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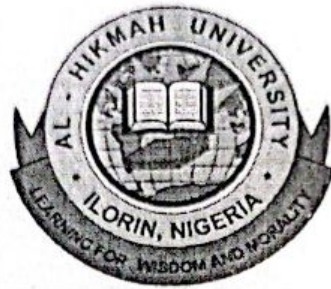
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Editorial Comment

The Editorial Board of HUIJIL is pleased to thank our contributors to the Volume 2 of this Journal. We equally appreciate very useful opinions and suggestions in respect of its maiden edition. This has greatly informed the quality and improvement in this second edition.

In this edition, only ten (10) articles that scaled through blind peer review were considered for publication. The articles, which are written by the distinguished and versed contributors in their respective areas, examine various areas in Islamic law such as *Maqasid al-Sharia'h* (Objectives of Islamic Law), Islamic Legal System, Islamic Jurisprudence, Islamic banking, and others that contribute to the advancement of Islamic law.

The contributors themselves are responsible for the views and opinions expressed by them in their respective articles published in this Journal. Nevertheless, I guarantee that you will find those articles informative and educative.

Professor S.O. Rabi

Editor-in-Chief (HUIJIL)

Al-Hikmah University Journal of Islamic Law (HUIJIL)

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AN EXAMINATION OF THE LEGAL IMPORTANCE OF ESTATE DISTRIBUTION IN ISLAMIC LAW

Abdulrazaak O. Zakariya*

ABSTRACT

There was no even distribution of estate prior to the revelation of the Quranic injunctions on distribution of estate. The distribution of estate was more or less confined to male agnate relatives of the deceased. The estate owner was at liberty to will out his property anyhow and to anyone he so wishes before his death. Women's right to inheritance were not recognized, in fact, they were part of the estate to be inherited. These were the prevalence practices throughout the world with little or no dichotomy. However, with the arrival of Islamic system of inheritance, Quranic injunctions introduced and recognized new set of heirs therefore; concentration of wealth in the hands of few individuals was abolished thereby ensuring the socio-economic welfare of the society at large based on blood relatives of the deceased, marriage affinities, slave-master relationship and the generality of Muslim Ummah through the public treasury. Therefore, this paper seeks to examine legal importance of estate distribution in Islamic Law. The paper relies on both primary and secondary sources which include the Qur'an, the Hadith, text books, articles in journals, internet materials etc. It reveals that the inheritance law within the overall framework of the Islamic Law does seek for justice and compassion for all with economic, social and psychological consideration for all and sundry. Therefore, it concludes that estate distribution in Islamic law seeks to ameliorate some hardship and marginalization experienced by certain people in the society.

Keywords: Islamic Law, Inheritance, legal importance, Estate distribution.

INTRODUCTION

Al-Mirath and Al-Faraa'id are two words often used for Islamic law of Succession. Al-Mirath is from Arabic word 'waritha' literally means: 'to inherit',¹ and the word Faraa'id is the plural of faridah which is derived

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¹ Wehr H., *Dictionary of Modern Written Arabic*, J. M. Cowan (ed.) (New Delhi, N.D) p. 1060

from the Arabic verb '*farada*' literally means: 'to order or to ordain'.² In the legal terminology, 'it is a knowledge about some rules of Shari'a which guide us who will inherit and who will not and what shares will go to the heir from the property of the deceased'.³ In another words, inheritance law or estate distribution law (*Ilm al-Faraid*) is the study of categories of heirs, their prescribed portion, and the law governing the division of the estate itself⁴ according to the laid down principles in the Quran and *Sunnah*⁵. This form of knowledge falls into the category of *waajib kifaai* (i.e. It is a community responsibility) like *salat-ul-jannazah*.⁶ Thus, if some people perform it then the whole community is absolved of the responsibility otherwise each individual in the community is liable.⁷ In Islamic Law of inheritance, there are three essential elements of inheritance.⁸ First and foremost, confirmation of the death of *Al-mawarithh* (the deceased person) is *sine qua non* to inheritance. This is because; someone's property/estate can only be inherited only when his death has been confirmed or he is declared missing (*Mafqood*)⁹ by the authority or a competent court.¹⁰ Secondly,

