



الجامعة الإسلامية العالمية ماليزيا
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA
بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**THE POSITION OF FEMALES
IN THE ISLAMIC (SUNNI)
LAW OF INHERITANCE**

MASTER OF COMPARATIVE LAWS DISSERTATION

Submitted to

**THE KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
MALAYSIA**

MAY 1994

HAFIZ NAZEEM M. I. GOOLAM

C O N T E N T S

	PAGE
Preface	1
INTRODUCTION	3
CHAPTER ONE:	
THE NOTION OF WOMEN'S RIGHTS IN ISLAM	14
CHAPTER TWO:	
THE FEMALE'S RIGHT TO INHERIT: A COMPARATIVE HISTORICAL PERSPECTIVE	28
CHAPTER THREE:	
THE RIGHT OF THE MUSLIM FEMALE TO INHERIT	46
CHAPTER FOUR:	
EXCLUSION OF THE FEMALE FROM INHERITANCE	90
CHAPTER FIVE:	
A. THE DOCTRINE OF INCREASE AND RETURN	99
B. THE ALGEBRA OF INHERITANCE	101
CONCLUSION	104
BIBLIOGRAPHY	107

PREFACE

In the name of Allah, the Beneficent, the Merciful. All praise be to Allah and may the Blessing and Peace of Allah be on the final Messenger of Allah.

When I began my study of this topic, I proposed the title "The Position of Women in the Islamic Law of Inheritance". The present title shows one important mutation as well as one important addition. First, 'Women' has been substituted by 'Females'. The latter category is wider than the former and includes, *inter alia*, the position of the unborn female child. Secondly, the addition is the inclusion of the term 'Sunni' in parenthesis, thus the scope of this work does not include Shi'a law or the law of any other Islamic sect.

My motivation for and decision to study this area of law is based primarily on two factors. First, the Prophet Muhammad (Peace be upon him) has emphasized the importance of this area of law, stating that one should learn the laws of inheritance and teach them for they constitute one half of useful knowledge. He has also said that one should study the laws of inheritance (ilm-ul-fara'id) with the same sincerity as one learns the Glorious Qur'an.

Having memorized the Qur'an under extremely trying circumstances, my intention is to devote the same magnitude of sincerity in obedience of these admonitions of God's Final Prophet (Peace be upon him).

Secondly, the position of women in Islam as well as the rights accorded to them have often been and still is misinterpreted and misunderstood. In fact, with the rise and growth of the feminist movement, many Muslim women feel that they are treated unfairly as regards the distribution of the estate of a deceased person. For these reasons, I believe a fresh examination of this subject is required in order to dispel these misunderstandings, misconceptions and notions of unfairness.

Over and above these two motivating factors, this area of law, concerning as it does the estate of a deceased person causes one to contemplate the only certain future event in life, namely death. And the remembrance (dhikr) of death is, in the Eyes of Almighty God, one of the foremost ways of the remembrance and contemplation of God Himself.

Although I have committed to memory the Glorious Qur'an, my primary linguistic limitation concerns my inability to read Arabic as well as to write the language. For this reason, I have not consulted any of the original Arabic sources and, as much as I would have liked, I have not been able to quote the original text of the Qur'an.

I hope and pray, God-willing, that this work, in particular the first half of it, will perhaps contribute to a better understanding, amongst both Muslims and non-Muslims, of the position, status and rights of women in Islam in general and more particularly vis-a-vis the law of inheritance.

Finally, I thank Allah Subhanahu Wa Ta'ala (God Most Glorious and Most High) for giving me the guidance to write on this subject. I convey a sincere and respectful gratitude to my supervisor Professor Syed Khalid Rashid for his kind assistance, advice, supervision and sincere co-operation throughout the period of my research. Lastly, but not leastly, I wish to thank my wife Hafiza Shabeehabanu for her patience, understanding and assistance, as well as Sister Hamsah Ramli for typing this work.

INTRODUCTION

A Turkish poet, in his zeal for the equality of the sexes, and in a fervent plea for radical changes in the family law system of Islam, writes:

"There is the woman, my mother, my sister, or my daughter; it is she who calls up the most sacred emotions, from the depths of my life! There is my beloved, my sun, my moon and my star; it is she who makes me understand the poetry of life! How could the Holy Law of God regard these beautiful creatures as despicable beings? Surely there is an error in the interpretation of the Qur'an by the learned?

The foundation of the nation and the state is the family.

As long as the full worth of the woman is not realized national life remains incomplete.

The upbringing of the family must correspond with justice.

Therefore equality is necessary in three things - in divorce, in separation and in inheritance.

