

# **ISLAM VERSUS GENDER EQUALITY: THE REALITY ABOUT THE ISLAMIC PRINCIPLE OF *LIDDHAKARI MITHLU HAZZI AL- UNTHAYAYN* (TWO FEMALE PORTION IS EQUIVALENT TO A MALE PORTION, 2:1) IN THE DISTRIBUTION OF A DECEASED’S ESTATES**

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## **Abstract**

Islam is a religion that always advocates justice, equity and fairness among people. The religion enjoins its followers to render back justice to whom it is due, even if it can conflict with their interest. Jurisprudentially, the concept of justice has been understood as a subjective phenomenon, but that does not in any way negates the objectives of Shari‘ah (maqasid al-Shari‘ah) in terms of ensuring and maintaining justice among people in the society. In fact, Islam is guided by the revealed sources of law that treats all people equally irrespective of their gender, status, affiliation and background. But then, only the knowledgeable people and the men of wisdom can understand the actual meaning and interpretation of Islamic injunctions. One of the glaring issues that have been confusing people in recent times, most especially people from the faiths other than the Islamic faith, is the issue of gender equality from the Islamic perspective. Notably, the Islamic principle of inheritance that apportioned for a male heir a larger portion of inheritance over a female heir; which nowadays has been seen by some people as an obstacle in achieving the international mission on the actualization of gender equality in the world. It is against this backdrop, the paper clarifies the misconception and misunderstanding involved in the Islamic principles of 2:1. Thus, the paper reveals the actual meaning and

wisdom behind such principle within the purview of Islamic law of intestate succession.

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**Keywords:** Islam, Gender equality, *Liddhakari Mithlu Hazzi al- Unthayayn* 2:1, Distribution of deceased's Estate

### Introduction

Justice and equity are among the attributes of Islam, as it is always enjoining its followers to do justice among people even if it will be against their interest. To this end, the Almighty Allah says:

*“O you who believe! Stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, Verily Allah is well- acquainted with all that ye do”.*<sup>2</sup>

In yet another verse:

*“Verily! Allah commands that you should render back the trust to those to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (Allah) gives you! Truly, Allah is Ever All-Hearer All-seer”.*<sup>3</sup>

Furthermore, the Almighty Allah in a separate verse has said: “And whoever does righteous good deeds, be they male or female, and have faith, they will enter heaven, and not the least injustice will be done to them”.<sup>4</sup>

The above provisions have emphasised and exhibited the significance of doing justice amongst people in Islam, to an extent that a Muslim has been obliged to compromise his interest for the sake of justice. When it comes to issue of justice, Islam does not care about the relationship, affiliation, background, status or sex of people. All people are human beings and therefore are equal in the eyes of Allah (s.w.t). To this end, the Almighty Allah said:

*“O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily! The most honourable of you with Allah is that*

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<sup>2</sup> Qur'an 4: 135 Al Hilali, MMuhammadTaqi-ud-Din and Khan, Muhammad Muhsin (1982); *Translation of the Meanings of the Noble Qur'an, in the English Language*, Madina: Saudi Arabia, King Fahad Complex, 132

<sup>3</sup> Qur'an 4: 58

<sup>4</sup> Qur'an 4: 124

*(believer) who has at-Taqwa. Verily! Allah is All-Knowing All-Aware”.*<sup>5</sup>

In yet another verse:

*“And their Lord hath accepted of them, and answered them: “Never will I suffer to be lost the work of any of you, be He male or female: ye are members, one of another.”*<sup>6</sup>

In a hadith, the Prophet (s.a.w) was reported to have said:

*“The Prophet Muhammad (s.a.w), during his Last Sermon at Arafat in Mina, said: “O people! Your Lord is one Lord, and you all share the same father. There is no preference for Arabs over non-Arabs, nor for non-Arabs over Arabs. Neither is their preference for white people over black people, nor for black people over white people. Preference is only through righteousness.” Then he said: “Have I conveyed the message?” and the people declared that he had.”*<sup>7</sup>

In Islam, there is no discrimination amongst people simply because of their race or sex. In fact, female have been considered with a high esteem, honour and dignity due to their value and vulnerability, contrary to wrong perceptions upheld by those that have no knowledge about the religion. Hence, Islam enjoins the believers to protect female and treat them with respect as they are the backbone of every community. The Almighty Allah says:

