**World Bulletin of Management and Law (WBML)**
**Available Online at:** https://www.scholarexpress.net
Volume-25, August -2023
**ISSN: 2749-3601**

# FEATURES OF ISLAMIC INHERITANCE LAW

**Khafiza Khamidovna Musaeva.**
Chilonzor district of Tashkent city Notary public in private practice

**Article history:**

**Received:** June 6th 2023
**Accepted:** July 4th 2023
**Published:** August 4th 2023

**Abstract:**

In this article, the authors explore the features of the regulation of inheritance relationships in Islamic law. The aim of the study is to determine the queue inheritance and differences in inheritance, bequest and the Shariah. Highlights the importance of Sharia law as an essential source of inheritance law for Muslims. Keywords: inheritance, Muslim law, wills, the heirs of the Shariah. Abstract: in this article, the authors explore the features of the regulation of inheritance relationships in Islamic law. The aim of the study is to determine the queue inheritance and differences in inheritance, bequest and the Shariah. Highlights the importance of Sharia law as an essential source of inheritance law for Muslims.

**Keywords:** inheritance, Muslim law, wills, the heirs, Shariah

The relevance of the topic under study is related to the possibility of creative use in the law of a secular state of the methods of substantiation of norms accepted in Islamic inheritance law, the structure of their presentation, the classification of relatives, as well as the large number of precedents contained in it. The projection of such norms on the inheritance law of a secular state creates new opportunities in lawmaking. The topic is especially relevant for regions where a significant number of Muslims live and there is a threat of radicalization of Islam. We also associate the importance of research in this area with the possibility of using the results obtained to find optimal solutions for integrating the Islamic cultural heritage into the political, legal and spiritual space of multi-confessional states. A striking example of the application of Islamic law in order to deradicalize Islam is the experience of modern Egypt [1] and the activities of the Malaysian Wasatiya Institute [2].

Islamic inheritance law is a well developed branch of fiqh (Muslim law) based on the centuries-old practice of peoples who profess Islam. Its main content was formed in the 8th–10th centuries. Changes in this content were associated with the expansion of the borders of the first Islamic state and the growth in the number of neophyte Muslims, whose pre-Islamic life was regulated by customary law. With the advent of Islam in the new lands, legal conflicts arose between fiqh and the old legal systems. A way was found to resolve them: if the norms of customary law did not contradict the Koran, then they were recognized as legitimate. Thus, according to the customary law of the Turkic peoples, the property of the deceased parents was inherited by the youngest son. With the inclusion of these peoples in the Islamic space, this norm was replaced by the Sharia norm: property began to be divided between relatives and persons indicated in the will. But among Turkic Muslims, inheritance is often carried out according to adat: the property is inherited by the youngest son, the rest of the children and other relatives take it for granted. The emerging legal phenomenon points to a new form of resolving conflicts between adat and fiqh: when the question of inheritance arises, a decision is made by reconciliation of the parties.

The basic principle of Islamic inheritance law is the observance of Koranic norms. In Islamic law, the Koran is considered the main source of law and its norms are recognized as a priori, not subject to change, mandatory prescriptions for Muslims [3, p. 43–47]. Since the authorship of the Qur'an is attributed to God, its content is considered in Islam as a divine instruction transmitted to people through the mediation of Muhammad. The justice and priority of the Koranic norms is justified by the fact that their author, God, has neither economic nor political interests that underlie secular norms, therefore, following the Koranic norms, according to fiqh, contributes to the maximum implementation of the principles of justice and humanism [4 , With. 101–111].

The Qur'an, as a source of Muslim inheritance law, contains laws of direct effect, set forth mainly in the fourth sura, dedicated to the rights of women. It introduces cardinal changes to the norms existing in the Arab adat, according to which a woman did not have the right to inherit the property of a relative. The Qur'an abolished this rule: female relatives were declared heirs who had their share in the inheritance: "Men own a share of what parents and close relatives left, and women own a share of what parents and close relatives left" [5, 4:47]. Another norm of direct action appeared, according to which a woman could not be an object of inheritance: "You are not allowed to inherit women against their will" [5, 4:19]. Prior to this, according to

**World Bulletin of Management and Law (WBML)**
**Available Online at:** https://www.scholarexpress.net
Volume-25, August -2023
**ISSN: 2749-3601**

the Arab adat, after the death of a husband, his eldest son or other relatives had the right to marry a widow or could marry her to another. But it does not follow from this that Islam equates a man to a woman in everything: "Men are the guardians of women, because Allah has given some of them an advantage over others and because they spend from their property" [5, 4:34]. In an earlier sura there is also a criminal procedural norm "two women are equal to one man", when it comes to testifying in court [5, 2:282]. Subsequently, this norm was also transferred to inheritance law: the share of a female heir was 0.5 of the share of a male heir.

