= $\frac{1}{4}$	$\frac{3}{15} \times 60,000$	=	12,000
Father	= $\frac{1}{6}$	$\frac{2}{15} \times 60,000$	=	8,000

<sup>57</sup> Sanyu B.A., 'A glimpse at Inheritance', Al-Maslaha, Journal of Law and Religion, Ilorin, *supra*

<sup>58</sup> i.e. of the same mother but different father

<sup>59</sup> Quran 4: 12

<sup>60</sup> By Analogy, she steps into the shoes of the mother.

Mother	= 1/6	· 2/15 x 60, 000	=	8,000
2 daughters	= 2/3	8/15 x 60,000	=	32,000

The denominator of the distribution will be 15 instead of 12.<sup>61</sup>

Where the heirs are two sons, the distribution is thus

Heir	Quranic share	Calculation	Amount
Husband	1/4	3/12 x 60, 000	15,000
Father	1/6	2/12 x 60, 000	10,000
Mother	1/6	2/12 x 60, 000	10,000
2 sons	Remainder	8/12 x 60,000	25,000

The denominator is 12

NB: In the case of the daughters, they get N16, 000 each while the two sons in similar scenario will get N12, 500 each

### Case Study 2

Where a woman is survived by a husband, mother and 2 sisters or 2 brothers leaving behind N48,000

A

Heir	Quranic share	Calculation	Amount
Husband	1/2	3/8 x 60, 000	18,000
Mother	1/6	1/8 x 60, 000	6,000
2 Germane sisters	2/3	4/8 x 60, 000	24,000

The denominator of the distribution is 8 thus:

Were the 2 germane sisters to be germane brothers, then the distribution will be as follow:

B

Heir	Quranic share	Calculation	Amount
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<sup>61</sup> This is in line with the concept of 'Awl which arises in situations where the heirs are more than the estate. In such cases, the base will be increased so as to have the estate go round all the heirs without leaving out any of them. In effect, each heir will drop an equal proportion of his full entitlement. On how the concept of increment is derived in cases of *awl*, you may see, Ali Lakvi S., *Almirath: Justice of Islam in the Rules of Inheritance*, (Kano, CAISL, 2003), pp. 117-126

Husband	$\frac{1}{2}$	$\frac{3}{6} \times 60,000$	24,000
Mother	$\frac{1}{6}$	$\frac{1}{6} \times 60,000$	8,000
2 Germane brothers	Remainder		16,000

Therefore one germane sister receives N12, 000 while her brother counterpart receives N8, 000.00

### Case Study 3

Where a woman is survived by a husband, father, mother and a daughter or son leaving N156, 000

#### A.

Heir	Quranic share	Calculation	Amount
Husband	$\frac{1}{4}$	$\frac{3}{13} \times 156,000$	36,000
Father	$\frac{1}{6}$	$\frac{2}{13} \times 156,000$	24,000
Mother	$\frac{1}{6}$	$\frac{2}{13} \times 156,000$	24,000
a daughter	$\frac{1}{2}$	$\frac{6}{13} \times 156,000$	72,000

#### B

Heir	Quranic share	Calculation	Amount
Husband	$\frac{1}{4}$	$\frac{3}{12} \times 156,000$	39,000
Father	$\frac{1}{6}$	$\frac{2}{12} \times 156,000$	26,000
Mother	$\frac{1}{6}$	$\frac{2}{12} \times 156,000$	26,000
A son	Remainder		65,000

Here the daughter takes N72, 000 as a statutorily prescribed share. In the case of a son, he inherits N65,000 as a remainder after which those with fixed shares might have been settled.

#### b. Cases where Woman inherits while a Male Counterpart does not inherit

### Case Study 4

Where a woman is survived by a husband, father, mother, a daughter, a son's daughter or son's son leaving behind N195.000.