*“Men are protectors and maintainers of the women because Allah has made one of them to excel the other and because they spend (to support them) from their means. Therefore, the righteous women are devoutly obedient (to Allah and their husband), and guard in the husband’s absence what Allah orders them to guard (for example their chastity)... ”*<sup>8</sup>

Similarly, the Prophet (s.a.w) has encouraged his community to always be kind to female, as they are the gateway to *Al-jannah* (Paradise). Being fair and kind to them has been described in the hadith as a means of admittance into Paradise. To this end, the Prophet (s.a.w) was reported to have said: “Whosoever has three daughters, three sisters, two daughters or two sisters, very kind and nice to them, and fears Allah in their treatment, will be admitted into Paradise.”<sup>9</sup> This is a clear indication that Islam does not joke with any issue related to female, as they are the root of the human nature.

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<sup>5</sup> Qur’an 49: 13

<sup>6</sup> Qur’an 3: 195

<sup>7</sup> Musnad Imam Ahmad, 22391

<sup>8</sup> Qur’an 4: 34

<sup>9</sup> Abu Dawud and Tirmidhi

In furtherance to ensure that justice and equity prevails amongst people, Islam has laid down some principles for the distribution of deceased's estates, which cannot be simply found in other laws. One of the fundamental features of the Islamic law of succession is "justice and fairness". This feature should be understood from the Islamic point of view but not from the other way round. Thus, it is indeed unfair for people to attribute anything to Islam without having a prior knowledge or without being well- informed about it. To this end, the Almighty Allah says: "And We sent not (as Our messengers) before you (O Muhammad s.a.w) any but men whom we sent revelation. So ask of those who know the scripture if you know not."<sup>10</sup> This provision simply encourages people to be well- acquainted with knowledge so that they should not be spreading speculations amongst people. It is in view of the above, the paper examines the Islamic law of intestate succession with a view to clarifying the misconception about the principle of *Liddhakari Mithlu Hazzil unthayayn* (2:1).

### **A Brief Overview of the Islamic Law of Intestate Succession**

The idea about the intestate succession in Islam is to reaffirm the Islamic principle that prohibits the acquisition of property or wealth unlawfully except through the legal means. Thus, the Almighty Allah says: "O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent..."<sup>11</sup> In yet another verse: "O mankind! Eat of that which is lawful and good on the earth, and follow not the footsteps of satan. Verily, he is to you an open enemy."<sup>12</sup> He further says: "O you who believe! Eat of the lawful things that we have provided you with, and be grateful to Allah, if it is indeed He whom you worship."<sup>13</sup> Similarly in another verse He says: "And eat up not one another's property unjustly, nor give bribery to rulers that you knowingly eat up a part of the property of others sinfully."<sup>14</sup> Among such legal means encouraged by Shari'ah *inter alia* include: contracts formed according to Islamic principles, Gifts donated in line with Shari'ah injunctions, Wills bequeathed and executed in accordance with the principles of Islamic law and inheritance distributed and inherited according to Islamic law of intestate succession.

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<sup>10</sup> Qur'an 16: 43

<sup>11</sup> Qur'an 4: 29

<sup>12</sup> Qur'an 2: 168

<sup>13</sup> Qur'an 2: 172

<sup>14</sup> Qur'an 2: 188

Islamic law of intestate succession is a set of rules called “*Fara'id*”<sup>15</sup> (science of inheritance shares) that deals with distribution of the deceased’s estates to his/her legal heirs after the confirmation of his/her death.<sup>16</sup> The term “intestate succession” which has been used interchangeably with the word “inheritance”, is rooted from the Arabic word “*Mirath*” whose genesis is from the word “*irth*”, meaning inheritance or heritage.<sup>17</sup> Sometimes the term *mirath* has been used interchangeably with *wirathah* “to inherit”. From this end, a heir is called *warith* and a deceased is addressed as *muwarith*.<sup>18</sup> Therefore, Islamic law of intestate succession can be defined as a comprehensive branch of Islamic law that defines: the modus operandi for distributing deceased’s estates; rights and liabilities attached to inheritance; and rightful beneficiaries and their apportioned shares.<sup>19</sup> It is an important aspect of Islamic law which Allah (s.w.t) made it upon Muslims as *fard al-kifayah* (a legal obligation that must be discharged by the Muslim community as a whole but not by an individual Muslim) to acquire its knowledge. To this end, it was narrated by Abu Hurairah (r.a) that the Prophet (s.a.w) was reported to have said: “O Abu Hurairah, learn *fara'id* (the shares of the inheritance that are prescribed in the Quran) and teach it to them. Indeed it is half of the knowledge.”<sup>20</sup>

