

# **INTERNATIONAL JOURNAL OF LEGAL STUDIES AND SOCIAL SCIENCES [IJLSSS]**

ISSN: 2584-1513 (Online)

Volume 3 | Issue 3 [2025] | Page 09 - 21

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# SECULARISM VS. SHARIA: RECONCILING ISLAMIC INHERITANCE LAWS WITH SECULAR LEGAL NORMS

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## ABSTRACT

**Muslim inheritance law** is based on **Sharia**, the Islamic law derived from the **Quran**, **Hadith** (the sayings and actions of the Prophet Muhammad), and **Fiqh** (Islamic jurisprudence). The law prescribes fixed shares for various family members, ensuring a defined portion for each heir, such as children, parents, and spouses. *Male heirs typically inherit more than female heirs*, with sons generally receiving twice the share of daughters. It provides specific guidelines for the distribution of a deceased person's estate, which often leads to outcomes that diverge significantly from the principles upheld by secular legal systems.

While Sharia inheritance law aims to maintain justice and prevent family disputes, it often conflicts with secular legal norms, particularly with regard to gender equality and the autonomy of the individual in deciding the distribution of their estate. The key areas of **contrast** include the unequal treatment of male and female heirs, the prioritization of certain family members, and the inflexibility of religious laws in comparison to the more adaptive and egalitarian nature of secular inheritance laws.

This paper offers a detailed exploration of Sharia inheritance law and its contradictions with secular legal systems, particularly with regard to gender equality and the concept of individual rights. This research examines the practical implications of these differences, ***focusing on the challenges faced by individuals living in secular legal environments but subject to Sharia inheritance practices, especially in contexts where both legal systems intersect.*** The paper critically analyzes the broader implications for personal freedoms, gender equality, and the legal recognition of religious laws within multicultural societies, ultimately questioning how these contrasting systems can coexist.

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## RESEARCH GAP

This paper aims to study the aspects of sharia law inheritance along with the principles of modern justice and its limited exploration of how do they both align and how more than often, they contradict. While much has been written about the application of Sharia law in traditional contexts, there is a lack of comprehensive studies addressing how these laws can evolve or be reinterpreted to meet the needs of modern, pluralistic societies. Furthermore, existing research often overlooks the intersection between secular legal norms and Sharia law, particularly in multicultural settings where individuals may be subject to both systems. There is also a need for empirical studies that examine the practical challenges faced by individuals navigating these dual legal frameworks, especially regarding inheritance, family law, and personal freedoms.

## HYPOTHESIS

The hypothesis of this research paper is that reconciling Islamic inheritance laws (Sharia) with secular legal norms is both necessary and feasible through a process of reinterpretation and adaptation. By addressing the inherent gender disparities and rigidities in traditional Sharia inheritance rules, particularly in the context of contemporary values like gender equality and individual rights, it is hypothesized that an inclusive legal framework can emerge. This framework would allow for the coexistence of Islamic principles and secular values, ensuring that the application of inheritance laws aligns with both religious teachings and the evolving needs of modern, pluralistic societies.

### The paper seeks to:

Investigate the key differences between Sharia inheritance laws and secular inheritance norms, with a focus on the implications for gender equality and individual rights.

Examine the feasibility of modernizing Sharia inheritance laws to align with contemporary principles, such as gender equality, fairness, and personal freedom.

Propose potential frameworks for harmonizing Sharia inheritance laws with secular legal norms, ensuring that both religious beliefs and universal human rights are respected.

## INTRODUCTION

In modern, legal and political theory, the intersection of religious law and secular legal systems poses a **significant challenge**, especially in multicultural and pluralistic societies. The field of Islamic inheritance law, a fundamental element of Sharia that has both theological and socio-legal significance, is one of the most complex areas of this intersection. The Qur'anic injunctions, which

specify fixed shares for particular heirs, govern inheritance in Islam. Many followers see these guidelines as unchangeable divine commands rather than just legal precepts. Because of this, Islamic inheritance laws are difficult to change and frequently contrast with the adaptable, dynamic character of secular legal standards.

