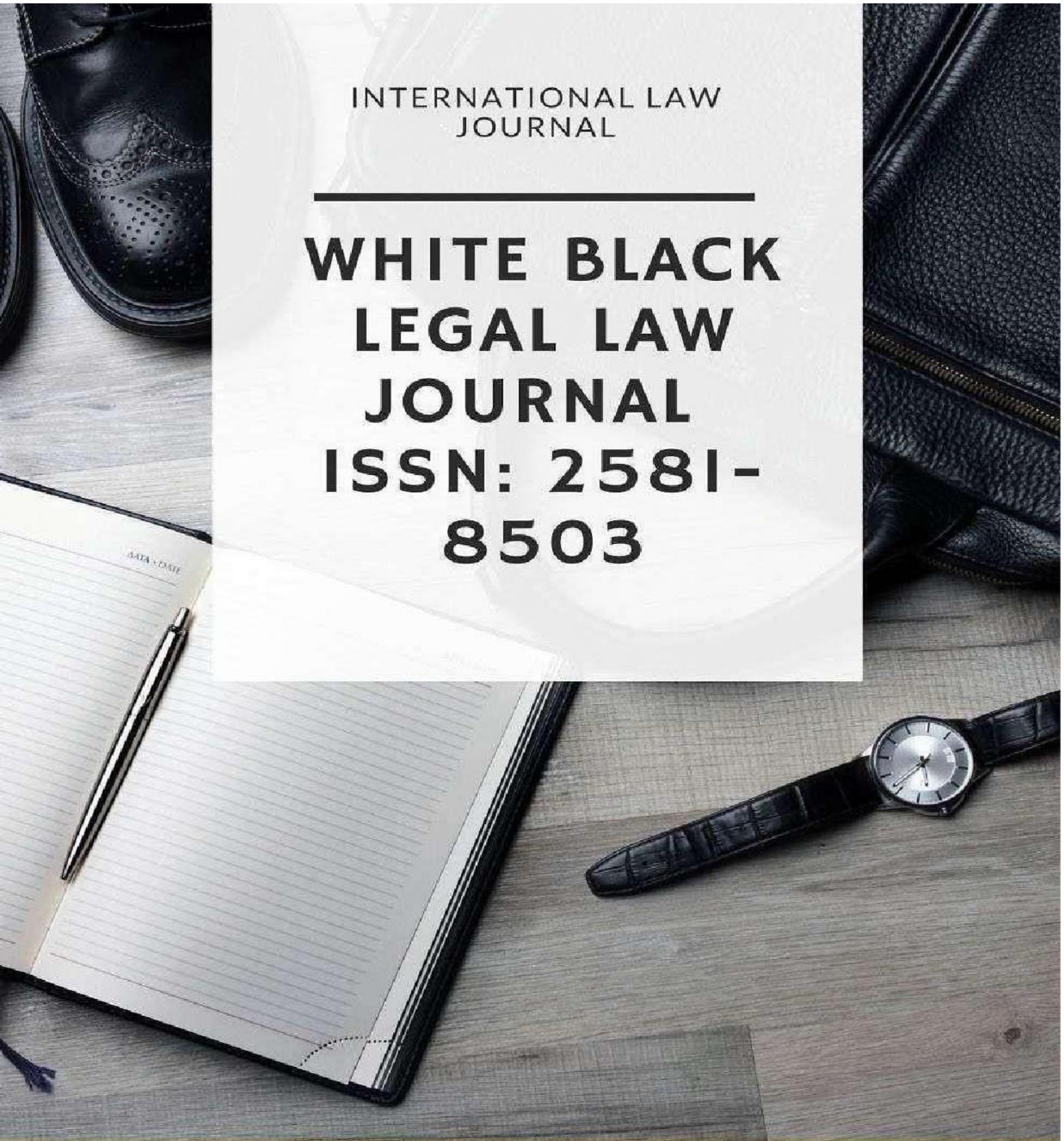




INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced, stored, transmitted, translated, or distributed in any form or by any means—whether electronic, mechanical, photocopying, recording, scanning, or otherwise—without the prior written permission of the Editor-in-Chief of *White Black Legal – The Law Journal*.

All copyrights in the articles published in this journal vest with *White Black Legal – The Law Journal*, unless otherwise expressly stated. Authors are solely responsible for the originality, authenticity, accuracy, and legality of the content submitted and published.