Most principles of the Islamic law of intestate succession are derived from the primary sources of Islamic law, which are the glorious Qur’an and Sunnah of the Prophet (s.a.w). Other sources of the Islamic law of intestate succession also includes: *ijma'*, *Qiyas* and *ijtihad* which can be applied only if there is no explicit provision in the above primary sources. In the Glorious Qur’an the Almighty Allah says: “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 small or large, an obligatory or legal share”.<sup>21</sup> In yet another verse: “...But kindred by blood are nearer to one another (regarding inheritance) in the Decree ordained by Allah. Verily! Allah is the knower of everything.”<sup>22</sup> Similarly, the Almighty Allah has categorically says:

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<sup>15</sup> The word *fara'id* is a plural form of *faridah* (an obligatory thing). To this end, the Almighty Allah has made *Ilmul fara'id* (knowledge of science of inheritance) as *fard al-kifayah* (an obligation that Allah has made mandatory upon all Muslims but not upon individual Muslims).

<sup>16</sup> Mohammad Razi (2008), *General Inheritance Law: General Rules and Shares*, 16-17, Canada: Toronto

<sup>17</sup> *Ibid*

<sup>18</sup> Mohammad Razi, *General Inheritance Law*, 19

<sup>19</sup> Muhammad Ridzuan Awang, “The Islamic Inheritance Law (*Fara'id*): The Manifestation of Compressive Inheritance Management in Islam”, a working paper presented at the National Convention of *Fara'id* and *Hibah* 2008, organised by the Islamic Development Malaysia Department (JAKIM) at the Multipurpose Hall of the Federal Territory Mosque, Kuala Lumpur on 7 August 2008, PP 7-8

<sup>20</sup> Sunan Ibn Majah, *Kitab Al -Fara'id* (Book Al- Fara'id)

<sup>21</sup> Qur'an 4:7

<sup>22</sup> Qur'an 8:75

*“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had male siblings [or Female siblings], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever knowing and Wise”.*<sup>23</sup>

The Qur'an further proceeds:

*“And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a female sibling, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah, and Allah is Knowing and Forbearing”.*<sup>24</sup>

In yet another verse, the Almighty Allah says:

*“They request from you a [legal] ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor ascendants [as beneficiaries]." If a man dies, leaving no child but [only] a female sibling, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two female siblings [or more], they will have two-thirds of what he left. If there are both male siblings and Female siblings, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah knows of all things”.*<sup>25</sup>

The principles of Islamic law of intestate succession are also found in *ahadith* of the Prophet (s.a.w). Thus, the Prophet (s.a.w) was reported to

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<sup>23</sup> Qur'an 4:11

<sup>24</sup> Qur'an 4:12

<sup>25</sup> Qur'an 4:176

have said: “One-half is for daughter and one-sixth for the son’s daughter, i.e. both shares make two-thirds of the total property; and the rest is for the female sibling.”<sup>26</sup> In yet another Tradition, “Give the shares to those who are entitled to them, and what remains over goes to the nearest male beneficiary”.<sup>27</sup>

From the ijma of the companions and *tabi’in* (Muslims after the era of Prophet Muhammad (s.a.w)) a grandmother or two grandmothers (mother’s mother and mother’s father) share equally in 1/6 portion. Similarly, the companions did their *ijtihad* (efforts) in solving some inheritance problems.<sup>28</sup>

