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# AN ANALYSIS OF CHILD'S RIGHTS UNDER ISLAMIC LAW OF INHERITANCE: AN EPITOME OF GENDER BALANCE, EQUITY AND JUSTICE IN NIGERIA

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## Abstract

*This paper analysis the rights of children under the Islamic law of Inheritance as a template for achieving gender balance, equity and justice in Nigeria. Issues of gender inequality, child exploitation and social injustice characterized the native customs in Nigeria, hence, the ceaseless clamour and struggle by civil society organisation, international organisations and government for a holistic overhauling and radical reforms through the instrumentality of legislations. However, Islamic law of Inheritance for over centuries has convincingly proffers a trusted platform to attaining justice and equity in the society. Unfortunately, sophisticated controversies which are orchestrated by antagonist have been attributed to Islamic law of Inheritance due to wide misconceptions, lack of proper understanding and unabated envy. An objective evaluation of Islamic law of inheritance revealed a classic and distinctive legal framework capable of restoring the desired objectives in a sane society. Contrary to the misjudgement from some quarters that Islamic law of Inheritance is gender bias, it has apparently epitomized justice, equity and gender balance. Meanwhile, it was observed that the disparity in Islamic and western perception on the one hand and the inadvertent mixture of Islam and cultural values on the other hand are largely responsible for the widespread misconceptions. This paper is analytical and based on the survey of relevant available literatures and statutes. This paper thus asserts that the prevailing misconception that has inundated revulsion for Islamic law of inheritance can be dislodged through objective exploration and understanding of basic concepts. This paper finally recommends Islamic law of inheritance as a template for the realisation of social justice, gender equity and justice amongst children.*

**Key words:** *child rights, Islamic law of inheritance, justice, equity, gender balance, etc.*

## Introduction

From time immemorial, coming of new souls (children) and departure of aged (parents) from this ephemeral world has remained a natural phenomenal experienced

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globally without resistance. The period in between birth and death often witnessed numerous socio-economic activities, mutual rivalry, and amassment of property for the purpose of family sustainability and to engender comfortable lifestyle. Consequently, the acquired property consciously or unconsciously passed from generation to generation due to the transient nature of human soul. Thus, the intervention of Islamic law in science of inheritance or succession becomes paramount especially where the deceased is a Muslim to prevent manipulation, hegemony and conflicts amongst the successors.

Many children are born in Nigeria on a daily basis. Some of these children are born within the legal marriage and others are born outside wedlock. It is a fact that when a child is born, he or she is supposed to have all rights as a child. These rights often include the right to life, education, maintenance and inheritance. However, the Islamic law of inheritance has laid down quintessential principles for the regulations, management and distribution of inheritance. Rights of the children remained one of the most significant areas of human rights. Accordingly, the term "human rights" has increasingly been applied to child over the past century through national and international laws.<sup>2</sup> The Islamic Shar'iah aims at obtaining benefits for individuals and societies while protecting them from harm. It is for this reason that the rules of Shar'iah explain the rights of every individual, whether as a foetus, child, young person or old person, male or female. The existence of any right implies the existence of a duty; thus, it is the duty of individuals, societies and states to protect these rights from harm orchestrated by others; natural or unnatural happenings.

The Islamic law of inheritance has often attracted heavy criticism from nominal Muslims and non-Muslims alike due to poor understanding of its philosophy of justice. The criticisms are not unconnected with the fact that Islamic law approach to distribution of estate is all encompassing, unique and pragmatically oriented. Thus, critics often capitalized on the widespread ignorance and misconceptions amongst the adherent of Islamic faith on the one hand and shallow conceptualization of justice, equality and rights on the other hand to throw tantrum against the Islamic law, principles and science of inheritance. Similarly, being a universal religion practiced by Muslim globally, there exist pockets of mixture between Islamic value systems and the cultural values in different localities. Therefore, the eventual widespread of Islam and its limitless influence has unconsciously occasioned admixture of aboriginal Islamic principles and archaic cultural values of its adherents.

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<sup>2</sup> Wall, J., "Human rights in light of childhood", *The International Journal of Children's Rights*, 2008, 16(4), 523-543.

In the light of the foregoing, this paper strictly examines the rights of children under Islamic law of inheritance with special focus on the perceived inequality and discrimination in the right of male and female children. Also, highlights of varying criticisms against the Islamic law of inheritance shall be done *vis-à-vis* the Islamic law defences and justification to the seeming disparity. The reforms and impacts of Islamic law of inheritance on socio-economic justice, gender balancing and true equality in the society shall be discussed side-by-side with contemporary laws at the conclusion of this paper leaving the audience to judge which system or law better epitomizes, protects and portrays the rights of children to inheritance.

### **Conceptualisation, Nature and Grounds of Islamic Law of Inheritance**

Inheritance is basically the transfer of the deceased person's property to the living person along with any other transferable rights. Inheritance has a different meaning in Islam. There is no particular definition of the word Inheritance in Qur'an but various scholars have defined it in their own ways. According to Sir Abdur Rahim, inheritance is the transfer of the rights and obligations from the deceased person to his/her heirs.<sup>3</sup> According to Coulson's definition of inheritance, it is the distribution of estate of the deceased's person among the heirs after the payment of funeral expenses, debts and valid bequest.<sup>4</sup> Invariably, inheritance in Islamic law connotes the science of transfer and acquisition of property between the deceased and the legal heirs. Literally inheritance means something which is endless or continuous; also it means transfer of property from one person to another whether intangible or tangible in nature. Technically it means a science that shows those people who are entitled to inheritance and how much each of them will get from the property of the deceased according to Islamic law.

Islamic law of inheritance has a religious and legal character in the religion of Islam.<sup>5</sup> Islamic law of inheritance being a religious obligation, command compliance in administration of a deceased Muslim's estate and also implies an act of Worship to the Most Supreme, Allah. Meanwhile, the legal character of the Islamic science of estate management commands compliance and attract punishment for defaulters from Allah. The principles of Islamic law of inheritance are sourced from the prominent major sources of legislation; the Quran and the Sunnah. There abounds plethora of legislation, ordinances and rules in the two major sources of law. While, the Qur'an establishes the fundamental principles, the legal heirs and conditions for distribution

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<sup>3</sup> Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, Pakistan Law Publishing Company, 2000, P.346

<sup>4</sup> N. J. Coulson, *Succession in the Muslim Family*, Cambridge University Press, 1971, P.40-204,

<sup>5</sup> Mzee Mustafa Mzee, "Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Assets of Deceased Father: A Tanzanian Case Study", *Journal of Law, Policy and Globalization* www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.45, 2016, p. 56

of estate, the Sunnah provide a vivid exposition, clarification and guidelines for the comprehensive understanding of the science of inheritance. Thus, adequate consideration of all major sources and a holistic approach are required while understudying Islamic law of inheritance.

