

**Women's Rights to Inheritance  
Realities and Proposed Policies  
2012**

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## Preface

Heavenly doctrines acknowledge the women's right to inheritance; the same right has been stipulated by international agreements and humanitarian conventions. According to the Koran, *"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."* Surat Al Nisa'a (Chapter 4 verse 7). Islamic jurist Al Qurtubi says in *The Tafsir* [interpretation of the Koran] of Al Qurtubi– 3/278-279 [about this verse], "This verse [verse 7 of Chapter 4 of the Koran] was revealed [to Prophet Mohammad] when a man named Auos Ibin Thabit Al Ansari died leaving behind a widow named Om Kaha and three daughters. The deceased man's cousins, Suwaid and Ajrafa, took all the money the deceased left behind without giving anything to his widow or his daughters. Their action was based on pre-Islam tradition where women and children were not given any inheritance. Male children, according to pre-Islam traditions, were only given inheritance if they were old enough to fight on horseback, fight with spears and swords, and earn spoils. Om Kaha told Prophet Mohammad about what had happened. The Prophet sent for the cousins. They said her children do not earn living, ride horses, or fight enemies. The Prophet said, *"Go now, I will wait for God's decision in this matter."* The above verse (Surat Al Nisa'a (Chapter 4 verse 7)) was revealed in response to the action of the two cousins and to prove that their action was based on ignorance. The Prophet sent for Suwaid and Ajrafa and told them not to touch the deceased man's money since God had ordained that the daughters had share in it. The Prophet did not say how much was the share until the following verse was revealed, *"God directs you as regards your children's [inheritance]: To the male, a portion equal to that of two females: If only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the [only] heirs, the mother has a third; if the deceased left brothers [or sisters] the mother has a sixth. The distribution in all cases shall be after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-knowing, Al-wise. (11). In what your wives leave, your share is a half, if they leave no children; but if they leave children, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no children; but if you leave children, they get one eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused [to any one]. Thus it is ordained by God; and God is All-knowing, Most Forbearing (12). Those are limits set by God: those who obey God and His Messenger will be admitted to gardens with rivers flowing beneath; to abide therein [forever] and that will be the supreme achievement (13)." Surat Al Nisa'a (Chapter 4 verses 11, 12, 13).*

The Prophet sent for Suwaid and Ajrafa and said, *"Give Om Kaha one eighth of the inheritance and give the daughters two thirds and keep the rest."*

Al Tarmathi, Abu Dawood, Ibin Maja, and Al Dar Qutni said that the aforementioned verses of the Koran were revealed when the wife of Sa'd Ibin Rabi'a said to the Prophet, *"Sa'd has died leaving two daughters and a brother. The brother took what Sa'd has left behind."* The Prophet did not say anything. Then she said again, *"Sa'd's daughters?"* The Prophet said, *"Call Sa'd's*

*brother.*” The prophet said to him when he came, “*Give the daughters two thirds, the widow one eighth, and keep the rest*<sup>1</sup>.”

In any case, the verses of the Koran on inheritance were revealed to treat women justly, show their shares in the inheritance, and to protect such shares from any denial or violation. God says in the Koran (Chapter 4, verse 7) about the inheritance “*an obligatory share.*” Hence, no one may change what has been ordained in the Koran. To emphasize this, God says in the Koran, “*Those are limits set by God: those who obey God and His Messenger will be admitted to gardens with rivers flowing beneath; to abide therein [forever] and that will be the supreme achievement.* Surat Al Nisa’a (Chapter 4 verse 13).

Those who transgress the limits set forth by God shall “*But those who disobey God and His Messenger and transgress His limits will be admitted to a fire, to abide therein: And they shall have a humiliating punishment.*” Surat Al Nisa’a (Chapter 4 verse 14). Also, “*Those who unjustly eat up the property of orphans, eat up a Fire into their own bodies: They will soon be enduring a blazing fire*” Surat Al Nisa’a (Chapter 4 verse 10).

According to Ibin Yazeed, the verse was revealed against those who denied women’s and children’s inheritance and kept women’s inheritance under men’s control forcing women to give it up or sell it. This is not permissible since the Koran stipulates in Surat Al Nisa’a (Chapter 4 verse 29) “*You who believe: Eat not up your property among yourselves in vanities, but let there be amongst you trade by mutual goodwill.*”

A’asha (Prophet Mohammad’s wife) said, the Prophet said, “*Those who confiscate unjustly a hand measurement of land shall have that and seven folds around their neck,*” *Sahih Al Bukhari*, Hadith number 3063 and *Sahih Muslim*, Hadith number 4093.

Shari’a obligations are directed to men and women equally such as the following verse, “*You who believe: Fasting is prescribed to you as it was prescribed to those before you, that you may [learn] self-restraint.*” Surat Al Baqara (Chapter 2 verse 183). The verses of the Koran address men as well as women. The Koran also states, “*Mankind: We created you, male and a female, and made you into nations and tribes, that you may know each other, verily the most honored of you in the sight of God is the most righteous of you. And God has full knowledge and is well acquainted [with all things].*” Surat Al Hujurat (Chapter 49 verse 13). There is no difference between men and women and “*the most honored ... in the sight of God is the most righteous...*” there is no regard to richness or poverty, kinship, sex, or color of skin. All are treated equally by God’s measure of righteousness.

Women have right and share in inheritance as ordained by God and explained in the Koran and in the *Sunnah* (Practice of Prophet Mohammad). Those who deny women their right to inheritance are transgressors of the limits set by God and shall be punished by God. A father may not deprive any of his children of their inheritance; also, brothers may not deprive their sisters of their shares in an inheritance.

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<sup>1</sup> Al Tarmathi, *the Book of Al Fara’id* (Hadiths number 2891 and 2892); Abu Dawood, *the Book of Al Fara’id* (Hadith number 2092); Ibin Maja, *Al Fara’id* (Hadith number 2720); and others, [*fara’id* means compulsory acts of worship]

Sheikh Mustafa Al Zarqa said, “If a father divides his money and register it in the name of his sons and gave nothing to his daughters, he shall be considered a transgressor. The brothers must relieve their father of his wrongdoing by giving their sisters their shares. However, the sisters may not demand from their brothers what their father had given to his sons and registered in their names before he died,” from the *Fatawi* [religious opinions] of the Sheikh, Mustafa Al Zarqa pp. 322 and 136. Dr. Al Qardawi says, “It is not permissible for a father to deprive any of his children of the inheritance. He may not deprive his daughters; or his children from a wife that he didn’t like, of an inheritance. A relative may not deny another relative from an inheritance for a made-up justification. Inheritance is a discipline set by an all-knowing and Just God who gave everyone their rights and ordered people not to transgress His limits. Those who violate the inheritance discipline shall be considered transgressors, “*Thus does God make clear to you (His law), lest you err. And God has knowledge of all things*” Surat Al Nisa’a (Chapter 4 verse 176) and they shall “... *be admitted to a Fire, to abide therein: And they shall have a humiliating punishment*” Surat Al Nisa’a (Chapter 4 verse 14) *The Book in Halal and Haram*, pp. 203.

International and humanitarian agreements, including the social and legal agreements, safeguard the rights of the women. They establish legal frameworks and legitimate controls to protect such rights, which mostly ensure justice and equality in rights and duties between men and women and eliminate all forms of discrimination against women.

The Universal Declaration of Human Rights, issued in 1948, contains a number of economic rights as general principles. These rights include the right to ownership; therefore, **Article 17 of the Universal Declaration of Human Rights demands equal rights between men and women; it stipulates that**

- 1. Everyone has the right to own property alone as well as in association with others.**
- 2. No one shall be arbitrarily deprived of his property.**

The International Covenant on Civil and Political Rights, issued in 1966, contains a number of economic and social rights such as the right to freedom of association with others and the right to form and join trade unions. Moreover, Article 1 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) dwells on the economic and social rights and Article 11 of the same Convention dwells on the right to work and the right to equal remuneration as well as the right to social security. The International Covenant on Economic, Social, and Cultural Rights stipulates that member states undertake to ensure equality between men and women in the right to enjoy all economic, social, and cultural rights set forth in the Covenant<sup>2</sup>.