Islamic law of intestate succession has laid out some prerequisite before a person shall be qualified to inherit from the estate of a deceased person, namely: a death of the deceased must be ascertained either in “fact” or in “law”;<sup>29</sup> a deceased must leave behind a legal estate (both real and personal);<sup>30</sup> there must be survivors of the deceased otherwise the estate will go to the public treasury;<sup>31</sup> It is also important to note also that the Islamic law of intestate succession has provided for the bases upon which inheritance can be made in Islam. In order for a person to inherit, he/she must have a nexus or a recognized relationship with a deceased person. Thus, a deceased’s heir shall exhibit one of the following relationships, namely: marital relationship (*Zawwaj/ tazawwuj*), Blood relationship (*Nasab*) and Clientage (*Wala*).<sup>32</sup>

<sup>26</sup> Muhammad Ibn Isma’il, *Sahih al- Bukhari*, Volume 8, Book 80 Laws of Inheritance (Al-Faraa’id), Number 728

<sup>27</sup> Muslim Ibn Al Hajjaj, *Sahih Muslim*, The Book Pertaining to the Rules of Inheritance (Kitab Al-Faraa’id), Book 11, Hadith 3929. See also Muhammad Ibn Isma’il, *Sahih al-Bukhari*, Volume 8, Book 80 Laws of Inheritance (Al-Faraa’id), Number 724

<sup>28</sup> Muhammad Ridzuan Awang, “The Islamic Inheritance Law (*Faraa’id*): The Manifestation of Compressive Inheritance Management in Islam”, a working paper presented at the National Convention of *Faraaid* and *Hibah* 2008, organised by the Islamic Development Malaysia Department (JAKIM) at the Multipurpose Hall of the Federal Territory Mosque, Kuala Lumpur on 7 August 2008, PP 1-8

<sup>29</sup> According to Imam Malik in his *Muwatta*, “No one should inherit from someone else when there is doubt.” See Malik Ibn Annas, *Muwatta Malik*, Book 27, Hadith 27.13.15 The ascertainment of death in “fact” it has to do with the real death of a person. Whereas, the ascertainment in “law” is a declaration of death of a person by the law in a situation where his whereabouts is unknown, for instance a missing person could be presumed death after a reasonable period of which his/her age mates have not been expected to have survived. Similarly, a person could also be presumed death by the law where his/her condition of survival could not be ascertained, for instance a fetus or newly born baby who has not cry in the course of delivery.

<sup>30</sup> A legal estate here is referred to as net estate after discharging all encumbrances such as funeral expenses, debt and *Wasiiyah* (Bequest)

<sup>31</sup> A. O. Yekini, Women and Intestate Succession in Islamic Law, being a project submitted to the Faculty of Law, Lagos State University, in Partial Fulfillment of the Bachelors of Laws Degree (LL.B) Hons. May 2008, Research paper Series at New York Law School, No. 08-49, available at available at: <http://ssrn.com/abstract=1278077>, accessed on 12/03/2014, 41-42

<sup>32</sup> *Ibid* 43

In contrast, as Islamic law of intestate succession provides for the bases upon which one could be qualified to inherit, same law also provides for the ground upon which a deceased's heir could be barred from inheritance. To this end, a murderer cannot inherit anything from the estate of the deceased murdered.<sup>33</sup> To this effect, the Prophet (s.a.w) was reported to have said: "a killer does not inherit (from the victim)".<sup>34</sup> Yet in another tradition: "a killer does not receive any part (of the inheritance). If he (the victim) has no (standard) heirs, his inheritor will be the nearest (of kin) to him, and the killer does not inherit anything".<sup>35</sup> Other impediments to inheritance include the differences of religion and slavery (*wala'*). No inheritance between persons of different religion. To this end, the Prophet (s.a.w) was reported to have said: "A Muslim cannot inherit a non-Muslim" and "there is no inheritance between persons of different religions".<sup>36</sup> Similarly, a slave cannot inherit his master because whatever property he owns is deemed as his master's property.<sup>37</sup>