As long as the woman is counted half the man as regards inheritance and [a fourth] of man in matrimony, neither the family nor the country will be elevated. For other rights we have opened national courts of justice;

The family, on the other hand, we have left in the hands of schools.

I do not know why we have left the woman in the lurch. Does she not work for the land? Or, will she turn her needle into a sharp bayonet to tear off her rights from our hands

through a revolution?"¹

The emotional nuances running through this poem possess the potential for stirring up in the fairer sex actions of a great magnitude, perhaps even a revolution. However, this radical action is not necessary since the Final Testament of the 'Holy Law of God', the Glorious Qur'an, does not regard these 'beautiful' creatures as despicable beings, the Qur'an contains the realization of the full worth of the woman, Islam has not 'left the woman in the lurch' and, most important of all, as regards the law of inheritance the woman is not counted 'half the man'.

This work sets out to analyze the truth of the last clause in the above sentence. But before embarking upon such analysis, a number of preliminary issues require mentioning. These are the IMPORTANCE of the law of inheritance in Islam, the PLACE it occupies in the legal system of Islam, the MEANING and TERMINOLOGY of ILM-UL-FARA'ID (laws of inheritance) and the BASIC PURPOSE and RATIONALE of the Islamic law of succession. However, even before an examination of each of these four issues, a brief definition of inheritance or succession would be apt.

The law of succession concerns the regulation of the devolution and distribution of the property of a deceased person. It is usually divided into two separate branches, namely testamentary- or testate succession and intestate succession. The former mode regulates such devolution and distribution according to the intention or will of the testator as enunciated in a legally valid will or testament, while the latter mode regulates such devolution and distribution where testamentary disposition exists. Testate succession is built upon the edifice of the principle of freedom of testation, while the law of intestate succession is governed by pre-determined and compulsory rules of inheritance. The position of females, and males alike in the Islamic system of succession, is regulated by intestate succession.

THE IMPORTANCE OF INHERITANCE LAW IN ISLAM

The primary source of Islamic jurisprudence, the Glorious Qur'an, lays down a number of general legal rules and principles relating to all areas of law. These general principles are not susceptible to change, but the manner of their application may change with changing times. As the Ottoman Civil Code or Majallah couches it:

¹ Iqbal, M. The Reconstruction of Religion Thought in Islam, p. 161.

"It is undeniable that rules of law vary with the change in times."²

However, Almighty God, the Author of the Qur'an, has in one particular area of law, found it necessary to legislate rules of such specificity that to render them mutable would be tantamount to tampering with or altering the Divine Will. The fact that He, Allah, provides such clear-cut, hard-and-fast and detailed rules regulating intestate succession is proof enough of the importance of this branch of Islamic Law (Shari'ah). It is in the fourth Surah (chapter) of the Qur'an that Allah places great emphasis on this areas of law.

The second source of Islamic Law - a source of law not independent of the first source but rather inextricably linked to it - is the Sunnah or Hadith. The Sunnah embodies the actions and teachings of the last Prophet of Almighty God, Muhammad (Sallallahu alayhiwassallam or on whom be peace and blessings). Two of his teachings or traditions (ahadith, pl. of hadith) testify amply. First, the Prophet has said:

"Study [or learn] the laws of inheritance with the same sincerity as you study the Holy Qur'an."³

And, secondly:

"Learn the laws of inheritance and teach them to people, for they constitute one half of useful knowledge."⁴

The late Professor N.J. Coulson has admirably assessed the nature and important of this branch of the Sharr'ah. He states:

"Above all, however, the great esteem which this branch of legal science enjoys among Muslims stems from its particularly strong religious significance. True knowledge, or 'ilm' in the Islamic view, stems from [D]ivine [R]evelation, and according to a statement of the Prophet (SAW) the laws of inheritance constitute 'half the sum of ilm'. Nowhere is the fundamental Islamic ideology of law as the manifestation of the [D]ivine

² Article 39.

³ Sahih Al-Bukhari, vol. 4; cf. also Sahih Muslim, vol. 8.

⁴ Ibid.

[W]ill more clearly demonstrated than in the laws of succession and inheritance. The system is firmly based on the very words of Allah Himself and this is reflected in the terminology of the law, i.e., 'ilm-ul-Fara'id ... The laws of succession are a vital aspect of the individual's supreme duty to the religion of Islam."⁵

THE PLACE OF INHERITANCE IN THE LEGAL SYSTEM OF ISLAM

Bearing in mind the importance of this branch of law in Islam, the place it occupies in the legal system is thus by simple analogy, equally colossal. What exactly does this mean.