Article 13 of the Convention on the Elimination of all Forms of Discrimination against Women stipulates that, “States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:

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<sup>2</sup> Article 3 of the International Covenant on Economic, Social, and Cultural Rights stipulates that “the States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.”

- (a) The right to family benefits;
- (b) The right to bank loans, mortgages and other forms of financial credit.”

Paragraph (h) of Article 16 of the same Convention stipulates, “The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property.”

On the national level, the Constitution of the Hashemite Kingdom of Jordan of 1952 guarantees the rights and duties of the individuals and asserts the safeguarding of personal liberty<sup>3</sup> and the right to social equality (due to customs and traditions) of individuals before the law without any discrimination<sup>4</sup>. Among the rights guaranteed by the Constitution are the economic and social rights, including ensuring a state of tranquility and equal opportunities to all Jordanians<sup>5</sup>. The Constitution of Jordan prohibits expropriation except for public utility and in consideration of a just compensation<sup>6</sup>. The constitution also prohibits confiscation of movable or immovable property and forcible imposing of loans except in accordance with the Law<sup>7</sup> and guarantees individuals’ right to work, protection of the rights of workers, a labor law that defines the number of working hours, holidays, compensations, and conditions of women and juvenile work<sup>8</sup>.

However, in practice, despite all conventions, covenants, and laws, women in Jordan do not enjoy their rights to ownership and inheritance due to continuous inequality in economic rights,

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<sup>3</sup> Article 7 of the Constitution of the Hashemite Kingdom of Jordan stipulates, “Personal freedom shall be guaranteed.”

<sup>4</sup> Paragraph 1 of Article 6 of the same Constitution stipulates that “(i) Jordanians shall be equal before the Law. There shall be no discrimination between them as regards to their rights and duties, on grounds of race, language or religion.”

<sup>5</sup> Paragraph 2 of Article 6 of the same Constitution stipulates that “(ii) The Government shall ensure work and education within the limits of its possibilities, and shall ensure a state of tranquility and equal opportunities to all Jordanians.”

<sup>6</sup> Article 11 of the Constitution of Jordan stipulates “No property of any person shall be expropriated except for purposes of public utility and in consideration of a just compensation, as may be prescribed by Law.”

<sup>7</sup> Article 12 of the Constitution of Jordan instructs that “No loans shall be forcibly imposed and no property, movable or immovable, shall be confiscated, except in accordance with the Law.”

<sup>8</sup> Article 23 of the Constitution of Jordan stipulates (i) it is the right of every citizen to work, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its performance level. (ii) The State shall protect labor and enact legislation to this effect based on the following principles:

- (a) Every workman shall receive wages commensurate with the quantity and quality of his work.
- (b) The number of hours of work per week shall be limited. Workers shall be given weekly and annual days of paid rest.
- (c) Special compensation shall be given to workers supporting families and on dismissal, illness, old-age and emergencies arising out of the nature of their work.
- (d) Special conditions shall be made for the employment of women and juveniles.
- (e) Factories and workshops shall be subject to health rules.
- (f) Free Trade unions shall be formed within the limits of law.

which sustains women's economic subordination and dependency and makes them more vulnerable to violence and exploitation and other violations.

The report discusses the right to inheritance, which is defined as a person's entitlement to something that is bestowed upon him/her by another person after the demise of such person. The discussion of these rights shall be from the point of view of the extent to which women in Jordan enjoy such rights. The discussion will dwell on the provisions of the heavenly doctrines in this regard (women enjoying the rights to inheritance) with focus on the provisions of the Islamic *Shari'a* (religious doctrine) since Islam is the religion of the state and the percentage of Muslims in the population is 95%. Moreover, the inheritance system that is enforced in Jordan on Muslims and non-Muslims is the Islamic inheritance system. The report also discusses the Jordanian legislations that deal with the right to inheritance. These legislations will be analyzed through focusing on a number of relevant issues and legal cases in order to show where women in Jordan stand with respect to these rights and specify the obstacles they (the women in Jordan) face in achieving, maintaining, and disposal of such rights. The report will propose plans and policies that would ensure empowerment of women to achieve their rights to inheritance without discrimination between them and men. The demand to put into effect the economic rights of women is not only to fulfill their direct material needs and fulfill their rights but also to restructure unequal power relations between men and women since there is fundamental relationship between violence and discrimination against women. The unequal relations between men and women also provide grounds to forcefully or deceitfully deny or deprive women of their rights to inheritance as well as other rights in different areas or through exerting pressure leading to deprivation or denial of such rights.

The report also debates a number of issues including the provisions concerning women's rights to inheritance in Islam, the legal framework of the women's rights to inheritance in Jordan, the guarantees of these rights, the reality of the women's right to inheritance in Jordan. The report also contains findings and recommendations.

**Inheritance:** It is a divisible right to be allocated to the rightful owners, based on kinship or marital or loyalty relationships, after the death of its original owner.

## Components of inheritance

**Decedent:** A deceased person who leaves heirs behind

**Heir:** The decedent's relatives

**Inheritance:** The money (movable and immovable property) left behind by a decedent

## Justifications of inheritance

- **Kinship:** Any relationship resulting from birth. Kinship heirs include parents and grandparents. To prove their right to heirs, God says in the Koran, "*God directs you as regards your children's [inheritance]: To the male, a portion equal to that of two females: If only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the*



*deceased left children; if no children, and the parents are the [only] heirs, the mother has a third; if the deceased left brothers [or sisters] the mother has a sixth. The distribution in all cases shall be after the payment of legacies and debts. You know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by God; and God is All-knowing, Al-wise.” Surat Al Nisa’a (Chapter 4 verse 11).*

Kinship also includes the “branches” or the children and the grandchildren. The grandchildren from the daughters’ side do not inherit; not as far’id or residuaries. The aforementioned verse is a proof of their entitlement to inheritance.

**Collateral relatives:** Including brothers, sisters, nephews and nieces, uncles, and cousins. The proof of their inheritance is the following verse, *“They ask you for a legal decision. Say: God directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no children, her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are brothers and sisters, (they share), the male having twice the share of the female. Thus does God make clear to you (His law), lest you err. And God has knowledge of all things.”* Surat Al Nisa’a (Chapter 4 verse 176). The Prophet said, *“Give the fara’id [those who inherit as ordained by God] and the rest go to the most deserving male”* Sahih Al Bukhari and Sahih Muslim.

**Relatives (arham):** Uncles, aunts, and nephews and nieces.

They are identified by the Provisional Jordanian Personal Status Law number 36 of 2010 and showed how they inherit. The following article explains that:

Article 301: Relatives only inherit among residuaries and fara’id. Relatives are four types as follows:

- a. Type one: Daughters’ children and the children of the son’s daughters.
- b. Type two: Grandparents and descendants
- c. Type three:
  1. Nephews and nieces from the mother side
  2. Nephews and nieces from the sister side
  3. Nieces
  4. Great nieces and nephews
- d. Type four: Includes six categories such as:
  1. The uncles and aunts of the decedent
  2. The children of those stated in Type one and the cousins of the decedent
  3. The uncles and aunts of the decedent’s father
  4. The children of those stated in the abovementioned paragraph and the cousins of the decedent
  5. The uncles and aunts of the decedent’s grandfather
  6. The children of those stated in 5 and the cousins of the decedentMales get twice as much as females get in this case.