Worthy also to mention here that under Islamic law of intestate succession, heirs are of different categories. Thus, eligible heirs can be classified into two, namely: Qur'anic heirs and non Qur'anic heirs. The Qur'anic heirs are those heirs whose shares are clearly spelt out and prescribed (*fard*) in the Qur'an and/or sunnah, while non- Quranic heirs are whose shares have neither been prescribed in the Qur'an nor in the hadith. But they inherit by way of *ta'sib* (agnates or clan or paternal relation). The former category include: a deceased father, a deceased father's father, a deceased uterine brother and a deceased husband, such are from the male side. But from the female side, it consist of a deceased daughter, a deceased son's daughter, a deceased mother, a deceased mother's mother, a deceased germane sister, a deceased consanguine sister, a deceased uterine sister and widow.<sup>38</sup> The latter category consists of a deceased son and any one listed

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<sup>33</sup> This is all the same whether the Killing is intentional (*Qatl al amd*) or unintentional (*Qatl al khat'*). According to the most popular opinion, if the killing is intentional, the deceased's heir cannot inherit completely, neither from the net estate of the deceased nor from the *Diyyah* (the blood money). However, if the killing is unintentional, the deceased's heir will be entitled to inheritance from the net estate of the deceased but cannot inherit from the *Diyyah* (the blood money).

<sup>34</sup> See Malik Ibn Annas, *Muwatta Malik*, Book 27, Hadith 27.13.15

<sup>35</sup> Sunan Tirmidhi and Sunan Ibn Majah. See also Mohammad Razi, General Inheritance Law, 21 and A. O. Yekini, 45

<sup>36</sup> Muhammad Ibn Isma'il, *Sahih al-Bukhari*, Volume 8, Book 80 Laws of Inheritance (Al-Faraa'id), Number 756, although the most popular opinion (*Qawl al mash'hur*) is that a non Muslim cannot inherit a Muslim but a Muslim can inherit a non Muslim regardless of the above hadith. The analogy has been drawn from the provision of the Qur'an that legalizes marriage between a Muslim man and non Muslim woman (*Ahl al kitab*), see Qur'an 5: 5. Similarly, in a hadith, the Prophet (s.a.w) says: "*Ad -Din ya zid wala yanqus-* the religion is capable of increasing but should never decrease."

<sup>37</sup> Mohammad Razi, General Inheritance Law, 22

<sup>38</sup> *Ibid*, 27-40



above under the male category except a deceased husband. However, if a deceased's son survived alone without any Qur'anic heir, shall inherit (as an agnate) all the estate.<sup>39</sup> All of the above mentioned persons are eligible to inherit their deceased, subject to other principles under Islamic law of intestate succession. Such principles include: the principles governing *hujb* (the principle of exclusion) which depends on the degree of remoteness between heir and a deceased;<sup>40</sup> settlement of bequest and/or debt incurred by the deceased while alive<sup>41</sup> or funeral expenses or bequest made in accordance with the principles of Shari'ah, all should be settled first before distribution of the net estate to the heirs; and then distribution of estates in accordance with the prescribed share under Shari'ah. To this end, the prescribed shares which a deceased's heir is entitled to could be any of the following: 1/2, 1/3, 1/4, 1/8, 1/6 and 2/3 depending on the nature of individual heir.<sup>42</sup> Thus, *ashab al fara'id* (those heirs with prescribed shares) should be settled first and then the residue if any shall be given to agnate(s). To this end, the Prophet (s.a.w) was reported to have said: "Divide the wealth among the heirs with prescribed shares, according to Allah's Book. Whatever remains after that, it is for the male person who is nearest (to the deceased)";<sup>43</sup> However, If the heirs are of the same status or background to the deceased,<sup>44</sup> they should share the estate according to the proportion (2:1) i.e double portion of a female heir goes to a male heir.<sup>45</sup>

### **The Principle of 2:1 under Islamic Law of Intestate Succession and the Wisdom behind it**

Islamic law of intestate succession has provided for a fair play amongst heirs in distribution of deceased's estate irrespective of their status or sex. The principle of 2:1 portion of distribution between a male and female heir mentioned in the Qur'an and Sunnah does not mean that at all times a female heir should inherit half of the share of her male counter part. However, sometimes the female share of inheritance is equal or even greater

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<sup>39</sup> Ibid

<sup>40</sup> There are two type of *hujb*, namely: *hujb naql* and *hujb hirman*. The former is a partial exclusion, that is to say, it is an exclusion from inheritings a large share to small, or from inheriting as *sahib al fard* (person with a stipulated share) to inherit as *asib* (agnate). The latter is a total and complete exclusion which happens as a result of the presence of some heirs. For instance, a deceased's son excludes a deceased's grand son completely from inheritance.

