

The Researches on the issues of Inheritance in Islam and Their Peculiarities

Saidjamol Masayitov,

Research fellow of the Islamic Academy of Uzbekistan

ABSTRACT: In the following article the researches on the issues of inheritance in Islam and their peculiarities are analyzed based on the source study produced within the scope of rare manuscripts. The issue of inheritance in Islamic law is a very complex one, but at the same time it is a legal issue that has been dealt with more skillfully in accordance with the legal system than some of the abstract and complex rules that have been introduced.

Key words: Qur'an, the Sunnah, the Ijma, inheritance law, Sharia, Abu Abdullah Muhammad ibn Ismail al-Bukhari, Muslim ibn Hajjaj al-Naysaburi Abu Isa at-Termizi, Abu Abdurrahman an-Nasa'i, and Abu Abdullah al-Qazvini ibn Majah.

Introduction

If we study the foundations, sources, norms of Islamic inheritance law, we can witness an important innovation in it, that is, the rejection of the Arab custom, which at that time considered women as the object of inheritance. The main sources of Islamic heritage law are the Qur'an, the Sunnah, and the Ijma¹. We must also not forget that modern fatwas are also seen as a synthesis of ijihad and ijma. It is based on the principles of justice, humanity and, most importantly, the Qur'an, which are the basic principles of Islamic inheritance law.

Specific features of Muslim inheritance law:

- the absence of the right to limit the number of heirs by will;
- the precedence of men over women in the right of inheritance;
- in cases where the will contradicts the norms of Sharia, the acceptability of the change, etc.

An important aspect of the subject of Islamic heritage law is that the legislation of modern secular states can use some aspects of Islamic heritage law, including its structure, classification of relatives, as well as its practical solutions to

¹¹ Xalof A. Usul al fiqh. P.16.

many issues. Such norms will be the basis for the creation of new opportunities in lawmaking in the projection of the secular state on the right of inheritance.

We can also connect the importance of research in this area with the possibility of finding optimal solutions for the integration of the rules of Islamic heritage into the political, legal and spiritual spheres of multi-religious states. Attempts to do so today can be seen as a shining example of modern Egyptian experience and the application of Islamic law to prevent Islamic radicalization in the activities of the Malaysian Wasatia Institute².

Literature review

It is known from history that the main content of Islamic heritage law developed in the 8-9th centuries. Changes in the new issues in its composition were due to the expansion of the borders of the first Islamic state and the increase in the number of Muslims who converted to a new religion (neophytes) whose pre-Islamic life was governed by customary laws. The emergence of Islam in new lands had led to legal conflicts between jurisprudence and old legal systems. If the norms of customary law do not contradict the Qur'an, then we can see that they were resolved by finding them to be Shari'ah, and that this is reflected in the rules of jurisprudence³. An example of this can be seen in the fact that according to the customary laws of the Turkic peoples, the property of the deceased passed to the youngest son. With the accession of these peoples to the Islamic state, it can be seen in the example that these customs acted as the norm of Sharia. In other Muslims, the inheritance began to be divided between relatives and the persons named in the will. But among the nomadic Muslim Turks, inheritance was often done by custom, i.e., the youngest son inherited the property, and the remaining children and other relatives accepted the custom as normal.

Main part

The emerging legal phenomenon represents a new form of resolving the conflict between custom and jurisprudence. In the science of inheritance, this is called "takoruj"⁴. According to him, the decision will be made by bilateral agreement of the parties⁵.

The basic principle of Islamic inheritance law is understood as adherence to the norms of the Qur'an, as noted above. In Muslim law, the Qur'an is the primary source of inheritance law, and its norms are recognized as necessary for Muslims. Since the Qur'an is from Allah, its content is recognized in Islam as a divine instruction conveyed to people through the intercession of Muhammad (SAV). The authenticity and supremacy of the Qur'anic norms differs from that of

²Raxmatullin R. YU. Geneticheskie istochniki musul'manskogo prava // Nauchniy vestnik Omskoy akademii MVD Rossii. 2011. № 4(43).

³عبد العزيز عزام. القواعد الفقهية. دار الحديث. القاهرة. 2005.

Toshqulov J.va boshqalar. Islom huquqshunosligi. "Toshkent islom universiteti", 2014. P 92.

⁴Taxoruj muayyan mol evaziga o'z hissasidan voz kechgan vorislardan birini qolgan hissasini

berilmasdan o'rtadan chiqarib yuborishlik. Qarang: .2014. أوردن. ابن كمال باشا. التوضيح في شرح التصحيح دار النور المبين.

السرخسي. كتاب المبسوط. دار المعرفة، بيروت. 1993. ج20، ص 182.

