Implication of Islamic Law of Inheritance: Ultimate Solution to Family Conflict

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ABSTRACT

Bangladesh is a densely populated and Muslim majority country. Because of the scarcity of resources and lack of moral teaching and learning, people have a tendency to capture illegally the properties of other. Most of the Laws here are built up on the basis of Islamic Laws but the practices of those laws are very limited, because, most of the people are illiterate and they do not have proper knowledge regarding religion. Even the laws implementing agencies are not so much active to implement those. Therefore, the socio economic culture of our society is another restriction to consume the heir properties by the women. Beside these, because of lacking of proper religious/ethical education people are becoming selfish day by day. This tendency leads to occurring unrest in the society. In this study it is found that if we want to resolve such conflict and want to establish peaceful environment, we must have to learn the religious commends regarding every sector related our life and to implement the Islamic Laws In the society and the law of Inheritance as well.

Key Words: Inheritance, Heir-estate, heiress, Wasiyaat, Islamic Economics

1 STATEMENT OF THE PROBLEM

From the very beginning of the world it was found that all of the conflict arose due to three reasons; i) to have woman ii) to acquire wealth, and iii) to be the supreme of power. It is known that the first murder was happened in this world for having a woman (named Aqlima). It is said that money is the root of all evil. A lot of examples of conflict for power are present. Bangladesh is a densely populated country. People have unlimited wants but limited means. To satisfy their needs they try to earn money by any means. To do this, sometimes they involve themselves in some conflict, which results unrest in the society. In our society it is seen that there is a conflict among siblings, with parents and among other relatives in the family due to properties. In the villages of this subcontinent, the major unrests are being occurred only for distribution of and occupying the Land and other assets. To resolve these conflict and unrest, lot of rules and regulations, and Law implementing agencies are present in these countries. Also lots of books on Law of Inheritance are available. But the conflict is continuing and is increasing day by day in the society and within family as well. Now it is the core demand of every individual and the society as whole to find out an effective solution to this social problem. As a part of

this responsibility, a study was conducted in between January 2012 and March 2012. In this study the researcher tried to find out the reasons behind such unrest and conflict, and also tried to find out the solution to this social problem.

2 RATIONALE OF THE STUDY

The concept of inheritance is being practicing from the very beginning of the world. It is present in all the religions in the world but different in shapes and in practice. Bangladesh is a Muslim majority country and the Law of Inheritance is buildup on the basis of the Islamic Law of Inheritance. A lot of studies have been done on Family Laws in Islam. But no paper the researcher has found where the solution to the family conflict is provided. For this reason, no literature review is available here. You know that one of the purposes to build up a family is to create and maintain a peaceful environment where all people should be cooperative and kind hearted. But the real situation is different. At present time, people having a bad experience of conflict within family members, which creates unrest among family members and that influences people not to buildup family, and really it is alarming for us. Now it is not only a family problem, but a national problem also which can demolish the identity of this nation. The conflict among the family members is increasing day by day and the nation is trying to find out the reasons behind this problem and also to find out the solution to this problem. As a part of the nation, the researcher has selected this topic to study on and the topic sentence is "Implication of Islamic Law of Inheritance: Ultimate Solution to Family Conflict".

3 OBJECTIVES OF THE STUDY

The main objective of this study is to find out the ultimate solution to resolve the conflict in society. For accomplishing the main objective some specific objectives are chosen, such as:

1) To find out the implementation rate of Islamic Law of Inheritance.
2) To examine the knowledge of people regarding Islamic Law of Inheritance.
3) To find out the status of woman in the family.
4) To examine the social outlook regarding consuming the assets by woman from their parents.
5) To assess the conflict rate in family for inheritance.
6) To evaluate the effectiveness of Islamic Law of Inheritance to resolve family conflict.

4 METHODOLOGY

Data collection and Analysis

This study is mainly empirical research. Only primary data are used in this study. To collect the data, some questionnaires are used. One type of questionnaire is used for male and another type is for female respondents. To collect data, the researcher took help of interview through questionnaire, face to face interview and over telephone interview. Some statistical tools and techniques are used to analyze the collected data and to present the data and findings.