<sup>41</sup> See Qur'an 4:11-12

<sup>42</sup> See Qur'an 4: 11-12

<sup>43</sup> Muhammad Ibn Isma'il, *Sahih al- Bukhari*, Volume 8, Book 80 Laws of Inheritance (Al-Faraa'id), Number 724

<sup>44</sup> For instance, the principle shall be applied in the cases of sons and daughters; fathers and mothers in some circumstances; and brothers and sisters in some circumstance. The illustration of this will be made later in the paper. See Qur'an 4: 11 & 176

<sup>45</sup> Qur'an 4: 11

than that of a male heir as could be seen in the following illustrations: For instance, 2/3 of a deceased's estates should be allotted to two or more daughters and the remaining 1/3 should be shared by agnates no matter their number. To this end, the Almighty Allah says: if only daughters, two or more, their shares are two thirds of the inheritance, they shall have two thirds of the inheritance (between them).<sup>46</sup> The same thing will happen if a deceased left no son but only two or more sisters.<sup>47</sup> Practically, in a situation where a deceased survived by a husband, father, mother and daughter, the largest portion which is half of the estate, will go to the daughter.<sup>48</sup> It shall even be lesser than that, had it been she is a son inheriting together with the above mentioned persons. Another example, if a deceased survived by husband, mother and sister. The sister shall inherit half of the estate which is equal to that of the husband and greater to that of a mother.<sup>49</sup> Had it been she is a brother inheriting together with the above persons, would have reduced to half of the share she got as a deceased sister.<sup>50</sup>

In some cases, female inherits while their male counter parts do not. For example, if a deceased survived by a husband, father, daughter and son's daughter. The son's daughter inherits 1/6 of the estate. But if it was a son's son in her position, will not inherit anything. This is because of the principle of Shari'ah that provides for settling the *ashab al fara'id* first before distributing the residue (if any) to the agnates. Similarly, if a deceased survived by husband, germane sister and a consanguine sister, the consanguine sister inherits 1/6 of the estate.<sup>51</sup> But if it was a consanguine brother in place of the consanguine sister, will inherit nothing as no residue left for him to inherit.

In some cases, female inherit equal share as her male counter part. For instance, a deceased survived by a son, both parents and a husband. In this situation, both father and mother inherits equal share (i.e 1/6 each).<sup>52</sup> In addition, if a deceased survived by a son, husband, mother and uterine brother and sister together. Both the brother and sister are jointly and equally entitled to 1/6 of the estate.<sup>53</sup>

In some cases, a female inherits half or less than the share of a male counter part, this can be demonstrated in a case of *asabah bil-ghayr* (agnates

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<sup>46</sup> Qur'an 4: 11

<sup>47</sup> Qur'an 4:176

<sup>48</sup> Qur'an 4: 11

<sup>49</sup> Qur'an 4:176. The share of husband in this case is half (see Qur'an 4: 12) and that of the mother is 1/3 (see Qur'an 4:11)

<sup>50</sup> S. Sultan (1999). *The Inheritance of Women and Equality*. Nahdat Misr Press, Cairo

<sup>51</sup> Qur'an 4:12

<sup>52</sup> Qur'an 4:11

<sup>53</sup> S. Sultan (1999),Op cit

as a result of another). For instance, in a situation where a deceased survived by son(s) and daughter(s) or where a deceased survived by two parents with a spouse but without any descendants or where a germen brother competes with a germen sister, in all such situations, a male should inherit double portion of a female. This is in line with the provision of the Qur'an that says: "Allah commands you as regards to your children (inheritance), to the male, the equivalent portion of two females."<sup>54</sup>