The provisions of Qur'an that establishes Islamic law of inheritance are sacrosanct, comprehensive and detailed. A careful look at Qur'an 4 verses 7-14 and verse 176 revealed; the legal principles, legal heirs, and conditions for distribution, optimal level of consciousness, consequence of violations and rationale for the administration of estate in accordance with the prescription of the Law-Giver (Allah). The Qur'an clearly establishes the eligibility of legal heirs regardless of sex or without discrimination as follows;

“There is share for men (**male**) and share for women (**female**) from what is left by parents and those nearest related, whether, the property be small or large- a legal share”<sup>6</sup> (**emphasis is mine**)

Similarly, a cursory look at Qur'an 4 verses 11-12 and 176 explicitly identifies the legal heirs of the deceased with respect to the circumstance or the deceased persons as follows; husband, wife, (one or more), daughter, son's daughter, father, mother, true grandfather, true grandmother, full sister, consanguine sister, uterine brother and uterine sister.<sup>7</sup> It is important to note that a son is a residual sharer that exclude majority of others whenever available. In certain circumstances, under the Sunni system, a female is restricted to one-half of what her male counterpart will take. A son's share will be twice that of a daughter. A sister's share will be half that of her brother. One theory provides that this is not gender discrimination per se, but rather a tangible recognition of the more substantial male responsibility of supporting his own wife and children. Hence, the son gets twice of whatever the daughter gets.<sup>8</sup>

Islam has divided legitimate heirs into three categories; the first one is Primary category, the second one is known as Secondary category and the third one is Substitute Heir's category. The Primary category comprises of parents, spouses and children. The Secondary heir's category is the agnate brothers, uterine brothers and sisters. The third category which is Substitute includes agnate grandsons, agnate grand-daughters and agnate grandfathers and grandmothers. The legal share which they receive is different from one another and from one class of heirs to another one.

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<sup>6</sup> Dr. Muhammad Taqi-ud-Din Al-Hilali and Dr. Muhammad Muhsin Khan, *The Noble Qur'an, English Translation of the Meaning and Commentary*. King Fahd complex (1426 AH), Madinah Munawwarah. Quran 4:7

<sup>7</sup> Frida Khan, 'Islamic Inheritance Laws and Their Impact on Rural Women: A synthesis of studies from Asia and West Africa and emerging recommendations', published by International Land Coalition, 2016, p. 112-113

<sup>8</sup> Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. Int'l & Comp. L. Rev. 135 (2000), <http://lawdigitalcommons.bc.edu/iclr/vol23/iss2/2> , P.169

As mentioned above, the Primary category of heirs include spouses, parents and children. Meanwhile, attention shall be given to the children sharers of the deceased (male and female) to safeguard focus and limit the scope of this paper.

The grounds of inheritance under Islamic law of inheritance are blood relationship (*Nasab*), valid marriage (Nikkah) and Al-Wala (Clientage)<sup>9</sup>. Also, these are legal bases on which an heir may be legally justified to inherit from the deceased property. Right of inheritance rest upon the two principal grounds of blood relationship and marriage. But there is a secondary ground as well, which can only be regarded in the absence of the above ones i.e. by Patronage (*wada' a*) or the relationship between a freed slave and his former master. By virtue of his act of manumission, the master acquired the right to inherit from his freedom if the latter died without any heir by blood.<sup>10</sup>

Finally, there are established impediments to rights of inheritance under Islamic law. Impediments to inheritance are those factors that would prevent an otherwise entitled heir from inheriting his deceased relation. In other words, an impediment to inheritance has been defined as;

“a personal act or attribute which disqualifies from Succession, an individual who would otherwise be an entitled heir on the ground of either marriage or blood relationship with the deceased”<sup>11</sup>

These includes difference of religion, divorce, murder, homicide, difference of religion, apostasy, difference of domicile, slavery, illegitimacy, and *Li'an* couples. In the Islamic perspective, one of the barriers to inheritance rights is religious differences. Children who have different religious beliefs from their Muslim parents are automatically prevented from obtaining the right of inheritance. The division of inheritance in Islam is described in the Quran (Chapter al-Nisa') as the legal basis for the division of inheritance. The division of the property aims to avoid disputes in distributing inheritance. Inheritance is distributed if the deceased person leaves a useful property for his or her heirs. However, before the inheritance is given to the heirs, there are three things that must first be spent from the heritage; all costs associated with the funeral process of the deceased, the testament of the deceased, and debts. When the three things above have been fulfilled, the property inherited from the deceased is given to the family and also the eligible relatives.<sup>12</sup>

<sup>9</sup> Coulson, N.J., N J. Coulson, *Succession in the Muslim Family*, (Cambridge Press University, 1971), p.10

<sup>10</sup> Doi, A.I. *Shar'ah: The Islamic Law*, Abdassamad Clarke, TaHa Publishers, (2008), P.437

<sup>11</sup> Coulson, N. J., p. 172.

<sup>12</sup> Andi Asdar Yusup, “Controversy of Islamic Law on the Distribution of Inheritance to the Heirs of Different Religion”, *University of Muhammadiyah*, Makassar Jl. Sultan Alauddin No.259, p.379, <http://oaji.net/articles/2017/1163-1516589038.pdf>

### **Child's Right of Inheritance Before the Advent of Islam**

It is essential to consider the extent of children's right of inheritance prior to the advent of Islam especially in the Arabian Peninsula in order to facilitate a rapid grasp of the reforms introduced by Islamic law. The rules of inheritance in pre-Islamic Arabia are said to have been basically determined by the war-like mode of life.<sup>13</sup> Their rules and customs of inheritance were similar to the pagan African customs prevalent even at the contemporary level in countries in south of the Sahara.<sup>14</sup> Therefore, inheritance among the Arabs during that period of Dark Age was confined only to able male relations. Daughters, Widows, Mothers, Minors and incapable persons had no share in the inheritance of their deceased relations.