² Wehr H., *Dictionary of Modern Written Arabic*, p. 706

³ Ali Lakhyi S., 'Almirath, Justice of Islam in the Rules of Inheritance' (Al-Maktabah Al-Muhammedia Ghullah Mandi, Renala Khurd – Okara, Pakistan, Fifth Ed., 2011) p. 16

⁴ Philip B. 'Islamic Studies Book 4' (International Islamic Publishing House, Riyadh, 2nd ed., 2005) p. 265

⁵ Tradition of the Prophet (SAW)

⁶ Islamic funeral prayer

⁷ See 'The importance of the Islamic Law of Inheritance (*Ilm al-Faraid, Mirath*)' available online at <http://www.ummah.com/forum/showthread.php?119557-The-importance-of-the-Islamic-Law-of-Inheritance> accessed on 01/06/2014

⁸ Ambali M. A. 'The Practice of Muslim Family Law in Nigeria' (Princeton & Associates Publishing Co. Ltd., Lagos, 3rd ed. 2014) p. 342

⁹ According to *Maliki* and *Shafi'i*, a missing person is considered dead if he/she lost and no available news of his/her whereabouts for a period of four (4) years. See Abdulfattah M. M. 'Al-Fiqhul-Muyassar Minal-Qur'ani was-Sunnah' Reima Y. Shakeir (ed), (Dar Al-Manarah, Egypt, 2004) vol. 2, p. 1134.

¹⁰ There are divergent opinion among the Muslim Jurists on how long should one wait for a missing person before [s]he can be presumed dead; Imam Abu Hanifah opines 120 years from the time of his/her birth, the Malikis opine 70 years based on normal life span with the addition that if the disappearance was during the war or fatal epidemic, a judicial pronouncement of his death may be obtained earlier. The *Shafi'is* and *Hambalis* left the determination of the time at the discretion of the court

it must be established that the heir[s] (*Al-warith*) survive at the time of the death of the deceased person.¹¹ It is only the surviving relatives (heirs) that are entitled to inherit. In a case where two or more persons died at the same time either in accident or any other means, and it is difficult to determine who die first, no one will inherit the other, therefore, their properties shall be inherited by their surviving heirs.¹² The fetus is also entitled to inherit if he/she is born alive.¹³ Lastly, the estate to be inherited is also one of the essential elements of inheritance. The property of the deceased person (*Al-Mawruth*) is the subject of inheritance therefore; the estate of the deceased must be ascertainable at the time of his death.

In view of the above, this paper intends to examine legal importance of estate in Islamic Law with a view to demonstrating how the law (Islamic Law) is responsive to economic, social and psychological needs of human society. To achieve this objective, the paper briefly looks at the basic and fundamental principles of Islamic law of inheritance. It also discusses criticisms put forth by some writers against estate distribution in Islamic Law as well as legal importance of estate distribution in Islamic law.

RULES RELATING TO ESTATE DISTRIBUTION IN ISLAMIC LAW

- a. **Consideration of Liabilities:** Generally, there are three (3) rights that required to be settled by the survived relation(s) of the deceased before the distribution of the estate. Firstly, reasonable funeral expenses which include expenses relating to washing the corpse, shrouding (*Kafan*) and burial expenses. This according to some Muslim Jurists takes priority over

ranging from 4 years to 7 years. See for details; Hassain A., 'The Islamic Law of Succession' Ahad A., (ed.) (Maktaba Darussalam, Riyadh, first ed., 2005) p. 325

¹¹ Doi A. I 'Shari'ah Islamic Law'. (Ta-Ha Publishers Ltd., London, 2nd ed., 2008) p. 415

¹² *Ibid.* 415

¹³ *Ibid.* 415 the share of a male child shall be reserved for the fetus pending the delivery.

other.¹⁴ Secondly, Settlement of debts from the deceased's estate which include debt of Allah such as payment of obligatory fast (*Ramadan*), *Salat* and *Zakat*, performance of Hajj, Expiation (*Kaffarah*) and debts of people which also include both secured and unsecured debts.¹⁵ However, if the deceased, before his death left his estate pledged in pawn (*rahn*), then the pledge must be settled first according to majority of the Muslim jurists except for *Hanbali* School who insist that the funeral expenses takes priority¹⁶. Lastly, Settlement of Bequest (*Wasiyyah*¹⁷). Sequentially, after funeral expenses and settlement of debts follows the bequest of the deceased.¹⁸ The bequest of the deceased must be carried out. It is a sin to go against the bequest of the deceased.¹⁹ The bequest must not be in favour of any heir and must not exceed $\frac{1}{3}$ (one-third) of the total estate except consented to by the heirs.²⁰