Sample size

The researcher selected only 100 people as sample size among the total population of the country. Out of the 100 people, 34 were selected from village, 33 from urban area and 33

from Dhaka city. The sample size was selected randomly and among those 100, 30 were graduates and post graduates, 30 were literate and the rest (40) were illiterate. Among them some were rich, some were poor and some were middle income people, and all of them are Muslims.

5 SOME BASIC CONCEPTS

Heir: Heir is a person entitled to property or rank as the legal successor of its former owner or, a person deriving or morally entitled to something, quality, etc. from a predecessor.

Heiress: Female heir, especially to wealth or high title.

Heirloom: A piece of personal property that has been in a family for several generations, or apiece of property received as part of inheritance. (Illustrated Oxford Dictionary, 2006, Pp 377)

Inheritance: Inheritance means something that is inherited, or, the act of inheriting. (Illustrated Oxford Dictionary, 2006, Pp 416)

According to the *Encyclopedia of Social Sciences*, "Inheritance is the entity of living persons into the possession of dead person's property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system. But the actual forms of heritance and the laws and custom governing it differ very greatly from country to country and from time to time. Changed ways of owning and using property will always bring with them in the long run alteration in the laws and practices relating to the inheritance of wealth." (Mannan, 1980, Pp 167)

Islamic Law of Inheritance: Legal heir, in the Islamic context, is a term which is properly applied only to those relatives upon whom property devolves, after the decease of its owner, by operation of law; and it is the rights of the legal heirs which are the keynote of the whole system of succession, for they are fundamentally indefeasible.

The supreme purpose of the Islamic System is material provision for surviving dependants and relatives, for the family group bound to the deceased by the mutual ties and responsibilities which stem from blood relationship.

The Islamic law of inheritance is, however, assumed to be found on certain passages of the Holy Qur'an, the inadequacy of which is indicative of the fact that the role of reasons is recognized in Islam. As Allah (SWT) says, "O you have believed, do not consume one another's wealth unjustly but only (in lawful) business by mutual consent. And do not kill yourselves or one another. Indeed, Allah is to you ever Merciful," (Al Qur'an, 4:29)

The properties of deceased person are generally distributed into two ways. One is **Will** and the other is **Inheritance**.

Will/*Wasyaat*- It is a well known term in the world. In most of the countries of the world for distribution of wealth the system 'will' is followed. And 'will' is an agreement of property to take effect after one's death. In western concept according to 'will', a testator may give all of his/her properties to anyone he/she desires. For being this practice a lot of people are depriving from their legal rights. But in Islam it is very rational and it always protects the rights of all people at the level best. As Allah (SWT) says in the Qur'an,

"Prescribed for you when death approaches (any) one of you if he leaves wealth [is that he should make] a bequest for the parents and near relatives according to what is acceptable – a duty upon the righteous." (Al Qur'an, 2:180)

After the death of the testator, it is the obligation of the live persons, who heard his/her *wasyaat*, to execute the bequest of that deceased person, exactly according to his/her will.

And the persons must not do any change in that 'will'. But if the live persons find any injustice in the 'will', they can bring some changes in it so that all the relevant people may get justice. As Allah (SWT) says,

"Then whoever alters it [i.e. the bequest] after he has heard it – the sin is only upon those who have altered it. Indeed, Allah is Hearing and Knowing.

But if one fears from the bequeathed [some] error or sin and corrects that which is between them [i.e. the concerned parties], there is no sin upon him. Indeed, Allah is Forgiving and Merciful." (Al Qur'an, 2:181, 182)

Forms of Will/Wasyaat: Basically two forms of will are being practiced. These are:
1. Written
2. Oral

It is said that if the will is in writing, it need not be signed; and if signed, it need not be attested; the only requisite is that the intention of the testator should be clear.

But, what will be for the person who is dumb, or a person who is unable to speak due to illness?

The solution is to make valid will through gestures. For instance, Abdur Rahim is a sick man. He is unable to speak from weakness. His wife, Mrs. Israt Jahan addresses him and says, "Do you giveaway one-third of your estate to your step brother, who is very poor?" If Abdur Rahim gives a clear nod with his head, the will is complete.

When be executed the will?

According to the Hanafi/Sunni Law, after the death of the bequeath person the will/*wasyaat* will be implemented. But according to the Shia Law, before or after the death of the bequeath person the will may be implemented. (Rashid, 1975, Pp 211)

How much can be bequeathed?

