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Article

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Women's Inheritance & its' Historical development: Comparison of Hindu, Zoroastrian, Greco-Roman, Judeo-Christian and Islamic systems

Thesis (Evolving): Islamic law of inheritance was the first to sanction equity and restore justice to women

Property, Status, Women in the Ancient world

Before the advent of Islam, societies around the world determined status of a family and its' members by the amount of property owned. Because ancient societies were fundamentally status-based and tribal, children were heavily dependent on the wealth of their parents in order to survive. Property included livestock, shelter, farmland, crops, land, jewelry, clothes, weapons, slaves and sometimes women. Those of the lowest status owned nothing and were either free peasants or slaves. Women were considered to hold no status whatsoever which made them non-existent in the question of inheritance unless another man inherited *them* as property.

As a result, discriminatory customs such as withholding from a wife, a daughter or a sister's right to their portion of the family estate socialized misogyny and sexism into the fabric of society. Ancient and medieval scriptures claim evidence to this fact by alienating women from the family tree and justifying their eternal state of poverty.

Being at the mercy of male family members meant that a woman's status did not stand for itself—it was interpolated into a man's prestige. There were a wide variety of inheritance systems that were practiced. Primogeniture, also known as agnatic or patrilineal primogeniture is the practice of passing down all of a family's estate in the hands of the eldest son. Ancient Persia, India, Greece and Rome practiced agnatic primogeniture.^{[1](#)}

The opposite of agnatic primogeniture was ultimogeniture where the youngest surviving (male) relative (brother, nephew, uncle, etc) inherited. Tlaxacala and Mesoamerica practiced ultimogeniture.^{[2](#)} Not all societies were patriarchal though, matrilineal primogeniture was (and still is) practiced among the tribes of south India, parts of Latin America and sub-Saharan Africa.^{[3](#)}

However matriarchal societies turned patriarchy upside down by means of reverse sexism which was still an injustice. In the overall scheme of history, women have been treated like minors. A daughter's son could inherit from her family whereas she would be passed over in favor of distant male relatives; and as for the son's son, it was custom to inherit from grandfathers and great-grandfathers^{[4](#)}. Sequentially wealth remained in the hands of a few at the expense of majority. Islamic law of inheritance was the first

to sanction equity and restore justice to women.

Hinduism & Zoroastrianism: Agnatic Primogeniture & Exclusion of Women's Share

Hinduism and Zoroastrianism are some of the world's oldest religions whose origins are unknown but date back three thousand years before the Common Era. The *Laws of Manu* written around 1500 BCE is the foundation of Hindu (personal) law which describes righteous codes of conduct, how to pursue a virtuous life, what acts are permissible and which are reprehensible.

In *Laws* rules of inheritance stated that women were to be completely excluded from. When the woman's father died all the inheritance would go to her oldest brother, even if he was an adopted son⁵, and he would take over as the father.⁶ This is because in all stages of her life a female must never be independent, not even in her own house;⁷ she must always be subject to her kinsmen.⁸

Ancient Persia followed similar customs in regards to passing on the family estate. Unlike in Hinduism, under Zoroastrianism a man was allowed to marry an unlimited number of women. The *padishah—e—zan* ('queen wife') and her children had legal standing but the 'servant wives' were at a lower status.

Only the sons of the *chakir—e—zan* ('servant wives')⁹ may become part of the family and thus become heirs, but daughters would have to marry within her father's clan to be part of the family again and even that did not secure possession of any portion of the family estate. As in Hindu law, Zoroastrian law also subjugated women to her father, husband or brother.¹⁰

The Hindu and Zoroastrian inheritance systems are called 'agnatic primogeniture' where only the eldest sons are heirs to the entire family property, usually the ones with the closest degree of blood relation being the most privileged. Husbands of daughters, sons of daughters and adopted sons in this system are also entitled to inherit.¹¹ However, a daughter, a sister or a wife must be explicitly "appointed" by the patriarch—which was by far an exception and left women to their own devices. Other world religions and societies practiced similar customs to those of the ancient Indians and Persians, agnatic primogeniture was common in places that had land-holding nobility.¹²

Judeo-Christian Traditions

Agnatic primogeniture was also practiced in ancient Western civilizations such as Greece and Rome. One of the major contributors to Western legal theory, Henry Maine writes in his book *Ancient Law* that whenever looking at a family tree the particular branch that stops is the female, who are considered to be *mulier est finis familia* (Latin: the ceasing of the family).¹³

Because a female is the genealogical stopping point, her descendents are excluded in primitive notions

of family. [14](#) Furthermore applying a woman's role in relations to property meant that the formal consent of her guardians had to be explicit. Fractured from family relations, a woman's role in society was merely to be an incubator. Though it was expected that the eldest son that inherits will spend on the younger siblings; whether or not this actually occurred is uncertain since there are few records of this.

