

# Gender and Islamic Inheritance Law: Reassessing Qur'anic Interpretations of Women's Inheritance Rights

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## Abstract

This article challenges dominant interpretations of Islamic inheritance law by advancing alternative readings of Qur'anic texts that produce more equitable outcomes for female heirs. Although gender justice in Islamic marriage and divorce law has received extensive scholarly attention, inheritance law (*mirāth*) remains comparatively underexamined, partly because it is widely perceived as immutable. This study demonstrates that inheritance rulings have historically been subject to scholarly disagreement and *ijtihād* since the era of the Prophet's Companions, including in the two decisions of 'Umar (*al-'Umariyyatān*). The article traces three stages in the development of Islamic inheritance law: the initial bequest system, the introduction of fixed Qur'anic inheritance shares, and later restrictions on bequests. It critically examines whether the bequest verses (Q2:180–182) and the widow verse (Q2:240) were abrogated by later inheritance verses. Drawing on the minority yet jurisprudentially rigorous views of Abū Muslim al-Iṣfahānī and Fakhr al-Dīn al-Rāzī, the article argues against abrogation and contends that the hadith “no bequest to an heir” lacks sufficient authority to override Qur'anic provisions. It further argues that alternative hermeneutical approaches can enhance gender equity while remaining faithful to the Qur'an's principles of justice.

**Keywords:** Islamic Inheritance Law, Gender Justice, Qur'anic Interpretation, Women's Inheritance Rights.

## I. Introduction

In socio-legal empirical research I conducted on Islamic inheritance practices within the Muslim minority community in South Africa,<sup>1</sup> practitioners noted that widows are often

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<sup>1</sup> The socio-legal empirical research was undertaken as part of the author's PhD research, which entailed qualitative interviews with lawyers, government officials and ulama officials who are engaged with the administration of Islamic estates in South Africa. The study furthermore included archival studies of Islamic wills in the South African archives, as well as document analysis of 480 Islamic wills stored in the archives of the Muslim Judicial Council, a Muslim theologian body in South Africa, which offers an Islamic will drafting service to the Muslim public. For more on the methodology adopted see: Fatima Essop, “The Intersection Between the Islamic Law of Inheritance and the South African Law of Succession” (PhD thesis, University of Cape Town, 2022), 173-175, 206-243.

left financially vulnerable upon the death of their husbands because of the limited share they inherit from the deceased husband's estate under Islamic law.<sup>2</sup> This situation is further exacerbated when the husband is the sole breadwinner during the marriage, while the wife performs domestic and caregiving responsibilities, without having the opportunity to amass an estate. Under Islamic inheritance law, a widow is entitled to one-quarter of her husband's estate if he leaves no descendants, or one-eighth if he leaves descendants.<sup>3</sup> Where the deceased husband had more than one wife, the widows must share the one-quarter or one-eighth portion between them.<sup>4</sup> It is also commonly understood, as will be discussed below, that a widow is entitled to maintenance from her deceased husband's estate only for four months and ten days following his death, which constitutes the prescribed waiting period (*iddah*) for widows. Thereafter, she is expected to survive on the relatively modest share inherited from the estate, often without any security of tenure in the home in which she may have lived for most of her married life. The assumption is that the widow will be supported by her male agnatic relatives after her husband's death; however, this is frequently not the case in contemporary contexts, where the nuclear family has largely replaced the support structures once provided by the extended family. During the course of my empirical research, a state official responsible for administering deceased estates remarked:

“The Shari‘ah basically says that the wife is entitled to one-eighth, but what do you do today when children do not look after their parents? I always advise the surviving spouse that, if she feels insecure, she should lodge a maintenance claim against the deceased husband's estate, especially where the children have not come forward. I have seen this happen often.”<sup>5</sup>

The concerns raised by this state official were echoed by lawyers administering Muslim estates, many of whom assist widows in lodging maintenance claims against their deceased husbands' estates because the one-eighth share allocated under Islamic law is

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<sup>2</sup> In order to prevent a widow from being left destitute on the death of her husband, attorneys often make provision in the husband's will for a usufruct in favour of the surviving wife. A usufruct is a limited real right that gives its holder, in this case the wife, the lifelong right to use and enjoy another person's property (in this case the husband's) without actually owning it. Attorney P3 noted, “A lot of clients enquire after a usufruct ... I include it to protect a spouse ... clients don't really enquire whether it is Shari‘ah compliant.” Attorney P5 noted: “Yes, with an older mom we always include a usufruct in the father's will, because then nobody can throw her [the mother] out” Essop “Intersection” 235-236.

<sup>3</sup> See Q 4:12, which is discussed in greater detail below. References from the Qur‘ān are cited with “Q” and the first number reflects the number of the chapter (*sūrah*), whilst the number following the separating colon indicates the number of the verse (*āyah*).

