The Question of Inheritance

The old world either gave absolutely no inheritance to women or when it was given the woman was treated as a minor which meant that she was not given independence and the status of a person having rights. Under the old laws of the world if inheritance was occasionally given to daughters it was never given to the daughter's children while a son could inherit himself and his children could grow up as the successor to their father's property as well. In some other laws of the world which gave an equal inheritance to women and men alike but not in the shape of a specified share it was what the Qur'an mentions as (i.e. a fixed share to which she was entitled) but it took this form: a person was entitled if he so liked to make a will in favour of his daughter as well.

The history of women's inheritance is long. Scholars and learned persons have extensively examined it and have left behind a vast body of investigations and writings on this subject which can be studied. I do not think it necessary to quote from their writings and their observations. The summary of their writings is as we have mentioned above.

The cause of woman's being deprived of inheritance:

The cause of a woman's being deprived of inheritance was to prevent the transfer of family property to another family. According to the old idea the role of the mother in the birth of a child was considered to be insignificant. Mothers were considered were considered as mere containers in which the man's sperm developed and out of which a child came into existence. For that reason they believed that the children of someone's son were the issue of a man and thus they were a part and parcel of his family. On the other hand the children of his daughters were not his children but the children of the husband of the daughter and they belonged to the family of the husband of the daughter. Consequently if a daughter inherited and afterwards her children succeeded her that. would cause situation where the wealth of one family would pass on to a different family.

In the book Irth dar huquq-e madani-e Iran (Inheritance in the Civil Laws of Iran) written by the late Dr. Musa 'Amid on page 8 after his remark that 'in ancient times it was religion which laid the foundations for the formation of families and not natural ties ' he says:

"The religious spokesmanship of the family (under the patriarchal system) was with the grandfather of the family and after him the religious rites and rituals of the family were

performed only by the male children generation after generation. The ancients considered that the male children were the only source of continuation of their lineage. The father of the family life-giver to his son as he was also transferred his religious beliefs and the religious rituals the right to keep the Fire alive and the right to recite special prayers also.[1]

As is mentioned in the Hindu Vedas and in the laws of Greece and Rome the power of generation is confined to men and the result of this antiquated belief was that the family regions were the special concern of men. Women had no business and concern with religion except through their fathers and husbands….. and because they had no hand in religious rituals they were naturally deprived of all family privileges. Afterwards when with the improvement of the economic situation an occasion for inheritance arose women were deprived of that right."

There were other reasons also for woman's being deprived of inheritance. One of them was their weakness in combat. In societies where preferences and prerogatives were based on heroism and valour and one war-faring person was preferred to a hundred thousand non-war like persons woman was naturally deprived of inheritance because of her weakness in the performance of acts of defence and bravery.

Arabs of the pre-Islamic age were against were against woman's receiving inheritance for this very reason and when there was a male member of a family however distant in the ranks of inheritance he may have been they never gave inheritance to a woman. So when the verse of inheritance was revealed and it distinctly stated:

To the men a share of what parents and kinsmen leave and to the women a share of what parents and kinsmen leave whether it be little or much a share apportioned. (4:7)

It was rather a shock for the Arabs. Incidentally in those days the brother of Hasan ibn Thabit the well-known poet of the Arabs died and left behind him a wife and a few daughters. The sons of his uncle seized all his property and spared nothing for his wife and daughters.

The wife of the dead man brought a complaint against them before the Holy Prophet. The Prophet called them before him. They submitted that woman is not in a position to arm her and fight against an enemy. "It is we who have to take the sword in our hands and defend ourselves and these women." So wealth should also belong to man. Nevertheless the Holy Prophet then recited to them the commandment of God.

Inheritance of an adopted son: In pre-Islamic days the Arabs sometimes adopted someone their son and as a result that adopted son was considered to be a successor when the man died like a real son. The custom of adoption existed in other communities among which were ancient Iran and Rome. According to this custom the adopted son because he was exactly like a son was entitled to all the privileges to which the real daughters of the deceased were not

entitled.