Considered to be the predecessors to Islam, Judaic and Christian traditions concerning inheritance were long established centuries before Islam came. Both traditions made some improvements compared to ancient civilizations. Talmudic Law gave the right of daughters to inherit only in the absence of brothers and under the condition that she marries within her father's clan. Yet at the same time under no circumstance did inheritance go to the mother, and if there were no daughters the inheritance went to the husband's brothers, then his family, but not his wife. [15](#) One reason for a daughter's inheritance was to provide dowry for her husband since this escaped the condition of purchasing her as a slave. [16](#)

In addition to providing dowry, the husband inherited from the wife but the wife did not inherit from either her husband or her father. [17](#)

Christian law was similar to Judaic law but not as clear cut as Hinduism and Zoroastrianism (which were based on codified law). 'Christian law' was heavily based on customs from Anglos, Saxons, Germanic tribes (Salic law), Catholic as well as other sources. Nonetheless, the pattern of female exclusion from the family estate continued well up until the end of the 19th century. [18](#)

Catholic priests institutionalized doctrines related to marriage, divorce and witness testimony which made it near impossible for women to succeed any amount of property and thus strengthening absolute patriarchy. Some women however did manage to gain part of the family estate. [19](#)

The Pagan Arabs and Islam

Pre-Islamic Arabia was no different than its' global contemporaries: women regardless of how closely they were related to the deceased were left destitute by their husband's brothers, cousins and uncles. This was the *'urf amm* (Arabic: normative practice) throughout the world and the Arabs were no different. Harmful practices persisted even after many of the Arabs had converted to Islam. When the verse in Surah Nisa was revealed:

"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"[20](#),

it sent shockwaves throughout the Arabian Peninsula. This was revealed after a woman came to the Prophet with her daughters and complained about how her brother-in-law had seized all her husband's possessions leaving her and her family impoverished. The Prophet then called the brother-in-law to bring forth the seized property, he then gave one-eighth to the wife, two-thirds to the daughters leaving one-fifth for the paternal uncle. [21](#) Though such a practice was normative universally, this was the first

step in dismantling harmful traditions. Furthermore it told the believing men to act with caution because it is *haraam* (Arabic: forbidden) to inherit women against their will and treat them callously.[22](#)

Under Islamic law, a widow was entitled to receive one fourth of her deceased husband's property after the payment of debts. If the man had a child, she received one eighth. For a widower he received half of the inheritance, but with children he got a fourth; after payment of legacies and debts. If the man or woman had no surviving parents and/or children, the siblings would inherit with the male portion being twice that of the female portion after debts are paid off.[23](#)

A Determined Share: A Fraction?

Upon first glance the Qur'anic text revealed does not seem to decree fairness or repair woman's status quo. Especially when Qur'an says blatantly that the share of males is twice of that to the female—seems that Islam made little progress in regards to women's share in inheritance!

Upon closer investigation one finds the reasoning. The two to one ratio is because a woman is entitled to *mahr* (Arabic: dower), and maintenance from the man she marries and is free from defense of the community. This is because the husband's responsibilities in a marriage are far more than a woman's especially in regards to financial matters.