⁵Raxmatullin R. Yu. Geneticheskie istochniki musul'manskogo prava // Nauchniy vestnik Omskoy akademii MVD Rossii. 2011. № 4(43).

the developers of the secular norms built on the economic and political interests of Allah, so according to jurisprudence, adherence to the Qur'anic norms is considered to be the maximum implementation of the principles of justice and humanity⁶.

Many verses of the Qur'an as the main source of Muslims 'right to inheritance detail its rules in Surat an-Nisa, which deals with women's rights. This led to radical changes to the norms existing in the Arab custom, and at the forefront of these customs was that a woman did not have the right to inherit the property of her relatives.

The Qur'an, on the other hand, led to the repeal of the above-mentioned norm. The woman led to the declaration of an heir who had a share in the inheritance of the relatives: *"Men have a share of what their parents and relatives have left, and women have a share of what their parents and relatives have left"*⁷. This meant that a woman could not be the object of inheritance: *"You are not allowed to inherit women against their will"*⁸. Previously, according to Arab custom, after the death of a husband, his eldest son or other relatives were considered to have the right to marry a widow or to marry him to another.

It follows that Islam equates man with woman in everything: *"Men are the patrons of women because Allah has preferred one of them over the others and they have spent their wealth"*. There is also a criminal procedural norm in Surat al-Baqara of the Qur'an, which states in court that *"two women are equal to one man"*⁹. This rule was later transferred to the right of inheritance. According to it, the share of the female heir is equal to 1/2 (half) of the share of the male heir, or, in the words of the Qur'an, one male is given equal to two female shares¹⁰.

The Qur'an contains rules regarding wills:

a) the making of a will is shar'i ("mashru")

b) the prohibition of unauthorized third party alteration of the will¹¹. It is determined that its change or complete prohibition is allowed only if the will contradicts the norms of the Qur'an.

As a result of the inclusion of women and other persons not provided for in the will as heirs in the Qur'an, this led to an increase in the number of heirs. Therefore, it became necessary to determine the share of each in the inheritance. Therefore, in order to determine the priorities of inheritance, heirs are divided into three categories according to the degree of kinship:

1. Spouses, parents and children of the testator;
2. Brothers and sisters and sons of brothers;
3. Uncles and their sons.

The share of each of these is clearly defined in the Qur'an¹², which led to the resolution of possible inheritance disputes between many relatives.

⁶Raxmatullin R. Yu. Osobennosti musulmanskogo prava // Vestnik VEGU. 2016. № 5(85).

⁷Niso surasi. 7-ayat.

⁸Niso surasi, 19-ayat.

⁹Baqara sura. 282-ayat.

¹⁰See: Nisa sura, 11-ayat.

¹¹See: Baqara sura, 180-182 ayats.

¹²Nisa sura, 11-,12-,176-ayats

If we look at another feature of Islamic inheritance law that emerged in the seventh century, it was that there was a possibility that relatives not mentioned in the will could also be heirs. It should be noted that the Qur'an states that the following conditions must be met before the distribution of property between relatives:

- a) payment of debts of the deceased from the inherited property;
- b) transfer of a part of the property (less than 1/3) by the deceased to the persons specified in the will.

Of course, these are the works after the expenses of the deceased for his burial¹³.

Islamic scholar O.V.Naumenko emphasizes that inheritance by will is of secondary importance in Islamic jurisprudence and points out that it contains a number of important limitations¹⁴. But at the same time, those who are bequeathed in the distribution of property receive their share earlier than those who are Shariah heirs.

Theoretical background

The further development of Islamic inheritance law is related to the emergence of the second important source of Islamic law - *circumcision*¹⁵. The Sunnah is a collection of hadiths describing the deeds and words of Muhammad (saas) related to a particular subject.

To date, there are several collections of hadiths written by Muslim scholars, most of which were compiled by Islamic scholars Abu Abdullah Muhammad ibn Ismail al-Bukhari and Muslim ibn Hajjaj al-Naysaburi in the ninth century, with Abu Dawud as the most reliable source. Sistani, Abu Isa at-Termizi, Abu Abdurrahman an-Nasa'i, and Abu Abdullah al-Qazvini ibn Majah and others were the main historical and religious scholars who contributed a great deal in the development of the science. In Islam, the Sunnah is seen as an example of how the interpretation of the Qur'an and its norms were demonstrated in practice by Muhammad (SAV) himself. Although there are some unreliable hadiths in the Sunnah, Islamic scholars have warned Muslims against them in their place.

J. Berton argues that while "scholars interested in theology, law, and politics have fabricated hadiths to ensure that views and ideas are universally accepted in their small study circles", reliable sources say such hadiths are virtually free¹⁶.