The views, opinions, interpretations, and conclusions expressed in the articles are exclusively those of the respective authors. They do not represent or reflect the views of the Editorial Board, Editors, Reviewers, Advisors, Publisher, or Management of *White Black Legal*.

While reasonable efforts are made to ensure academic quality and accuracy through editorial and peer-review processes, *White Black Legal* makes no representations or warranties, express or implied, regarding the completeness, accuracy, reliability, or suitability of the content published. The journal shall not be liable for any errors, omissions, inaccuracies, or consequences arising from the use, interpretation, or reliance upon the information contained in this publication.

The content published in this journal is intended solely for academic and informational purposes and shall not be construed as legal advice, professional advice, or legal opinion. *White Black Legal* expressly disclaims all liability for any loss, damage, claim, or legal consequence arising directly or indirectly from the use of any material published herein.

ABOUT WHITE BLACK LEGAL

White Black Legal – The Law Journal is an open-access, peer-reviewed, and refereed legal journal established to provide a scholarly platform for the examination and discussion of contemporary legal issues. The journal is dedicated to encouraging rigorous legal research, critical analysis, and informed academic discourse across diverse fields of law.

The journal invites contributions from law students, researchers, academicians, legal practitioners, and policy scholars. By facilitating engagement between emerging scholars and experienced legal professionals, *White Black Legal* seeks to bridge theoretical legal research with practical, institutional, and societal perspectives.

In a rapidly evolving social, economic, and technological environment, the journal endeavours to examine the changing role of law and its impact on governance, justice systems, and society. *White Black Legal* remains committed to academic integrity, ethical research practices, and the dissemination of accessible legal scholarship to a global readership.

AIM & SCOPE

The aim of *White Black Legal – The Law Journal* is to promote excellence in legal research and to provide a credible academic forum for the analysis, discussion, and advancement of contemporary legal issues. The journal encourages original, analytical, and well-researched contributions that add substantive value to legal scholarship.

The journal publishes scholarly works examining doctrinal, theoretical, empirical, and interdisciplinary perspectives of law. Submissions are welcomed from academicians, legal professionals, researchers, scholars, and students who demonstrate intellectual rigour, analytical clarity, and relevance to current legal and policy developments.

The scope of the journal includes, but is not limited to:

- Constitutional and Administrative Law
- Criminal Law and Criminal Justice
- Corporate, Commercial, and Business Laws
- Intellectual Property and Technology Law
- International Law and Human Rights
- Environmental and Sustainable Development Law
- Cyber Law, Artificial Intelligence, and Emerging Technologies
- Family Law, Labour Law, and Social Justice Studies

The journal accepts original research articles, case comments, legislative and policy analyses, book reviews, and interdisciplinary studies addressing legal issues at national and international levels. All submissions are subject to a rigorous double-blind peer-review process to ensure academic quality, originality, and relevance.

Through its publications, *White Black Legal – The Law Journal* seeks to foster critical legal thinking and contribute to the development of law as an instrument of justice, governance, and social progress, while expressly disclaiming responsibility for the application or misuse of published content.

BETWEEN REVELATION AND REALITY: MUSLIM WOMEN'S INHERITANCE RIGHTS

AUTHORED BY - BUSHRA SHAFEEQUE

Research Scholar

College of Law, IIMT University, Meerut

CO-AUTHOR - DR. MOHD. JUNED ANSARI

Assistant Professor

College of Law, IIMT University, Meerut

ABSTRACT

The Quran explains the rules of inheritance in Islam in a straightforward manner. These laws determine the manner of distribution of the estate of a deceased individual among his heirs. The Islamic inheritance rules are founded on justice and fairness to ensure the welfare and financial stability of the family members. The rules of inheritance are the same for both sexes but the shares for male and female heirs are slightly different. These variances differ from the state and circumstances of each instance. But in fact the legacy is more prejudiced and less justly distributed, and on each occasion the common victims are women. Women's status is enhanced and their full religious rights such as the right of inheritance as provided for in Sharia law are guaranteed.

Keywords: Muslim women, Inheritance, Sharia, Contemporary Islam, Quranic exegesis.