Similarly, under the Jewish law of inheritance, there are four grounds of inheritance, viz; Male descendant, male ascendant, male descendant of the deceased's father, male descendant of deceased's grand-father.<sup>15</sup> Under the Hindu laws/customs, only sons have the right of inheritance excluding daughters. Even among the sons the rule of primogeniture is applied, meaning where the deceased have many sons, the eldest son have referential claim over the estate of their deceased father, excluding the younger sons.<sup>16</sup>

It is obvious from the foregoing that only male child's rights of inheritance is acknowledged and observed prior to the advent of Islam. This exposes the height of discrimination, injustice and gender bias against female children who are often treated as chattels with no dignity under the various religious and customary laws. Consequently, it is imperative at this junction to wet our appetite and satisfy our curiosity with the reformations introduced by Islamic law of inheritance and the eventual civilization of the World.

### **Child's Rights of Inheritance After the Advent of Islam And Notable Reforms**

Unlike the vague Biblical law, and restrictive Jewish laws, the Qur'anic laws of inheritance are extraordinarily specific. An Islamic maxim is "Learn the laws of inheritance, and teach them to the people; for they are one half of useful knowledge."<sup>17</sup> The Qur'an contains an explicit system for the distribution of a decedent's estate among family members. The Qur'an specifies certain fractional shares of the estate for named heirs of the decedent, who include both male and female relatives. The

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<sup>13</sup> Ati H.A., *Al-Muqaddimaful Iddiyyah (Arabia Text)*, At-Taucheed Publishing Company, Akoka Lagos. P. 251

<sup>14</sup> Qadri, A. A., *Islamic Jurisprudence in the Modern World*, Taji Company, Delhi, 1982. P. 424

<sup>15</sup> Lakhvi, S.B.H. *Almirath: Justice Of Islam In The Rules Of Inheritance*, Ghullah Mahdi, Remala Khurd-okara, Pakistan, 2003; p. 2.

<sup>16</sup> Primitive laws, pp. 88-89; as quoted in Lakhvi, p.5

<sup>17</sup> POWERS, *supra* note 49, at 8; Honarvar, *supra* note 39, at 380

majority Sunni view, however, is that this new framework is to be superimposed upon the framework that already existed in pre-Islamic Arabia.<sup>18</sup>

Basically, the Qur'an prescribes the rights of children to inheritance explicitly and vested female children with rights of inheritance contrary to what was obtainable before the advent of Islam. These ground breaking reforms transformed and elevated the status of female children upon the advent of Islam in the Arab communities. The Qur'an provides thus;

“There is share for men and share for women from what is left by parents and those nearest related, whether, the property be small or large- a legal share”<sup>19</sup>

In consolidation of the above general prescription, subsequent verses stipulate the share a female child (daughter) is entitled at every given circumstance to avoid ambiguity and manipulation by the stronger sex. The Qur'an provides as follows;

***Allah commands you as regard your children's (inheritance): to the male, a portion equal to that of two females; if there are women (only daughters), two or more, their share is two-third of the inheritance; if only one daughter, her share is half. For parents, a sixth share of inheritance to each if the deceased left children and the parents are the only heirs, the mother has a third, if the deceased left brothers or (sisters), the mother has a sixth. (the distribution in all cases is) after the payment of legacies he may have bequeathed or debt. You know not which of them whether your parents or children are nearest to you in benefit; (these are fixed shares) are ordained by Allah. And Allah is Ever All Knower, All Wise.***<sup>20</sup> (**emphasis is mine**)

The above verse underscores the significance of children's rights of inheritance under Islamic law irrespective of the sex (male or female). The opening sentence emphasis the seriousness attached to the order while verse 13<sup>21</sup> of same chapter buttress the consequence of violations or departure from Allah's ordinance with respect to children rights of inheritance. The right to inherit the deceased property have been recognized and guaranteed by the provision of the Qur'an and the Sunnah of the Prophet (S.A. W.), therefore adding a great deal of information and knowledge to the Qur'anic verses, dealing with principles of inheritance by his explanations and interpretations. The reason for the revelation of the above verses was complaint lodged with the Holy Prophet after the death of Aus Bin Thabit Al-Ansari who left

<sup>18</sup> Coulson N., 110, P. 33.

<sup>19</sup> Dr. Muhammad Taqi-ud-Din Al-Hilali and Dr. Muhammad Muhsin Khan, *The Noble Qur'an English Translation of the Meaning and Commentary*. King Fahd complex (1426 AH). Madinah Munawwarah. Quran 4 verse 7

<sup>20</sup> *Ibid*, See Quran 4 verse 11

<sup>21</sup> Quran 4 verse 13 “These are the limits set by Allah (or ordainment as regards law of inheritance) and whosoever obey Allah and His Messenger (Muhammad) shall be admitted to the Garden under which river flows (in Paradise), to abide therein, and that will be the greatest success



behind his wife and two daughters. The two sons of his paternal uncle named Suwaid and Arfaja and in another report Qatadah and Arfaja took all his property leaving nothing to his widow and daughters. The widow complained to the Holy Prophet, who called them and enquire about the matter. They replied how we can give them when they do not fight against the enemies and defend our family. The Holy Prophet said to them go and wait I hope Allah will send a revelation about them, thereafter the verse was revealed. The Holy Prophet sent to them not to distribute the estate of Aus because Allah had given his daughters a part from his property. Later on the verses on inheritance were revealed. The Holy Prophet asked them to give the widow 1/8 and the daughters 2/3 and the remaining for them.<sup>22</sup>

The above historical events that instigated the revelation demonstrate the alacrity and dexterity of Islamic law towards child's rights protection. Islamic law of inheritance has not only guaranteed children's rights of inheritance but has also clearly defines the means and science of achieving the desired objectives. To further coagulate or consolidate child's right to inheritance, Allah says;

*And give unto orphans their property and do not exchange your (your bad things) for their good ones; and devour not their substance (by adding it) to your substance. Surely, this is a great sin.*<sup>23</sup>

While the previous verses (7-12) of chapter 4 of the Qur'an emphasis the rights of children to inheritance, verse 2 quoted above provides a protection for the shares of children (minor) who lacks the mental and physical prowess to manage their property immediately. Hence, huge obligation and caution stipulated to the custodian or guardian against exploitation of the children mental, physical and psychological weakness.