Most scholars point out that many jurisprudential norms, including inheritance norms, are also derived from the correct interpretation of the hadiths. In particular, there is a rule in the Sunnah that a Muslim cannot inherit his property to a non-Muslim, even if he is a brother or sister. Here we see that they referred to the following hadith: "A Muslim does not inherit from a disbeliever and a disbeliever does not inherit from a Muslim"¹⁷.

Sunnah is thus regarded as the main source of Islamic jurisprudence. It contains many norms that develop the Qur'an's instructions on inheritance, taking into account practical situations, and many of them could not be reflected in the

¹³ الموصلي الحنفي. الإختير لتعليل المختار. ج 5. ص 85. دار المعرفة، بيروت، 1996.

¹⁴ Naumenko O. V. Nasledovanie v musulmanskome prave //Vestnik Yujno-Uralskogo gosudarstvennogo universiteta. Seriya: Pravo. 2010. № 18(194).

¹⁵ عبد العزيز البخاري. كشف الأسرار عن أصول فخر الإسلام البزدوي، دار الكتاب العربي، بيروت، 1991. ج 2، ص 653.

¹⁶ Byorton Dj. Musulmanskoe predanie: Vvedenie v xadisovedenie. SPb., 2006.

¹⁷ ص 87. ابن كمال باشا. التوضيح في شرح التصحيح دار النور المبين. أوردن. 2014.

Qur'an. For example, there is no direct rule in the Qur'an that indicates the need to determine the legal capacity of the testator. However, such a rule is included in fiqh, which states, "The testator must be able to dispose of his property. In other words, you have to be smart, mature, free and have a choice"¹⁸.

Funeral expenses are also paid in the circumscision before the inheritance is divided between the heirs¹⁹. Circumscision also introduces the norm of bail. If the deceased received money as collateral for a valuable thing, it means that from the inherited money this amount is returned to the debtor and the pledged thing is naturally included in the list of objects of inheritance²⁰. The Sunnah also complements the Qur'anic norm of the need to pay the debts of the deceased²¹.

In addition, the testator must indicate to the testator to whom and how much he owes, as well as write down to him the amount owed and the amount owed to him²². If the deceased died as a result of the murder, the hadith forbidding the murderer to inherit is also considered reliable. Muhammad (peace and blessings of Allah be upon him) said: "There is nothing of inheritance for a murderer"²³. Under the circumscision rule, unmarried children are also removed from the list of heirs. Also, the relationship between the illegitimate child and his or her biological father is not taken into account in Islamic inheritance laws.

Results

An important source of Islamic heritage law today is said to be the fatwa. This is a consensual decision of authorized Muslim scholars. Usually, researchers refer to cases that are not mentioned in the Qur'an and Sunnah as fatwas but are regulated by scholars. For example: "If a child born out of wedlock is married to his or her biological parents after birth, will he or she inherit the property of his or her biological father?"²⁴.

"How can euthanasia, property or life insurance, surrogacy, body parts, blood and sperm donation be evaluated in terms of inheritance law?", "Is it permissible for a Muslim to inherit the money collected by the deceased in the form of interest because usury is forbidden in Islam?". Many of these issues could have been resolved without contradicting the normative norms of Islam. The fatwa is given by a Muslim who has a high level of knowledge in the field of jurisprudence, who is fluent in Arabic, the Qur'an, the Sunnah, the sects and the history of Islam, and who has high moral qualities and piety.

In fact, the emergence of a source of Muslim law, such as a fatwa, can be seen as a specific continuation of the process of ijtiḥad. It is known that ijtiḥad has led to the emergence of many schools of jurisprudence (jurisprudence) in the simultaneous enactment of Islamic law. Although each of them only declares its norms to be correct, we may find in

¹⁸علاء الدين الكاساني. بدائع الصنائع في ترتيب الشرائع. دار الحديث القاهرة، 2005. ج10، ص509.

¹⁹ابن كمال باشا. التوضيح في شرح التصحيح دار النور المبين. الأردن، 2014. ص56.

²⁰IdrisGalyautdin. Nasledstvo. Er-Riyad, 2009.

²¹السيد شريف الجرجاني. الشريفة شرح السراجية. المكتبة الاشرفية، ديوبند، الهند،

Nashryili ko'rsatilmagan. B 5.

²²Oblegchenniy fiqh v svete Korana i Sunni. Makhachkala, 2016.

²³Imom Nasa'iy rivoyati, 6367-hadis.

²⁴Yusuf Qoradoviy. Zamonaviy fatvolar. -M.2004

inheritance law, among other things, that their followers accepted the words of other mujtahids, as required by the circumstances.