Therefore the philosophy behind a female inheriting half of or lesser share than her male counter part in some circumstances is not an issue of gender but it revolves round any of the reasons that will be analyzed hereunder. Firstly, it can be an issue of the financial burdens such as family maintenance. This is a general responsibility of male as stipulated in the Qur'an that "Men are the protectors and maintainers of women because Allah has made one of them to excel the other, and because they spend (to support them) from their means..."<sup>55</sup> Usually female are financially secured and been catered for by male in most circumstances. Thus, if she happened to be a daughter, it is the responsibility of her father to maintain her; when she does not has a father, the responsibility will shift to her brother; as a wife, it is the responsibility of her husband to maintain her; if she attend the old age and become a widow, then the responsibility will shift to her son to cater for her need; and even if she has no any close male relative, Islam has made it duty upon a state to maintain such a person.<sup>56</sup> Secondly, it can be an issue of relationship strength between a deceased and his/her heir. It is logical that the degree of closeness or remoteness between a deceased and his/heir determines what and how much a heir should get from the deceased's estate. The closer the heir to a deceased the greater his estate, and vice versa. Thirdly, it can be an issue of placement of the heritor generation among the time sequence of the generations. Thus, the generation which is about to embark on the journey of life and bear its responsibilities usually has a bigger share than the generations which are older and approaching life's end. For instance, the daughter of a deceased has a bigger share of inheritance than his mother and both are females; the daughter's share is bigger than that of the father's even if she was an infant and even if the father was the source of the son's wealth which she inherits half of.<sup>57</sup>

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<sup>54</sup> Qur'an 4:11

<sup>55</sup> Qur'an 4:34

<sup>56</sup> A. O. Yekini, 63

<sup>57</sup> Zakaryya Mohammed Abde-Hadey, Can Interpretations of the religious Texts be Answerable for the disadvantages Status of Women Today? Being a paper presented at INTCESS14 Conference, 3<sup>rd</sup> -5<sup>th</sup> February, 2014, at Nippon Hotel, Istanbul Turkey.

## **Gender Equality and Its Manifestation under Islamic Law**

Islam is a religion that places all humanity on equal footings irrespective of their status, sex, religion and affiliation. It does not exhibit any kind of unnecessary preferential treatment amongst the people. This is due to the fact that all people are human being whose origin is from Adam (a.s) and who was also created out of clay. Nobody should claim superiority over another just simply because of having a little advantage over and above his fellow being. To this end, the Almighty Allah says:

*“O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another. Verily! The most honourable of you with Allah is that (believer) who fears Allah (who has at-Taqwa). Verily! Allah is All-Knowing All-Aware”.*<sup>58</sup>

The Prophet (s.a.w) was also reported to have said:

*“O people! Your Lord is one Lord, and you all share the same father. There is no preference for Arabs over non-Arabs, nor for non-Arabs over Arabs. Neither is their preference for white people over black people, nor for black people over white people. Preference is only through righteousness.” Then he said: “Have I conveyed the message?” and the people declared that he had.”*<sup>59</sup>

Although, in the above authorities no mention was specifically made regarding male and female, but it stands as an indicator and manifestation on the position of Islam in respect of the principle of equality and equal treatment of people. Thus, it signifies that no one can be seen in the eyes of Allah as superior over and above his fellow being simply because of his/her tribe, affiliation, status and place of origin, except he who fears Allah best. To this end, male and female as far as Islam is concern, is both the creature of the Almighty Allah. They shares equal treatment and opportunities here on the earth and also in the life hereafter, except in some circumstances which are peculiar to individual person. Hence, the preference in that regards cannot be seen as a gender issue used to undermine or lower a particular sex; or to give one sex a preferential treatment over another. Thus, the issue of gender equality in Islam can be well-understood if considered from different aspects such as the social, spiritual and economic aspects.

With regards to social aspects, the Almighty Allah says: O mankind, be dutiful to your Guardian Lord Who created you from a single person (Adam a.s) created of like nature his mate (Haww/Eve) and from them twain scattered (like seeds) countless men and women; and fear Allah through