The essence of inheritance is not whether it is classified as a part of the law of property or of family law. For it comprises the transfer of wealth or property to members of the deceased's family. The relevant factor is the economic factor. The law of inheritance is a fundamental component in the economic structure of the family, the community, the society at large and the state or nation as a whole. And the stability of any nation depends fairly and squarely on the stability within the family unit.

There can be no prevalence of stability, peace and harmony within the family unit as long as there exists economic disequilibrium amongst family members. It is here that the law of inheritance occupies its place - and clearly a very significant one - in the Islamic legal system. In the same way as the institution of zakah or alms-giving aims at the eradication of financial disequilibrium amongst members of the community, the laws of inheritance look to the members of the family.

THE MEANING AND TERMINOLOGY OF ILM-UL-FARA'ID

Strictly speaking, as well as in literal terms, the concept 'laws of inheritance' ought to be translated as AHKAM-UL-MAWARITH. I say this because 'ahkam' is the plural of 'hukm' (law or value) and 'mawarith' is the plural of 'warith' (heir). The word 'warith' emanates from the word 'irth'; the literal meaning of 'irth' is 'remainder'.⁶

⁵ *Succession in the Muslim Family*, p. 5.

⁶ Rahman, T. *A Code of Muslim Personal Law*, Vol. II, P. 404.

However, 'laws of inheritance' is translated as 'ILM-UL-FARA'ID', which literally means 'the knowledge or the science⁷ of obligations'. 'FARA'ID' has thus come to mean the obligatory or specified shares laid down by God to be attributed to the heirs. Thus 'ILM-UL-FARA'ID' may also be translated as 'the science of the shares'. The sharers of a deceased estate are, understandably, termed the 'AHL-UL-FARA'ID' (literally, the 'people of the shares'), while the verses (ayat) of the Qur'an which specify these shares are called the 'AYAT-UL-FARD' (literally, the 'verses of the obligatory shares').

BASIC PURPOSE AND RATIONALE OF THE ISLAMIC LAW OF SUCCESSION

The brief analysis of the significance as well as the place occupied by this branch of the Shari'ah has already highlighted the purpose and objective underlying it. In particular, having stated that inheritance comprises the transfer of wealth or property to the family members of the deceased, recourse to N.J. Coulson is once again necessary. He summarizes the objectives of the law thus:

"The supreme purpose of the Islamic law of succession is material provision for surviving dependents and relatives, for the family group bound to the deceased by the mutual ties and responsibilities which stem from blood relationship. The manner in which this provision is to be made is prescribed by the law in rigid and uncompromising terms. The power of the deceased to dispose of his property by will is recognized but is restricted to safeguard, substantially, the basic interest of dependents and close relations. Accordingly, the transmission of property by way of testamentary succession, or in accordance with the wishes of the deceased, is of secondary importance and the central core of the system of succession is formed by the compulsory rules of inheritance designed for the material benefit of the family group."⁸

The same writer continues:

"From the sociological standpoint, the Islamic laws of inheritance reflect the

⁷ The Latin Word For Knowledge is 'Scientia'.

⁸ *Succession in The Muslim Family*, pp. 1-2.

structure of family ties and the accepted social values and responsibilities within the Islamic community. For in the eyes of the law rights of inheritance are generally regarded as the consideration for duties of protection and support owed by the deceased during his lifetime, so that the stronger the family bond, the greater the right of inheritance. In Islamic legal philosophy the rules of inheritance propound the ideal way for the deceased to fulfil his duty to his surviving relatives and members of the family".⁹

It may be deduced from Professor Coulson's summary that the primary contribution of the Islamic law of inheritance to the economic structure of its society is that it runs counter to the concentration of wealth in the hands of a few select individuals or preferred heirs/heiresses. In this way, it attempts to spread the deceased estate more evenly and fairly for the benefit, not only of family relations, but of society as a whole. In this way, the law of inheritance in Islam serves to consolidate the family system which is the basic social unit of any society.

Having now attained a basic understanding of the purpose, objective or rationale of the Islamic law of inheritance, a crucial point must be made abundantly manifest. This is that this branch of law, more than any other, instils in the consciousness of man - in accordance with a familiar rule of interpretation the masculine gender includes the feminine gender too, lest I be attacked by a group of feminists - the fact that he is not the absolute owner of the property he possesses or the wealth he produces. Rather, he is a trustee and is not, therefore, authorized to transfer such property or wealth in any manner he wishes. The fundamental issue at hand is the concept of ownership, and since inheritance involves the transfer of property and thus the transfer of ownership, an understanding of this concept from the Islamic perspective is essential.