- **Marriage:** It means sound marriage contract even if no copulation takes place. If one of the spouses dies, the other shall have the right to the inheritance of the passing spouse.

Proof that marriage is reason for inheritance in Islam: God says in the Koran, “*In what your wives leave, your share is a half, if they leave no children; but if they leave children, you get a fourth; after payment of legacies and debts. In what you leave, their share is a fourth, if you leave no children; but if you leave children, they get one eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused [to any one]. Thus it is ordained by God; and God is All-knowing, Most Forbearing*” Surat Al Nisa’a (Chapter 4 verse 12).

Abdullah Ibin Mas’oud said about a woman who got married without a dowry whose husband died before he actually had any sexual intercourse with her that “she must have a dowry without any increase or loss and she has the right to inherit her deceased husband.” A man named Mu’qa Al Ashja’ee was listening; he said, “The Prophet had ordained the same in a woman named Barwa’a Bint Washiq,” *Abu Dawood* and *Al Tarmathi*.

- **Allegiance:** It is the relationship between two persons based on the fact that one is a master and the other is a slave; however, the master decides to free the slave. If the master dies without leaving an heir behind, the freed slave shall inherit the dead master. **Could the freed slave inherit the master?** There are two views in this: First: Yes, he/she could providing that the deceased master did not have any relatives. The proof of that is when, according to Awsaja, a slave of Ibin Abbas, “a man died leaving behind no heirs but a slave that he had freed. The Prophet gave the slave what the master had left behind.” The second opinion says that the freed slave shall not inherit what his master who has no relatives has left behind; the inheritance should go to public Muslims’ public funds. **Proof that allegiance is reason for inheritance:** The Prophet said, “Allegiance is to the person who sets someone free.” *Al Bukhari*. The Prophet also said, “Allegiance is similar to kinship,” *Ibin Haban*.

## Conditions of inheritance

There are three conditions to inheritance:

**First condition:** The death of the decedent. Death in this case includes a person who actually dies or a person who is judged or considered to be dead. Actual death of a person is the death that happens in front of witnesses. Judged death is when a judge decides that a person is dead due to signs showing that such person is dead or because his companions are dead, including hostages and missing people. A person who is considered is like a fetus that dies inside the mother’s womb as a result of the mother being attacked.

**Second condition:** Verification or assessment of the life of the heir, which means that it was verified that the heir was alive at the time of demise of the decedent. Otherwise, a number of arrangements must take place, including,

1. Missing heir who cannot be verified whether dead or alive and a judge did not decide in the matter. Such missing heir does not inherit.
2. A fetus may inherit once it is born alive after the demise of the decedent. It cannot be considered an heir before that; however, its share is kept separate –the share value depends of the sex of the fetus. The separate share shall be returned to the heirs if the fetus was born dead; otherwise, its share is kept.
3. When two people related in inheritance die without telling one another about such entitlement, they may not inherit since the heir’s being alive was not verified at the time of the passing of the decedent. The inheritance goes to the living relatives.

**Third condition:** Knowing the heirs through kinship or sibling relations, marital, or allegiance relations; also, knowing that there are no reasons that prevent inheritance.

## Causes that prevent inheritance

A cause that prevents inheritance is a cause that disqualifies someone from becoming an heir. The causes include murder, having a different religion, and slavery.

1. **Murder:** An act that leads to ending someone’s life, including premeditated murder, conspiring to murder, or false witness leading to someone’s execution.
2. **Having a different religion:** When the religion of the decedent is different from that, which brought about the cause of inheritance.
3. **Slavery:** Since a slave is owned by a master; hence, he or she is part of the inheritance.

The Islamic Shari’a ensures that women obtain their rights to property bequeathed upon them by a decedent. Such guaranteeing of rights is detailed in most cases of women’s inheritance and explained in amounts women are entitled to in the Koran. In fact, inheritance is the only discipline, which the Koran made sure to explain in details rather than leave to people to decide on since inheritance is a very serious issue that is most vulnerable to manipulation.

The *Sunnah* (Practice of Prophet Mohammad) addresses inheritance issues not addressed by the Koran such as the inheritance that residuaries (‘aşaba) receive, including grandmothers<sup>9</sup>, sister, full sisters, consanguine sisters (in the event of having no full sisters), and granddaughters if

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<sup>9</sup> A woman came to Abu Bakir (1st Muslim Caliph) to inquire about her share in inheritance. Abu Bakir said “the Koran says nothing about that matter; however, let me ask people.” Abu Bakir was informed through Al Mughira Ibin Shu’ba that Prophet Mohammad had had granted her one-sixth. The statement by Al Mughira was also confirmed by Mohammad Ibin Muslimah; hence Abu Bakir had to comply. Omar Ibin Al Khatab (2nd Caliph) also complied with granting a woman in similar circumstances one-sixth of an inheritance.

anything remains of the estate once the quota heirs<sup>10</sup> receive their shares. A [full] sister is (from a female branch that is entitled to estate) shall be entitled to what is left of an inheritance once the quota heirs had taken their shares providing that there are no male branch that is entitled to estate. The same applies to a person who dies and leaves a daughter, a granddaughter (son's daughter), and a sister behind, the daughter becomes a quota heir and receives one half, the granddaughter (the son's daughter) inherits one sixth as a quota heir, and the full sister inherits what is left of the estate.

A father's sister is entitled to inheritance in the event of belonging to a feminine branch that is entitled to inheritance in the absence of the following; a full brother, a full sister, or residuaries or masculine branch or father or grandfather<sup>11</sup>. The focus on the women's right to inheritance in the Koran and the Sunnah should deter the Muslims who undermine the women's right to inheritance.

The Islamic Sharia'a guarantees inheritance to males and females. A person; therefore, may not deprive any of the people who would inherit him/her their shares. Moreover, heirs may not refuse their share of an inheritance as is the case with wills and donations. This is based on the following verses from the Koran "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." Surat Al Nisa'a (Chapter 4 verse 7) and "God instructs you concerning your children: for the male, what is equal to the share of two females" Surat Al Nisa'a (Chapter 4 verse 11). The two verses grant women and children their rights to inheritance. Islam guarantees inheritance to men and women; it does not discriminate between adults and children or males and females unless for reasons related to heirs supporting [other people]. Males and females are entitled to shares regardless of the size of the inheritance or whether the heirs or the decedents liked it or not<sup>12</sup>.

## **The legal framework of the women's rights to inheritance in Jordanian legislations**

The Islamic Shari'a provisions apply to inheritance in Jordan. The provisions define heirs and their shares. Article 1086 of the Jordanian Civil Law stipulates that

- 1. An heir may acquire through inheritance real estate and movable property and the rights available in the inheritance,***
- 2. Defining the heirs, their shares in an inheritance, and shifting of inheritance shall be subject to the provisions of the Islamic Shari'a,***
- 3. The right of shifting [ownership] of Amiree [state-owned] lands shall be governed by the Shifting Law,"*** which is the Shifting of Immovable Property Law number 4 of 1991 that replaced

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<sup>10</sup>This is related to relations between a man and his father and when a person inherits what is left of an inheritance when all entitled people to an inheritance have taken their shares.

<sup>11</sup>Abu Musa Al Ash'ari (one of Prophet Mohammad's companions) said a daughter receives one-half whereas a sister gets what is left. Ibn Masoud said Prophet Mohammad said "A daughter gets one-half, a granddaughter (from the father's side) gets one-sixth, and the sister gets the remaining part of the inheritance.

<sup>12</sup> Al Shafi'ee, Jabir, Inheritance Provisions in the Jurisprudence, Law, and Legislations, 2005, pp. 27

the Ottoman law for shifting immovable property and canceled any legislations that contradict it. Article 2 of the Shifting of Immovable Property Law number 4 of 1991 states that immovable property, including the right to handle Amiree lands, shall be shifted to the heirs of a person who dies in the period after which the law became effective. The shifting is subject to Islamic Shari'a provisions concerning inheritance and the effective Provisional Jordanian Personal Status Law number 36 of 2010<sup>13</sup>.