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<sup>58</sup> Qur'an 49: 13

<sup>59</sup> Musnad Imam Ahmad, 22391

Whom you demand your mutual (rights) and (reverence) the wombs (that bore you), for Allah ever watches over you.<sup>60</sup> In yet another verse: “It is He who created you from a single person and made his mate of like nature in order that he might dwell with her (in love). When they are united she bears a light burden and carries it about (unnoticed). When she grows heavy they both pray to Allah their Lord (saying): If You give us a goodly child we vow we shall (ever) be grateful.”<sup>61</sup> The above provisions imply that both male and female bears same social status in their society as both of them are important creature for procreation. In Furtherance to reaffirm the equality amongst people, Islam has countered some social vices bedeviling female most especially during the pre Islamic period. Islam has made a Decree to protect female from anything that will cause inferiority, disrespect and infringement of their human rights. Islam forbids treating female inhumanely and in disrespectful manner. To this end, Allah says: “When the female (infant) buried alive is questioned for what crime she was killed.”<sup>62</sup> The term equity is used instead of the common expression 'equality" which is sometimes mistakenly understood to mean absolute equality in each and every detailed item of comparison rather than the overall equality. Equity is used here to mean justice and overall equality of the totality of rights and responsibilities of both genders. It does allow for the possibility of variations in specific items within the overall balance and equality. It should be added that from an Islamic perspective, the roles of men and women are complementary and cooperative rather than competitive.<sup>63</sup>

Spiritually, both men and women have the same religious and moral duties and responsibilities, as both of them are liable and accountable for their own deeds. To this end, the Almighty Allah says: “Never will I suffer to be lost the work of any of you be it male or female, you are members of one another ...”<sup>64</sup> In yet another verse: “If any do deeds of righteousness be they male or female and have faith they will enter paradise and not the least injustice will be done to them.”<sup>65</sup>

Economically, both male and female have been given opportunity to participate and contribute in economic activities. There is no disparity between male and female in performance of contract or its liability, no restriction placed on anyone of them to the exclusion of other in terms of ownership and assignment of a contractual property. All verses in the Qur’an

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<sup>60</sup> Qur’an 4:1

<sup>61</sup> Quran 7: 189

<sup>62</sup> Qur’an 81:89

<sup>63</sup> Jamal A. Badawi, available at, (<http://www.islamicity.com/articles/ articles.asp?ref=IC0210-1757&p=1>), accessed on 12/03/2014

<sup>64</sup> Quran 3: 195

<sup>65</sup> Quran 4: 124

and traditions of the Prophet (s.a.w) relating to contracts (*mu'amalat*) are generic. For instance, in the Qur'an the Almighty Allah says: "Those who...Allah has permitted trading and prohibits *riba* (usury...)"<sup>66</sup> The verse began with a generic phrase "*Alladhina-* those who" indicating the generality of people. In yet another verse, the Almighty Allah warns the believers (who could be male or female) to desist from acquiring property of one another in an unlawful manner. To, this end Allah has said: "O you who believe! Eat not up your property among yourselves unjustly, except it be a trade amongst you, by mutual consent..."<sup>67</sup> In all of the above verses, there is no disparity between male and female in terms of "dos" and "don'ts". Some have been mistakenly translating the word "*qiwamah*" or responsibility for the family enshrined in Qur'an 4:34 as superiority. The Qur'an makes it clear that the sole basis for superiority of any person over another is piety and righteousness, but not his/her gender, or his/her color, or his/her nationality.<sup>68</sup>

## Conclusion

Islamic law of intestate succession is a divine principle of law that treats all heirs fairly and equally irrespective of their status, affiliation, influence and gender. Islam regards all human beings as a single family; hence no one is better than the other in the side of Allah (s.w.t) except he who fears him (Allah) best. Male and female, rich and poor, Arab and non Arab, white and black are all equal in the eyes of Allah, except in some circumstances where it is peculiar to an individual heir. In such circumstances, an individual (whether male or female) can have advantage over another. In view of this, it has been concluded that the issue of distribution of a deceased's estate according to the proportion 2:1 in some cases, as contained in the Islamic law of intestate succession is not a gender issue. It is an issue of who amongst the heirs has a greater financial burden and responsibility; or an issue of the degree and strength of relationship between a deceased and his/her heir; or in some circumstances, the issue centers on placement of the heritor generation among the time sequence of the generations. To this end, both the male and female are bound at any time to be affected by, or to benefit from the aforementioned circumstances. In fact, it is worthy to note that the Islamic principle of 2:1 in distribution of a deceased's estate has nothing to do with gender, talk more of violation of human right.

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<sup>66</sup> Qur'an 2: 275

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<sup>68</sup> Quran 49:13

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