Unlike the Roman jurists, who developed the concept of absolute ownership, a concept adhered to by most nations of the world, there is no such idea in Islamic law. Absolute ownership entitles the owner of property unfettered discretion and unfettered rights in respect of property owned by him. In Islam the entire universe belongs to Almighty God. God Himself declares:

"To Him belongs what is in the heavens and on earth, And whatsoever is between them, And

⁹ Id. at 3.

everything beneath the soil".¹⁰

Again, Allah emphatically states:

"To Allah belongeth the dominion
Of the heavens and the earth
And whatsoever there is therein,
And it is He Who hath power
Over all things".¹¹

In a number of other verses of the Qur'an, this point is reiterated. The only Absolute Owner in Islam is God, the Omnipotent. In this sense, one may say that the concept of absolute ownership exists in Islamic thinking. The human being, therefore, possesses and holds title to property merely as a trustee. The property allocated to him by the True Owner is a trust. The Qur'an explains:

"We did indeed offer the Trust
To the Heavens and the Earth
And the Mountains
But they refused to
Undertake it, being afraid thereof:
But man undertook it".¹²

A commentator of the Qur'an, Abdullah Yusuf Ali, states the trust is something given to a person, over which he has power of disposition. He is expected to use it as directed, but he has the power to use it in a different manner. There is no trust if the trustee has no power, and the trust implies that the giver of the trust believes and expects that the trustee would use it according to the wish of the creator of the trust, and not otherwise.¹³ Ali furthermore says that the undertaking by man of the great responsibility of this trust establishes a covenant (mithaq) between God and man. A covenant, in turn, necessary implies trust.¹⁴ The eminent scholar Abu'l A'la Maududi, in his MEANING OF THE QUR'AN, further explains this fundamental concept of 'TRUST' or 'AMANAT'. Referring to the above quoted verse (QUR'AN 33:72), he writes:

¹⁰ Surah Ta Ha, 20:6.

¹¹ Surah Al-Ma'idah, 5:120.

¹² Surah Al-Ahzab, 33:72.

¹³ *The Meaning of The Holy Qur'an*, p. 1080.

¹⁴ Id. at 1081.

"Here, the word 'amanat' (trust) implies khilafah (caliphate) which man has been granted [on] earth. The inevitable result of the freedom given to man to choose between obedience and disobedience, and the powers of authority granted him over countless creations for using that freedom is that he himself be held responsible for his voluntary acts Since man has not attained these powers by his own efforts but has been granted these by Allah, he is answerable before Allah for their right or wrong use".¹⁵

The khilafah (caliphate) which man has been granted on this planet is clearly stated in the Qur'an in Surah Al-Baqarah (The Heifer):

"Behold, thy Lord said to the angels:
"I will create a vicegerent on earth".¹⁶

Maulana Maududi has, in concise terms, explained the essence of vicegerency. He says:

"[A] khalifah, vicegerent, is one who exercises the delegated powers on behalf of the supreme authority. Man is, thus, not the master; he is only His deputy and does not possess any powers of his own except those which are delegated to him by the real Master.

... [H]is duty is to fulfil the will of the delegating Authority. It would be dishonesty and treason if he assumed sovereign powers himself or used them according to his own whim or if he acknowledged someone else as his sovereign and submitted to his will".¹⁷

This not-so-brief allusion to the concept of ownership from the Islamic viewpoint is absolutely essential, since without it, the essence of this work cannot be understood. In the same vein, the interrelated concepts of 'AMANAH' and 'KHILAFAH', which pervade all areas of Islamic thinking and philosophy, require clear understanding. It remains now to mention one more issue in the

¹⁵ Vol. X, p. 155.

¹⁶ Verse 30.

¹⁷ *Meaning of The Qur'an*, vol. I, pp. 16-17.

introductory portion of this work. This is the rationale or objective behind the rule in the Islamic law of inheritance that a testator may not bequeath more than one-third of his estate to legatees.

This restriction on the power of the testator was introduced shortly after the conquest of Mecca when Sa'd Ibn Abi Waqqas enquired from the Prophet Muhammad (SAWS) whether he could bequeath all his property to his only daughter. When the Prophet replied in the negative, Sa'd enquired whether he would be allowed to make a will regarding two-thirds of his wealth. Again the Prophet retorted negatively. On enquiring as to the permissibility of bequeathing one-third, the Prophet agreed and added that even one-third is much.¹⁸ The point is that one should leave one's heirs in reasonable financial affluence. This is preferable to leaving them as beggars or in a state of poverty, with the result that they become dependent on others for maintenance and well-being.