¹⁴ Khan .S. A., 'How to Calculate Inheritance, A Simple Approach' (Goodword Books Pvt. Ltd., New Delhi, first Ed., 2004) p. 20; the Hanafi, Maliki, and Hambali schools opined that the funeral expenses must be settled first before anything is taken from the estate of the deceased, while the Shaf'i is of the view that debt –Allah's and individual's debts- should be paid first before any other steps. Though the funeral expenses of a wife is her husband responsibility. See for details; Doi A. I 'Shari'ah Islamic Law'. p. 436-438.

¹⁵ Allah says: '...after the payment of legacies he may have bequeathed or debts...' See Taqi-ud-Din al-Hilali M., and Khan M. M., *Translation of the Meaning of The Noble Qur'an in the English Language* (King Fahd Complex, Madina, 1999), Quran 4:11

¹⁶ Doi A. I 'Shari'ah Islamic Law'. P. 438

¹⁷ Quran 4:11

¹⁸ Allah says: 'It is prescribed for you, when death approaches any of you, if he leaves wealth, that he makes a bequest to parents and next of kin, according to reasonable manners. (This is) a duty upon *Al-Muttaqin* (the pious)' Q. 2: 180. It must quickly be pointed out here that the aspect of the bequest for parents in the verse as been abrogated by Q. 4: 11 which provides for the shares of the parents.

¹⁹ Then whoever changes the bequest after hearing it, the sin shall be on those who make the change. Truly, Allah is All-Hearer, All-Knower. Taqi-ud-Din al-Hilali M., and Khan M. M., *Translation of the Meaning of The Noble Qur'an in the English Language* Q.2: 181

²⁰ This was deducible in the Prophetic hadith narrated by Sa'd b, Abi Waqqas viz: I said, "O Allah's Apostle! May I will all my property (in charity)?" He said, "No." I said, "Then may I will half of it?" He said, "No". I said, "One third?" He said: "Yes, one third,

- b. **Causes of Entitlement to Estate:** The remaining estate (residue) shall be appropriately distributed to the entitled heirs.²¹ In Islamic law, entitlements to inheritance are rooted in sustaining certain relationship with the deceased.²² The relationships are; blood relation.²³ These are the relatives – who are bound by blood- of the deceased person. Marriage affinity.²⁴ This is the marital association between the spouses. The surviving spouse (man or woman) have specific and inalienable shares of inheritance from each other.²⁵ *Al-Walaa* i.e. emancipation/slave-master relationship.²⁶ It is a relationship where the deceased was a slave to a master but the former had been set free by the latter and the former does not survived by any heir[s] after his death, the latter (master) inherits the former (slave) and vice versa.²⁷

yet even one third is too much. It is better for you to leave your inheritors wealthy than to leave them poor begging others. See Sahih Bukhari, vol. 4, Book 51; Wills and Testaments (*Wasaayaa*) hadith Number 725. Available online at @ <http://www.hadithcollection.com/download-hadith-books/download-sahih-bukhari.html> accessed on 1/1/2014. However, the above 1/3 principle is a general one; as one may bequeath above 1/3 of one's property subject to the approval of the heirs.

²¹ The prophet ordered that the obligatory shares of inheritance should be distributed among those entitled to them. He said: *"Distribute the property (of the deceased) among those who are entitled to the obligatory shares (of inheritance) according to the (laws of) the Book of Allah, and what is left (from the property) after distributing the obligatory shares should be given to the closest male heir."* See Sahih Bukhari Book 80 'Law of Inheritance (*Al-Faraa'id*)' hadith no. 727 available online at <<http://www.hadithcollection.com/download-hadith-books/download-sahih-bukhari.html>> accessed on 20/2/2014.