It is worthy of note that Islamic law of inheritance set up some impediments to child's Right. These factors may permanently impede or temporarily restrict a child from enjoying his right of inheritance. Factors such as homicide, difference of religion, Apostasy, Slavery, difference of domicile, illegitimacy/ *li'an* couples and irrevocable divorce, uncertainty of simultaneous death, and difference of domicile may constitute hindrance to the peaceable enjoyment of rights to inheritance under Islamic law. However, Islamic law empowers a deceased to dispose of not more than one-third of his estate to any of his children that is cut by the impediment on compassionate ground. In essence, a deceased father can legitimately execute a will not more than

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<sup>22</sup> Lakhvi S.B.H. op. cit. PP. 8-9 As quoted from Tafsir al-Qur'dubi vol. 5 p. 57 and Albukhari, Muslim, Abu Dawud and Al Tirmidhi.

<sup>23</sup> *Ibid*, See Quran 4 verse 2

one-third of the entire estate in favour of his biological child (not legitimate) born out of wedlock, or that profess a different religion so as to facilitate amity, cordiality and harmonious relationship after his demise amongst his children. While other legitimate children enjoy their right to inheritance without restrictions, other children that are cut by the trap of impediments are covered by the window of *wasiyah* (will). Thus, the deceased is justified and enable to adequately protect the interest of his biological but illegitimate child on compassionate ground via the window of Will (*Wasiyah*).

### **Child's Rights of Inheritance Under Contemporary Laws**

There is no gainsaying that rights of children have enjoyed wide global recognition over the years. This is not unconnected with the fact that children who are consider the essential components of the society lacks psycho-mental and socio-economic ability to protect themselves from the hazard of life. While the United Nations Convention on the Rights of child<sup>24</sup> remained an international framework which has been widely ratified by many most member states, other legislation have been enacted at national level to complement its provisions. The Nigeria Child's Rights Act 2003<sup>25</sup> and the constitution of the Federal republic of Nigeria constitute the legal frame work for the rights of Child in Nigeria. Other notable laws in relation to inheritance in Nigeria are customary laws, the Wills Acts, Islamic laws (For Muslims), Administration of Estate laws etc.,

Basically, articles 7 and 8 of Convention on the Rights of the Child wholly support the view that makes provisions for the right of a child to a name, which also includes his or her right to acquire a nationality, and the right to know and be cared for by his or her parents. However, all forms of cultural and traditional practices which tend to be harmful or found to be 'repugnant to natural justice, equity, and good conscience' must be repudiated and discarded accordingly as the case was in *Mojekwu v Mojekwu* (1997) 7 NWLR, 283.1.<sup>26</sup> A painstaking evaluation of the CRC revealed that there are provisions for child's right to life, education, name and identity. However, there is no specific provision for child's right to inheritance. There are no detailed stipulations of child's rights where the parents even died intestate. This lacuna underscores the inadequacy of the CRC with respect to protection of child's right to inheritance. The CRC is the most widely ratified human rights treaty with 190 ratifications. Somalia and the USA are the only two countries which have not ratified

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<sup>24</sup> "Convention on the Rights of the Child" The Policy Press, Office of the United Nations High Commissioner for Human Rights, [http://www.hakani.org/en/convention/convention\\_rights\\_child.pdf](http://www.hakani.org/en/convention/convention_rights_child.pdf) accessed on 15th May, 2020

<sup>25</sup> Child's Rights Act, Cap C50 Laws of the Federation of Nigeria, 2010 [hereinafter 'CRA'],

<sup>26</sup> Onyemachi, Thomas Uche, 'Children, Status and the Law in Nigeria', *An International Multi-Disciplinary Journal, Ethiopia Vol. 4 (3a) July, 2010*, ISSN 1994-9057 (Print) ISSN 2070-0083 (Online) *Indexed African Journals Copyright © IAARR, 2009: www.afrrvjo.com Online: www.ajol.info* p. 382

the CRC. The CRC is based on four core principles<sup>27</sup>, namely the principle of non discrimination, the best interests of the child, the right to life, survival and development, and considering the views of the child in decisions which affect them (according to their age and maturity).<sup>28</sup>

Contrary to the Islamic law of inheritance as enunciated above which absolutely reserved the power of legislation with Allah, the rights of children to inheritance is hinged on the will or discretion of the deceased where he or she dies testate. But where the deceased died intestate, the various Administration of Estate laws and customary laws of the deceased regulate the management and distribution of the deceased property. It suffices to conclude here that the child's right to inheritance is subjective, unfixed and dependent under the Nigerian laws compared with the Islamic law of inheritance which is uniform and fixed globally.

Meanwhile the deceased has unfettered power through the Will instrument to determine the distribution of his property. Section 3 of the Wills Act (1837) provides that it shall be lawful for every person to devise, bequeath or dispose of his property at death by Will executed in the hereafter required. In *Okelola v Boyle*,<sup>29</sup> The Supreme Court defined Will as a document by which a person makes a disposition of his property to take effect after his death. The consequence of this is that a deceased have unrestricted right to dispose of his property even to the detriment of any of his children or all of them. This privilege is often utilized to the extreme where the discretion of the deceased through the Will is against the interest of his immediate family. For instance, Majel Barrett-Roddenberry, the widow of "Star Trek" creator Gene Roddenberry, reportedly left £2.65 million (roughly \$3.3 million) to her pets when she died in 2008.<sup>30</sup>

A cursory look at section 42(2) of the Constitution<sup>31</sup> reads; 'No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.' An attempt to juxtapose shows that the provision of section 42(2) is restrictive to instance where the deceased died intestate. Hence, the law empowers the deceased to institutionalize perpetual injustice and inequality while exercising his unrestricted freedom. In fact, a deceased may dispose of his entire

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<sup>27</sup> Arts K, Popvoski V., *International Criminal Accountability and the Rights of Children: From Peace to Justice Series*". (London, Cambridge University Press. ISBN 978-90-6704-227-7. 2006)

<sup>28</sup> Masumeh Saeidi, Maryam Ajilian, Hamid Farhangi, Gholam Hasan Khodaei, 'Rights of Children and Parents in Holy Quran' *International Journal of Pediatrics*, August 2014 <https://www.researchgate.net/publication/267392183>

<sup>29</sup> (1998) 2 NWLR (Pt 539) 533

<sup>30</sup> <https://www.insider.com/richest-pets-in-the-world-2018-11#the-star-trek-heiress-gave-her-pets-more-than-3-million-1> accessed on 20<sup>th</sup> May, 2020

<sup>31</sup> The 1999 Constitution of the Federal republic of Nigeria (as amended)

property to an illegitimate child to the detriment of the legitimate ones on the basis of affections, emotional exploitation or any other flimsy reasons.