Shia Laws say that if several bequests are made order in which they are mentioned. The first bequest takes effect first and thereafter the subsequent bequests, unless the bequeathable third is exhausted. But according to Sunni Law, no Muslim can bequeath more than one-third of his estate. This one-third is calculated after deducting any debt, and funeral expenses. The limit of one-third is not laid down in the Qur'an, but is based on a Hadith narrated by Sa'd Ibn Abi Waqqas that is described in the book Mischat-ul-Masabih, XII, xxi.

If bequests are for religious or pious purposes but exceed the legal limit of one-third, then the priority would be determined in the following order:
a) bequest for *Faradj* (i.e. performance of *Hajj)*;
b) bequest *forwajibat* (i.e. charity on the day of *Eid-ul-Fitr*); and
c) bequest for *nawafil* (i.e. building a bridge).

Bequest of the first class takes precedence over that of second; and bequest of the second class takes precedence over that of the third. (Rashid, 1975, Pp 212)

For whom the bequest can be made?
i)   Any person who is capable of holding property, whether male or female, Muslim or non-Muslim, may validly avail the benefit of a bequest.
ii)   Unborn person cannot be a legatee. Shia Law recognizes a legatee born within 10 months from the date of will.
iii) Heirs can not be the legatees, that is, no bequest to heirs, who are entitled to inherit. It is essential that the heir must be in existence at the time of stator's death.

iv)   Apostates cannot, in any case, be legatees. A bequest to non-Muslims, however, is valid according to all schools except Shafii School. But in Indian context, this rule of Shafii Law does not apply owing to Act XXI of 1850.

v)   Manslayer is one who kills another person, from whom the intends to take a legacy. Hanafi/Sunni Law prohibits him to take any interest in the bequest. In Shia Law, however, the more logical view is taken and only intentional homicide leads to exclusion.

vi)   Institutions, whether religious or charitable, can be valid legatees.

Inheritance

Islamic Law of Inheritance is implemented under the Sunni Law of Inheritance and Shia Law of Inheritance with a little bit differences keeping the basic principles same.

Sunni Law of Inheritance: Hanafi/Sunni jurists divide heirs into seven classes, the three principal. These classes are:

1) **Principal classes**:   i) Qur'anic Heirs (sharers)
          ii) Agnatic Heirs (residuaries)
          iii) Uterine Heirs (distant kindred)

2) **Subsidiary classes**:   iv) The successor by contract
          v) The acknowledged kinsman
          vi) The sole legatee
          vii) The state, by Escheat.

i) Qur'anic Heirs – The persons who are mentioned in the Qur'an as the heirs/heiress are known as Qur'anic heirs. In the Qur'an Allah (SWT) says;

"For men is a share of what the parents and close relatives leave, and for women is a share of what the parents and close relatives leave, be it little or much – an obligatory share." (Al Qur'an, 4:7)

"Allah instructs you concerning your children [i.e. their portions of inheritance]: for the male, what is equal to the share of two females; But if there are [only] daughters, two or more, for them two thirds of one's estate; And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no child and the parents [alone] inherit from him, then for his mother is one third, And if he had brothers [and/sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children- you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever knowing and Wise." (Al Qur'an, 4: 11)

"And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for them [i.e. the wives] is one forth if you have no child. But if you leave a child, then for them is an eight of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendant nor descendant but has a brother or a sister, then each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. This is an ordinance from Allah, and Allah is knowing and forbearing." (Al Qur'an, 4:12)

Here the heirs are sons, daughters, father, mother, sisters, brothers, wives, and husband.

ii) Agnatic Heirs (Residuaries) – The heirs very next to the Qura'nic heirs, for instant, sons and daughters of dead sons/daughters, sons and daughters of dead brothers/sisters.

iii) Uterine Heirs (Distant Kindred) – If there is neither sharer nor residuary, the estate will be distributed among Distant Kindred. The Distant Kindred will inherit with a sharer when the sharer is the wife or husband of the deceased.

iv) Successor by Contract – Successor by contract is a person where right of inheritance is based on a contract with the deceased in consideration of an understanding given by him to pay any fine or ransom.

v) Acknowledged Kinsman – Acknowledged Kinsman is a person of unknown descent in where favor the deceased has made an acknowledgement of kinship, not through himself but through another. Consequently, a man may acknowledge another as his brother (descendant of father) or uncle (descendant of grandfather) but not as his son.

vi) Universal Legatee – In the absence of all of the above mentioned classes a person is entitled to bequeath the whole of his estate to any person, who is called the universal legatee.

vii) The State, by Escheat – In the absence of the above mentioned heirs and a will, the whole of an estate of a deceased would escheat to the Government. (Rashid, 1975, Pp 242, 243)

Shia Law of Inheritance: According to the Shia Law there are only two groups of heirs. They are:

1)   Heirs by Consanguinity (blood relation); and
2)   Heirs by Marriage (husband and wife).