²² Zugloul .I. A. S., 'A Comprehensive Manual on the Islamic Law of Estate Distribution' (Kewudamilola Printing Press & Computer Center, Ilorin, First Ed., 2005) p. 10

²³ Allah says: '...and blood relations among each other have closer personal ties in the degree of Allah [regarding inheritance]...' Taqi-ud-Din al-Hilali M., and Khan M. M., *Translation of the Meaning of The Noble Qur'an in the English Language* Q.33: 6

²⁴ 'In that which your wives leave, your share is half...' Q.4: 12

²⁵ See Q.4: 12

²⁶ Zugloul .I. A. S., 'A Comprehensive Manual on the Islamic Law of Estate Distribution'. p. 10

²⁷ Ambali M. A. 'The Practice of Muslim Family Law in Nigeria' pp. 345-346

- c. **Impediments to Inheritance:** Nonetheless, a situation may arise where the heir(s) may be barred from inheritance despite their affinity or relationship with the deceased person; where it is established that the deceased person (*Al-Mawarith*) was killed by the heir (*Al-Warith*), the killer shall not inherit the killed.²⁸ Where there is difference in the religion of the deceased person (*Al-Mawarith*) and the heir (*Al-Warith*).²⁹ And lastly, a slave cannot inherit his/her relative nor can his relative inherit him.³⁰ This is because; a slave and everything that [s]he aims actually belong to his owner. Therefore, if he were to inherit from a relative, that inheritance would go to his master not him.³¹

CRITICISMS AGAINST ESTATE DISTRIBUTION IN ISLAMIC LAW

There is a source of significant controversy both inside and outside the Muslim community in Islamic law of inheritance. Whether women can inherit at all is not the controversy. Rather, the dispute centers around the "share" that is to be inherited.³² The injunction that a male relative (son) receives a share equal to that of two females (daughter) has given birth to a vigorous equality debate. Some argue that the

²⁸ Abu Hurayrah reported that the Prophet (SAW) says: 'The murderer [of the deceased] does not inherit. See no. Hadith 4436 Albani '*Saheeh al-Jami'* as-Sagheer' available online at <<http://www.hadithcollection.com/download-hadith-books/download-saheeh-al-jami.html>> accessed on 20/2/2014.

²⁹ Usamah bn Zayd narrated that the Prophet (SAW) says: 'the Muslim does not inherit from a disbeliever nor does the disbeliever inherit from a Muslim. Sahih Bukhari Book 80 '*Law of Inheritance (Al-Faraa'id)*' hadith no.

³⁰ This is because a slave is considered to be part of his master's estate and therefore, if he is allowed to inherit, the master owns him and what he inherited. For details, see Ali Lakhyi S., '*Almirath, Justice of Islam in the Rules of Inheritance*'

³¹ Badawi A., '*The Concise Presentation of the Fiqh of the Sunnah and the Noble Book*', Zarabozo J. M. (Trans), (International Islamic Publishing House, Riyadh, 2nd ed., 2007) p. 564

³² Ara A., '*Inheritance Law in Islam and Women*' available online at <https://webcache.googleusercontent.com/search?q=cache:X-bZYFAA2V4J:https://www.kantakji.com/mawareeth/inheritance-law-in-islam-and-women.aspx%3Fdownload%3Dtrue+&cd=1&hl=en&ct=clnk&gl=ng&client=firefox-b.> accessed on 30/5/2016

differential treatment on the basis of gender regarding inheritance shares violates international human rights and in Islam women's share in inheritance is unfair and unjustified. Therefore, a number of NGOs and few personalities in Muslim countries have called for equal inheritance rights.³³ Oraegbunam describes women's shares of inheritance in Islamic law *inter alia* as 'far from equitable', 'unfair practice' and 'clearly opposed to freedom from discrimination on the basis of sex' in the following words:

...the mode of distribution of the property of the deceased between male and female inheritors is far from equitable. The Koran states: "God directs you as regards your children's (inheritance), to a male, a portion equal to that of two females"⁵⁵. Sometimes, this unfair practice is defended with the argument that men should inherit more property because of their greater responsibilities in the family and the society...Therefore, it can rightly be argued that the inequitable inheritance in the Koran based on gender is clearly opposed to freedom from discrimination on the basis of sex as enshrined in the 1999 Constitution.³⁴

It must be emphasized that these formal inheritance rules pertaining to designated shares in Islamic law must be understood in a broader socio-cultural and economic context and within wider inheritance systems of practice. It would be very clear that Islamic law is a divine law which has general acceptance among all persons with Islamic faith. Therefore, individuals' shares of inheritance are perceived as God