Similarly, section 43 of the Constitution provides for right of every citizen to acquire property. Such right is not specifically related to right of inheritance. In other words, the right is wide and general which can be interpreted to mean right to acquire property movable or immovable through contractual means, gift, etc., however, section 3 of the Wills Acts makes children right to inheritance probable as the deceased has the choice to determine who benefits and the extent of benefit from his property. As noted earlier, section 43 of the constitution is also restrictive in scope to instances of intestate.

Although, as stated above, the provision of Section 42(2) of the 1999 Constitution has effectively eliminated the status of illegitimacy in Nigeria, Nevertheless, it is not sufficient to establish child's right of inheritance. Once a child has been acknowledged by his putative father, he is entitled to equal share of his estate with the children born in lawful wedlock. This position is similar to what is obtainable under Article 17 (5) of the American Convention on Human Rights which provide equal right for children, irrespective of whether they were born in lawful wedlock or not. Also, the current position of the law accord with the various human rights instruments. For example, Article 26 of the International Convention on Civil and Political Rights provides that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on the ground of sex, birth or other status. Unfortunately, this laudable provision is inconsistency with the Will Acts which allows the deceased to dispose of his property at his own will. Sadly, the deceased Will may not be consistent or favourable to all or any of the children regardless of status (legitimate or illegitimate) which may ignite mutual enmity, disputes and hegemony after the demise of the testator.

It thus appears from the foregoing that child's right of inheritance is marred by inconsistencies and restrictions under Nigeria laws. Although, the law recognized children right to acquire property through any means, it is not clear whether rights are feasible considering the wide spectrum of discretion vested on the deceased. While the rights are realizable in circumstance where the deceased died intestate, its realization is very improbable where the deceased is survived by a duly executed will. Unlike Islamic law of inheritance which empowers the deceased to exercise restrictive power to make will to persons not eligible to inherit, the Nigeria Wills laws like other contemporary laws invested the deceased with unrestricted power to will

the entire estate in favour of pets or in favour of some others to the detriment of his immediate family. How justified is such discretion?

Conclusively, Islam modified the existing customary law by adding thereto as supernumerary heirs a number of relatives who would normally have had no rights of succession under the pre-Islamic customary law. The Qur'an introduced a new system of inheritance which reflected a transition from tribalism to individualism with more emphasis on the right of women and children to property.<sup>32</sup> The idea of giving women and children as we have seen early was not known before Islam, therefore, in Islamic law the distribution of the estate is determined by the law rather than by the will of the deceased. However, a person may dispose by will of one-third of his estate only, provided that no part of this one-third may be bequeathed to any of the legal heirs.<sup>33</sup>

### **Response to Criticism and Demystification of Misconceptions**

Basically, two aspects of Islamic law of inheritance have consistently attracted criticisms. First is the disparity in the share of a male child and female child which is often adjudged a basis for discrimination and inequality against female sex; while the second as to do with the aspects of impediment to inheritance under Islamic law. Impediment such as illegitimacy, difference of religion and illegitimate marriage has often been described by critics as act of incivility, wickedness and discrimination. The inheritance of the people of different religions is one of the contemporary issues in Islamic legal thought today. Along with the development of time, the cases that occur in the law of inheritance of the people of different religions are increasingly widespread. One of the contributing factors is disagreement of the heirs (non-Muslims) to the unfair division of property.<sup>34</sup>

Furthermore, in the sub-Sahara Africa, widows are believed to face discrimination in the inheritance of asset and property of their deceased spouse causing poverty for their children and themselves as well. Inheritance in this region is related to education, wealth and higher age. Only those women who have socio-economic status are likely to negotiate asset and favourable inheritance.<sup>35</sup> Proponents of a law reform advance the argument of the discriminatory nature of the Islamic succession rules.<sup>36</sup> According to this opinion, Shar'iah favors men over women. However, in a modern

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<sup>32</sup> Mzee Mustafa Mzee, *Islamic Law of Inheritance: The Case of Illegitimate Child and Possibility of Having an Assets of Deceased Father: A Tanzanian Case Study* *Journal of Law, Policy and Globalization* www.iiste.org ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.45, 2016, p. 57

<sup>33</sup> Mahmoud Hoballah, *Marriage, Divorce and Inheritance In Islamic Law*, 22 Geo. Wash. L. Rev. 24, 1953-1954

<sup>34</sup> Andi Asdar Yusup, "Controversy of Islamic Law on the Distribution of Inheritance to the Heirs of Different Religion" *Hunafa: Jurnal Studia Islamika*, Vol. 14, Number 2, December 2017: 377-403

<sup>35</sup> Amber Peterman, "Widowhood and Asset Inheritance in Sub-Saharan Africa: Empirical Evidence from 15 Countries", international Food Policy Research Institute (IFPRI) Washington DC, USA, June 2011, p.2

<sup>36</sup> For example, Ali Mezghani et Kalthoum Meziou-Dourai, *L'égalité entre hommes et femmes en droit successoral* (Tunis, Sud Edition, 2006).

society where women are considered as equal partners to men, traditional Shar'iah rules become not only obsolete but also outdated compared to modern standards of modern societies no matter how these rules were revolutionary in the context in which they appeared.<sup>37</sup>

On the other hand, opponents of any modification of the Shar'iah inheritance rules claim that these rules are of religious nature: these are considered as injunctions from God himself who directly intervened to determine in detail the share due to both men and women in many situations. In addition, opponents of any law reform also advance that these rules are justified, to a large extent, by the financial burden incumbent on men who should maintain their family, provide for the dower (*mahr*) and assistance to their parents and relatives. In other words, the Islamic rules supposedly reflect a "divine wisdom" which ensures greater "justice" between men and women rather than a simple arithmetic equality.<sup>38</sup>