Heirs by consanguinity are further divided into three classes:

Class I – i) Parents

       ii) Children and lined descendants

Class II – i) Grand parents

        ii) Brothers and sisters and their descendants

Class III – i) Paternal, and

        ii) Maternal uncles and aunts of the deceased, and of his parents and grand parents, and their descendants.

Class I excludes Class II, and Class II excludes Class III. But the heirs of each class, whether they are of sub-class (i) or (ii), inherit together, the nearer in degree excluding more remote.

6   ANALYSIS AND FINDINGS

Table – 1.1: The collected data are analyzed and then presented in the following ways

Respondents	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated*	Literate	Illiterate		
Male	17	20	13	15	25	10	50	**50%**
Female	17	13	20	15	25	10	50	**50%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	**34%**	**33%**	**33%**	**30%**	**50%**	**20%**	**100%**	

*Graduates and post graduates

It is evident from table-1.1 that out of total 100 respondents all of whom are Muslims, 34% are from village, 33% from urban area, and 33% from Dhaka city. Among the respondents 30% were educated, 50% were literate, and rests 20% were illiterate. It is also found here that among the respondents 50% were male and the rest 50% were female.

Table-1.2: Properties Distributed According to Islamic Law of Inheritance

Islamic Law of Inheritance	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated	Literate	Illiterate		
Implemented	28 (82%)	30 (91%)	20 (60%)	25 (83%)	40 (80%)	13 (65%)	78	**78%**
Not Implemented	06 (18%)	03 (09%)	13 (40%)	05 (17%)	10 (20%)	07 (35%)	22	**22%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	100%	100%	100%	100%	100%	100%	100%	

The above table shows that among 100 respondent families, 78% families distributed their properties according to the rules of Islamic Law of Inheritance. Among the respondent families, 82% of villagers, 91% of urban area people, and 60% of Dhaka city people distributed their properties on the basis of Islamic Law of Inheritance. Again, 83% of educated people, 80% of literate people, and 65% of illiterate people are practicing this law.

Table- 1.3: Knowledge of People Regarding Islamic Law of Inheritance

Respondents	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated	Literate	Illiterate		
Have Knowledge	25 (73%)	23 (70%)	20 (60%)	23 (76%)	35 (70%)	10 (50%)	68	**68%**
Don't Have Knowledge	09 (27%)	10 (30)	13 (40%)	07 (34%)	15 (30%)	10 (50%)	32	**32%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	100%	100%	100%	100%	100%	100%	100%	

It is evident from the Table-1.3 that only 68% of the 100 respondents claimed that they have knowledge about Islamic Law of Inheritance and 32% told that they didn't have the knowledge. It is also found that the percentages of the villagers are higher who have knowledge about Islamic Law of Inheritance, and among the educated people this percentage is also higher. It is mentionable that among those 68% people, most of them have very little knowledge regarding inheritance.

Table-1.4: Social Outlook Regarding Consuming Heir-estate by the Heiress

Respondents	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated	Literate	Illiterate		
Good	07 (20%)	05 (15%)	10 (30%)	15 (50%)	05 (10%)	02 (10%)	22	**22%**
Bad	20 (60%)	12 (36%)	10 (30%)	05 (17%)	30 (60%)	07 (35%)	42	**42%**
Nothing Wrong	07 (20%)	16 (48%)	13 (40%)	10 (33%)	15 (30%)	11 (55%)	36	**36%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	

From the Table-1.4 it is evident that among the 100 respondents only 22% think that it is the right of woman to consume the heir-estate and it is well accepted, 42% think that it is very bad and they should not consume that asset, but the rest 36% people think that there is nothing wrong to be consumed the properties by the heiress. They believe that if the heiresses want,

they can consume; and if they want, they can donate their heir-estate. It is also evident from the above table that among the villagers and literate people the rate of thinking that it is very bad to be consumed by female is very bad and it should not be. But it is hopeful for us that with the increasing of education level their good concepts are increasing.