Therefore a woman's inheritance in Islam being half of a male is recompensed elsewhere; this is known as the law of recompense.[24](#) The texts of the Qur'an are plain in regards to women receiving their share. "To (benefit) every one, God has appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion."[25](#) This is revolutionary considering Hindu and Zoroastrian law did not recognize woman as a capable, independent individual or even part of the family since she did not inherit from her father or husband.[26](#)

Western feminism vs. Islamic feminism: Notions of Equality

Furthermore when the Qur'an said to not inherit women against their will and to not treat them harshly, it was referring to a custom in Arabian society: when a man died, his relatives inherited his wife, they could marry her to her husband's kinsmen, or give her in marriage, if not, then they would be more entitled to dispose her, than her own relatives.[27](#) Islamic law explicitly recognized a woman's right to choose, whether she married the second time or did not, whether she wanted to marry within her dead husband's family or not. There are select requirements, such as waiting for three to four months to ensure whether or not she is pregnant.[28](#)

It is important to note that while Islamic laws concerning inheritance are not 'equal' in the modernist sense, they are proportionate. For instance if a woman were to receive half of the inheritance that would mean that her children would receive one-fourth each, after payments of debts and if a man died, his share is half of what his wife left behind. The problem with inserting the modernist notion of equality in

regards to inheritance is that at the time of marriage a man is required to provide *mahr*, wedding gift.[29](#)

Then, if he somehow dies and leaves the wife behind and the inheritance is divided in half, there is no need left for requirement of the *mahr* in the first place on the man—this is considering the purely financial aspect of equality. The act of getting married requires its' own set of requirements as dictated in Qur'anic text and Hadith. But the death of a spouse is uncertain and circumstantial during a marriage. However, Islam does not always have laws that seem to make sense to the modern person, but that does not mean they do not have a rationale.

The end of the 19th century experienced the presence of women demanding 'equal' share in all that men have deprived them of. These feminists offered a great deal of rhetoric and simplistic notions of 'equality' in everything—what is given to a male is the same exact thing given to a female. This is not to say that at the workplace, educational institution, business and management that a woman should be paid less or treated like they lack creativity and intellectual capacities. Rather the debate arises when the same Western-born feminist rhetoric is used as a lens to interpret Islamic laws regarding women.

This is problematic on several different levels, comparing “Western” (European) modern culture as a contrast to Islamic “civilization”—disregarding the context, history and the cultures Islam settled into. Modern feminists slap dissimilar analogies together whose unit of comparison is too large and complex to understand easily.

Another deficiency is comparing how secularism in the modern nation-state has impacted the role of women in American or Western European society *today* versus a few Qur'anic texts that stand for themselves without sufficient explanations, cross-examination within the Prophetic tradition and Hadith and the contributions of the post-Prophetic to Classical era.

Islamic law takes various aspects into account some of them include gender, status, custom, financial and moral position in society. Where one person is cut short, he/she is compensated in another place. There is proportionality and appropriateness with regards to a woman's role in the family and society, as well as a man's role in family and society. Though there is no flat 'equality' across the board, at the same time there is no institutionalization of injustice, misuse, cruelty or oppression either.

Islamic System of Inheritance: Inclusive Allocation

As compared to evidence mentioned before, Islam completely changed the position of adopted sons. During patriarchal times an adopted son was an avenue of continuing the family line, substituting for daughters. There is a famous story of how Prophet Muhammad (pbuh) had adopted Zaid as his son who then married the Prophet's cousin Zainab—this was to overturn ignorant customs of treating an adopted son like a blood-relation. When the Qur'an revealed that an adopted son still holds the name of *his* father it meant that incorporating him into his adopted family did not mean he inherited like biological children.[30](#)

Compared to absolute primogeniture prescribed in Hinduism, Zoroastrianism, Judaism and Christian traditions Islam was successful in disrupting strict patriarchal traditions. Even though some past traditions continued, Islamic law monitored and regulated them. Though Islam recognized patriarchy, it also made men more responsible within that patriarchy as well.³¹ Qur'anic texts, the Prophet's actions, his sayings and guidance had a medicinal effect. The Arab way of life completely changed, and as Islam spread into places like Eastern Europe, Anatolia, Persian and the Subcontinent the cultures, traditions and customs of these regions also changed.

Severe misogynist and sexist structures were re-examined, and as compared to ancient and medieval periods women were now entitled and required to obtain portions of the family estate—a long way from being considered the end of the family, to playing an integral role of continuation of the family.