Another question on which modern scholars still seem to disagree is whether the priority of males over females continues throughout the entire order of succession. For example, Rabbi Shmuel Shilo describes the order of succession as "a parentelic system, conferring the right of inheritance on all kin of the deceased in the agnate (paternal) line of descendancy and ascendancy." Thus, descendants would inherit first. If there were no descendants, the father and his descendants (presumably both male and female descendants) would inherit next. In the absence of a surviving father, siblings, or descendants of siblings, the grandfather and his descendants would inherit, and so on.<sup>39</sup> Rabbi Dayan Grunfeld, on the other hand, offers a more explicit set of rules, which clearly favour males over females throughout.<sup>40</sup>

In response to the critics' allegation of gender bias and inequality in share of male to female heirs as espoused in Qur'an 4 verse 11, it is sacrosanct to state that rights come with responsibility in Islamic law. To explain this principle, the provision of Qur'an 4 verse 34 is helpful which read as follows;

**Men are the protectors and maintainers of the women because Allah has made one of them to excel above the other, and because they spend (to support them) from their means...<sup>41</sup> (emphasis is mine)**

<sup>37</sup> Abdelmagid Zarrouki, *Equality between Men and Women in the Islamic Law of Inheritance*, Published in Tunis, first edition, 2018

<sup>38</sup> Mohd Altaf Hussain Ahangar, 'Succession Rights of Muslim Women in the Modern World: An Analytical Appraisal', *Arab Law Quarterly* 28 (2014) 134; Abdulmajeed Hassan Bello, 'Islamic Law of Inheritance: Ultimate Solution to Social Inequality against Women', *Arab Law Quarterly* 29 (2015) 271-272.

<sup>39</sup> Mary F. Radford, *The Inheritance Rights of Women Under Jewish and Islamic Law*, 23 B.C. Int'l & Comp. L. Rev. 135 (2000), <http://lawdigitalcommons.bc.edu/iclr/vol23/iss2/2>, P.162

<sup>40</sup> *Ibid*,

<sup>41</sup> *Ibid*, See Quran 4 verse 34

The first part of the above verse vest authority over women on the men while the second part of the verse explains the rationale or justification for the privilege on men (male). Hence, to understand Islamic law, there is need for a community reading of all relevant portions of the sources (Qur'an and Sunnah) as against narrow minded approach.

Principle of balanced right means balance of right and responsibility in the inheritance process. There is a balance between what they receive and use. This is the concept of justice in the context of the division of the inheritance law of Islam. In this case, it can be said that gender differences do not affect the right of inheritance in Islam. Both men and women have equal rights to get the inheritance, comparable between the rights and the assumed obligation should be fulfilled in family and community. On regards of amount to be received, there are difference between men and women. However, this does not mean unfair. Justice in Islamic perspective sees deeper than just a number, it also looks into use, needs and responsibilities.<sup>42</sup>

The provision for double shares for males is often pointed to as a source for the proposition that Islamic law generally favours men over women. It should be noted, however, that the Qur'anic system may at times result in situations in which female family members (although not of the same rank) may end up with equal or greater shares of decedent's estate. For example, if a wife dies survived by her husband, her daughter and her (the wife's) brother; the estate will be distributed as follows: one-fourth to the husband, one-half to the daughter, one-fourth to her brother. Thus, the spouse and male relative of the wife each receive half of the amount allocated to the daughter.<sup>43</sup>

Tehrani<sup>44</sup> narrates that Muhammad ibn Yaquab al Kulayni stated that Imam Jafar b. Muhammad as-Sadiq was asked regarding the inequality in inheritance between men and women where women gets less than the men. He replied that a man has more responsibilities and he must go to war, and endure many expenses in the process. Aside from his own expenses, a man must also take upon himself the expenses of his spouse and children. What's more, he must give money to the family of a person

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<sup>42</sup> Iman J, 'Normative Analysis Approach: Status and Rights of a Daughter under Islamic Inheritance Law in Indonesia'. *Journal of Sociology and Criminology*, Volume 4, Issue 2, 1000149, , P. 2

<sup>43</sup> Mary F. Radford, 'The Inheritance Rights of Women Under Jewish and Islamic Law', *Boston College International & Comparative Law Review* [Vol. 23:135], 23 B.C. Int'l & Comp. L. Rev. 135 (2000), <http://lawdigitalcommons.bc.edu/iclr/vol23/iss2/2>, p. 170

<sup>44</sup> Tehrani, Hadavi, Mahdi, Hojjat al Islam (1999). *Difference of Women and Men in Islamic Jurisprudence* <http://www.imamreza.net/eng/imamreza.php?id=7340> cited from Muhammad ibn Yaquab al Kulayni, Al-kafi, Vol. 7, p. 85

accidentally injured by one of his family members. Shehzad Saleem<sup>45</sup> states that the justification for less than half the share of women has been stated by Allah (SWT) in Surat al-Nisa: "...With regard to your parents and children, you do not know which of them is of more benefit to you."<sup>46</sup> On the basis of this verse, Saleem says that the person who provides more benefits to a person is entitled to more share from the property left by the deceased. In Islamic family system, the male is the head of the family: "*men are in charge of women*".<sup>47</sup> Men serve and take care of their parents while women leave their parents' house after marriage and reside in her husband's residence and hence cannot fully serve their parents. So, it is apparent that the son provides all the benefits to the parents by taking the responsibility of maintenance of the parents. As a result, a son is entitled to more share than that of a daughter.