One of these privileges was that the adopted son was to inherit from the deceased. There was another similar privilege and consequence which was that it was considered forbidden to marry the woman to whom the adopted son had been married. The Qur'an disposed of this custom .also

Inheritance by a confederation:

The Arabs had another custom regarding inheritance which was also abolished by the Holy Qur'an. That custom was of 'confederation'. This meant that two strangers would enter into a pact that the blood of one was the blood of the other and attack on one was the attack on the other and each one was entitled to inherit from the other. According to this pact the two non-kindred persons defended each other from attacks during their lifetime and whoever died .earlier left his property to the other

Woman as a part of the share of inheritance:

Arabs sometimes counted the wife of the deceased as part of his property and holdings and took possession of her as a share in the inheritance. If a man had a son by some other wife that son could in token of his possession threw a cloth on the face of that woman and count her as a part or his share. It depended upon his inclination whether he entered into wedlock with her or whether he gave her in wedlock to another person and received her dower for himself. This custom was not confined to Arabs only and the Qur'an abolished it.

In old Hindu Japanese Roman Greek and Iranian laws very many unjust discriminations are to be found. If we were to quote the observations of those persons who have made a thorough .study of the subject we would require a great deal of space

Woman's inheritance in the Sassanid period in Iran:

The late Sa'id Nafisi writes on p 42 of his book Tarikh-e ijtima'i-e Iran az zaman-e sasaniyan ta inqirad-e Umawiyan (The Social History of Iran from the Sassanid Period till the Overthrow of the Umayyids):

"In connection with the establishment of a family another notable point in the Sassanid civilization was that when a son reached the age of puberty his father would give one of his several wives to him in marriage. Another mentionable fact is that in Sassanid civilization

woman had no individuality and thus no rights and a father and a husband had immense authority to keep a hold over them. When a girl reached the age of fifteen and reached full maturity the father or the head of the family was required to give her in marriage but the marriageable age for a son was considered to be twenty years.

In the matter of marriage the consent of the father was a necessary condition. The girl who went over to her husband without such consent did not inherit from her father or guardian and in the selection of a husband for herself she was not considered to have any right. However if after reaching puberty her father neglected to give her in marriage she had a right to have recourse to an illegal marriage and in these circumstances she was not entitled to inherit from her father.

"The number of women that a man could keep had no limit. From Greek document it transpires that a man sometimes had several hundred women with him in his house. The principle of marriage in the Samanian period as recorded in the religious books of the Zoroastrians is very complex and confusing but there were five customary kinds of marriage.

1. A wife who was married with the consent of her parents and who gave birth to children who were hers in this world and hereafter was called "padishah-e zan" (queen of the wives).
2. A wife who was the only child of her father and mother was called "ug zan" (unique wife). The first child she gave birth to was given over to her parents so that the child could fill the place of his or her mother who had gone from the house and had married. Thereafter she too was spoken of as "padishah-e zan".
3. If a man died in his youth without marrying the members of his family used to give a dower to a woman from another family and take her to the house of a man not of their family and that woman was called "sidhar zan" (adopted wife). Any child that she gave birth to was to be considered in the next world as one half or the young man who had died and the other half of the man still alive.
4. A widow who married for the second time was called "chigar zan" (servant wife). If she had no issue by her first husband she was given the status of "sidhar zan".
5. A woman who went to a husband without the consent of her father and mother was considered to be of the lowest status and she was called "khud saray-e zan" (wilful wife) and did not inherit from her father or mother. Nevertheless when her son reached the age of puberty and accepted her as his "ug zan" her status changed".

The share of women in inheritance according to Islam:

In Islamic laws none of the incongruities of the past are found in the question of inheritance.

The matter regarding which those who claim equality of rights raise objections is that the share of a woman in inheritance according to Islam is half the share of a man. In Islam a son inherits twice as much as a daughter a brother twice as much as a sister and a husband twice as much as a wife. It is only in the case of the father and mother that if the deceased has children and his father and mother are also alive both the father and the mother will inherit one sixth of the property of the deceased.

The fact that a woman inherits one half of the share of a man is due to a special state of affairs. Because a woman is entitled to a dower and maintenance and because she is incapable of taking an equal part in the defence of the community the fact that her share is one half of her brother's is to some extent the result of a law of recompense. In other words the special inheritance position of woman is founded upon the special place she occupies as regards dower and maintenance and so forth.