The Qur'an contains norms concerning wills: a) the obligation to leave a will; b) prohibition to change the will by an outsider. Its change or complete prohibition is allowed only if the will contradicts the Koranic norms [5, 2:180–182].

In connection with the inclusion of women and persons not provided for in the will in the number of heirs, there was a significant increase in their number. This required determining the share of each in the inheritance. To establish priorities in inheritance, the heirs were divided into three categories according to the degree of kinship: 1) spouses, parents and children of the testator; 2) brothers and sisters, their ancestors; 3) uncles and aunts, their children. The share of each of the heirs is clearly defined in the Qur'an [5, 4:11–12, 176], which made groundless possible disputes between numerous relatives regarding inheritance.

Let us pay attention to one feature of Islamic inheritance law, which appeared as early as the 7th century: relatives not indicated in the will are also beneficiaries. The Qur'an contains a rule obliging before the division of property between relatives to fulfill the following conditions: a) distribute the debts of the deceased from the inherited money and property; b) to give part of the property to the person indicated by the deceased in the will [5, 4:11]. According to O. V. Naumenko, inheritance by will in fiqh is of secondary importance and contains a number of significant restrictions [6, p. 92]. True, in the division of property, the beneficiaries under the will receive their share earlier than those who are heirs under the law.

The further development of Islamic inheritance law is associated with the emergence of the second most important source of Islamic law - the Sunnah. It is a collection of hadiths (traditions) describing the deeds and words of Muhammad related to a particular topic. There are several Sunnahs, most Muslims prefer the collection compiled by al-Bukhari in the 9th century. Sunnah is considered in Islam as an interpretation of the Qur'an and an example of the implementation of its norms by Muhammad himself. The disadvantage of the communah as a source of law is the presence of unreliable hadiths in it. J. Burton writes about the fabrication of hadiths in order to "ensure universal recognition of the views and ideas born in small circles of scientists who were interested in theology, law and politics" [7]. Considering that the Sunnahs began to appear two centuries after the death of Muhammad, then there is doubt about the authenticity of those hadiths that are not directly based on the Qur'an. We believe that some norms have emerged as a result of a plausible interpretation of the words of Muhammad. For example, there is a rule written in the Sunnah, according to which a Muslim should not inherit his property from a non-Muslim and be the heir of the latter. At the same time, they refer to the hadith: "A Muslim does not inherit from an infidel and an infidel from a Muslim" [8, p. 16]. But there is a doubt that Muhammad said so: out of the 35 verses of the Koran, in which the norms of inheritance law are formulated, there is not a single one that regulates the act of transferring and receiving inheritance, in which representatives of Islam and other religions participate. Given that the theme of Muslim identity is pivotal for the Qur'an, there are great doubts about the authenticity of this hadeeth.

Nevertheless, we do not think that the Sunnah should be excluded from the list of sources of Islamic law. It contains many norms that develop the Qur'anic injunctions of inheritance, taking into account practical situations that, due to their huge number, simply could not be reflected in the Qur'an. For example, in the Koran there is no direct rule indicating the need to determine the legal capacity of the testator. However, such a norm is included in fiqh: "The testator must be able to dispose of his property, that is, be capable: reasonable, sexually mature, free and having the right to choose" [9, p. 417]. The Sunnah also defines such a norm of inheritance, according to which the funeral expenses are paid from the inherited money before they are divided among the recipients [10, p. 6]. It also introduces a rule related to a pledge: if the deceased took money as a pledge of a valuable thing, then from the inherited money this money is returned to the creditor, and the thing is included in the objects of inheritance [10, p. 6]. The Sunnah also supplements the Qur'anic norm on the need to pay the debt of the deceased. The addition is that the testator is obliged to indicate in the will who and how much he owes, as well as list those who owe him and how much [9, p. 416]. A hadith is also considered reliable, which prohibits the succession of the murderer if the murder was committed by him intentionally. The Prophet Muhammad said: "For the murderer, there is nothing from the hereditary share" [10, p. eleven]. Thanks to the Sunnah, illegitimate children were also deleted from the list of heirs. The relationship between an illegitimate child and his biological father is outside Islamic inheritance law.