The Provisional Jordanian Personal Status Law number 36 of 2010 applies to inheritance issues in Jordan. Inheritance, according to the law, is restricted to households where one must have the right sibling or marital relation to be entitled to an inheritance. The Provisional Jordanian Personal Status Law number 36 of 2010 strictly regulates the provisions of inheritance; we cannot go into the provisions in details since that requires another study. Moreover, inheritance issues are too large; therefore, this report restricts dealing with inheritance to the women's right to inheritance.

The texts of the Provisional Jordanian Personal Status Law number 36 of 2010, which regulates the right to inheritance, show that women's entitlement to inheritance varies in accordance with their status and their relation with the decedent. This part of the report will discuss different statuses of women's inheritance. The statuses are divided into four statuses, including the statuses where women are equal to men in inheritance, the statuses where women inherit more than men, the statuses where women inherit whereas men don't, and the statuses where women inherit less than men.

### **First: The statuses where women are equal to men in inheritance**

1. The inheritance of parents: Heirs (men and women, including sons, grandsons (of sons), and granddaughters (of sons)). The following verse from the Korana applies "... and for one's parents, to each one of them is a sixth of his estate..." Surat Al Nisa'a (Chapter 4 verse 11)<sup>14</sup>.
2. The inheritance of two or more uterine children (males only, females only, or males and females): They equally share one-third<sup>15</sup>. *"If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister,*

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<sup>13</sup> Article 2 of the Shifting of Immovable Property Law number 4 of 1991 states that "immovable property, including the right to handle Amiree lands, shall be shifted to the heirs of a person who dies in the period after which the law became effective. The shifting is subject to Islamic Shari'a provisions concerning inheritance and the effective Personal Status Law."

<sup>14</sup> Article 286 of the Provisional Jordanian Personal Status Law number 36 of 2010 stipulates that, "a father has three cases, a. one sixth (absolute quota) providing that the decedent has one or more sons." Article 287 of the same Law stipulates that, "a mother has three cases, a. one sixth providing that the decedent has a son, a son's son or two or more brothers and sisters regardless of their kinship to the decedent."

<sup>15</sup> Article 296 of the Provisional Jordanian Personal Status Law number 36 of 2010 stipulates that, "uterine brothers and sisters have four cases, a. one sixth providing that the uterine brother or sister is only one, b. one third for two or more males or females; the division shall be equal..."

*each one of the two gets a sixth; but if more than two, they share in a third,”* Surat Al Nisa’a (Chapter 4 verse 12).

3. A *sahihah* grandmother receives one sixth from the *sahih* grandfather in some cases. Hence, if a person dies and leaves behind a mother, the grandfather (from the father’s side), and a son, the grandmother and the grandfather (from the father’s side) receive a quota of one sixth and the rest goes to the son. (A *sahihah* grandmother and a *sahih* grandfather mean grandparents from the father’s side<sup>16</sup> otherwise they would be not *sahih* or *sahiha*).

## Second: The statuses where women inherit more than men

1. If a man dies and leaves behind a wife, a daughter, a mother, two uterine sisters, and a full brother, the wife receives three shares out of twenty four shares, the mother receives four shares, the full brother receives five shares whereas the two uterine sisters receive nothing<sup>17</sup> since the daughter, as a residuary, receives eight shares; hence, she inherits more than the full brother. The same applies if we replace the daughter with a granddaughter (the son’s daughter), or replaced the full brother by a father or a consanguine brother or uncle (father’s brother) or father’s uncle. Hence, children take priority over fathers and brothers<sup>18</sup>.
2. If a woman dies and leaves behind a husband, a daughter, a full sister, a consanguine sister, the husband receives one out of four shares, the daughter receives two shares as a residuary, and the full sister receives one share. The consanguine sister receives nothing since the full sister receives a share. The husband in this case receives half of what the daughter inherits. The same applies if we individually replace the daughter by a granddaughter (son’s daughter) or full or consanguine sister without having a masculine or feminine branch that is entitled to inheritance, even if a full brother or a father existed, they inherit more than the husband and more than the uncle (father’s brother)<sup>19</sup>.
3. If a woman dies and leaves behind a husband, two granddaughters (sons’ daughters), a grandson (the son’s son), the husband inherits three shares out of twelve shares, the granddaughters inherit eight shares (four shares each), and the grandson receives the remaining one share. The share of a daughter in this case is bigger than the share of the grandson since she is in a higher rank [of relation]; she also inherits more than the husband<sup>20</sup>.

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<sup>16</sup> See Articles 290 and 291 of the Provisional Jordanian Personal Status Law number 36 of 2010

<sup>17</sup> Article 189 of the Provisional Jordanian Personal Status Law number 36 of 2010 stipulates that, “a wife or wives have two cases, a. one quarter providing that the husband does not have a branch that is entitled to inheritance, b. one eighth if the husband has a branch that is entitled to inheritance.”

<sup>18</sup> See Article 292 of the Provisional Jordanian Personal Status Law number 36 of 2010

<sup>19</sup> See Article 292 of the Provisional Jordanian Personal Status Law number 36 of 2010

<sup>20</sup> See Article 293 of the Provisional Jordanian Personal Status Law number 36 of 2010

### Third: The statuses where women inherit whereas men don't

1. If a person dies and leaves behind a mother who has two daughters, two consanguine sisters, and a uterine brother, the mother receives two out of eight shares, the daughters receive four shares each, the consanguine sisters receive two shares (a share each), and the uterine brother receives nothing since the consanguine sisters take precedence. All females inherit in this case whereas the uterine brother does not inherit.
2. If a woman dies and leaves behind a husband, a grandson (son's son), granddaughter (son's daughter), a father, and a mother, the husband receives three shares out of twelve shares, the daughter receives six shares, and the grandson and granddaughter are left with nothing. The daughter inherits more than the husband and the father. The daughter inherits while the grandson doesn't inherit. The mother inherits while the grandson doesn't inherit.
3. None of the male kinships shall inherit when there are female quota heirs except for the wife. Moreover, male kinships do not inherit when there are female residuaries.

### Fourth: The statuses where women inherit less than men

A man inherits twice what a woman inherits in the following cases:

1. In all degrees of relation (excluding the daughter's children), including sons and daughters and the son's daughters and sons. A daughter's daughter and a daughter's son do not inherit.
2. First degree relatives only such as more than one full sister and a brother and consanguine sister(s) and brother(s). However, their children, such as the full or consanguine sister's son and the full or consanguine brother's son, are excluded since they are considered kinships.
3. Parents, including father and mother providing that only they can inherit and that they do not have a feminine or masculine branch that is entitled to inheritance, including two or more brothers. The father in this case receives twice what the mother receives. This is based on the following verse from the Koran, "But if he had no children and the parents [alone] inherit from him, then for his mother is one third" Surat Al Nisa'a (Chapter 4 verse 11). The father in this case receives the remaining two thirds.
4. In a marital relation providing that one of the couple is deceased and the other inherits from his/her estate. In this case, a husband takes twice the amount from his deceased wife's estate compared to what the wife would get from the estate of her deceased husband. If a wife dies without leaving behind a branch that is entitled to inherit, her husband takes half of her estate or one quarter of it if she had a branch that is entitled to inherit. If a husband dies without leaving behind a branch that is entitled to inherit, his wife takes one quarter of his estate or one eighth of it if he had a branch that is entitled to inherit.