Table-1.5: Conflict in Families for Inheritance

Respondents	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated	Literate	Illiterate		
Conflict Present	18 (53%)	16 (48%)	18 (54%)	15 (50%)	25 (50%)	12 (60%)	52	**52%**
No Conflict	16 (47%)	17 (52%)	15 (46%)	15 (50%)	25 (50%)	8 (40%)	48	**48%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	

From the Table-1.5 it is proved that among the respondent 100 families in 52% families there is conflict to distribute the heir-estate; and in 48% families there is no conflict. The rate of conflict within illiterate families is higher.

Table-1.6: Possibility to Resolve Family Conflict by Implementing Islamic Law of Inheritance

Respondents	Location			Education			Total	%
	Village	Urban Area	Dhaka City	Educated	Literate	Illiterate		
Possible	34 100%	33 100%	30 91%	28 (93%)	50 (100%)	19 (95%)	97	**97%**
Not Possible	00 0%	00 0%	03 9%	02 (7%)	00 0%	01 (5%)	03	**3%**
Total	34	33	33	30	50	20	100	**100%**
Percentage	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	**100%**	

From the Table-1.6 it is evident that among 100 respondents 97% people believe that if it is possible to implement the Islamic Law to distribute the properties, the conflict among the family members can be resolved. Only 3% said that only to implement the Islamic Law of Inheritance is not sufficient to resolve the family conflict. They believe that, with this the people should be free from selfishness to resolve such conflict.

From above analysis the following findings have been found:
1. Since, the Inheritance Law of Bangladesh is built up on the basis of Islamic Law of Inheritance, in most of the families (78%) the heir-estates are distributed according to the Islamic Law of Inheritance.
2. In our country, majority people (68%) have enough knowledge about law of inheritance. But it is painful that though it is a Muslim majority (85%) country, a large portion of the people (32%) doesn't have any knowledge regarding Islamic Law of Inheritance. And, this is one of the main causes to arise conflict within the families.
3. The society does not take it as a good did that the heir-estate will be consumed by the heiress. At the time of distribution of the heir-estate, they are allotting it to the name of heiress, but they think that the heiress can't consume it; they (heiress) should donate their parts to their brother's (sons of brothers) as a gift. And usually they (heiress) are doing this.
4. In the society most of the conflicts are arisen only for distributing the heir-estate among the heirs.

5. Most of the people (97%) of Bangladesh believe that if it is possible to ensure 100% implementation of Islamic Law of Inheritance, as well as other Laws of Islam in the society, it will be possible to stable a conflict free and peaceful society in this world.

7 RECOMMENDATIONS

From the study it is seen that a large portion of our total population don't have enough knowledge regarding Islamic rules and regulations. This is one of the main causes for creating unrest in the society. On the basis of the above findings of the study conducted, the researcher may recommend the followings:

1. Religion should be taught everywhere in the society.
2. Religion should be included in the curriculum at all levels of education.
3. To make the society peaceful, human beings should be pious.
4. To avoid family conflict, everybody should make *wasiyaat*.
5. Everybody should have proper knowledge regarding Law of inheritance.
6. Law of Inheritance should be properly implemented in the families to remove conflict from the society.
7. The society should change the concept positively regarding consuming the heir-estate by the heiress.
8. To establish a peaceful society, there is no alternative but teaching the morality with professional educations in the institutions.

By following and implementing the above recommendations and suggestions, it would be possible for us to establish a peaceful and conflict free society in this world.

8 CONCLUSION

At the concluding remarks it can be said that by proper implementing the Islamic Law of Inheritance as well as the other Laws of Islam, it is possible for us to make sure peaceful environment in this world and can ensure peace in the life hereafter. It can also be told here that the findings of this study are not absolutely right and universe. With the change of sample size and with time and space variation, the result may vary. But, it will be treated as a matter of thinking for them who want to do further research on this topic.

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Asian Journal of Applied Science and Technology
(Peer reviewed international journal)
ISSN 2305-915X

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