³³ *Ibid.* p. 1

³⁴ Oraegbunam I. K. E., 'A Critique of Certain Aspects of Islamic Personal Law in Nigeria: Re-Examining the Jurisprudence of Women's Rights' (African Journal of Law and Criminology, Vol. 3, Number 1, 2013) available online at <https://www.researchgate.net/publication/312174353> Print A CRITIQUE OF CERTAIN ASPECTS OF ISLAMIC PERSONAL LAW IN NIGERIA RE-EXAMINING THE JURISPRUDENCE OF WOMEN'S RIGHTS Faculty of/download accessed on 25/3/2019. pp. 9-10

ordained which cannot be changed. A more dominant position is that; even among Muslim women, women are much more favored financially than male. More so, those who criticize this aspect of inheritance need to understand the whole system of Islamic law which Islamic law of inheritance is only a part of it, in order to appreciate the wisdom behind the difference. It is on this backdrop that the next segment would present legal importance of estate under Islamic Law.

LEGAL IMPORTANCE OF ESTATE DISTRIBUTION IN ISLAMIC LAW

The Islamic system of estate distribution takes into account economic, social and psychological needs of human society, by ordering the implementation of the natural and systematic flow of wealth among family members when death occurs. This particular system of estate distribution laws was chosen by Allah based on His complete knowledge of human nature and human needs within a societal framework. The following are just a few of the ways which the law protects the rights of family members and regulate the distribution of wealth legally and religiously which altogether form the importance of estate distribution in Islamic law.

a. Protection of the Heirs

Wealth (Money and property) sustains the worldly interests of human beings, and it is the means by which they fulfill their requirements. Man needs them as long as he is living, and once he dies, he no longer needs it. Therefore, it is necessary to have a successor and a new owner of his wealth. If the new owner is someone who is capable of taking the property by force and overpowering others, then, it would lead to mutual hatred, chaos and disputes among people. Thus, inheritance would be subjected to power struggles and strife. If, on the other hand, the property is assigned (after one's death) to cats, dogs, and domestic animals or even an individual which is sometimes the case in some laws³⁵ surely, the people's benefits and interests will be

³⁵ Section 3 of the Wills Act 1837 states: 'All property may be disposed of by will.-It shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner

lost and their needs will not be met. In Islam, wealth is considered a trust from Allah (SWT) which returns to Allah, upon the death of its earthly trustee.³⁶ However, one-third of one's wealth may be willed to whomever one wishes.³⁷ Allah the Almighty has determined the obligatory shares of inheritance Himself – a task which He entrusted neither to a close angel nor to a sent Prophet. He determined the share of each heir in the inheritance, which He gives in detail in His Book (*Al-Quran*), unlike many rulings which were mentioned in a general and brief way in the Quran.³⁸ In addition, the *Sunnah* (tradition) of the Prophet, (peace be upon him) came to give a detailed explanation about these rulings, just like the rulings regarding prayers, *Zakaah* (purifying alms) and *Hajj* (pilgrimage). For this reason, the *Shari'ah* (Islamic law) has protected the heirs by assigning inheritance to the deceased person's relatives so that people would be rest assured of the destiny of their property, as they are naturally eager to benefit those with whom they have a strong relationship of blood, marital relation or allegiance. If a person dies and leaves property, according to the Islamic *Shari'ah* that takes into consideration all the

herein-after required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death,...', see also the holding of the Supreme Court in the case of *Idehen v. Idehen* (1991) LPELR.SC.271/1989 (other citation {1991}6 NWLR [pt. 198] 382. P. 51, para. D-G), also pp. 34-35 para. F-A. Like the case of Peter Sellers, by name Richard Henry Sellers; (a British film actor, comedian and singer) who died on 24th July, 1980 and left \$10 million to his last wife (Lynne Fredrick) who was not the mother of his children and to whom he was married only a few years. He had three children –a son and two daughters- from other divorced wives; he left his own children with about only \$2, 000 each. The children were extremely furious and bitter, thus ended up contesting the will in an attempt to set right this obviously unjust system of inheritance. See for detail 'Peter Sellers Biography' available online at <<http://www.imdb.com/name/nm0000634/bio>>, 'Peter Sellers' available online at <http://en.wikipedia.org/wiki/Peter_Sellers> see also *Newsweek*, February 9, 1981 available online at <<http://backissues.com/issue/Newsweek-February-09-1981>> all accessed on 01/06/2014