## A.

Heir	Quranic share	Calculation	Amount
Husband	$\frac{1}{4}$	$\frac{3}{15} \times 195,000$	39,000
Father	$\frac{1}{6}$	$\frac{2}{15} \times 195,000$	26,000
Mother	$\frac{1}{6}$	$\frac{2}{15} \times 195,000$	26,000
Daughter	$\frac{1}{2}$	$\frac{6}{15} \times 195,000$	78,000
Son's Daughter	$\frac{1}{6}$	$\frac{2}{15} \times 195,000$	26,000

## B.

Heir	Quranic share	Calculation	Amount
Husband	$\frac{1}{4}$	$\frac{3}{13} \times 195,000$	45,000
Father	$\frac{1}{6}$	$\frac{2}{13} \times 195,000$	30,000
Mother	$\frac{1}{6}$	$\frac{2}{13} \times 195,000$	30,000
Daughter	$\frac{1}{2}$	$\frac{6}{13} \times 195,000$	90,000
Son's Son	Remainder		NIL

Here, the son's daughter inherits N26, 000 as a first-degree share while the son's son inherits nothing.

### c. Cases Where a Woman Inherit the Same Share as a Man

There are situations in the Islamic inheritance law where a woman receives equal share of inheritance with a man as can be seen in the following cases:

- i. Where a deceased (wife) is survived by a child, his parents and a husband. Husband gets  $\frac{1}{2}$ ; Father gets  $\frac{1}{6}$  Mother gets  $\frac{1}{6}$  and Son gets the remainder<sup>62</sup>.
- ii. Equality between male and female siblings of full blood (germane brother and sister).

#### Case Study 5

Where a woman dies and is survived by a husband and a germane brother or sister, the estate will be distributed as follows in these two cases:

<sup>62</sup> Here, the mother and the father received equal shares. This also applies to all cases where the deceased have both parents and daughter(s)

A.

Heir	Quranic share
Husband	1/2
Germaine Brother	1/2

  

Heir	Quranic share
Husband	1/2
Germaine Sister	1/2

B.

In these cases, both of them take the remaining half after that of the husband.

#### d. Cases where a Woman Inherits Half or Less of the Share of a Man

i. Where the deceased is survived by a son and a daughter, the Qur'an says "Allah instructs you concerning your children, to the male, the equivalent portion of two females"<sup>63</sup>

ii. Where the deceased is survived by a father and mother with a spouse but no children the father gets twice as much as the mother.<sup>64</sup>

iii. Where a germane brother competes with a germane sister, then the brother gets double the share of the sister.

### VII The Philosophical Foundation for Women's Lesser Shares

The quantum of distribution of inheritance and the designation of the circumstances in which a woman inherits a half as much as a man in the cases shows that these rules are designed to strike a balance between rights and obligations<sup>65</sup>. Below are some of the reasons and rationale proffered by the divine law:

<sup>63</sup> Quran 4v 11

<sup>64</sup> This is a case of *Al-Gharawayn* where the estate will need to be redistributed in such a way that the spouse gets his/her share and the mother takes 1/3 of what is left and the father takes the remainder. However, the condition is that the only heirs left by the deceased must be spouse, father and mother. See Al-Jibaly M., *Inheritance: Regulations & Exhortations*, 2<sup>nd</sup> ed., (Al-Madina Al- Munawarah: Al-Kitab & As-Sunnah Publishers, 2005), p. 47; Ali Lakvi S., *Almirath: Justice of Islam in the Rules of Inheritance*, supra, p.50

<sup>65</sup> F. Soliman, Women's life, Ethics & values, Human Rights', <http://www.readinginislam.com>, (accessed on 05.03.08)

a. The husband is the one saddled with the responsibility of the maintenance of the wife, children and other needy relations under Islamic law. It is his duty by law to assume all financial responsibilities and maintains his dependants adequately.<sup>66</sup>

b. It is also a man's duty to contribute financially to all good causes in his society. All financial burdens are borne by him alone. In contrast to the above, a woman has no financial responsibilities whatsoever. She is financially secured and provided for in all situations.<sup>67</sup> For example:

- i. Where she is a wife, her husband is the provider,
- ii. Where she is a mother, it is the son,
- iii. Where she is a daughter, it is the father,
- iv. Where she is a sister, and it is the brother, and so on.