Contrarily, secular legal systems are usually based on the constitutional precepts of equality, individual liberty, and state neutrality regarding religious issues. Secular jurisdictions' inheritance laws frequently place a higher priority on individual rights protection, testamentary freedom, and gender neutrality. When Muslim people or communities try to implement Islamic inheritance laws within a secular legal framework, this leads to a normative conflict. Gender-based distribution (male heirs, for instance, usually receive twice the share of female heirs), restrictions on testamentary freedom, and the marginalization or exclusion of some heirs under Islamic law that secular systems would otherwise recognize equally are particularly controversial topics.

The central aim of this paper is to explore whether—and how—it is possible to reconcile Islamic inheritance laws with secular legal norms in a manner that respects religious identity without compromising constitutional principles. This investigation will examine the theoretical underpinnings of both legal paradigms, analyze case law and statutory frameworks in selected jurisdictions, and consider the socio-political implications of legal pluralism.

## THE JURISPRUDENCE OF ISLAMIC INHERITENCE

Often referred to as *Mirāth* ("*inheritance*"), Islamic inheritance is a field within the study of Islamic law jurisprudence. Its branch of Islamic law is officially known as 'ilm al-farā'id. Islamic inheritance laws specify precise rules for allocating assets among heirs and are based on precepts taken from the Quran and Sunnah<sup>2</sup>. These regulations, which guarantee equity and justice in the allocation of wealth among family members, are essential to Islamic estate planning.

### A) QU'RANIC INHERITANCE

The Qu'ran brought about several important rights and restrictions regarding inheritance, which included significant improvements in the treatment of women and family dynamics. It also aimed to establish clear laws of inheritance, effectively creating a comprehensive legal framework. This was a notable shift from pre-Islamic societies, where inheritance rules were often inconsistent.

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<sup>2</sup> [https://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/Islamic Law of Inheritancee \(1\).docx](https://law.uok.edu.in/Files/5ce6c765-c013-446c-b6ac-b9de496f8751/Custom/Islamic%20Law%20of%20Inheritance%20(1).docx) >> accessed 17 April 2025

Additionally, the Qur'an recognized new heirs who were not given claim to inheritance in preIslamic times, specifically naming nine relatives—six women and three men. In Shia tradition, the laws of inheritance also acknowledged other male relatives, like husbands and half-brothers from the mother's side, who were previously, not eligible for inheritance.

While the Qur'an doesn't detail the specific shares for male relatives, such as the son of the deceased, it does establish a principle that a son's share should be double that of a daughter's. ***‘Muslim theologians explain this aspect of inheritance by looking at Islamic Law in its entirety, which bestows the responsibility and accountability on men to provide safety, protection and sustenance to women’***

Before the revelation of the verses containing the above changes, the Qur'an specified on Muslims to write down a will detailing how they wish to dispose of their entire property. Muslims are allowed to give out a maximum of one third of their property, while the rest will be divided according to the verses of inheritance in Shia Muslims.

## **B) DETAILS OF INHERITENCE**

When a Muslim dies, such duties needs to be performed :-

1. Pay funeral and burial expenses.
2. Paying debts of the deceased.
3. Determine the value / will of the deceased if any (upto one third of the estate)
4. Distribute the remainder of estate and property to the relatives

Therefore, it is necessary to determine the relatives of the deceased who are entitled to inherit, and their shares.

## **MOHD. ISMAIL V. SABIR ALI<sup>3</sup>**

It was clarified that under Muslim law, inheritance opens at the time of death, and legal heirs are determined at that moment. A person who is not alive at the time of the deceased's death cannot inherit.

Islamic law places the following types of restrictions on the testator.

1. Which persons they can bequeath their wealth to.
2. The amount that they can bequeath

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<sup>3</sup> Md. Ismail v. Thakur Sabir Ali (1962) SC 117

### 3. Principles of inheritance

**Prescribed Shares:** The Quran specifies fixed shares for different categories of heirs, including spouses, children, parents, and other relatives.

**Precedence of Kinship:** Islamic inheritance laws prioritize the rights of close relatives over distant ones, with spouses, children, and parents typically receiving the highest shares, followed by more distant relatives.