It can be said that the role of fatwas in modern lawmaking in Islam has become very large. As a striking example of this, a fatwa was passed in Malaysia allowing medical intervention to affect the sex of an unborn child²⁵. Some scholars view the fatwa as a source of Islamic law similar to ijihad, which is a type of ijihad and ijma synthesis²⁶. But not all Muslims in the Islamic world can accept it unanimously. The fatwa, which is a continuation of ijihad and ijma, inherited the same problems from them.

There is a standing committee with the authority to issue fatwas in the Arab Republic of Egypt, Saudi Arabia and other Arab and Islamic countries. However, these fatwas are not recognized as a source of Sharia law in Iran. Even in modern Egypt, its acceptance without objection is questionable. There is also a Council of Europe on fatwas in Europe for more than 20 years, which focuses solely on the problems of European Muslims²⁷.

Among the Shari'a sciences, the issue of a separate study of the science of heritage is also a specific system in the Movarounnahr madrasahs, which functioned in the 18th century. In particular, Ziyodulla Muqimov, a jurist on these madrasahs in Uzbekistan and the sciences taught in them, concludes in his book, *The Movarounnahr School of Fiqh*, that in the tenth and eleventh centuries, the science of heritage was taught as a separate subject in Movarounnahr madrasahs.

A French scholar who studied Islamic law and several of its branches, R.Charles also devoted the fifth chapter of his book, *Muslim Law*, to this question, in which he described the question of inheritance as follows: "The basic rules of Islamic inheritance law are taken from the Qur'an. The issue of inheritance in Islamic law is a very complex one, but at the same time it is a legal issue that has been dealt with more skillfully in accordance with the legal system than some of the abstract and complex rules that have been introduced".

In Islamic law, inheritance is based on inheritance and will. When the right of inheritance is exercised by law, the heir is considered to be the successor, not the successor, of the testator. Therefore, the heir is not obliged to pay the debts of the deceased in excess of the share he received²⁸.

Conclusion

The findings of the researchers show that Islamic heritage law is unique in its coverage of issues in this area. It is impossible to determine whether we have separate inheritance rules for gay (hermaphrodites) in other legal systems.

²⁵YilmazI. An analytical overview on the girl's inheritance share based on gender in Islamic Law // *Cumhuriyet İlahiyat Dergisi*. 2018. 22(1). P.347.

²⁶Raxmatullin R. YU. Osobennostiislamskogo nasledstvennogo prava// *Nauchnyy vestnik Omskoy akademii MVD Rossii*. 2019. № 2(73).

²⁷Shavit U., Spengler F. Does the European Council for Fatwa and Research Matter? The Case of Muslims in Dortmund, Germany // *Politics, Religion and Ideology*. 2017. 18(4). P.363.

²⁸Begmatova B. Islomda meros huquqlari. Fan nomzodi ilmiy darajasi uchun yozilgan dissertatsiya. Toshkent. Toshkent islom universiteti, 2008 y.

However, since the share of inheritance in jurisprudence is not the same for men and women, it is necessary to determine the sex of “homosexuals” (hermaphrodites). Such a norm exists in fiqh²⁹. In modern Malaysia, a fatwa has emerged that allows such individuals to undergo voluntary gender reassignment surgery, after which it is possible for a person to inherit as a man or a woman³⁰.

If we evaluate the Islamic heritage law in general, we must keep in mind that this is the most difficult part of fiqh. As AK Khalifaeva writes, “the law of inheritance of Muslims is distinguished by its incomparable complexity”³¹. Also, details of the smallest but occurring categories of heirs in life and their share in the inheritance, and even the rulings on the rights of the fetus in the mother’s womb, are analyzed in the works on inheritance written by the jurists³². Thus, a description of inheritance law in general may be useful for the development of the inheritance law of secular states.

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²⁹Mukhammad Ashiq. *Islamskoye pravo. Obshedostupnoye izlozheniye fikha*. Kazan, 1999. P.163

³⁰Badrol M. A. B. M., Awang A. B. B., Haneef S. S. S., Zainuddin A. A. The gaps in fatwa on intersex corrective surgery: Some reflections in the context of Malaysia // *Intellectual Discourse*. 2018. 26(1).

³¹Xalifaeva A. K. *Musul`manskoe gosudarstvennoe pravo (imushchestvennoe i nasledstvennoe pravo) na territorii Dagestana: problemi stanovleniya i razvitiya* // *Sistemnie texnologii*. 2014. № 1(10). P.185

³²Idris Galyautdin. *Nasledstvo*. Er-Riyad, 2009. P.11

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