

Ignoring Islamic Inheritance Laws Is Not Always Islamophobic

Islamic and Western wills have different priorities

BY AHMED SHAIKH

A MAN DIED IN GREECE. IN KEEPING with the custom in many Western countries, his wife wants everything. The trouble is that the man was Muslim. Of course the widow inherits, but so do others — in this case his sisters, who actually received more than the widow did. A local court awarded the inheritance under Islamic law, only to have it overturned by the European Court of Human Rights (ECHR) after the widow filed a review petition (AP News, Dec. 19, 2018).

Why Islamic law in Greece? Legislation concerning the country's minorities was based on international treaties drawn up in the 1920s when the Ottoman Empire collapsed. Civil cases involving northeastern Greece's 100,000-strong Muslim minority were dealt with under Islamic law and presided over by a single official, a state-appointed Muslim cleric, or a community-recognized mufti.

Many countries have dual or multiple systems. Israel has Sharia courts, India maintains a personal law board for Muslims and some Muslim-majority countries allow religious minorities to have separate systems.

Historically, religion has always been consequential when it comes to deciding who has rights. If we don't care about rights to inheritance, we will start to see more injustice, particularly to orphans.

Islam's inheritance system is obligatory on all Muslims, whether the government mandates it or not. In Greece, though, the ECHR decided that in this case the system is discriminatory, where widows are treated differently based on religion, and should not be permitted. Can this be interpreted as an anti-Muslim decision, given the reality of such bias in Europe and other countries with historical Muslim minorities? Not necessarily. A single inheritance system is not always bad for Muslim minorities, provided that Muslims can implement this obligation for their own families.

One example of this is the U.S., where

every state follows some variation of "free alienation of property," meaning that you can mostly do whatever you want with your money or property. The U.S. Supreme Court has likened this to an essential stick in a bundle of rights that goes with ownership, for only ownership permits you to make such a decision. While Islam teaches that everything belongs to God, the U.S. system is still useful for practicing Muslims.

But not every state has the same rules. For example, many states have "forced" shares, where the surviving spouse is always entitled to inheritance (though not everything)

unless he/she waives it. However, you can plan to arrange an Islam-compliant distribution in any state.

When, during the 2010 elections, Republicans focus-grouped the scary word "Sharia," it was unclear whether Muslims would be able to maintain this religious obligation — Oklahoma's "Save Our State" amendment went so far as to outlaw Sharia. This anti-Muslim animus helped Republicans gain a super-majority in the legislature.

In the same year, Muneer Awad, then executive director of CAIR-Oklahoma,




drafted an Islamic will and went to court to vindicate his right to do so, naming the Oklahoma State Election Board, then chaired by Paul Zirllax. Awad argued that the amendment would make Oklahoma's constitution a vehicle for "an enduring condemnation" of Islam. His case resulted in a quick injunction and an appellate court win (*Awad v. Zirliax*, 670 P.3d 1111 [10th Cir. 2012]).

Inheritance in Islam is not really about governments and their policies, at least not in the U.S. Residents of other countries, including some Muslim-majority countries, aren't always so fortunate. In fact, the reasons why they can't implement this system can vary and range from sloth to ignorance.

Surprisingly, Muslim Americans who draw up a will may find it put aside by a judge who rules in favor of non-entitled people

wasiyyah through her Muslim husband's right to distribute up to one-third of his estate to all such people.

It is entirely reasonable for people to worry about a widow's welfare, as seen in the Greek case mentioned above. There is a conflict of values here. Many societies favor widows, including people like the wicked stepmother in "Cinderella," whereas Islam places more importance on orphans. Indeed, the Quran warns guardians not to grab the latter's wealth (4:10) just before laying out the inheritance rules (starting at 4:11). Of course widows inherit, but along with a constellation of other heirs, including orphans.

In the U.S., a plan might consist of a property agreement between spouses, a living trust, a will, beneficiary designations, deeds and other contracts — all of which can be drafted to create a private Islamic system. Although not as simple as it may be in a Muslim country that applies this system, it works fine. 

SURPRISINGLY, MUSLIM AMERICANS WHO DRAW UP A WILL MAY FIND IT PUT ASIDE BY A JUDGE WHO RULES IN FAVOR OF NON-ENTITLED PEOPLE DUE TO STATUTES THAT MANDATE IGNORING THE WILL UNDER CERTAIN CIRCUMSTANCES.

due to statutes that mandate ignoring the will under certain circumstances. By doing a "will-based" plan, you are subjecting your property to a probate, which has its own rules and internal logic. In some cases, the will may never even reach a judge due to non-probate transfers — property transfers to people outside the court system.

Say that Abdullah, a single homeowner whose home is worth \$1 million, marries Haritha and dies a month later. If he does not have a last will, depending on the state, the wife will get everything or nearly everything. But if he has one, there are other considerations. For example, if he owns it jointly with his wife (and many spouses set this up soon after the marriage), everything goes to her even if his will follows the Islamic system. If he didn't update his will to reflect his changed status, his wife will receive an "intestate" share: an amount similar to what she would receive in the absence of a will.

A lot of the concern for Muslim American parents is not what the children or siblings get, even though a daughter only inherits half of what a son does, for this is clearly stated in the Quran. Instead, the primary concern is the wife, who receives either one-eighth or one-fourth; the smaller amount is for those with children. If she is a non-Muslim she has no right to any inheritance; however, she can receive up to one-third of it through

Ahmed Shaikh is an attorney and certified specialist in estate planning, trust and probate law by the State Bar of California Board of Legal Specialization. He is the co-author of "Estate Planning for the Muslim Client" (ABA Publishing, 2019).

ISNA Monthly Sustainer – A Good Deed Done Regularly!

**You can make an impact
with as little as
\$10 per month!**




www.isna.net
(317) 839-8157

Convenient. Secure. Affordable.