#### **APPLICATION OF ISLAMIC INHERITANCE LAWS:**

When it comes to **calculating shares**, Islamic inheritance laws have specific guidelines that determine how much each eligible heir receives. These calculations are based on set formulas that consider the deceased's assets, debts, and the designated shares for each heir.

**As for the distribution of assets**, when someone passes away, their belongings are divided among the heirs according to the shares specified in Islamic inheritance laws<sup>4</sup>. Executors or administrators are responsible for managing this distribution, ensuring everything aligns with Shariah principles.

Additionally, **Islamic inheritance laws also touch on guardianship and trusteeship matters**. This includes appointing guardians for minor children and overseeing the management of assets for the beneficiaries.

Lastly, it's important to have the **right legal documentation in place**. Islamic inheritance laws mandate that all inheritance proceedings are properly documented, which includes wills, distribution plans, and legal declarations outlining each heir's rights.

#### **SHARIA LAW OF INHERITANCE : SHIA AND SUNNI'S**

Both Shia and Sunni schools of Islamic law derive their principles of inheritance from the Quran, Hadith and the Sunnah. However, they differ in certain aspects, leading to variations in the distribution of an estate and there are **key differences** in how they apply these rules due to differences in jurisprudence and religious interpretation.

**Sharers (Dhawul-Furud):** These are heirs whose shares are specifically mentioned in the Quran. Both Sunni and Shia laws recognize these sharers, but there can be differences in their number

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<sup>4</sup> [https://en.wikipedia.org/wiki/Islamic\\_inheritance\\_jurisprudence#Inheritance\\_and\\_the\\_Qur'an](https://en.wikipedia.org/wiki/Islamic_inheritance_jurisprudence#Inheritance_and_the_Qur'an) >> accessed 17 April 2025

and the circumstances under which they inherit. Common sharers include spouses, parents, and children

## **SUNNI LAW- 12 SHARERS ( 8 FEMALE 4 MALE ) SHIA LAW- 9 SHARERS ( 6 FEMALE 3 MALE )**

**Residuaries:** In Sunni law, after the sharers have received their prescribed portions, the remaining estate is inherited by agnatic relatives (male relatives related through the male line). The closest male agnate inherits the residue.

**Distant Kindred:** If there are no sharers or residuaries, Sunni law allocates the remaining estate to distant kindred (relatives who are neither sharers nor agnatic residuaries)

## **RULES OF EXCLUSION**

Exclusion (Hajb) refers to the principle where the presence of a closer relative prevents a more distant relative from inheriting. The rules of exclusion differ slightly between Sunni and Shia law due to their different classifications of heirs.

**General Principles of Exclusion:** This principle is generally accepted in both Sunni and Shia law within the same class of heirs. For example, a son excludes a grandson, and a father excludes a paternal grandfather.

## **NAWAB BAHADUR OF MURSHIDABAD V. NAWAB SYED MOHAMMED ALI KHAN<sup>5</sup>**

The case ruled that a grandson cannot inherit in place of a predeceased son under Sunni law.

**Relationship Through Another Excludes:** In Sunni law, a person related to the deceased through another person is excluded if that connecting person is alive. For instance, a paternal grandfather is excluded by the father. This rule has a more limited application in Shia law due to its different heir classes.

**Complete Exclusion (Hajb Hirman):** This is the total deprivation of inheritance.

**Partial Exclusion (Hajb Nuqsan):** This involves reducing the share of an heir due to the presence of another heir. For example, the husband's share might be reduced from one-half to one-fourth if the deceased has children.

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<sup>5</sup> Nawab Bahadur Murshidabad v. Nawab Syed Mohd. Ali Khan 1990

## DOCTRINE OF AUL (INCREASE)

**Sunni Law:** If the total prescribed shares of the sharers exceed the total value of the estate, the shares are reduced proportionally among all the sharers.

**Shia Law:** The doctrine of Aul is generally not recognized. If the total shares exceed the estate, some sharers (excluding the spouse and sometimes parents) might have their shares reduced.

Doctrine of Rudd (Return or Increase by Return):

**Sunni Law:** If the total prescribed shares of the sharers are less than the total value of the estate and there are no residuaries, the surplus is returned proportionally to the sharers, with the exception of the husband and wife, who generally do not receive the return.