In a tradition reported by the most authentic of the six canonical traditionists, Imam Muhammad Al-Bukhari, it is stated that Ibn Abbas commented that bequeathing one quarter of the estate rather than one third is preferable since the Prophet, although permitting one-third, added the proviso that 'it is much'. The Caliph Ali (may God be pleased with him) once remarked:

"I have greater regard for the person who makes a will regarding 'one-fourth' compared to 'one-third', and 'one-fifth' compared to one-fourth".¹⁹

Similar remarks and comments have been related by two of the other three Khulafa-ur-Rashideen (Rightly-Guided Caliphs), namely Abu Bakr and Umar (may God be pleased with both of them). The upshot of all of these narrations is that it is commendable to leave even more than two-thirds of one's estate to the compulsory heirs. But the one-third restriction is to be viewed as an attempt - and a very successful attempt - at striking a balance between the compulsory and voluntary aspects of the law of inheritance.

Therefore, a minimum of two-thirds is distributed among the heirs in accordance with the compulsory rules established in the inheritance verses (ayat-ul-fard), and a maximum of one-third may

¹⁸ Rahman, T., op. cit., p. 450.

¹⁹ Id. at 451.

be used to make discretionary bequests.²⁰ This maximum of two-thirds is available for all the heirs, including females. In this respect, it is interesting to note that the legal system which preceded the Islamic system, namely Roman law, also imposed restrictions on testamentary powers. The Emperor Justinianus provided in his *Novellae* that if a testator has four or more children, he should leave at least one-third or one-half of his estate for them.²¹ However, the Islamic arrangement is a quite substantial improvement on the Roman provision since it takes full account of the welfare not only of the children, but all close relations.

In stark contrast, inheritance provisions under the vast majority of modern legal systems stand firmly on the principle of freedom of testation, i.e. the freedom of the testator to determine how his property shall devolve upon his death. A striking illustration is to be found in the English legal system, where the intention of the deceased as expressed in his will are paramount, and the law only intervenes to specify the manner in which the property shall devolve when a person died wholly or partially intestate. Only very recently has the English law, by way of the Inheritance (Provision for Family and Dependents) Act of 1975, somewhat meliorated the position of females. Their position will be analyzed more fully later.²²

The severe restrictions which the Islamic law of inheritance places upon testate succession is to safeguard, primarily, the basic interests of dependant and close relations and is designed for the material benefit of the family group as a whole.

The rationale of the 'one-third rule' or 'one-third restriction' or 'al-wasiyya fi'l-thulth (a bequest may not exceed one-third of the estate) should, by now be clear. If it is not, then it certainly becomes not only clear, but crystal clear, by the repetition of Prof. Coulson's words as regards the aims and objectives of the Islamic inheritance system. He says:

"The supreme purpose of the Islamic law of succession is material provision for surviving dependants and relatives, for the family group bound to the deceased by the mutual ties and responsibilities which stem

²⁰ Powers, D.S. *Studies in Qur'an and Hadith*, p. 14.

²¹ Novel 18.

²² See chapter two, p. 49.

from blood relationship."²³

Finally, it should be borne in mind that the 'one-third rule', and the devolution and distribution of the deceased estate as a whole, comes into operation only after two preferred right in relation to the estate are satisfied. These are:

- 1) funeral expenses, and
- 2) payment of all debts in full.

²³ Supra, n. 8.

CHAPTER ONE

THE NOTION OF WOMEN'S RIGHTS IN ISLAM

One hundred and fifty years ago Edward William Lane remarked that the 'fatal point in Islam is the degradation of women'. The Turkish poet quoted at the commencement of my Introduction would certainly agree. Two months ago, an American researcher visiting Malaysia, Dr. George K. Tanham, commented that the Americans generally think that Muslims do not treat their women fairly.²⁴ Tanham added:

"... [Americans] would realize how Prophet Muhammad had given women better positions than before the advent of Islam."²⁵

It is necessary to dispel the erroneous aforementioned perceptions and notions of women's rights in Islam, and to re-examine afresh the position of women, in the light of the last-mentioned statement. The best approach in achieving this would be to examine what the primary sources of Islamic Jurisprudence, namely the Qur'an and the Sunnah, propagate in this respect. The purpose in doing this is to show conclusively that, in the following three areas, Islam has accorded the fairer sex a permanent place of honour, dignity and respect:-

- 1) the upliftment and elevation of the female's position in general,
- 2) the conferment on the female of inheritance rights, and
- 3) the conferment, in particular, upon the female of rights to intestate succession.