The Jordanian law has treated both men and women equally in defining inheritance shares; however, there is a shortcoming in the Provisional Jordanian Personal Status Law number 36 of 2010 with respect to mandatory will, which is the enforceable will by the Law concerning the inheritance of a decedent by first degree relatives, including the children of the sons and the children of the daughters regardless of the degree of relation. They inherit the amount their father

would have inherited upon the demise of the grandfather. Article 279 stipulates that, “If a person dies and leaves behind grandsons (from the son’s side) where the father of those children had died before or with his father (the grandfather), the grandsons are entitled to inherit from one third of their grandfather’s estate (defined in a will) based on the following amount and conditions:

- a. The mandated will shall be as much as the share of their father had he been alive; however, the amount shall not exceed one third of the inheritance;
- b. The grandchildren do not require a will if they were heirs of their grandparents (from their father’s side) unless the *fara’id* have used up the entire inheritance.
- c. The grandchildren do not require a will if their grandfather had given them their share of the mandatory will while he was alive. If the shares were less than they should be, they must be completed; however, if they were more, the excess shall be considered optional will.
- d. The will shall be for the grandchildren from the father’s side and the great grandchildren also from the father’s side (a male child shall have twice the portion of a female child).

The aforementioned article gives the right to inherit in the mandatory will to the grandchildren (from the son’s side) and excludes the grandchildren (from the daughter’s side). If a person dies and leaves behind grandchildren (from the daughter’s side) where the mother of those children had died before or with her father (the grandfather), the grandchildren are not entitled to inheritance from the mandatory will. This reflects a certain degree of discrimination against women. Entitlement to inheritance in a mandatory will should be given equally to the grandchildren (from sons’ and daughters’ sides) whose parents had passed away, which is the case of the Palestinian law. Article 1 of the law concerning mandatory wills number 13 of 1962 stipulates that, “If a decedent does not leave behind a will for his grandchildren (on the son’s side) where the son (the father of those children) had died before or with his father, where such will defines what the son would have been entitled to in his father’s estate had he been alive, the grandchildren (on the son’s side) shall be entitled to what their father is entitled to in the one third limit. The will applies to first degree relatives, including grandsons and granddaughters on sons’ and daughters’ sides.” Moreover, the Moroccan legislator has taken this into consideration. Article 396 of the Moroccan Household Code of 2004 stipulates that, “If a person dies and leaves behind grandchildren (from the son’s and daughter’s side) where the father and mother of those children had died before or with their father (the grandfather), the grandchildren shall be entitled to inherit from one third of their grandfather’s estate (defined in a will) based on the following amount and conditions...”

The Egyptian law concerning wills number 71 of 1946 stipulates that heirs of the mandatory will must receive their shares as well as the grandchildren whose father had died before or with the decedent, such as those who die together in a fire or destruction. They get their father’s share had he been alive once the cost of the funeral is paid and debts are settled. The grandchildren include males and females whether the decedent has left a will or not or the heirs approved it or not. The law is called the mandatory will law. Such will comes before any optional wills. The remaining amount of the one third shall be distributed according to Shari’a provisions. The cause for drafting this law is that the case used to be that if parents outlived their children, the children and their children would be deprived of inheritance. The orphaned children would then end up living in poverty while their uncles enjoy the inheritance.



According to Ibin Hazm, a Muslim may leave a will that bestows some of the inheritance on those who are not allowed to inherit such as the slaves or the disbelievers. The value of the inheritance is up to the person who leaves the will. The heirs may also bestow some of their shares on those who cannot inherit. The proof of this comes from the Koran, “It is prescribed, when death approaches any of you, if he leave any goods that he make a bequest to parents and next of kin, according to reasonable usage; this is due from the God-fearing (180) If anyone changes the bequest after hearing it, the guilt shall be on those who make the change, for God hears and knows (All things) (181)” Surat Al Baqara verses 180, 181.

Hence, the mandatory will is based on the benefits of the people. There are no Shari’a definite texts in this concern; however, the interest of the people must be taken into consideration in this regard where grandchildren –on mother and father sides- must inherit.

## **The legal guarantees to women’s rights to ownership and inheritance in Jordan**

The Islamic Shari’a and Jordanian legislations have not deprived women of their rights to ownership and inheritance; however, in reality, Jordanian women suffer in some cases from the loss of their rights due to wrongful social understandings. Women in many cases are deprived of their rights. The Jordanian Civil Law and the Provisional Jordanian Personal Status Law number 36 of 2010 have set forth a number of provisions that protect the inheritance rights of women. These laws also nullify certain legal conducts such as delaying exclusion from inheritance to take effect after one month of the passing of a decedent, which was amended to a three-month delay period. This procedure is conducted upon instructions from the chief justice and based on Article 319 of the Provisional Jordanian Personal Status Law number 36 of 2010 and Article 318, which state that exclusion from inheritance deeds concerning immovable property shall not take effect unless a shifting of ownership had been done by the decedent before the exclusion from inheritance deeds are registered. Women may nullify certain legal procedures in the event of deception or inequality or coercion during exclusion from inheritance or in the event of distribution of shares through relevant courts.

## **The guarantees of women’s rights in Jordan**

### **First: Women enjoy independent financial entity**

Women enjoy independent financial entity and full performance capacity. The performance capacity means the capacity of a person to perform what is legally permissible. Women’s capacity to own and handle property is independent and unrestricted. The Jordanian Civil Law

treats men and women equally with respect to the capacity to own and handle property and conduct financial deals. An adult female, like an adult male, has full legal personality to handle what she owns through buying, selling, leasing, giving power of attorney to others, mortgaging, and donating. She has the mandate and capacity to initiate financial contracts by herself or through others whether she is married or not. An adult woman is not required to have a male guardian over her property. The Provisional Jordanian Personal Status Law number 36 of 2010 stipulates in Article 320, “Each of the spouses shall have separate financial liability.”

## **Second: Guarantee of non-enforcement of coercive acts**

Article 141 of the Jordanian Civil Law guarantees non-enforcement of deals and contracts that had been conducted through coercive acts. A man or a woman may claim invalidity of a contract that had been forcefully and unwillingly sealed. Such claim would eventually lead to nullifying such acts. Article 142 of the same law provides special protection to women in facing their husbands who force them to relinquish rights or property. Such forceful actions would be unenforceable and the wives in this case are entitled to claim invalidity of the outcomes of such acts and regain what had been forcefully and unwillingly taken from them. These two articles of the Jordanian Civil Law provide real guarantee to protect the women’s right to inheritance in the event that they are forced by others to relinquish their shares or be excluded from an inheritance of an estate.

Coercive acts lead to forcing a person to give in as a result of pressure he or she cannot resist. They result from external factors; once the external factor is done away with, the person forced to do something will be relieved. Hence, coercive acts are attributed to the perpetrators rather than the victims. In Islam, people giving in under paramount pressure are not to be held responsible to what they do. God says in the Koran says in this regard, “Whoever disbelieves in God after his belief... except for one who is forced [to renounce his religion] while his heart is secure in faith.” Surat Al Nahl, Chapter 16, verse 106. The Prophet said in this regard, “God has relieved Muslims of wrongdoings resulting from forgetfulness and coercion.”

## **Third: The condition for a guardian to obtain court order to handle the property left for children**

Guardianship in the Shari’a is a form of control of a guardian over the will of a young person, which shall be lifted once the legal cause becomes null and void. Guardianship in this case shall be for charitable purposes. Guardianship allows the guardian to handle property for the benefit of another person who cannot handle it such as a young person. This is permissible since God says in the Koran, “*And test the orphans [in their abilities] until they reach marriageable age. Then if you perceive in them sound judgment, release their property to them. And do not consume it excessively and quickly, [anticipating] that they will grow up. And whoever, [when acting as guardian], is self-sufficient should refrain [from taking a fee]; and whoever is poor - let him take according to what is acceptable. Then when you release their property to them, bring witnesses upon them. And sufficient is Allah as Accountant*” Surat Al Nisa’a, Chapter 4, verse 6.