**Shia Law:** If there is a surplus after distributing the shares to Class I heirs and there are no other Class I residuaries, the surplus returns to the sharers in Class I (including the spouse in some cases, depending on the presence of other Class I heirs).

## THE CONFLICT BETWEEN MUSLIM INHERITANCE AND INDIAN

### SUCCESSION ACT

The contradiction between **Muslim personal law of inheritance** and the **Indian Succession Act, 1925**<sup>6</sup> arises because India follows a **pluralistic legal system** for matters related to marriage, divorce, inheritance, and adoption. This system allows different religious communities to be governed by their **personal laws** in certain civil matters, leading to differences and contradictions between religious personal laws and general civil laws like the Indian Succession Act.

Muslim inheritance laws in India are not codified by Parliament but are governed by **Islamic Shariah** principles. There are two main sects: **Sunni** and **Shia**, and both follow different schools of thought.

Inheritance is divided according to **pre-determined shares** in the Quran.

A Muslim cannot will away more than **one-third** of their property (if heirs exist).

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<sup>6</sup> Indian Succession Act (1925)



Certain heirs (like parents, spouse, children) are "sharers" and always entitled to a part of the estate. The estate is first used to pay funeral expenses, debts, and bequests, and the remaining is distributed to the heirs.

## UNDER INDIAN SUCCESSION ACT, 1925

- Equal distribution among heirs regardless of gender.
- Allows full testamentary freedom (i.e., a person can will away the entire property).
- There is no mandatory share for any particular heir unless a will is absent

## MOHAMMED AHMED KHAN V. SHAH BANO BEGUM (1985)<sup>7</sup>

SC in this case highlighted the tension between personal law and constitutional rights. This leads to a **constitutional dilemma**: Articles 14 and 15 guarantee equality, yet personal laws are exempted from scrutiny in many cases.

The moral differences between the Indian Succession Act of 1925 and Muslim inheritance law stem mainly **from their core values and how they view equality, individual rights, and family responsibilities**. The Indian Succession Act is a secular law, shaped by Western legal ideas, and it prioritizes individual freedom, the right to make a will, and gender equality. It allows people to decide how to distribute their property through a will, and if someone dies without one, it ensures equal inheritance rights for everyone, regardless of gender.

On the other hand, Muslim inheritance law is based on religious teachings, mainly from the Quran and Hadith, and is considered divine law that should not be changed. It focuses more on family dynamics, religious obligations, and community justice rather than individual rights. In this system, the shares for heirs are predetermined, with males typically receiving double the share of females, based on the belief that men have greater financial responsibilities within the family. Additionally, the freedom to make a will is limited—a Muslim can only leave one-third of their estate to be distributed as they wish if there are heirs, while the remainder must follow religious guidelines. From a traditional Islamic moral standpoint, this system is seen as fair because it upholds family obligations, but from a modern constitutional or secular perspective, it can often be viewed as discriminatory, especially against women.

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<sup>7</sup> Mohammed Ahmed Khan v Shah Bano Begum (1985) AIR 945 SCR 3

## SHARIA VS SECULAR LEGAL SYSTEMS : GENDER EQUALITY DILEMMA

Muslim inheritance law lays out a detailed and mandatory framework for how a deceased person's estate should be divided. The Qur'an specifies particular shares for a variety of heirs, including children, spouses, parents, and siblings. *One of the most talked-about and often debated elements of this system is the gender-based distribution, especially the rule that male heirs receive twice the share of their female counterparts.* For instance, a son inherits double what a daughter does, and brothers may get more than sisters.

This principle is traditionally explained by the classical Islamic perspective on social and financial roles: men are viewed as the primary providers for the family, **tasked with earning a living, paying the dowry (mahr), and covering household expenses, while women's financial duties are more limited, and their wealth is considered their own**<sup>8</sup>. In this context, the unequal inheritance shares are perceived not as unfairness, but as part of a larger system aimed at ensuring family stability and financial security for women through male guardianship and support.