Where she has no close male relations on whom she can depend, maintenance of such a woman is the responsibility of the society as a whole and the state in particular. She may be given welfare benefit or a job to earn her living, and whatever money she makes will be hers.<sup>68</sup>

c. A woman is not responsible for the maintenance of anyone else beside herself. So in the hardest situation, her financial responsibility is limited, while that of the man is unlimited.<sup>69</sup>

d. Now, we have a male heir, on one side, burdened with all kinds of financial responsibilities and liabilities. We have, on the other side, a female heir with no financial responsibilities at all or at most with very little of it. In between we have some properties and aid to redistribute by way of inheritance. If we deprive the female completely, it would be unjust to her because she is related to the deceased. Likewise, if she is given a share equal to the brother's, it would be unjust to him. So, instead of doing injustice to either side, Islam gives the male brother a larger portion of the inherited property to help him to meet his family needs and social responsibilities.<sup>70</sup>

<sup>66</sup> A R. Doi *Woman in Shar'ia (Islamic Law)*, n.p, n.d, pp 105-106

<sup>67</sup> F. Soliman, *supra*

<sup>68</sup> A. Zakariyyah 'The True Position of Women's Inheritance under the Islamic Law', Islamic Education Trust, Minna, (Unpublished Paper, 2006)

<sup>69</sup> J. Rafidah, J., 'The Issues on Inheritance for Women' (September 2005). [www.bismikallahuma.org/archives/2005/the-issue-on-inheritance-for-women.html](http://www.bismikallahuma.org/archives/2005/the-issue-on-inheritance-for-women.html), (accessed on 10.03.08)

<sup>70</sup> Sorowar, 'Muslim Inheritance Law: Is it Injustice to Women?' (2008). [www.shodalap.com/MSH\\_muslim\\_inheritance.htm](http://www.shodalap.com/MSH_muslim_inheritance.htm) (accessed on 10.03.08)

e. A woman is entitled to the fourths of her father's estate. As a wife, she is entitled to demand of her prospective husband a suitable dower that will be her own. She is entitled to complete provision and total maintenance by the husband. She does not have to work or share with her husband the family expenses. She is free to retain, after marriage to any of her belongings.

### **Conclusion:**

What this article has shown from the above discussions is that the rights of women to inheritance are more widely guaranteed and secured under the Islamic law than any contemporary legal system be it indigenous or statutory.

Widows, daughters, full and half sisters, mothers, son's daughters and maternal sisters are all made statutory heirs under Islamic law and their shares are well spelt out in the Islamic law. Their entitlements are given priority before those of other male heirs. This is tenable under all other systems of inheritance.

The female sex (all those mentioned above) is entitled to both real and personal property allocated to them absolutely. Unlike what is obtained in some indigenous and western systems of inheritance, a widow in Islamic law does not lose any property she inherits even after she undergoes a second marriage. Her entitlement is her property and it enures in her forever absolutely.

The case studies presented in this paper has shown that contrary to the stereotype prevalent among western and oriental scholars that Islamic law discriminate between a male and female in matters of inheritance, is wrong. In most of the cases, it is observed that there are situations where a female inherits more than a male, where they inherit equally and where a male inherits more than a female. Islamic law seeks to strike a balance between both sexes by taking into consideration the economic right and responsibilities imposed on both sexes under the Islamic law.

Lastly, it is recommended that the system of inheritance under Islamic law should be adopted both under the statutory and indigenous intestate system. By this, the status of widows, daughters, mothers and other female heirs would be enhanced and better protected.