A father becomes the guardian of a child without having to obtain court order. The father’s guardian shall become the guardian of a child in the event that the father of the child had

requested that in a will. A governor may not become a guardian. Some jurists consider the grandfather as mandated guardian after the father without having to obtain court order. The handling of the property of the child shall be for the child's benefit.

The guardian; however, must have a number of qualities to qualify as a guardian. According to the Provisional Jordanian Personal Status Law number 36 of 2010, these qualities are:

1. Full competency
2. Ability to fulfill the needs of the young person
3. Must not be sentenced by a criminal court for committing a crime against honesty and integrity
4. Must not have been deprived of guardianship before
5. The guardian must not have a legal dispute with the minor

The guardian may handle the property of the minor for his benefit. God says in the Koran in this regard, "And do not approach the orphan's property except in a way that is best until he reaches maturity" Surat Al An'am, Chapter 6, verse 152.

The Jordanian legal system includes a number of texts that protect the property of young children. The Jordanian Civil Law and the Provisional Jordanian Personal Status Law number 36 of 2010 require obtaining an order from relevant courts to entitle a guardian to handle the property of young children providing that such handing does not involve administration (administration means selling, mortgaging, loaning, arrangement, division, and investment). Article 126 of the Jordanian Civil Law and Article 273 of the Provisional Jordanian Personal Status Law number 36 of 2010 demand that a guardian must obtain an order from the Sharia'a court to handle the property of a young child if such guardian wants to use the property for the purposes of administration. Moreover, Jordanian Civil Law requires that a guardian must obtain relevant court order for handling the property of young children for purposes other than administration. Hence, (adult) heirs or guardians would not be able to take over the property of the young heirs and deprive them of their shares in an estate.

#### **Fourth: Pregnant women**

1. Nothing of the inheritance should be kept aside for an unborn fetus.
2. The birth of the fetus decides its inheritance.
3. The unborn fetus shall not change the portions heirs receive; for instance, an unborn fetus should not change the share of the mother of the decedent (the grandmother).
4. If a man dies leaving behind a pregnant wife and a brother, the brother may not receive his share of the inheritance since the unborn fetus could be a boy.
5. Upon birth, the baby gets its share providing that it was born alive. If it were dead, its share goes to the other heirs.

Legislations stipulate that legitimate shares may not be distributed through an inheritance determination deed before a pregnant woman gives birth and ensuring that the fetus is alive and recognizing its sex. The legitimate shares are then distributed accordingly.

### **Guarantees of obtaining the right to inheritance in the Jordanian law**

The Jordanian legislators have set forth a number of legal provisions to guarantee the rights to inheritance and to prevent any denial of such rights in an estate to heirs and to prevent people from handling their estate in a manner that deprives some of the heirs of the estate or reduce their shares in the estate. The legal provisions include,

**a. Non-enforcement of a sale made by a dying person to an heir**

Paragraph 1 of Article 544 of the Jordanian Civil Law prevents enforcement of a sale made by a dying person to an heir unless approved by all heirs. The Article states, “The selling by an ailing person of a part of his/her property shall not be enforced unless approved by the rest of the heirs after the demise of a decedent.” In some cases, people while on deathbed tend to falsely sell their property to some heirs for the purpose of depriving other heirs of inheritance such as the case where a father sells his property (without receiving any payments) to his sons in order to deprive the daughters of the estate. In other cases, sons force their ailing father to relinquish his property to his sons from the first wife in order to deprive the second wife and her sons of the estate. A dying person is a person whose illness prevents him/her from conducting his/her routine functions and dies before one year of falling ill.

Hence, an heir may refrain from approving a sale made by a decedent to another heir during falling ill and dying through filing a lawsuit at a relevant court to claim invalidity and falsehood of the sale and that it was sealed by the decedent while ill. This considered deception, which is impermissible. It is a violation of the Shari’a, God says in the Koran, “Believers, be fearful of God and be with the truthful people,” Al Tawba, Chapter 9 verse 119. The Prophet says in this regard, “Do justice unto your children,” the Prophet repeated the sentence three times, *Sahih Al Bukhari*.

**b. Non-enforcement of a will that exceeds one third**

A will is used sometimes by decedents to deprive all or some heirs of full or partial inheritance. From a legal point of view, there are provisions to prevent that; moreover, the will only applies to one third of the estate. If a decedent leaves a will that allocates a non-heir a share in the estate that exceeds one third of it, the will is deemed null and void; it is only enforceable on one third of the estate. Any excess of the one third requires the approval of all heirs. Paragraph (b) of Article 274 of the Provisional Jordanian Personal Status Law number 36 of 2010 includes this provision. Hence, the Provisional Jordanian Personal Status Law number 36 of 2010 made this provision to prevent enforcement of a will that allocates an entire estate or large part of it to one or more people for the purpose of depriving heirs of inheritance or any other purposes. The enforcement of a will that allocates more than one third of an estate to a non-heir requires the approval of heirs. The Prophet told Sa’id Ibin Abi Waqas not to give more than one third of his property in a will. The Prophet said, “It is better to leave your heirs rich rather than to leave them as burdens to other people” *Sahih Al Bukhari* (2742) and *Sahih Muslim* (1628).

Sheikh Mohammad Ibin Othaimen said, “A will of more than one third is not allowed since doing that is violation of the heirs’ rights. Hence the incident of Sa’id Ibin Abi Waqas who the

Prophet told not to give more than one third of his property in a will and said, “It is better to leave your heirs rich rather than to leave them as burdens to other people.”

### **c. Non-enforcement of a will to an heir**

Among the most important provisions of a will is that it cannot be enforced unless approved by the heirs. A will may not be valid unless it is approved by all heirs in the event that a decedent leaves an estate to one heir. Paragraph (f) of Article 274 stipulates that, “A will may not be enforceable unless approved by heirs in the aftermath of the passing of the decedent.” Hence, the enforcement of a will is subject to the approval of heirs who may or may not approve it. The Prophet says, “God has given everyone what they are entitled to” from *Sahih Al Tarmathi*.

Jurists agree that a will may not be valid for heirs; it is not valid for more than one third unless heirs agreed to it where such heirs are mature.

Fatwa number 574 of the Ifta’a Department of Jordan stipulates, “A will to an heir shall not be valid unless agreed by the remaining mature heirs since the Prophet said, “No will shall be valid for an heir unless approved by heirs” *Al Dar Qutni*. If some heirs approve it while others didn’t, the will may be valid for the shares of the heirs who approved. The rest of the shares shall be given as ordained by the Shari’a.

### **d. Validity of the provisions of a will over legal actions taken by an ailing person on deathbed for the purposes of donation**

The provisions of a will shall be considered valid when issued by an ailing person on deathbed for the purposes of donation. The legal actions taken by an ailing person on deathbed for donation shall be considered a will regardless of the labeling (fake sale or other legal handling). The validation of the provisions of the will over the aforementioned acts show that if such acts were conducted by an ailing person on deathbed for the benefit of one of the heirs or a non-heir where they involve more than one third of an estate, they shall not be valid and shall be subject to the approval of the heirs<sup>21</sup>.

Imam Al Shafi’ee says in *Al Wasaya* [wills] that a man freed six of his slaves while he was ill; they were all that he had. When the man died, the Prophet freed two of them (one third). This means that a sick man may not give everything during sickness; however, one third can be handled.