However, this structure has come under increasing scrutiny in modern times, especially when compared to contemporary ideas of gender equality. Critics argue that the historical context in which these rules were established no longer reflects today's realities. In many societies—both Muslim-majority and otherwise—women are actively involved and often hold equal positions in the workforce, significantly contributing to household income, and sometimes even serving as the sole providers or heads of families.

This clash between adherence to scripture and changing social norms presents a complex dilemma regarding gender equality. On one side, many Islamic scholars and conservative voices maintain that the inheritance laws are “divinely ordained” and based on clear, straightforward Qur'anic verses, making them unchangeable and beyond human intervention. On the other hand, a growing number of reformist scholars, Muslim feminists, and legal activists argue for the **use of *ijtihad*—independent reasoning**—in reinterpreting these laws in light of ***maqāṣid al-sharī'ah* (the higher objectives of Islamic law)**, which emphasize justice, social welfare, and the protection of human dignity. These reformists maintain that the spirit of Islamic law supports equity and that literal interpretations should not override the fundamental ethical values Islam seeks to uphold.

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<sup>8</sup> "Sahih al-Bukhari 2742 - Wills and Testaments (Wasaayaa) - كتاب الوصايا - Sunnah.com - Sayings and Teachings of Prophet Muhammad (صلى الله عليه و سل)

Some countries, such as Saudi Arabia and Pakistan, implement classical Islamic inheritance laws as part of their legal systems. In contrast, others have introduced legal reforms or practical workarounds to promote more gender-equitable outcomes.

**Tunisia, for instance,** has led controversial efforts to propose equal inheritance laws for men and women, igniting debates about the role of the state, the interpretation of Islamic texts, and the limits of religious authority in civil law. In other contexts, families ensure daughters or female relatives receive more equitable treatment, even if this circumvents the formal inheritance system.

## **PRINCIPLES OF JUSTICE: CONSTITUTIONAL AND RELIGIOUS RIGHTS**

### **ARTICLE 14<sup>9</sup> – RIGHT TO EQUALITY**

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

- Guarantees equality before the law.
- Prevents arbitrary classification or discrimination by the state.

Personal laws govern matters like marriage, divorce, succession, and adoption. These laws are not codified in the Constitution, but are derived from religious scriptures, customs, and community practices. The Supreme Court, in various cases, has treated personal laws as not “law” within the meaning of Article 13<sup>10</sup> of the Constitution, meaning they are not subject to constitutional scrutiny— this is highly contested.

### **MOHAMMED AHMED KHAN V. SHAH BANO BEGUM (1985)<sup>11</sup>**

Shah Bano, a 62-year-old Muslim woman, was divorced by her husband using triple talaq. She filed a claim for maintenance under **Section 125 of the Criminal Procedure Code (CrPC)**<sup>12</sup>, which is a secular law applying to all citizens. The Supreme Court ruled in her favor, granting her maintenance beyond the iddat period (three months after divorce).

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<sup>9</sup> Indian Const. Art. 14

<sup>10</sup> Indian Const. Art. 13

<sup>11</sup> ibid 6

<sup>12</sup> Criminal Procedural Code, S.125

The Court emphasized **Article 14 and 15**<sup>13</sup>, stating that a divorced woman, regardless of religion, deserves maintenance. This decision was seen as a step toward **uniform civil rights**, but it sparked massive backlash from conservative Muslim groups, claiming interference in **Islamic personal law**.

## DOCTRINE OF “ESSENTIAL RELIGIOUS PRACTICES”

- The court has occasionally used this doctrine to **determine if a religious practice is protected under Article 25**<sup>14</sup>. If a practice is not "essential" to the religion, it can be subject to constitutional scrutiny.

**Article 25** of the Constitution which guarantees **freedom of religion**, often comes into **conflict with fundamental rights** like **Article 14** and **Article 15** especially when religious practices or personal laws result in **discrimination or inequality**, particularly against women and marginalized communities.

## PERSONAL LAWS

- **Muslim inheritance law**: Sons get **double** the share of daughters.
- **Hindu law (pre-2005 amendment)**: Daughters were not considered coparceners in ancestral property.
- **Adoption and guardianship**: Vary by religion, often discriminatory.

It is therefore, held by the Supreme Court in cases time and again that Only those practices that are essential and integral to the religion are protected under Article 25. If a practice is not essential, it can be regulated or struck down.