³⁶ Quran 2:284

³⁷ See *ibid* (n 20)

³⁸ See Quran. 4:11, 4:12 and 4:176

benefits of people, it should be distributed among his relatives with justice.³⁹

b. Prevention of Dissatisfaction

The fact that individuals shares in the inheritance are laid down by Allah (SWT)⁴⁰ and not by human being helps the inheritors to be satisfied with what has been allotted to them. Since the heirs know fully-well that these are not man-made laws, which unjustly favour some over others, thus, they tend to be more ready to accept Allah's decree. Allah says:

These are limits (set by) Allah (or ordainments as regards laws of inheritance), and whosoever obeys Allah and his messenger will be admitted to gardens under which rivers flow (in paradise), to abide therein, and that will be the great success. And whosoever disobeys Allah and his messenger, and transgresses his limits, he will cast him into the fire, to abide therein; and he shall have a disgraceful torment.⁴¹

It is only Allah, Creator of the complex creature -the human being- who could possibly know what best suits human needs, regardless of race, tribe, gender, age, time and place. Hence Allah (SWT) perfected His laws for human needs.⁴²

c. Consideration of Male and Female Roles

The shares of a male are double of that of a female not because a male is worth more, but because the male has the duty to support his family

³⁹ There is a share for men and a share for women from what is left by parents and those nearest in relation, whether the property be small or large --a legal share. See Quran 4:7

⁴⁰ *Subhanahu wa Ta'ala* (the most Exalted)

⁴¹ Quran 4:13-14

⁴² Allah says: *'This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion.'* Quran 5:3

while the female is exempted from any sort of financial responsibility and can spend it all on herself without the need to share.

However, a more dominant position is the general position, even from Muslim women, that what God has ordained for shares cannot be changed and the application of these formal inheritance rules pertaining to designated shares must be understood in a broader socio-cultural and economic context and within wider inheritance systems of practice. If seen as a whole, it would be very clear that in Islamic law, women are much more favored financially than male.⁴³

The fact is that Islamic laws of estate distribution take into account the natural roles of males and females children in a normal society. The male heirs are given as much as two times the portion of corresponding female heirs⁴⁴ in order to support their roles in the society as the providers and supporters of women.⁴⁵ Women are not expected to support themselves in an Islamic society; if a woman is not yet married, the law requires her father to cater for her needs and if he is incapacitated or dead, her brothers, uncles, nephews or sons become responsible. No married woman is required to spend any amount at all from her property and income on the household. In special circumstances, however, such as when her husband is ill, disabled or jobless, she may find it necessary to spend from her earnings or savings to provide the necessities for her family.⁴⁶ The Islamic laws of inheritance take into consideration the societal needs of men and women in a way which contributes positively to the development of a healthy society.

⁴³ Ara A., 'Inheritance Law in Islam and Women' p. 1

⁴⁴ Quran 4:11

⁴⁵ Allah says: 'Men are the protectors and maintainers of women, because Allah has made one of them to excel the other, and because they spend (to support them) from their means...' Quran 4:34

⁴⁶ 'Financial Security and Inheritance Laws: The Right to Possess Personal Property' available online at <http://www.thewaytotruth.org/womaninislam/financial.html> accessed on 1/6/2014

d. Even Circulation of Wealth

In some inheritance laws, the lion's share of inheritance of the deceased's property usually goes to the eldest son.⁴⁷ The Arabs were inheriting based on blood relation which was only confined to the paternal male descendant.⁴⁸ Even among the male descendants, only those who have the ability to hold arm and had actually fought with the deceased were entitled to inheritance.⁴⁹ Those male descendants who had no ability to hold arms, such as minor, disabled and old people were impeded from inheritance.⁵⁰ Hence, the wealth of the society (many heirs) were fused in the hands of a smaller group. More so, in the pre-Islamic era women themselves were also objects of inheritance and they were considered part of the possession of a man.⁵¹ At such a critical juncture of history Islam brought about a revolution in the domain of human thought and outlook towards women and established the right of women to inherit and has distributed the inheritance in a very upright way. This determined share is calculated by Allah Himself and can't be changed. Thus, Islam, by clearly stating in the Quran that women have the right to inherit for themselves, changed the status of women in an unprecedented fashion. The Quran states: *'Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind'*⁵². These restrictive processes progressively widen the gap between the rich and the poor in the society. However, in Islamic law of inheritance, estate of the deceased is automatically distributed among all the heirs; sons and daughters of the deceased as well as some other family members who are eligible to inherit