As regard the Islamic law of inheritance verdicts restricting the rights of an illegitimate child from inheriting the estate of his biological father and vice-versa, it is essential to state that such principle is to protect the integrity of family system from distortion and to restore sanity in family relations as part of measures to protect a fundamental part of the *Maqasid* (Objectives) of Shar'iah<sup>48</sup>. However, Islam open a window for will execution (*wasiyyat*) to salvage the interest of the innocent heir from bearing the brunt and misdeeds of his biological father. A will (*Wassiyat*) is a direction by which a person directs his heirs or personal representatives regarding the distribution of his death although it may include expressions or wishes as to other matters.<sup>49</sup> Thus a will (*Wassiyat*) is the wealth bequeathed which becomes the property of the person in whose name it is made with the death of the person who actually makes it. The Holy Quran has given great importance to the institution of *Wassiyat*,

*"It is prescribed, when death approaches any if you, it he leave any goods that he make a bequest to parent and next of kin, according to reasonable usage; this is due from the God-fearing."*<sup>50</sup>

Again there is a prophetic tradition which support the idea of making a will provided it is not more than one-third of the entire estate, it is reported that, the Prophet has said

*And the statement of the Prophet: "One should have his Wasaya (last will and testament) written and kept ready with him."*

<sup>45</sup> Kazi Arshadul Hoque, Muhammad Jalal Uddin and Mohammad Saidul Islam, 'Inheritance rights of women in Islamic law : An assessment' *International Journal of Islamic Thoughts*, 2, 45-58, 2013 Copyright © BIIT ISSN 2306 -7012, p. 49

<sup>46</sup> *Ibid*, see *Quran* 4 verse 11

<sup>47</sup> *Ibid*, see *Qur'an*, 4 verse 33

<sup>48</sup> Jasser Auda. *Maqasid Al-Shariah An Introductory Guide*, (Published by IIIT, 2008), p.8

<sup>49</sup> Abbas Mithain, *Islamic Wills, the World Federation of K.S.I.*, Muslim Communities Stanmore Middix 1994 at p.16

<sup>50</sup> See *Quran* 2:180



*And the Statement of Allah "It is prescribed for you, when death approaches any of you, if he leaves wealth, that he make a bequest to parents...(upto)...some unjust (V.2:180-182)<sup>51</sup>*

Similarly, the female right of inheritance and the need to facilitate comfort for the heirs after the demise of the deceased was strengthened by another tradition of the prophet as follows;

*"Narrated Sa'd bin Abi Waqqa The Prophet, came visiting me while I was (sick) in Makkah, ('Amir the sub-narrator said, and he disliked to die in the land whence he had already migrated). He (i.e., the Prophet) said, "May Allah bestow His Mercy on Ibn 'Afrā' (Sa'd bin Khaula)." I said, "O Allah's Messenger! May I will all my property (in charity)?" He said, "No." I said, "Then may! will half of it?" He said, "No." I said, "One-third?" He said, "Yes, one-third, yet even one-third is too much. It is better for you to leave your inheritors wealthy than to leave them (poor) begging others, and whatever you spend for Allah's sake will be considered as a charitable deed, even the handful of food you put in your wife's mouth. Allah may lengthen your age so that some people may benefit by you, and some others be harmed by you. At that time Sa'd had only one daughter."<sup>52</sup>*

Finally, it is imperative to highlight some misconceptions shrouding Islamic law of inheritance principles arising from the mixture of cultural beliefs. Cultural values and practices in different localities before the advent of Islam still influence some Muslims' understandings of Islamic principles. This is unconnected with the fact that the degree of Islamic creed and understanding of Islam varies from individuals and localities. Thus, localities wherein the understanding of Islamic law is relatively low often succumb to cultural influence in the manifestation of Islamic law practices. Consequently, the fact that majority of the cultural practices before Islam operates a patriarchal system of inheritance makes a window for the subjugation and exclusion of female children from inheritance contrary to the explicit provision of the Islamic sources. Unfortunately, critics of Islamic law of inheritance often premise their judgments on isolated instances against the divine texts and sources.

The contemporary practice especially in Nigeria, is that the wife of a deceased would be held hostage soon after the husband is certified dead, subjected to interrogations on the wealth of her husband by in-laws who would seize valuables that belongs to

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<sup>51</sup>Dr. Muhammad Muhsin Khan, *The Translation of the Meaning of Sahih Al-Bukhari, Arabic-English*, Vol. 4, King Fahd complex (1997), Madinah Munawarrh, Hadith 2737, The Book of Bukhari 55:1

<sup>52</sup> *Ibid*, see Hadith 2742

the deceased. These crusaders would come under the pretext that they are protecting the interest of the children who may still be minors. Honesty in this crusade may just be the necessary check on the excesses of some of the widows that would mismanage the resources of their late husbands, abandon the children to their fate and go and remarry or take to high life. To help themselves from the estate of deceased persons at the expense of widows and orphans, in-laws invoke inhuman cultural practices to villain the wife as the husband's killer thereby unfit or lack the moral standing to be in charge of the deceased estate.<sup>53</sup> Amongst the Ibos, such practices include asking the widow to drink from the water that was used in washing the dead body of her husband to assert her innocence of his death. Recently, a lawyer, N.O. Ezike-Okoli took up a matter in the Abuja office of the National Agency for the Prohibition of Trafficking in Persons (NAPTIP). A widow had been thrown out by her Ogoja<sup>54</sup> in-laws and the young children of the marriage seized from her on the ground that she refused to accede to the in-laws' demand that she should have sexual intercourse with the dead body of another man to prove that she did not kill her husband.<sup>55</sup>

The foregoing represents the awkward cultural values that Islamic law must wrestle to successfully establish its pristine principles of inheritance globally. Unarguable, change is the only permanent phenomenon; although, it takes time and extra measures to effectively change habit and customs. In fact, Islamic law requires Cultural Revolution to effectively dislodge backward cultural system and completely transform its adherent throughout the globe. Hence, it is incumbent on researchers to trend the path of caution when castigating Islamic law of inheritance principles as there exist a wide dichotomy between Islamic law and Muslims practices. However, it is not of place to chastise Muslims for their shortcomings in the practice of Islamic law as their actions may be inimical to the perceptions and understanding of Islamic law by non-Muslims and Muslims alike.

## **Islamic Law of Inheritance: An Epitome of Justice, Equity and Gender Balance**

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<sup>53</sup> S.T. Silas, 'An Evaluation of the Cultural Practices and Women's inheritance Rights in Ibo Land, Eastern Nigeria: A Theological-Ethical Study (being a Master's Degree Dissertation Submitted to the Post Graduate School, North-West University, Potchefstroom, 2017)p. 21.

<sup>54</sup> This was the testimony and experience of Dulcinea, a widow in Mchele, Mozambique, a widow and her children who were robbed of all by in-laws as found by Randi Kaarhus of the Centre for Practical Knowledge, University of Nordland, Norway and Stefaan Boneeyne of the University of Leuven, Belgium, Formalizing Land Rights Based on Customary Tenure: Community Delimitation and Women's Access to Land in Central Mozambique, (2015) *Journal of Modern Africa Studies* p. 19, available at <http://dx.doi.org/10.1017/S0022278X15000166> visited 17/11/2018. The dictatorship of in-laws against widows and orphans reported by Human Rights Watch as 'injustice' involving the seizure of their 'homes or property' in their helplessness. (n44 at p.4.).