**World Bulletin of Management and Law (WBML)**
**Available Online at:** https://www.scholarexpress.net
Volume-25, August -2023
**ISSN: 2749-3601**

An important source of Islamic inheritance law is the fatwa (fatwa). It is a legal norm that appeared as a result of the decision of an authorized Muslim body or person and regulates situations that are not taken into account in the Qur'an and Sunnah. As a rule, the topic of a fatwa is determined by the challenges of today. For example, is a child born out of wedlock the heir to the property of his biological father, if after the birth the marriage between his biological parents was nevertheless concluded? [11, p. 95–99]. How to evaluate euthanasia, property or life insurance, surrogacy, donation of body parts, blood and sperm from the position of inheritance law? Is it possible for a Muslim to inherit money accrued in the form of interest on the deposits of the deceased, if usury is prohibited in Islam and it is impossible to lend at interest, including to a bank? Many such issues need to be resolved and they should not contradict the canonical Islamic norms. The authors of fatwas must be highly professional specialists in the field of fiqh, have a perfect knowledge of the Arabic language, the Koran, sunnahs, madhhabs, the history of Islam, and possess high moral qualities.

In fact, the emergence of such a source of Muslim law as a fatwa is a continuation of the process of lawmaking based on ijtihad - the agreed opinion of the most authoritative legal theologians on any controversial issue. But ijtihad at one time led to problems in Islamic lawmaking due to the emergence of many schools of law, each of which declared only its own norms to be correct, therefore, among Islamic jurists, an opinion appeared that the "gates of ijtihad" are now closed and only those norms are legitimate. , which are based on the ijtihad de, which existed before the tenth century. This limitation is due to the fact that in the 7th–9th centuries. there were not so many different currents within Islam, the emergence of which caused great controversy in the Islamic world. It can be argued that modern Islamic lawmaking is entirely based on fatwas. For example, most recently in Malaysia, a fatwa was adopted, allowing medical intervention in order to influence the sex of the unborn child [12, p. 347-376]. In the same place, with the help of fatwas, changes are made to the rights of the testator, limiting his powers to determine the share in the inheritance [13, p. 1739–1777].

In our opinion, the fatwa is a kind of synthesis of ijtihad and ijma - another, similar to ijtihad, source of Islamic law (represents a unanimous decision adopted by authoritative Muslim scholars). However, as such, there is no unanimity in making all decisions in the Islamic world: the presence of various Muslim currents makes this impossible. And the fatwa, being the successor of ijtihad and ijma, inherited the same problems from them. If we take only Russian Islam, then there is no single center for preparing and issuing fatwas, since every muftiate has the right to issue fatwas. In Saudi Arabia, the Standing Committee on Fatwas has the power to issue fatwas, but these fatwas are not recognized as a source of law in Iran, and can be challenged in modern Egypt. In Europe, for more than 20 years, there has been a European council on fat you, which is focused on considering the problems of only European Muslims [14, p. 363-382].

Thus, Islamic inheritance law, based on the Koran, goes beyond the norms of direct action contained in it due to the need to solve numerous new problems that arise in society. It is unique in its coverage of issues relating to the right of inheritance. Thus, we were not able to find out whether there are separate inheritance rules for hermaphrodites in other legal systems. But since in fiqh the shares of inheritance for men and women are not the same, it becomes necessary to determine the sex of hermaphrodites. And such a norm exists in fiqh [15, p. 163–164]. In modern Malaysia, a fatwa has appeared that allows surgical intervention for voluntary reassignment of the sex, after which the intersex person can inherit as a man or as a woman [16, p. 75–89].

If we evaluate Islamic inheritance law as a whole, then this is the most difficult part of fiqh. As A. K. Khalifaeva writes, "the inheritance law of Muslims is exceptionally complex" [17, p. 185]. The smallest, but taking place in life, details about the categories of heirs and their shares in the inheritance are described, for example, in the already mentioned work of Idris Galyautdin "Inheritance" [10, p. 11–95]. And R.M. Nurgaleev takes up 114 pages to classify heirs, determine their share in the inheritance and recommendations for resolving disputes in this area [8, p. 13–127].