Now, before a specific examination of the Qur'an and the Prophetic Sunnah on the issues of women's rights and the equality of the sexes, a few general observations require mentioning. Islam treats these issues on its own merits and defines its attitude to sex relations on the basis of human nature, on the

²⁴ *New Sunday Times*, February 27, 1994, p. 5.

²⁵ *Ibid.*

basis of the concept of FITRAH (nature).²⁶ Islamic teachings on these issues, therefore, spring from the ultimate facts of human nature in its social context. M.M. Siddiqi analyses the issue as follows:

"The question of the relationship between man and woman and their respective rights and duties is really a part of the larger socio-economic problem of man. Its solution depends of the way in which this larger problem is dealt with by a civilization. It is wrong, therefore, to study the question of woman's rights and her place in society in isolation from the total context of human relationships in all their aspects. Before we pass any judgment on the particular way in which a civilization deals with the sex problem we should consider its total approach to human existence, so as to enable us to view its specific solution in their larger and total setting."²⁷

Let us, then, consider this 'total approach to human existence' from the Islamic perspective. And, as I have stated, the best approach in this regard would be to examine the Final Divine Revelation and the Prophetic traditions. First, the Qur'an, which declares in its commencement of a chapter most aptly titled The Women (Al-Nisa):

"O mankind, rever
Your Guardian-Lord
Who created you
from a single being,
Created, of the same essence
His mate, and from them twain
Scattered (like seeds)
Countless men and women."²⁸

This is the promulgation of the doctrine of human equality and, of course, includes equality of the sexes. The verse declares, long before the Universal Declaration of Human Rights in 1948, that all human beings, irrespective of sex, race, colour, caste or creed, are equal before God and they stand firmly on a footing of equality. The Qur'an then categorically dispels any notion

²⁶ See Qur'an, Surah Al-Rum, 30:30.

²⁷ *Women in Islam*, p. 7.

²⁸ Verse 1.

that women, or the broader category of females, are inferior to men when it asserts:

"They are your garments
And ye are their garments."²⁸

By stating that the two parties to a marriage contract complement each other, the implicit deduction is that neither spouse is inferior in status or dignity. This basic equality is reiterated some forty verses later when Almighty God says:

"And women shall have rights similar to the rights (men have) Over them ..."³⁰

Although this verse refers in particular to rights attaching to divorce, its import may be extended to other areas of male-female interaction and thus be elevated to the status of a general rule. Notwithstanding the clarity and unambiguity of the above Divine Words, it is in this very verse that there appears to the reader a superiority of man over woman. For Allah says:

But men have a degree
(of advantage) over them
And God is Exalted
in Power, Wise."

Coupled with this, the verse which has given rise to most of the misunderstanding and misinterpretation regarding the equality of the sexes is to be found in the chapter on Women. It reads:

"Men are the protectors
And maintainers of women
Because God has given
The one more (strength)
than the other, and because
They support them from their means."³¹

Perhaps the wording of verse 228 of Sura Al-Baqarah that 'men have a degree (of advantage) over women' was one of the reasons for E.W. Lane's remark that the 'fatal point in Islam is the degradation of woman'. This is certainly not the case, for the degree (of advantage) simply refers to the difference in the economic position between the sexes. This difference is clarified in Qur'an 4:34 to the effect that the men shoulder a greater economic responsibility than women in that the former

²⁸ Surah Al-Baqarah, 2:187.

³⁰ Surah Al-Baqarah, 2:228.

³¹ 4:34.

support the latter 'from their means'. In fact, men are legally obliged to maintain women adequately and reasonably. This increased economic responsibility does not confer on man any increased or exalted status, does not confer on man any superiority over women, and certainly cannot be said or understood to be a degradation of women or a disregard of woman's rights. M.M. Siddiqi, in his exegesis of the four above-quoted Qur'anic verses, explains;

"The Qur'an ... first sets forth a general doctrine of sex equality and then qualifies and defines it with the assertion that this is not a bald and undifferentiated equality but one involving special rights and duties both for men and women, within the framework of their special responsibilities: both sexes are absolutely equal to each other."³²

It is perhaps appropriate to conclude the Qur'anic view on the rights of females by its expression of and reaction to the barbarity of female infanticide, which was the practice in pre-Islamic Arabia. In the Surah entitled Bees (Al-Nahl), God condemns this inhumane practice:

"When news is brought
to one of them, of (the birth of)
a female (child), his face
Darkens, and he is filled
With inner grief!