INTRODUCTION

In the early seventh century the world's population was dispersed over three continents, Asia, Europe and Africa. For instance, members of the same race or ethnicity just happened to live in the same large area. People of the Arab race live in the area known as the Arabian Peninsula, sometimes referred to simply as Arabia. Pre-Islamic Arabia is known as the Age of Jahiliyyah, or "Ignorance," due to the absence of virtues and good conduct, and the absence of knowledge or divine direction, since the revealing of Islam had yet to occur. Arabia was a place of instability, with several incursions and tribal wars over different issues.

In addition, there were other unfair practices targeted at vulnerable people in general. Women were the most affected by the time due to a variety of biases and grievances that were widespread. They were considered personal property and had no right to inherit. Islam tried to fight these injustices by giving rights to women and stressing the need of gender equality.¹ However, many of the behaviours against Muslim women in our own time are quite similar to the traditions that existed during the time of Jahiliyyah. The social organisation of the society in Islamic countries today is largely male dominated and long-standing customs have a major effect on connections between the sexes and prevent equitable relations.

This paper deals with the inheritance rights of Muslim women under Shari'a law which are often ignored due to the prevailing social norms. The subject emphasises that in Muslim countries, cultural traditions have a greater impact on the perception of gender relations than the influence of revealed law. It also discusses the implications of this for the interpretation of Islamic law regarding women's rights to inheritance.

WOMEN IN JAHILIYYAH TIME (PRE-ISLAMIC ARABIA)

Before the coming of Islam, the cultural matrix in Arabia was essentially a structure of status, dominance and discrimination.² The territory was ruled by a single authority: the powerful held power over the weak. The tribe was the highest authority in society, so tribal law ruled the tribe. Pre-Islamic Arabia had several customs that were far away from the ethical norms and human ideals. Female infanticide, the selling of vulnerable women and weak men into slavery, the raiding of trade caravans and tribes, the imprisonment of girls as concubines and usury were all profoundly sewn into the fabric of society. Women were deprived of their rights and were looked upon as personal property or more as belonging to the man with little or no say in their own destiny. Besides, women weren't entitled to receive from their deceased parents. Only the strong and united, the adult men who carried the message in the fight, could inherit. Male relatives of a deceased husband are customarily entitled to inherit from their deceased wives, and a woman was included in the inherited wealth. Girls were buried alive while they were young, sometimes even before birth, because they were considered a burden to the family and the community.³

¹ Natana J. DeLong-Bas, *Islam: A living faith*. (Anselm Academic, 2018), 55.

² John L. Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* 38 (2nd edn., Syracuse University Press, Syracuse, 2001).

³ Ghaleb Saeed & C. Gurusiddaiah, "Jahiliyah Arab Culture, Pre and Post Islam," *International Journal of Management & Social Science Research Review* 42 (2020).

WOMEN IN THE DAWN OF ISLAM

The advent of Islam has changed the whole human environment up to the current day. Islam modified some social practices and customs in the Arabian milieu, encouraged others, and destroyed others which were not consistent with the law which was revealed. The purpose of Islam as described by Prophet Muhammad was: "I was sent to uphold and complement ethical values." (Ahmad, 2/381, H / 8939). In addition, Islam envisaged new rules for living together in a setting where everyone would have equal rights and obligations. The literature does not reveal that the position of women in society was a major role in the rejection of Islam by the Quraysh tribe and others, yet the rejection of Islam was vehement and they waged war against it for a long time.

Islam provided women rights that were not widely honoured in Arabia when it began and that perhaps are still not fully enforced in some Muslim countries today.⁴ These rights included the right to own and inherit property, to pursue an education, to retain earnings or inheritance, to retain their maiden names after marriage, to secure dowries for themselves, to decline marriage proposals, to initiate requests for marriage, to manage their personal finances after marriage and to opt for divorce when they so desired.⁵

The paper compares the lives of Muslim women in post-Islamic Arabia with the lives of women in present-day Muslim societies.

WOMEN'S RIGHT TO INHERITANCE IN ISLAM

Inheritance is the transfer of the property of a deceased person to his living relatives, as well as other rights that are transferable.⁶ Tribal life in Arabia before Islam was a civilisation that wanted to preserve and its dominance in the region. Hence, inherited property was only for the more dominant adult males who could protect the tribe and defend their property.⁷

In Islam, no one is entitled to inheritance after the death of their guardians, regardless of their

⁴ Muhammad Faizul Haqueetal., "Women Rights to Inheritance in Muslim Family Law: An Analytical Study." *International Journal of Islamic Business & Management* 4, no. 1 (2020): 15.