We believe that familiarity with Islamic inheritance law can be useful for the development of inheritance law in secular states. Let us note that the problem of the interaction of different legal systems within the framework of one state has always favorably affected the preservation of peace between believing citizens of different faiths. The history of Russia can serve as such an example, where until the 20th century. Muslims were allowed to divide the inheritance according to Sharia norms [18, p. 96–100]. For example, in 1826 the Senate issued a law according to which the division of inherited property among Muslims was allowed to be carried out according to the norms of Islamic inheritance law 1 . Attempts to integrate the elements of Muslim law into the legal space are being made in modern Great Britain, where the activity of more than 80 Sharia courts is allowed, considering disputes between Muslims in accordance with British law and fiqh norms. There, in March 2014, an official guide for lawyers on providing services to Muslims when drafting a will 2 appeared. L. Kh. Satushieva, in search of a new model of interaction between modern Russian law and the customary law of the peoples of the North Caucasus, suggests finding a consensus when "the law will strictly and rigorously

**World Bulletin of Management and Law (WBML)**
**Available Online at:** https://www.scholarexpress.net
Volume-25, August -2023
**ISSN: 2749-3601**

express not only the will of the legislator, but also the law created by people in the natural form of custom » [19, p. 57]. Unfortunately, the author does not consider the options for the interaction of these two normative systems. We believe that it will be fruitful to create and give the official status of councils of elders in each administrative-territorial unit of the North Caucasus. In particular, Prime Minister D. A. Medvedev spoke about this at a meeting of the Council for the Development of Civil Society Institutions in the North Caucasus 3.

**IN CONCLUSION**, we formulate a number of conclusions.

Islamic inheritance law declares justice and humanism, strict adherence to the Koranic prescriptions as the main principles.

The main source of inheritance law in Islam is the Koran. Inheritance norms from other sources - sunnahs, fatwas, ijtihad, ijma - are derived from the Koranic norms, which appeared to solve newly arisen inheritance circumstances that are not directly regulated by the Koran.

The peculiarities of Islamic inheritance law include: the absence of the testator's right to limit the number of heirs; the pre-emptive right of male heirs in inheritance (in the same way, the share and right of the husband in the inheritance is greater than that of the wife); the presence of the concept of "unworthy heirs", i.e. persons deprived of the right to inherit (non-Muslims, deliberate murderers of the testator, etc.), even if they are designated in the will as the beneficiaries.

**BIBLIOGRAPHY**

1. El Fegiery Moataz. Islamic Law and Human Rights: The Muslim Brotherhood in Egypt. Cambridge Scholars Publishing, 2016.
2. Mohammad Hashim Kamali. The Middle Path of Moderation in Islam. The Qur'anic Principle of Wasatiyyah. N.-Y., 2015.
3. Рахматуллин Р. Ю. Генетические источники мусульманского права // Научный вестник Омской академии МВД России. 2011. № 4(43).
4. Рахматуллин Р. Ю. Особенности мусульманского права // Вестник ВЭГУ. 2016. № 5(85).
5. Коран / пер. Э. Р. Кулиева. М., 2012.
6. Науменко О. В. Наследование в мусульманском праве // Вестник Южно-Уральского государственного университета. Серия: Право. 2010. № 18(194).
7. Бёртон Дж. Мусульманское предание: Введение в хадисоведение. СПб., 2006.
8. Нургалеев Р. М. Наследственное право в исламе: учебное пособие. Казань, 2009.
9. Облегченный фикх в свете Корана и Сунны. Махачкала, 2016.
10. Идрис Галяутдин. Наследство. Эр-Рияд, 2009.
11. Юсуф аль-Кардави. Современные фатвы. М., 2004.
12. Yilmaz I. An analytical overview on the girl's inheritance share based on gender in Islamic Law // Cumhuriyet Ilahiyat Dergisi. 2018. 22(1).
13. Yilmaz I. The restriction of testator's legal acts regarding depriving the inheritors of inheritance through last will in Islamic law // Cumhuriyet Ilahiyat Dergisi. 2017. 21(3).
14. Shavit U., Spengler F. Does the European Council for Fatwa and Research Matter? The Case of Muslims in Dortmund, Germany // Politics, Religion and Ideology. 2017. 18(4).
15. Мухаммад Ашик. Исламское право. Общедоступное изложение фикха. Казань, 1999.
16. Badrol M. A. B. M., Awang A. B. B., Haneef S. S. S., Zainuddin A. A. The gaps in fatwa on intersex corrective surgery: Some reflections in the context of Malaysia // Intellectual Discourse. 2018. 26(1).
17. Халифаева А. К. Мусульманское государственное право (имущественное и наследственное право) на территории Дагестана: проблемы становления и развития // Системные технологии. 2014. № 1(10).
18. Мухаметзарипов И. А. Применение норм мусульманского наследственного права в Российской империи в конце XVIII — начале XX века // Известия Российского государственного педагогического университета им. А. И. Герцена. 2010. № 123.
19. Сатушиева Л. Х. Механизм взаимодействия российского законодательства, мусульманского и обычного права на Северном Кавказе // Юридическая наука и практика: Вестник Нижегородской академии МВД России. 2010. № 1(12).