With shame does he hide
Himself from his people,
Because of the bad news
He has had!
Shall he retain it
On (sufferance and) contempt,
Or bury it in the dust?
Ah! what an evil (choice)
They decide on!"³³

In order to deter commission of this heinous crime, God admonishes in a later revelation.³⁴

³² *Women In Islam*, p. 19.

³³ 16:58-59.

³⁴ This refers, of course, to a verse and not a Revealed Book.

"When the female (infant)
Buried alive, is questioned
(on the Day of Reckoning)

For what crime
She was killed."³⁵

In this way, the Qur'an eradicated the Pre-Islamic Arabian parents' attitude to differential treatment of sons and daughters. And it is on this point that the teaching of the Prophet Muhammad (on whom be peace) vis-a-vis equality of the sexes begins. He constantly reminded his followers that female children should be treated in exactly the same manner as their male counterparts and always encouraged the raising of sons and daughters alike on an equal footing.

Such was the concern of the Prophet for women's rights that to each of the clear commandments of the Qur'an on this subject, the Prophet added his own re-enforcing and reasserting injunctions.³⁶ For example, to the Qur'anic declaration (quoted above) that women and men have similar rights against each other (2:228), the Prophet in his famous last sermon delivered in Mecca stated:

"Fear God in matters concerning women.
Verily women have rights against you, As you
have rights against them."³⁷

Never before in the history of mankind had the status of women, the position of women, the rights of women and womanhood itself been elevated and exalted to the extent that the final Prophet of God had done. A few of his traditions (ahadith) in this respect are:

"Women are the twin halves of men."³⁸

"The most valuable thing in the world is a
virtuous wife."³⁹

³⁵ Surah Al-Takwir (The Folding Up), 81:8-9.

³⁶ Mahmood, T., "The Grandeur of Womanhood in Islam"
Islamic and Comparative Law Quarterly,
Vol. VI, p. 8.

³⁷ Ibid.

³⁸ Iqbal, S. *Woman and Islamic Law*, p. 3.

³⁹ Id. at 2.

"God enjoins to treat women well for they are your mothers, daughters and aunts."⁴⁰

"Females rights are sacred; see that [women's rights] are maintained."⁴¹

On the basis of these foundational principles of the Qur'an and the exhortations of the Prophet Muhammad (SAWS) it can certainly not be argued that Islam has not accorded to females a permanent place of honour, dignity and respect. In general, the upliftment and elevation of the position of the female cannot be opened to doubt. If it perhaps still is, then the discourse in the following chapter should put paid to the existence of any such doubt. In particular, I intend now to lift or pierce the veil, if I may use corporate terminology, concerning the rights of females vis-a-vis the law of inheritance and, at the same time, to bring to the fore the wisdom of the Divine Law in this regard. The Qur'an states:

"From what is left by parents
And those nearest related
There is a share for men
And a share for women
Whether the property be small
Or large - a determinate share."⁴²

Allah lays down clearly in this verse the general principle that both men and women shall have the right of inheritance. Bearing in mind that this verse was revealed in the seventh century A.D., a time when females were the subject not only of oppression but also regarded as a marketable commodity, it is quite remarkable. This right of inheritance granted to females resulted, of course, in women attaining the right of ownership. From being regarded as property herself to being entitled to inherit and to own property is certainly a remarkable shift, a shift which chanced the condition of women irrevocably, restoring them to a place of dignity and respect.

However, the following statement of Almighty god has caused the furore. He says:

"God directs you
As regards your children's

⁴⁰ Khwaja Kamaluddin, "Al-Islam", *Islamic Review*, vol. 12, p. 283.

⁴¹ Ibid.

⁴² Surah Al-Nisa, 4:7.

Inheritance: to the male
A portion equal to that
Of two females."⁴³

These words have aroused in women the feeling, a feeling which has steadily gained momentum, that Islamic Law, and in particular the law of inheritance, treats women unfairly, unjustly and inequitably. The situation has been exacerbated by the rise and speedy growth of the feminist movement over the past three or so decades. The movement, with its roots in the United Kingdom and the United States of America, has extended to many countries having a substantial Muslim population.

Now, the wisdom of this piece of Divine Legislation comes to the fore only through an understanding of the position men and women occupy in an Islamic society and the concomitant economic implications thereof. As to their respective positions, the reader should bear in mind the words of Siddiqi quoted above.⁴⁴ In particular, he says, it is incorrect to study the issues of women's rights, as well as the rights and duties of men and women respectively, in isolation from a civilization's total approach to human existence. On the contrary, if one does take into account the 'total approach' adopted by Islamic civilization, it will result in a clearer and more comprehensive understanding of the specific rules of the law of inheritance and its application in society at large.