⁴⁷ see *Arase v. Arase* (1981) N.S.C.C. 101, see also Itua P. O. 'Succession under Benin customary law in Nigeria:

Igiogbe matters arising' (Journal of Law and Conflict Resolution Vol. 3(7)) available online at <<http://academicjournals.org/article/article-1379863550-Itua.pdf>> accessed on 1/6/2014

⁴⁸ Ali Lakhyi .S., 'Almirath, Justice of Islam in the Rules of Inheritance' p. 6

⁴⁹ *Ibid.* p. 6

⁵⁰ *Ibid.*

⁵¹ *Ibid.* ps. 7-8

⁵² Quran 4 (An-Nisa):7

regardless of age, gender and status. The Quran outlines detailed Islamic inheritance laws to ensure that no person is denied his or her rights.⁵³

e. **Property rights for Women**

One must first realize that Islam revolutionized women's inheritance rights. Prior to the Quranic injunction - and indeed in the west until only recently⁵⁴ - women could not inherit from their relatives, and were themselves bequeathed as if they were property to be distributed at the death of a husband, father, or brother. Muslim mothers, wives, daughters, and sisters had received inheritance rights thirteen hundred years before Europe recognized that these rights even existed.⁵⁵ In the pre-Islamic period, inheritance among Arabs was confined only to able-bodied male relations who were capable of fighting battles to defend the honour of their family or tribe.⁵⁶ Consequently, daughters, widows; mothers, minors, infirm and old persons had no right of inheritance to the property of their deceased fathers, husbands and other relations.⁵⁷ Similarly, prior to the 20th century when women gained right to own property, women in America, England, and some other Western countries could not represent themselves in financial transactions, more so, a woman's wealth usually became a part of her husband's wealth when she got married.⁵⁸ However, Islam made provisions for the right of women to

⁵³ See Quran 4:11-12

⁵⁴ Late 1870s onwards in Europe that married women achieved the right to enter contracts and own property. In France this right was not recognized until 1938. See for details; Ara A., 'Inheritance Law in Islam and Women' p: 1

⁵⁵ Ali Lakhyi .S., 'Almirath, Justice of Islam in the Rules of Inheritance'. ps. 3-8

⁵⁶ Jaiyeola M. B. 'A Comparative Study of Women's Rights of Inheritance In Nigeria Under Islamic Law And Some Customary Laws'(A thesis submitted to the faculty of law, University of Ilorin, Ilorin, Nigeria, in Partial fulfilment of The requirement for the award of the degree of doctor of Philosophy in law, 2011) p.133. available online at <http://www.unilorin.edu.ng/graduatetheses/law/Law_Law_2011_JAYIEOLA.pdf>

accessed on 1/6/2014

⁵⁷ Ibid.

⁵⁸ 'Islamic Studies Book 4' p. 268 see also 'Financial Security and Inheritance Laws: The Right to Possess Personal Property'

inherit and to own property more than fourteen hundred years ago.⁵⁹ Hence, it could be said that Islamic laws of estate distribution provide for a perfect basis for the establishment of women's right to possess wealth independently of men.

f. Protection of the Fetus Right to Inheritance

In the pre-Islamic era, entitlement to inheritance was more of the 'survival of the fittest'. A minor (either male or female) –talkless of a fetus- who had no ability to fight and had not fought with the deceased was not entitled to inheritance.⁶⁰

Islamic law provides for a woman whose husband passed away to observe *iddah* (waiting period) in her husband's house for four months and ten days⁶¹ in order to determine whether or not such a woman was pregnant before the demise of her husband and subsequent upon such a fetus is entitled to inherit.⁶² The prerequisite condition for such fetus to inherit is to be born alive, even if it is for a short moment.⁶³ In a situation where the fetus would be a major sharer and thus excludes some or all the existing heirs, then the property must not be shared until the arrival of such child.⁶⁴ Similarly, where the fetus is not the major heir, preliminary distribution of the estate may be effected