⁵ Crocco, Pervez and Katz, "At the Crossroads," 110.

⁶ Muhammad Zubair et al., "The Laws of Inheritance in Islam," *Journal of Basic and Applied Scientific Research* 4, no. 8 (2014): 84.

⁷ John L. Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* 40 (2nd edn., Syracuse University Press, Syracuse, 2001).

gender and age. With the coming of Islam, tribal unity was replaced by the ummah, a brotherhood of believers which was to transcend all tribal and racial attachments. Shari'a law contains rules on inheritance that allow heirs to come into possession of the deceased's estate and to succeed to any transferable rights of the deceased. These rights include property rights and debt and compensation rights on behalf of the deceased.⁸

According to Islam widow inheritance is forbidden and Muslim women are respected in all aspects of life, including the right to inherit. The riches of the deceased was systematically denied to children and women, in a situation where inheritance was only for fighting adults. "This is a big step forward for women's lives."⁹

Hanafi law in Islam classifies heirs into seven different groups: Quranic heirs, agnatic heirs, uterine heirs, successors by contract, acknowledged kinsmen, universal legatees, and those who inherit by escheat. The following provide concise definitions of each category: The Quranic heirs or "sharers" have their shares expressly established in the Quran: 23. Two or more daughters inherit two-thirds; if there is only one daughter, her share is one-half. If the deceased had children, each parent receives one-sixth of the estate. If there are no children and the only heirs are the parents, the mother gets one third. If the deceased had brothers or sisters, the mother gets a sixth. (The distribution in all situations is) after payment of legacies which he may have bequeathed or debts.¹⁰

In the verse's direction, the first inheritance is for the women, and then, later, it is for the male heirs. In pre-Islamic times, property was inherited differently. In Islam, if the couple has children, wives are entitled to one-eighth of their deceased husband's estate. The proportion of childless widows is one quarter. Where polygamy is the case, these amounts will be shared among the wives.¹¹ The husband and wife are heirs by affinity which reduces the share of the agnatic heirs. If there are no children, the husband is entitled to one-fourth of the wife's assets. Otherwise, he is not subject to one-half. When the shares of the Quranic heirs have been

⁸ Muhammad Zubair et al., "The Laws of Inheritance in Islam," *Journal of Basic and Applied Scientific Research* 4, no. 8 (2014): 84.

⁹ Nasr Abu-Zayd, "The Status of Women between the Quran and Fiqh," In *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, ed. Ziba Mir-Hosseini et al. (New York: I.B. Tauris & Co Ltd, 2013), 162.

¹⁰ Surah Al-Nesa, verse 11.

¹¹ John L. Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* 38 (2nd edn., Syracuse University Press, Syracuse, 2001).

allocated, the balance is dispersed among the agnatic heirs, i.e. the male relatives on the male line. This class of heirs contains besides males, four kinds of female agnates, namely. daughter with son, son's daughter, complete sister and consanguine sister.

REFORMATION OF WOMEN'S INHERITANCE RIGHTS IN MODERN ISLAM

At the beginning of the twentieth century, Muslim innovation was expressed in many ways and directions, all of which aimed to reform what had been understood as classical or traditional religious thought. Historically, certain orthodox traditionalists have rejected the reformations of social life that had emerged from the interpretations of the Islamic texts and exegesis. They say that Islamic law is one of the unshakeable elements in Islam. They see secular Western concepts and paradigms as an external intrusion that has a substantial impact on such endeavours. Philosophers and thinkers such as Qasim Amin, Al-Tahir Al-Haddad and Allal Al-Fasi are indicative of attempts to revive Islamic ideas. Unfortunately, dealing with the matter of Islamic reformation at that time, especially in the field of gender equality, had heavy costs, including exile and accusations of apostasy.¹²

Since the 1970s, traditional Islamic discourses, family law and personal status issues have re-emerged considerably and on a broad scale in many Muslim countries and Islamic communities.