In accordance with the arguments which we have put forward in the previous chapters Islam has acknowledged dower and maintenance as a necessary and effective factor in strengthening the mutual relationship between husband and wife safe guarding the tranquility of the household and establishing unity between husband and wife. In the eyes of Islam the abolishing of dower and maintenance but especially maintenance would cause a shaking in the foundations of the household and the wife being drawn towards promiscuity.

As Islam considers dower and maintenance to be obligatory the wife is automatically exempted from providing for the family budget and that responsibility has been laid upon the husband. Islam seeks that this responsibility should be recompensed by inheritance and so twice as much of the share or inheritance has been allocated to man as to woman. In short it is .dower and maintenance which has decreased the woman's share in inheritance

An objection by the worshippers of the west:

When a group of worshippers of the west give vent to their utterances concerning this problem and make an issue of a woman's share being less than a man's in their propaganda against Islam they start on the subject of dower and maintenance. They say: "Why should we proceed in a circuitous and a round-about way? Why should we not give equal shares to man and to womanso that we should not be obliged to compensate the deficit by way of dower and maintenance?"

Firstly these busybodies have mistaken the cause for the effect and vice versa. They consider that dower and maintenance is the effect of the situation that holds as regards a woman's share in inheritance whereas in fact that special situation is the effect of dower and

maintenance. Secondly they think that what really matters is the financial and economic aspect of the question. Obviously if only the financial and economic aspects were in view there would have been no justification for dower and maintenance or for the share in inheritance being unequal.

As we pointed out in the preceding article Islam has kept in view many aspects of the question some of which are based on nature and some psychological. On the one side there are the excessive requirements and problems of woman in connection with childbirth while man is free from all this. On the other side there is her lesser ability to produce and earn wealth.

Thirdly there is the fact that her consumption of wealth is more than of man. Moreover the special psychological and intellectual considerations regarding men and women in other words the characteristic psychology of men and women and the fact that a man should always be there as the person responsible for the expenses of women and lastly the subtle psychological and social considerations which are the source of strength in family ties – all these aspects have been kept in view by Islam. It has considered dower and maintenance positively necessary.

These necessary and unavoidable matters are an indirect cause of the burden on the man's expenses. This is the reason that Islam has ordained that in recompense for the responsibilities that have been laid upon man's shoulders; he should have twice as much share in inheritance as a woman. Any how the financial and economic aspect is not the only one and it is not the only goal aimed at in Islamic law so the question proposed: "Why in one place is the share of woman cut to half and in another place recompensed? does not arise.

The objection of atheists at the beginning of Islam about inheritance:

We pointed out that in the view of Islam dower and maintenance are the cause and the situation regarding a woman's share in inheritance is the effect. It is not only recently that questions regarding this part of the law have been raised for it has been under discussion from the early days of Islam.

There was a man called Ibn Abi'l-'Awja' who lived in the second century of the Hejra and had no belief in God or religion. This man took advantage of the freedom of that period and propagated his atheistic beliefs everywhere. Not only that but he sometimes went to the Holy Mosque (Masjidu'l-Haram) in Mecca or the Holy Mosque of the Prophet (Masjidu n-Nabi) in Medina and there he debated the subjects of the Unity of God life after death and other cardinal principles of Islam. One of his objections against Islam was the very same one about inheritance. He would say:

“Why should a poor woman who is weaker than man gets only one share while a man who is stronger gets two? This is contrary to justice.” Imam Ja’far as-Sadiq (a.s.) replied that it was because Islam had exempted woman from armed combat and moreover that dower and maintenance had been imposed upon man for her benefit.

What is more in certain cases of doubt in which blood relatives had to pay ransom money woman has been exempted from sharing with others in the payment. These are the causes why the share of woman is lees than the share of man. Imam as-Sadiq (a.s.) said distinctly that the special situation of woman in inheritance is the effect of dower and maintenance is the effect of dower and maintenance and exemption from armed combat and paying ransom money.

.Such questions were put to all the Imams of our faith and all of them replied in the same way

Note

[1] This describes the situation in Ancient Iran (Tr.)

The Rights of Women in Islam, Ayatullah Murtada Mutahhari, p. 239 - 248