- ¹. Mutahhari, Murtadha 1980: 239 –248 Women's Rights in Islam
- ². Robichaux, D.L. "Residence Rules and Ultimogeniture in Tlaxcala and Mesoamerica" Copyright © 1997–2006, University of Pittsburgh. Some research suggests that parts of England, ancient Near East, Meijo Japan and Mongolia under the Khans also practiced ultimogeniture, however this is speculative evidence.
- ³. Gage, M.J. 1893: 21, "The Matriarchate" Woman, Church and State; Montesquieu 1755: 273, Spirit of the Laws
- ⁴. Manu, Smriti; Laws of Manu, Chapter IX: 141–150.
- ⁵. Manu, Smriti; Laws of Manu, Chapter IX: 141
- ⁶. Ibid, Chapter IX: 105
- ⁷. Ibid, Chapter VI: 147
- ⁸. Ibid, pg. 148.
- ⁹. The 'queen wife' is one the husband favors and 'servant wife' are all the others that are not favored. These are just some of the labels attributed to Zoroastrian women. From childhood well into her elder years, she was given names i.e. 'unique wife' if she was the only child of her parents, etc.
- ¹⁰. Christensen, Arthur. 1965: "Iran under the Sassanids". The Cambridge Ancient History, Volume XII: The Imperial Crisis and Recovery (A.D. 193–324). Trans., Cambridge: University Press.
- ¹¹. Manu, Smriti, Laws of Manu, Chapter IX: 141, Chapter XI: 135
- ¹². Sulloway, F.J. "Sibling Order Effects," International Encyclopedia of the Social & Behavioral Sciences. Copyright © 2001 Elsevier Science Ltd. All rights reserved. <http://www.sulloway.org/Sibling-order-effects> [2](2001).pdf
- ¹³. Maine, Henry Ancient Law 1861: ch. 5, 7. <http://www.ecn.bris.ac.uk/het/maine/chap05> [3].
<http://www.ecn.bris.ac.uk/het/maine/chap07> [4]
- ¹⁴. Ibid, ch. 5.
- ¹⁵. Dembitz, Lewis N. "Rights of Woman: Female Inheritance" Talmudic Law. Executive Committee of the Editorial Board, www.jewishencyclopedia.com; [5] "Inheritance: Husband and Wife" by Joseph Jacobs, Julius H. Greenstone Copyright 2002 JewishEncyclopedia.com. All rights reserved. <http://www.jewishencyclopedia.com/view.jsp?artid=140&letter=I> [6]
- ¹⁶. Dembitz, Lewis N. "Rights of Woman: Relations to Husband" Talmudic Law. Executive Committee of the Editorial Board, Copyright © 2002 JewishEncyclopedia.com, www.jewishencyclopedia.com [7].
- ¹⁷. Joseph Jacobs, Julius H. Greenstone, "Inheritance: Husband and Wife" Copyright 2002 JewishEncyclopedia.com. All rights reserved.
<http://www.jewishencyclopedia.com/view.jsp?artid=140&letter=I> [6] .
- ¹⁸. Gage, Matilda J. Woman, Church and State 1893: 140.
- ¹⁹. Ibid, pp. 116, 120.
- ²⁰. My emphasis, Qur'an 4: 7
- ²¹. Sunan Abu Dawud, Book 18, Number 2885.
- ²². Qur'an 4: 19 Translated by Yusafali.

- [23.](#) Ibid, ayahs 11, 12
- [24.](#) Mutahhari, Ayatollah Murtadha. 1980: 245 The Rights of Women in Islam. World Organization for Islamic Services.
- [25.](#) Qur'an 4: 33. Translated by Yusufali
- [26.](#) Christensen, Arthur. 1965: "Iran under the Sassanids". The Cambridge Ancient History, Volume XII: The Imperial Crisis and Recovery (A.D. 193–324). Trans., Cambridge: University Press.
- [27.](#) Bukhari: Volume 6, Book 60, Number 103 Narrated Ibn Abbas.
- [28.](#) Bukhari: Volume 6, Book 60, Number 54 Narrated Mujahid
- [29.](#) If for example he does not during the time of marriage, it is due if the couple divorces or when/if the husband dies and the prior to the division of the inheritance. However, I do not want to sidetrack from the main point.
- [30.](#) Bukhari: Volume 5, Book 59, Number 335 Narrated by 'Aisha; (Qur'an 33: 5)
- [31.](#) Qur'an 4: 34

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