WOMEN'S INHERITANCE RIGHTS IN CONTEMPORARY ISLAM

As was seen in the preceding discussion Islam has bestowed upon women the right to get a fair and equal share of inheritance. Over time the dynamics shifted; there were numerous interpretations and adoptions of Islam in different civilisations. Islam has been influenced by cultural norms and traditions, many of them predating the religion itself.¹³ Moreover, the current transformations of family law are not consistently sustained. This led to the emergence of substantial disparities between the present requirements of the holy scriptures and the way they are performed. Moreover, Muslim women's roles in society have been increasingly marginalised in comparison to the time of the Prophet, and their rights have been curtailed in

¹² Ziba Mir-Hosseini, Kari Vogt, Lena Larsen & Christian Moe (eds.), *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition* 13 (I.B. Tauris, New York, 2013).

¹³ Albert Hourani, *A History of the Arab Peoples* 15 (Faber & Faber Ltd., London, 1991).

different ways, making them vulnerable to oppression and suppression. Before the discussion of illegal and discriminatory practices in the award of inheritance rights to women, the paper gives a comprehensive overview of the gender status in contemporary Muslim communities.

MALE-FEMALE STATUS IN MODERN ISLAM

Generally, modern Muslim states provide male dominated frameworks in which men have great influence over women inside the household. That is, women in Muslim communities are often faceless because of male domination. A woman has no right but the man's commands are the law to her. One reason is that the Quranic scripture is influenced and the Shari'a law is adjusted to consolidate men's rule over women, and therefore to perpetuate their hegemonic ideals of superiority and domination. These interpretations, mostly based on masculine perspectives, are gradually being incorporated into the social structure, so much so that they are seen as integral parts of religion. Inheritance in the Modern Islamic Practice As mentioned earlier, Islam has conferred the right to inheritance to women as one of the equal heirs with the male heirs in the family structure. However, it is crucial to remember that the divided shares are not necessarily equal since they depend on the socioeconomic status of the heirs. He is therefore taught to feel that he is under an obligation to maintain his female relatives, and for this reason he receives twice as much of the inheritance, for it is divided amongst those for whom he is responsible.¹⁴ Under Shari'a law, women are recognised as "Quranic heirs," with a defined share of inheritance given to them before it is distributed to their male relatives.¹⁵ Today, however, women in some Muslim countries do not always enjoy the full right. Usually these women are under the jurisdiction of the brothers and brothers-in-law who have substantial social and cultural power and are therefore able to bypass and use the right to inherit.¹⁶ Furthermore, women are often totally robbed of their legitimate inheritance, as in the case of some districts of Egypt.¹⁷ Other examples may be found in other nations where women are pressured by elder siblings to give up their inheritance portions to male siblings.

¹⁴ Albert Hourani, *A History of the Arab Peoples* 121 (Faber & Faber Ltd., London, 1991).

¹⁵ John L. Esposito & Natana J. DeLong-Bas, *Women in Muslim Family Law* 40 (2nd edn., Syracuse University Press, Syracuse, 2001).

¹⁶ Valentine M. Moghadam, "Patriarchy in Transition: Women and the Changing Family in the Middle East," *Journal of Comparative Family Studies* 35, no. 2 (2004): 142.

¹⁷ Sharafeldin, "Egyptian Women's Rights," 69.

CONCLUSION

Islam is not just a religion of rituals, it is a comprehensive code of conduct based on the principles of monotheism and equality. Many of these notions are universally accepted amongst Muslims, however the concept of gender equality is being challenged by both non-Muslims and Muslims who desire to follow secularism. This is a special case of the oppression of women in Islam, and in this regard the subject of women's inheritance has been discussed. This can be linked to the idea that the alleged discrimination against women that is seen in Muslim communities is due to the insufficient implementation of proportionate Islamic inheritance law.

In the religion of Islam, Muslim women are entitled to equal rights as men. Men are in a higher position over women, but females have rights which are at par with those of males who are above them.¹⁸ Without a doubt, the most essential institution that exists inside the Islamic faith is the nuclear family. The family's most important role should be to facilitate the integration of the new generations into the norms of society and to promote the formation of realistic expectations for social standing. Family also contributes to the creation of a stable environment, which helps to mitigate the psychological damage that can be caused by isolating jobs, educational settings, and various other pressures. In other words, the family's responsibility is to provide acceptance to all family members and to provide a nurturing atmosphere in which people may experience a sense of comfort and safety.

¹⁸ Surat al-Baqarah, verse 228.