⁵⁹ See Quran 4:11

⁶⁰ Ara A., 'Inheritance Law in Islam and Women' p. 1

⁶¹ Ali Lakhvi .S., 'Almirath, Justice of Islam in the Rules of Inheritance'. ps. 6-7

⁶² See Quran 2:234

⁶³ Bakr Ishmael M., *Al Fiqh al- Wadih Minal-Kitab Was-Sunnah "Alal-madhahibil -Arba"ah* (2nd ed. Daru al-Manar, Cairo, vol. III, 1998) p.169

⁶⁴ This was based on the Prophetic hadith which says: '*as soon as a baby cries (at birth) he/she inherits*' see also, Al-Jibali M. 'Inheritance Regulations & Exhortations' (Al-Kitaab & As-Sunnah Publishing, Place of Publication not supplied, 2nd Ed., 2005) p. 20

⁶⁴ This is the view of Maliki School. Abu Hanifa opines that the estate may be shared but the share of four boys or four girls should be withheld for the unborn child while the Shafihi and Hambalis opine for the shares of two sons or two daughters should be withheld for the unborn child. See for details: Hassain A., 'The Islamic Law of Succession' p. 259; see also: *Al Fiqh al- Wadih Minal-Kitab Was-Sunnah "Alal-madhahibil -Arba"ah* p. 169, Ibid

hence, the possibility of the fetus being a male, female or even more than one⁶⁵ must be considered.⁶⁶

g. Prevention of Unending Series of litigations

In non-Islamic systems of estate distribution laws, the division of estate is based on either the testate of the testator or human interpretation of man-made laws in order to suit a rival interest hence, abuse and oppress others in the process.⁶⁷ This leads to an unending series of legal disputes and changes which tend to keep the society in constant turmoil. In Islamic law, estate distribution automatically comes into effect on the death of individual, whether he or she left a will or not and such distribution shall be based on the apportioned shares of individual as provided for under the Islamic law of estate distribution.⁶⁸ It is even possible for individual heirs who have the knowledge of Islamic law of estate distribution to know relatively his/her portion[s] in the estate of the deceased person. Thus Islamic society avoids unnecessary delays in the distribution of estate, as well as the resulting confusion and rivalry among heirs. More so, Allah (SWT) promises to admit those who fear religiously obey Him in the distribution of estate into Paradise in the hereafter.⁶⁹ The promise of Allah (SWT) to punish with hellfire, whosoever disobey and transgress the limits set by Him in the Islamic Law of Estate distribution makes the Muslims to contentedly and willingly accept his/her portion(s) in accordance with the provisions of Islamic Law.⁷⁰

CONCLUSION

The beauty or comprehensiveness of Islamic law of inheritance will be understood if it is read with the law of maintenance, *Wasiyyah*

⁶⁵ Hanafi and some of the Maliki's view see for detail; Abdul-Fattah M. M. 'Al-Fiqhul-Muyassar Minal-Qur'an was-Sunnah' (Dar Al-Manarah, Egypt, 2004, Vol. II) p. 1133-1134

⁶⁶ Ibid.

⁶⁷ 'Islamic Studies Book 4' p. 267

⁶⁸ See the hadith of the Prophet (SAW) earlier referred to in Ibid (n 7)

⁶⁹ Quran 4:13

⁷⁰ Quran 4:14

(bequest) and *Hiba* (gift). An examination of the inheritance law within the overall framework of the Islamic Law reveals not only justice but also an abundance of compassion for all with economic, social and psychological consideration for all and sundry. The role and importance of Islamic law of inheritance cannot be overemphasized in any Islamic society. This is because; Islamic law of estate distribution has gone a long way to mitigate against hardship, discrimination and marginalization against certain people in the society and has also lay to rest, series of disputes and psychological turmoil that many people had incessantly suffered across the ages since the advent of Islam. These were achievable based on the Almighty Allah's wisdom, the Creator of the complex creature -the human being- Who knows His creatures and their nature before creation hence, perfectly takes care and allots to individuals appropriate shares from the estate of their deceased relatives hence makes no Muslims died intestate.