

A training course on land, property and housing rights in the Muslim world



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Module 5

Powerpoint presentation


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ISLAMIC INHERITANCE MODULE 5

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What are the key concepts?

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- Inheritance of land owned by Muslims is governed by compulsory rules, except State land rights
- As per divine formula, specific fractional shares of estate distribution to define relatives or 'shares'
- Muslims can only bequeath or make a will (*wasaya*) of up to one-third of their estate.
- Women have specific (lesser) rights to fixed shares under the inheritance rules
- Inheritance rules cannot be seen in isolation but must be considered as part of a dynamic inheritance system








Session Learning Outcomes

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At the end of this session participants should be able to:




- Appreciate some of the key features of the Islamic legal rules of inheritance, including the benefits and disadvantages of the fixed share system
- Explore some of the legal rules on inheritance as part of wider Islamic inheritance systems and their implication
- Examine post-inheritance adjustment practices including consolidation and renunciation of inheritance rights, with particular reference to the position of women

Why are these concepts relevant?

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- The inheritance rules are derived from religious sources – verse in the Qur'an.
- Inheritance remains an important source of access to land for women and others
- Changes to shares of 'adopted' children and orphaned grandchildren justified on basis of the Qu'ranic bequest verse
- A wider flexible system for property takes place across the generation and within the family.
- Estate planning debated; maybe seen as socially commendable to protect rights of women

Your opening thoughts!

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- What experience do you have of Islamic inheritance principles?
- Do you think Islamic inheritance principles are significant in the access to land?
- How can Islamic inheritance systems promote land, property and housing rights?








How can the concepts be used?

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- Inheritance rules apply to all size estates, residential or commercial, liquid assets or investments
- Islamic wills have an important role with respect to provision for particularly vulnerable children.
- Land consolidation and readjustment, through collective rights can be facilitated.
- Through a holistic approach, women are 'compensated' for their lesser inheritance shares.
- Need to take a closer whether the renunciation is voluntary and legally sanctioned.
- Islamic inheritance rules are complex and sensitive issue, cannot be avoided.

What is inheritance?

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- Means of acquiring property/land upon death
- In some societies, free choice on who should succeed to property through series of gifts or legacies.
- In other contexts, no choice or only a limited choice as to who will enjoy his or her property after death
- Islam recognises freedom for one -third of property with rest being determined by legal rules which define who will succeed to a deceased persons estate as well as the shares in the property of each successor



How is inheritance in Islam?

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- Same inheritance rules apply to big or small estates – residential or commercial property, liquid assets or investments.
- Distinction between two forms of landholding.
- Land held in full ownership, known as mulk/milk, is inherited according to Islamic rules of inheritance.
- Rights of possession in state land (miri) are traditionally regarded as outside Islamic inheritance rules, although such rights can be inherited.



Why Islam deals with inheritance?

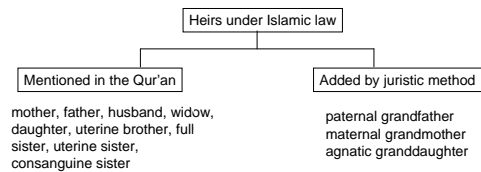
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- Common way of acquiring land or rights in land in the Muslim world
- One of the most detailed fields of Islamic law
- Most Muslims are aware, many follow it
- Provides for the compulsory division of an individual's property upon death
- Derived from the Qur'an



Who inherits under Islamic law?

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- After heirs inherit their fixed shares – the remaining estate is inherited by the residuaries
- Legitimate claimants can be disinherited, in extreme circumstances such as causing the death of the deceased



What is the basis of Islamic rules?

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- Based on divine formula
- Specific fractional shares are distributed to certain defined relatives
- 'Shares' are sons, daughters, a father, a mother or a spouse.
- Absence of children, sisters and brothers, according to compulsory rules



Is an Islam will possible?

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- Possible for Muslims to make a will (wasaya).
- But Islamic inheritance principles do not give the absolute freedom to decide where property will develop upon death as some other systems.
- Up to one-third of an individual's estate can be bequeathed through will.
- For a Sunni Muslim a bequest cannot be made to anyone who is entitled to a share under the compulsory inheritance rules
- Shi'a Muslim do permit bequests to those entitled to fixed shares in some circumstances.



Does all use the same rules?

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- Where Qur'an is explicit, all Muslims use the same rules
- Where no direct Qur'anic instruction, *Sunni* and *Shi'a* Muslims, and their respective jurisprudential schools, established different methods for allocation of inheritance shares.
- Not every case dealt with directly in the religious sources; many combinations of surviving relations of the deceased that can arise



Are Islamic wills important?

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- Importance in compensating those not in inheritance rules, such as vulnerable children
- Orphaned grandchildren do not receive a defined share.
- Not recognize formal adoption, but children are raised within families without sharing a blood relationship with the family members.
- The will is a useful means to benefit such 'children of the family' and orphaned grandchildren



Are Muslims aware of these rules? 15

- The Islamic inheritance principles represent a source of pride because of their close association with the Qur'an
- Muslim men and women in all social classes and of all educational standards, tend to have some knowledge of the basic inheritance rules
- The rules are in the main rigorously implemented by families, communities, legal officials and state authorities

Do women enjoy same shares as men? 19

- women**
 - Have specific fixed shares
 - Receive a half share
 - Receive same as of similarly positioned male
- men**
 - Receive whole share in a similar situation as women

What advantages in the system? 16

- Compulsory specified shares have the benefit of spreading ownership of property, including land
- Creating rights amongst a range of family members, creating rights
- They reduce family strife and promote cohesion

Do the rules discriminate? 20

- Women's lesser shares in inheritance are often regarded as marker of their inferior status
- These rules violate the non-discriminatory provisions of CEDAW
- View not shared by most Muslims, fixed shares a good starting point
- In practice, barriers and constraints on women's access to inherited land, irrespective of 'paper rights'.