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<sup>21</sup> Article 1128 of the Jordanian Civil Law stipulates that, “1. Any legal actions taken by an ailing person on deathbed for the purpose of donation shall be considered postmortem action and shall be subject to the provisions of a will regardless of the labeling of such actions, 2. The heirs of the decedent must use all means to prove that the action was taken by the ailing decedent on deathbed. It shall not be claimed that the heirs’ conduct is invalid unless the date of the decedent’s actions is officially proven invalid. 3. If the heirs prove that the action was taken by their ailing decedent on deathbed, they shall be considered for the purposes of donation unless proven otherwise or proven contradictory to certain provisions. Article 255 of the Provisional Jordanian Personal Status Law number 36 of 2010 deals with the same issue; it stipulates that, “Actions taken by an ailing decedent on deathbed for the purposes of donation and favoritism shall be related to a will and the will’s provisions shall apply.”

**e. Impose procedures that ensure conducting exclusion form inheritance in a manner that guarantees the rights of the heirs to an estate**

The purpose of such procedures, which are based on legitimate acts, is to protect the rights of the heirs, including women, against abuse. The psychological or emotional state of women could be used to make them unwillingly relinquish their rights to an estate through embarrassment and using their sadness over the decedent. Such procedure came to prevent such use and to handle exclusion from inheritance and deal with many similar situations. Article 318 of the Provisional Jordanian Personal Status Law number 36 of 2010 prevents enforcement of exclusion from inheriting immovable property unless there had been a shifting of property deed before registration of the exclusion from inheritance deed. Hence, if a decedent had inherited before his/her demise but failed to register his/her inherited estate under his/her name, any exclusion from inheritance of such estate shall not be valid without having the inherited estate shifted to the name of the decedent. Consequently, an heir may conduct a deed of exclusion from inheritance accordingly.

According to Article 314 of the Provisional Jordanian Personal Status Law number 36 of 2010, “Exclusion from inheritance means that heirs agree to exclude some of them from a defined inheritance.” Article 539 of the Jordanian Civil Law states that, “An heir may sell his/her share in an estate, after the demise of the decedent, to one or more heirs in return for defined compensation even when the assets of the estate are not defined. This shall be called exclusion from inheritance.”

Article 319 grants the chief justice the power to issue the instructions he deems appropriate to regulate the registration of the exclusion from inheritance deeds and to impose periods of time separating the demise of the decedent and the conducting of private or public exclusion of inheritance deeds providing that the purpose of such instructions is to ensure interests and protect the rights of the people conducting such deeds.

This is for the benefit of everyone; it protects the women’s right to inheritance, which shall be based on the following rule: **For their own (women’s) interest**. Jurists have a number of explanations to the rule, including

Imam Ibin Taimiya says in *The Collection of Fatawi* 32/53 (religious opinions) that, “The guardians of women must consider the women’s interest rather than their own likings. They must comply with the following verse, “God commands you to render back your trusts to those to whom they are due; and when you judge between man and man, that you judge with justice: Verily how excellent is the teaching which He gives you! For God is He Who hears and sees all things” Surat Al Nisa’a (Chapter 4 verse 58). The prophet said, “Religion is an advice of God, the Koran, the Messenger of God, Muslim Imams, and the public.”

Al Qurafi Al Malki says in *Al Foruk* 4/76, “Guardianship, whether it over a nation or a minor, must be for wellbeing and benefit; hence, God says in the Koran, “And do not approach the orphan's property except in a way that is best” Surat Al An’am, Chapter 6, verse 152, and the Prophet said, “Whoever becomes a guardian of an affair of Muslims and failed to work hard for it or give advice shall be deprived of Paradise.”

## Reality of women rights to inheritance in the Jordanian society

Though the women's rights to inheritance are clearly stated in the law and though there are many guarantees to such rights, the phenomenon of depriving women of their rights still exists in the Jordanian society. In some cases, women are forced to relinquish their rights to inheritance through different means. Undedicated women are mostly susceptible to such practice<sup>22</sup>.

Inheritance is a legitimate right; it is not an endowment. It is proven by the Islamic Shari'a and the law. The deprivation of women of inheritance is religiously and legally baseless. It is rather one of the corrupt and debased customs and traditions of a number of communities that still uphold such traditions and consider them impenetrable or impassable. Such communities think that women do not need to own property, hence needn't inherit, as long as they are under the responsibility of men. Also, the households of such communities seek to restrict estates to themselves and consider allowing women inheritance, especially if such inheritance is a piece of land, as granting members of other households the right to share their estate especially when those men are strange husbands (not from the same household) but married to women of the household owning an estate.

For the purposes of this report, we conducted interviews with 15 women aged 24 to 45. Such women had issues related to obtaining their shares of inheritance. The interviews inquired about whether these women had obtained their rights to inheritance or not, the ways they relinquished their rights to inheritance, and the reason why they did not demand their rights to inherit.

The interviews show that women in many cases are deprived of their rights to inheritance and forced to renounce their rights to inheritance through a number of practices, most importantly:

1. There are cases when a decedent surrenders his entire property or part of it to his sons or the sons of one of his wives through fake sale, endowment, or will for the purpose of depriving the females or a wife and her children of the inheritance.
2. Some heirs would use wooing, deception, and appeasement so that women would surrender their rights in return for money or a piece of land, which do not represent the actual value of their inheritance.
3. Practice pressure and threat to harm women to force them to surrender their shares in an estate.

There are also many cases where women regret surrendering their rights to inheritance. They wonder what would happen to them if they are divorced or become widows. This may explain why women opt for staying with their husbands even when they are subjected to the worst kinds of violence since they wouldn't find someone to accommodate them except for their adult sons.

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<sup>22</sup> Depriving women of their rights to inheritance is a new Jahiliya (pre-Islam era), Hayil Al Amoosh, an article posted on the website of Assawsana on October 6, 2010.

This may also explain the relationship between violence against women and their deprivation of economic rights.

The interviews also show that women refrain from demanding their rights to inheritance for the following main reasons:

1. Fear of being harmed by brothers and other heirs and fear of being and abandoned by the household.
2. Lack of knowledge on women behalf of their rights to inheritance.
3. Lack of knowledge of the laws and procedures of division of inheritance.
4. Being shy to demand the right to inheritance and the negative viewpoint of the society towards women who demand their rights to inheritance.
5. Avoid embarrassing the husband.
6. Inability to pay the courts' and lawyers' fees.

Interviews also showed that women are deprived of their rights to inheritance for the following reasons:

1. Lack of knowledge on behalf of a category in the society with respect to religious, legal, and social issues.
2. Failure to apply religious teachings and legal provisions.
3. Compliance with the inherited social customs and traditions contradictory to religious teachings.
4. Failure on behalf of a category in the society to recognize women rights.
5. Households' desire to keep owned lands within the family and prevent people who are outsiders (outside the households) from owning such land.

The statistics published by the Chief Justice Department show that in 2009 there were 3,904 cases of exclusion from inheritance. The number of inheritance cases that the Shari'a courts processed totaled 13,725. However, the processed cases fail to show whether litigants were males or females. In fact, people in most cases seek to follow this step in order to reduce the fees that are paid for shifting ownership of real estate; therefore, it is not possible to know the number of men and women who had been excluded from inheritance.

### **Cases of denial of women's inheritance right:**

**Case 1:** A family that consisted of the parents, six daughters, and one son. The parents, while still alive, handed down their entire immovable property (real estate) to their only son by selling it to him and registering the deal at the Land Department. The justification for their action was that the boy is alone and the daughters are married to strangers.



**Case 2:** A man died and left behind great fortune. He left behind three daughters, three sons, and a widow. The eldest son made his sisters and mother sign a power of attorney that excluded them from the inheritance. He also made his mother sign a promissory note stating that she owed him 100,000 Jordanian dinars. This took place on the day of the father's demise. Shortly after that, the eldest son excluded his brothers from the inheritance and filed a legal case against his mother demanding the 100,000 dinars. He swore a fake oath and won the case and took the money from his mother (from her share in the real estate). This man was three months later punished for his action by wrath from God. He became seriously ill and died. The mother inherited one sixth of what he had left behind. The mother died late and her daughters inherited from what she had left behind. Finally, the daughter regained their shares and eldest son lost everything.