## NEED FOR REFORMATION : MODERNISING MUSLIM LAW

The call for reforming and updating Muslim inheritance laws is becoming more urgent in today's socio-economic and legal environment. While the traditional Islamic inheritance rules, rooted in the Qur'an and classical Islamic jurisprudence, were revolutionary in their time for ensuring women received a specific share of inheritance, they were created in a historical context that doesn't quite match the realities of modern Muslim societies anymore.

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<sup>13</sup> Indian Const. Art. 15

<sup>14</sup> Indian Const. Art. 25

Nowadays, women are more financially independent, educated, and actively participating in the workforce. Yet, despite this progress, the inheritance laws still adhere to the old formula where a male heir gets twice the share of a female heir in the same category. This system, which was once based on principles of financial responsibility and protection, now risks widening economic gaps and perpetuating gender inequality in how inheritance is distributed.

Updating Muslim inheritance laws doesn't mean discarding the Islamic framework; rather, it involves reinterpreting and applying it in light of today's contexts, using the very tools that the Islamic legal tradition offers—like *ijtihād* (independent reasoning) and *maqāṣid al-sharī'ah* (the higher objectives of Islamic law).

These objectives, which include justice, equity, and public welfare, can guide us in rethinking the laws to ensure they continue to fulfill their intended moral and social roles as society evolves. Reformist scholars and Muslim feminists argue that there is room within Islamic jurisprudence for adaptation, especially since the Qur'an also emphasizes principles of fairness and the importance of protecting vulnerable members of society.

The urgency of reform is also evident in the practical consequences of maintaining the current system without flexibility. In many Muslim-majority countries, women are not only entitled to less inheritance but also face social pressure to relinquish their shares to male relatives. In rural areas and traditional communities, it is common for daughters or sisters to be excluded altogether in favor of male kin, despite the explicit provisions in Islamic law that guarantee them a portion. Such practices highlight the disconnect between the law as written and its implementation on the ground, reinforcing the need for legal reform alongside cultural transformation.

**Tunisia**, proposed equal inheritance laws, citing the need to align legal practices with constitutional commitments to gender equality. While such reforms have faced opposition, they reflect a growing recognition of the need to harmonize Islamic values with contemporary human rights standards. Other countries, like Egypt and Morocco, have promoted awareness and education to encourage fairer application of inheritance rules and protect women's rights within the existing framework.

## CONCLUSION

Reconciling Islamic inheritance laws with secular legal norms presents a complex yet increasingly urgent challenge in many Muslim-majority and multicultural societies. On one side, Islamic inheritance laws are rooted in religious texts and traditions considered immutable by many believers, representing divine guidance on justice, family responsibility, and wealth distribution.

On the other, secular legal systems prioritize principles of gender equality, individual autonomy, and uniform civil laws that apply equally to all citizens regardless of faith. The friction arises when religious laws, particularly those perceived as discriminatory—such as unequal inheritance shares for women—conflict with constitutional commitments to equality and human rights.

Navigating this tension requires a nuanced approach that respects religious identity while also addressing evolving social values. Legal pluralism, contextual reinterpretation of religious texts, and inclusive legal reform can offer pathways toward compromise. Reform-minded scholars and lawmakers can work within the framework of Islamic legal tradition using tools like *ijtihād* (independent reasoning) and *maqāṣid al-shari‘ah* (higher objectives of Islamic law)<sup>15</sup> to reinterpret rulings in ways that align with contemporary standards of justice and fairness. At the same time, secular systems must foster inclusive dialogue with religious communities to ensure that reforms are not seen as attacks on faith, but rather as efforts to harmonize law with lived realities.

Ultimately, the goal is not to erase religious identity from the legal system but to create a framework where justice—both religious and civic—can coexist. This delicate balance between secularism and Sharia requires ongoing dialogue, cultural sensitivity, and a shared commitment to protecting the dignity and rights of all citizens, regardless of gender or faith.

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<sup>15</sup> <https://en.islamonweb.net/fundamentals-of-inheritance-faraid-in-islam-ensuring-fair-distribution> accessed 17 April 2025