What are the disadvantages? 17

- A land parcel may follow application of inheritance rules, and involve many partners with equal or unequal shares.
- The Islamic system of compulsory shares can lead to fragmentation of property into minute divisions.

How to interpret inheritance rules? 21

- Muslim women often argue that taken as a whole the inheritance system is fair, supportive of the family and that it fosters interdependence.
- Within Islamic framework, women's property rights should be approached holistically.
- Women are to be 'compensated' for their lesser inheritance shares
- Practices surrounding inheritance lead to discrimination rather than the rules themselves.

Is Inheritance Important to Women? 18

- Where women own land, it is frequently inherited land
- Inheritance rules provide women within the family of the deceased with their own specific shares support

How can women be compensated? 22

- Other avenues for women to obtain property exist
- Includes gifts, payments from the husband to the wife upon marriage (*mahr*) and as a beneficiary under an endowment (*waqf*)
- Qur'an requires that a husband support and maintain a wife out of his property, providing shelter, clothing, food and medical care, but she has no equivalent obligation towards the husband.

Does compensation work?

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- In practice 'compensation' variable and uneven
- Impact depends on custom, family, kinship and local interpretations of Islamic law
- Some women may be 'compensated' for their losses in gaining access to land, by periodic gifts of money or other personal property.
- But this may not fully compensate the woman regarding exclusion from rights in land



Does estate planning benefit women?

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- Legal principles may be manipulated both to the benefit and detriment of women in terms of their property rights?
- In order to concentrate ownership within the hands of one person, or a small group, within the family.
- In Indonesia and other countries, it seems that estate planning as a means of re-compensating some women and girls for their disadvantage position under the compulsory Islamic inheritance rules is readily used and socially acceptable.



Are inheritance rules independent?

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- Rules on inheritance shares are part of a wider flexible system for the transmission of property
- Rules include tools such as lifetime gifts which enable 'estate planning' and post-inheritance adjustment practices.
- Rules cut cross the generation and within the family



Can beneficiaries reject their shares?

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- Islamic inheritance process doesn't conceive of a rejection by a beneficiary of his or her share.
- But, there is a widespread practice of renunciation, post inheritance.
- A person typically a woman voluntarily renounces (tanazul) her inheritance rights in favor another family member.
- This is a customary practice or informal process which co-exist along side Islamic law in many countries.



Can inheritance rules be avoided?

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- Legal techniques for person in form of 'estate planning' when concerned about the distribution of property after death.
- Particularly the case with regard to agricultural land, where fragmentation in ownership of the land is great concern..
- Most obvious tool of estate planning is the lifetime gift or transfer.
- Land categorised as state land (miri) too is often subject to lifetime transfer, since it lies outside the compulsory inheritance rules.



How is renunciation implemented?

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- Renunciation is tolerated or has been incorporated into the legal process
- It takes place after legal confirmation that the person renouncing is competent and fully aware of her actions.
- Renunciation of inheritance rights across a range of Muslim societies has little to do with Islam and is a socio-cultural practice that requires close scrutiny.



Is estate planning acceptable?

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- There is debate and some tensions surrounding their use
- But commonly used in modern Islamic societies
- A wide range of different versions of lifetime gifts developed with distinctions between various schools of law
- 'Estate planning' techniques may be seen also as socially acceptable means of mitigating the effects of unequal legal status of women with respect to inheritance in some Muslim societies.



Is renunciation always bad?

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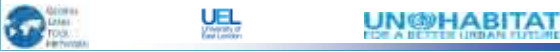
- Women may be forced to renounce their limited inheritance rights, which needs to be addressed
- Some women renounce their rights in order to preserve relationships with more powerful family members, particularly with their brothers.
- The benefit may include a continuing rights of access to family homes
- The reality 'on the ground' may be complex



Can shares be sold or exchanged?

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- Consolidation: though this process a division of an estate into fractional shares may be followed by a series of sales or exchanges to reduce the number of co-owners
- Example: a daughter of the decease may exchange her share in land for cash from her brother.
- Compensatory payment: this may be paid, thereby giving the transaction clear authority, or it may be a symbolic exchange or 'payment on paper'



Are legal reforms acceptable?

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- Number of NGOs and liberal personalities in Muslim countries have called for equal inheritance rights
- But, Islamic inheritance rights rules are complex and sensitive
- Change of inheritance is resisted the basis that it breaches Islamic law



Have reforms impacted inheritance?

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- Exchange codification of inheritance rules, as part of Personal Status and Family Codes, in many Muslim countries
- Little change or addition to inheritance rules, relatively modest impact
- Focus on the position of 'adopted' children and orphaned grandchildren, justified on the basis of the Qu'ranic verse of bequest.
- Even limited adjustments remain in the subject of juristic debate



Thank you for your attention!

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