<sup>55</sup> Suleiman & Amuda-Kannike, 'Some Religio-Cultural Practices Against The Property Rights Of Women And Children In Nigeria And Specified African Countries', *Nnamdi Azikwe University Journal of International Law and Jurisprudence*, 10 (1) 2019, p. 170

Among the rights of children that the Holy *Qur'an* gives particular attention to are the child's right to life, sustenance, property and freedom of conscience. These are, of course, rights to which every human being is entitled, but because of certain special needs of children and prevailing inimical customary practices the Holy *Qur'an* considers it necessary to deal with them particularly in relation to children. In the case of the right to life, for instance, infanticide was a customary practice in many pre-Islamic societies. Some of the causes of infanticide were the fear of penury, or the offering of religious sacrifices or, in the case of daughters, to avoid disgrace.<sup>56</sup> Thus, according to the *Qur'an*, any killing without lawful authority constitutes murder in Islamic law and is punishable in this life and in the hereafter. It is of fundamental value in Islamic juristic thought, therefore, that the life of a child must be preserved.<sup>57</sup>

Orphans are placed in the spot light when it comes to caring for needy and helpless children. Among the eligible category that is ranked right after our parents and the relatives to receive our charity is the orphans. This charity to feed and spend from our provisions on the orphans is mentioned by God in seven different verses. However, bringing them up as righteous candidates of the community, honouring them just like our own family members, and sympathizing with their fragile emotions and wounded hearts due to the loss of their parents is decreed by God in another six verses. Another important aspect of caring for the orphans is guarding their money and properties until they become eligible to manage them on their own. This is emphasized in five other verses. Wronging our souls and cheating them out of their own rights because of their helplessness or dependence while observing such a duty is an abomination with a shameful and miserable penalty: "Those who consume the orphans' properties unjustly, eat fire into their bellies, and will suffer in Hell".<sup>58</sup>

To exemplify Islamic law of inheritance as an epitome of justice, equality and gender equalities, recourse must be made to the basic sources for guidance. Allah says;

*O You who believe! **Stand out firmly for Allah as just witnesses;** and **let not the enmity and hatred of others make you avoid justice.** Be just: that is nearer to piety and fear Allah. Verily, **Allah is well acquainted with what you do.**<sup>59</sup> (emphasis is mine)*

*O you who believe! **Stand out firmly for justice as witnesses to Allah.** Even though it be **against yourself or your parent or your kin, be he rich or poor,***

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<sup>56</sup> *Ibid*, see Quran 17 verse 31

<sup>57</sup> *Ibid*, see Qur'an 4 verses 92-93

<sup>58</sup> Masumeh Saeidi1, Maryam Ajilian, Hamid Farhangi, Gholam Hasan Khodaei, 'Rights of Children and Parents in Holy Quran', *International Journal of Pediatrics (Supplement 4)*, Vol.2, N.3-2, Serial No.8, August 2014, p. 110

<sup>59</sup> *Ibid*, see Quran 5 verse 8

*Allah is a better protector to both (than you). So **follow not the lust of your heart**, lest you avoid justice. And if you distort your witness or refuse to give it fairly, Allah is ever well acquainted with what you do.*<sup>60</sup> (**emphasis is mine**)

The above two verses underscore the importance of justice in Islamic law on the one hand and showcase the foundation of Islamic law principles. Hence, self desires, ethnic bigotry, gender bias, favouritisms, and discrimination are anathema to the fundamental principles of Islamic law. Islamic law of inheritance is not an exception as highlighted earlier. Islamic law demonstrates the dichotomy between justice and equality. While justice is understood to mean giving what is due to whom it's due<sup>61</sup> on the one hand, equality connotes giving to all equal share on the other hand.<sup>62</sup> Therefore, the perceived inequality in the share of male to female is justified by the reciprocal responsibilities that follow. While equality and gender balance are manifestly established in children rights to inheritance under Islamic law, justice is technically entrenched considering the accompanying responsibilities.

## Conclusion

From the foregoing, it is sacrosanct to demonstrate objectiveness while understudying Islamic law principles to have a deeper grasp of its outstanding values and distinctive principles. While Islamic law of inheritance has introduced unimaginable reforms with the establishment of equal rights to inheritance amongst the deceased children; eliminated gender bias, subjugation and manipulation on the basis of physical physiological differences, it has equally set a pace for world on the real conceptualization of justice. I will end this paper with some rhetoric and demand the audience to give their verdict.

1. Should a father give equal allowances to his two undergraduate children while one enjoys full scholarship and the other is not?
2. Should an employer give equal allowance to his employees in disguise of equality while they offer different service?

The above rhetoric explains the philosophy of Islamic law justice system. A male child shoulders the financial responsibilities of his family but a female child as a daughter, wife and mother enjoys economic protection from father, husband and children respectively at every point in time. Invariable, it will amount to injustice to award equal share to male and female share when the former is burden with financial

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<sup>60</sup> *Ibid*, see quran 4 verse 135

<sup>61</sup> Henry Campbell Black, *Black's Law Dictionary*, "Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern" West Publishing Co.1968, Fourth Edition, "In Jurisprudence justice is the constant and perpetual disposition to render every man his due." P. 1002

<sup>62</sup> *Ibid*, EQUALITY. The condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties, *Louisville & N. R. Co. v. Commonwealth*, 160 Ky. 769, 170 S.W. 162, Ann.Cas.1916A, 405. P, 631

responsibilities and the later is not. Islam introduced so many reforms in the laws of inheritance which can be succinctly summed up as follows;

1. It defined and determined in clear-cut terms the share of each inheritor and imposed limits on the right of the property-owner to dispose of his property according to his whim and caprice.
2. It made the female, who had been previously thought a chattel, the co- sharer with the male and thus not only restored her dignity, but safeguarded her social and economic rights.
3. It laid the rules for the break-up of the concentrated wealth in the society and helped in its proper and equitable distribution amongst a large number of persons.
4. It gave a death-blow to the law of primogeniture and thus provided the democratic basis for the division of the property of the deceased