When Allah says that 'men have a degree of advantage over women',⁴⁵ it ought not to be too readily assumed, as I stated earlier, that males occupy a position of superiority over females. In the same vein, such assumption should not be made in regard to God's 2:1 male-female apportionment regarding inheritance. Indeed the great poet and philosopher, Sir Muhammad Iqbal, has stated that such an assumption would be contrary to the spirit of Islam.⁴⁶ His statement come is the light of the Qur'anic verse, quoted above,⁴⁷ that women have rights over men similar to those men have over women. In other words, both sexes are clearly on an equal footing. What, then is the *ratio* of the 2:1 ratio vis-a-vis inheritance?

⁴³ Surah Al-Nisa, 4:11.

⁴⁴ See p. 12 of this work.

⁴⁵ Surah Al-Baqarah, 2:228.

⁴⁶ OP. CIT., P. 169.

⁴⁷ Q.2:228.

The Islamic law of inheritance does not stand *in vacuo*, but it is complementary to other branches of a comprehensive system of family law, which must be viewed as an integral whole and understood in its entirety. Thus the portion inherited by the widow, daughter or daughters, mother and other female relatives of the deceased should be evaluated in the light of and in relation to the female's right of dower and her right to maintenance. The correlative duty - Hohfeld would enjoy this - of payment of dower as well as the duty of maintenance rests on the husband's shoulders.

As regards dower - often misconstrued and equated to bride-price, this is a sum of money or other property which becomes due and payable by the husband to his wife as an effect or consequence of the contract of marriage. The Qur'an declares:

"And give the woman
(On marriage) their dower
As a free gift; but if they,
of their own good pleasure,
Remit any part of it to you,
Take it and enjoy it."⁴⁸

While women enjoy a discretion to remit part of the dower, men are clearly under a duty to pay the dower. Dower is referred to in the Qur'an, inter alia, as 'mahr' 'sadaq', 'nehla', 'ajr' and 'fareeda'. The last-mentioned is particularly interesting since it means 'the obligatory portion' and is derived from the root word 'fard', the same word from which 'fara'id' in ilm-ul-fara'id is derived. The word 'fareeda tammin Allah' appears in one of the ayat-ul-fard⁴⁹ in the Qur'an and means:

"These are obligatory portions
ordained by Allah".

The obligatory nature of dower (fareeda) has been cogently analyzed by Jamal Nasir. He writes:

"The qualification of dower as an effect or consequence of the marriage contract rather than as an essential or an condition thereof, does not reduce or weaken in any way the wife's entitlement to it. In fact it is both an inalienable and imprescriptible right of the wife:

⁴⁸ Surah Al-Nisa, 4:4.

⁴⁹ Surah Al-Nisa, 4:11.

- (i) It is inalienable in that it is taken for granted even if it is not expressly stated in the contract ...
- (ii) It is imprescriptible in that the wife shall not lose her entitlement to it through prescription alone."⁵⁰

Furthermore, the learned write states that apart from valid marriage contract which makes the dower per se an established right of the wife, consummation with the semblance of the right to have intercourse or under an irregular (fasid) marriage contract shall also render the wife entitled to a dower.⁵¹ In addition, it is unanimously agreed by the Sunni jurist that the whole dower shall become payable to the wife or her heirs on the occurrence of either of two events:

- i) the actual consummation of marriage, and
- ii) the death of either spouse before consummation.⁵²

If it is the wife who dies, her heirs shall take the residue of her whole dower from the husband after deducting his share. In the event of the death of the husband, the whole dower shall be due to the wife, except if she has murdered him.⁵³ In effect, on the husband's death, the dower becomes a debt payable from the husband's estate prior to his discretionary bequests amounting to no more than one-third of the estate.

The dower, whether it be paid in a lump sum (prompt dower) or in 'instalments' (deferred dower), or whether the wife's entitlement attaches to the whole dower or to half the stipulated dower is, therefore, an exclusive right of the wife under a valid marriage contract or even under an irregular contract of marriage. And this is only the commencement of the vast economic and financial burden to be borne by the husband.

In respect of maintenance, the husband shoulders the entire burden, since maintenance is the lawful right of a wife under a valid marriage contract. It is the right of the wife to be provided at the husband's expense, and at a scale suitable to his means, with food, clothing, housing, household necessities and

⁵⁰ *The Islamic Law of Personal Status*, p. 87.

⁵¹ *Id.* at 92.

⁵² *Id.* at 93.

⁵³ The Prophet said: "The Killer Shall Not Inherit".