**Case 3:** A man died leaving behind a widow, three daughters, and 2 sons. A year later, the eldest son and one of the daughters demanded their shares of the inheritance. The mother refused and said that the inheritance (businesses worth more than 2 million dinars) was the result of her hard work abroad and denied that the money belonged to her deceased husband. The son and daughter filed a number of legal cases against their mother. The cases are still being dealt with by courts and the family is divided.

**Case 4:** A man had four daughters and five sons. While still alive, the father handed down a commercial center he owned to his sons and gave his daughters pieces of land each worth 5,000 dinars. His action took place while he was ill. He died nine months later. The daughters filed a lawsuit against their deceased father claiming that his actions were wrongful. The court threw out the case stating that cancer did not affect the mind and actions of the deceased father.

**Case 5:** A number of brothers had only one sister. The brothers stood in the way of their sister's marriage. Finally, they agreed to let her get married after she had relinquished her right to her inheritance from their father.

**Case 6:** An elderly man who was married to two women gave his entire wealth to his children from the second wife. He deprived his children from the first wife (4 girls and 1 boy) from his wealth. Having registered his wealth in the name of his second wife's children, the children threw him out of his house. They sold his house and bought another one. The father ended up living in the house of one of his daughters whom he had deprived of his wealth.

**Case 7:** A number of brothers made their sister sign promissory notes worth a large amount of money that exceeded her share in their father's inheritance. When the husband of that sister discovered what the brothers had done, he divorced her.

**Case 8:** A husband forced his wife to sign a power of attorney that gave him the right to her inheritance from her father. He managed to get her inheritance from her brothers; however, he used her share to buy a new house and marry another woman. When the first wife, the legitimate owner of the inheritance, complained against her husband, he divorced her.

**Case 9:** A mother gave everything she owned to one of her sons. The son registered what his mother had given him in the name of his wife so that none of his sisters or brothers would claim their shares in what the mother had given him. Consequently, the son's wife threw the mother out of her house. The other children refused to accommodate their mother because she had deprived them from their shares in the inheritance. The mother ended up living in her nephew's house.

**Case 10:** A son made his mother believe that his sister and her husband were trying to take over her fortune once she passed away. The son told his mother to sign a power of attorney that gave him control over her property so that it wouldn't be lost to the sister and her husband. The son; consequently, sold his mother's property and left the country.

## Findings

A number of issues emerge and need to be considered, including

1. To recognize a person's economic and social rights would free such person from financial domination by another party and would enable the person to have a decent life and to carry out his/her role in the society in a better way.
2. Continuous inequality in economic rights sustains women's subordination and dependency and makes them more vulnerable to violence and exploitation and other violations.
3. The demand to put into effect the economic rights of women is not only to fulfill their direct material needs and fulfill their mandated rights but also to restructure unequal power relations between men and women since there is fundamental relationship between violence and discrimination against women and their deprivation of equal rights to ownership and inheritance as well as other rights in different areas.
4. The Jordanian legal system grants women independent financial entity and full performance capacity. The women's capacity to own and handle (property) is independent, unrestricted, and unconditional.
5. The Jordanian legal system does not stop at granting women the rights to ownership and inheritance; it sets forth a number of guarantees that prevent the violation of such rights.
6. In practice, despite all guarantees that prevent violating the women's rights to ownership and inheritance, reality in the Jordanian society reveals many cases where women are deprived of such rights especially in rural and desert areas. According to studies, 74% of women in Irbid governorate haven't had their full inheritance rights and 15% of women of the same district have voluntarily relinquished their rights to inheritance (percentages are similar for the various provincial centers and rural areas of the Irbid governorate)<sup>23</sup>.
7. The main reasons for depriving women of their rights to ownership and inheritance include,

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<sup>23</sup> A study conducted by the Jordanian National Forum for Women within "Focus on Rights" Project. The study was funded by Gender and Social Fund. The title of the study is "A Survey Study on Violated Rights of Jordanian Women, the Governorate of Irbid: The Right to Inheritance."

- a. Fear of being harmed and abandoned by the household. The process of negotiating the relinquishing of women's rights to inheritance starts with using wooing and ways of embarrassment so that women would surrender their rights to inheritance. However, when such attempts fail, some may seek to use other means such as threatening of reflecting harm upon women and their children or household abandonment or even causing actual harm through beating and other means of physical and psychological abuse.
- b. Lack of knowledge on women behalf of their rights to inheritance as well as the laws and procedures of division of inheritance. Such lack of knowledge of women's share in inheritance may lead to relinquishing their rights to it in return for small amounts of money that do not equal the real value of their shares.
- c. Being shy to demand the right to inheritance: Some women may be too shy to demand their shares in an inheritance because they feel that they may be asking for alms or that they demand something that they do not have the right to as the custom of the community dictates. Moreover, they may be too shy and scared of the way that they would be treated by the society in the event that they take legal action to obtain their rights.
- d. Inability to pay the courts' and lawyers' fees to cover a legal action taken to obtain rights in an inheritance if the rest of heirs refuse a satisfactory distribution or distribution of inheritance shares in accordance with the law.

## Recommendations

### 1. The legal aspect

- a. Criminalize all acts of coercion and deception that are taken against women for the purpose of depriving them of their right to inheritance.
- b. Amend Article 279 of the Provisional Jordanian Personal Status Law number 36 of 2010 to grant right to a mandated will to the children of a deceased daughter similar to the right granted to the children of a deceased son.
- c. Link the Shari'a courts to the civil status department to inspect inheritance determination deeds and inheritance determination based on information issued by the civil status department. The purpose of such step is to avoid depriving anyone of the heirs of the inheritance determination deed.
- d. It is necessary to explain Article 318 of the Provisional Jordanian Personal Status Law number 36 of 2010, which stipulate that "Exclusion from inheritance shall not apply to immovable property that had been inherited unless a process of shifting of such property is conducted by the inherited person before registering the exclusion from inheritance deed or the deed states otherwise." In reality, this article cannot be put into effect since immovable property is in the name of the decedent. The article can only be enforced if the decedent had inherited the property before his demise and that the inheritance shares had not been shifted to him/her and remained in the name of person who had left him/her the estate. Hence, the article needs explaining.

- e. The Provisional Jordanian Personal Status Law number 36 of 2010 must include clear statement that regulates “*Farar* Divorce,” which is the divorce of a wife incurred by a dying husband in order to deprive his wife of her right to inherit him when he dies. The statement should allow a wife in such situation to inherit though divorced by a dying husband.
- f. Set up instructions for notary public to inform people of the legal consequences of giving a power of attorney to others to handle their property.

## **2. Advisory and awareness-raising aspect**

Intensify activities concerning raising awareness about granting women their rights to inheritance. This step shall be taken through sending letters to men and women via the following venues,

- a. Places of worship through intensified lessons and advice and speeches on the importance of the issue of granting women their rights to inheritance and explaining the Sharia’a stand concerning deprivation of women of such rights. Also, promote granting women full rights to inheritance as mandated by legislations.
- b. Civil society organizations and human rights organizations through raising awareness among women and introducing them to their rights to inheritance and the legal ways of obtaining them. This process would be conducted through educational lectures on inheritance and how to demand rights to inheritance, the parties that may be sought after to obtain inheritance, give actual examples of women who demanded their rights to inheritance and were able to succeed in such demand. The focus shall be on rural and desert areas.
- c. Organize awareness-raising and advisory campaigns –through the visual and audio media- on inheritance rights, their importance, and women’s economic participation.