<sup>4</sup> The share would be 1/16<sup>th</sup> if the deceased had two wives, 1/24<sup>th</sup> if he had three wives and 1/32<sup>nd</sup> if he had four wives.

<sup>5</sup> See interview transcript in Essop, “Intersection”, 225. In South Africa, a surviving spouse may lodge a maintenance claim against the estate of their deceased spouse in terms of the Maintenance of Surviving Spouse Act 27 of 1990.

often insufficient to sustain them.<sup>6</sup> It was in this context that I revisited the Qur’anic verses and ahādīth specifically addressing the inheritance rights of wives and mothers. I sought to determine whether alternative readings of the primary sources of Islamic law could yield more just and equitable outcomes for these categories of heirs following the death of close relatives. In doing so, I encountered interpretive approaches that may significantly improve the position of female heirs within Islamic inheritance law.

Islamic inheritance law (*mirāth*) represents one of the most complex and allegedly immutable areas of Islamic jurisprudence<sup>7</sup>, yet this perceived rigidity masks a rich history of interpretive disagreement and scholarly reasoning (*ijtihād*) dating back to the Prophet’s companions.<sup>8</sup> While contemporary scholarship has extensively examined patriarchal interpretations in Islamic marriage and divorce law,<sup>9</sup> inheritance law has received comparatively less critical attention from a gendered perspective.<sup>10</sup> This scholarly gap is

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<sup>6</sup> The lawyers noted that the estate of a deceased Muslim husband only pays maintenance for the widow for the period of her *iddah*. After the *iddah* the widow is expected to survive on her 1/8 share, which inevitably is inadequate, especially if the family home was not registered in her name. Essop, “Intersection”, 235-236.

<sup>7</sup> The Qur’ān stipulates fixed fractional shares for various relatives, which have been treated by classical jurists as *qaṭ’i* (definitive) texts, leaving little room for *ijtihād*. The Islamic system of inheritance is referred to as *ilm al-farā’id* (the science of *farā’id*), denoting the obligatory nature of the Qur’anic stipulated shares and the Qur’ān’s own framing of the *farā’id* as *ḥudūd Allah* (the limits of God) in Q4:13-14 is what gives the inheritance rules their perceived inviolability.

<sup>8</sup> Lexically, *ijtihād* means effort or exertion, but legally, *ijtihād* refers to “[a]n interpretive tool that applies legal reasoning based on the sacred texts to derive new legal rules that meet emerging legal problems”. See Hamid Harasani, “The Role of *Ijtihād* in Progressing Islamic Law in Modern Times,” *US-China Law Review* 10 (2013): 361–72, 361.

<sup>9</sup> In this regard I refer to works by Judith E. Tucker, *Women, Family and Gender in Islamic Law* (Cambridge: Cambridge University Press, 2012); Zainah Anwar (ed.), *Wanted: Equality and Justice in the Muslim Family* (Kuala Lumpur: Musawah, 2009); Ziba Mir-Hosseini, “A Woman’s Right to Terminate the Marriage Contract: The Case of Iran,” in *The Islamic Marriage Contract: Case Studies in Family Islamic Law*, Asifa Quraishi and Frank E. Vogel (Eds) (Cambridge: Harvard University Press, 2008); Ziba Mir-Hosseini, Mulki Al-Sharmani, Jana Rumminger, and Sarah Marssó, *Justice and Beauty in Muslim Marriage: Towards Egalitarian Ethics and Laws* (New York: Simon and Schuster, 2022); Ayesha S. Chaudhry, “‘I Wanted One Thing and God Wanted Another...’: The Dilemma of the Prophetic Example and the Qur’anic Injunction on Wife-Beating,” *Journal of Religious Ethics* 39, no. 3 (2011): 416–39.

<sup>10</sup> Scholars who have engaged with issues around gender and inheritance include, Chaudry who argues that the cause (*illah*) behind male heirs receiving twice the share of their female counterparts has nothing to do with gender. She argues that if gender were the underlying cause, then the 2:1 ratio should apply to all cases where males and females of the same class are inheriting together, which is clearly not always the case. Zainab Chaudhry, “The Myth of Misogyny: A Reanalysis of Women’s Inheritance in Islamic Law,” *Albany Law Review* 61, no. 2 (1997): 511–55, 537. Amien and Billoo both argue that as laudable as the rationale may be for the differentiation in shares between males and females, such rationale is outdated in present-day Muslim societies because of changing socio-economic circumstances: Yasir Billoo, “Change and Authority in Islamic Law: The Islamic Law of Inheritance in Modern Muslim States,” *University of Detroit Mercy Law Review* 84, no. 5 (2007): 637–64, 653 and Amien “The Viability for Women’s Rights” 192.

particularly concerning, given that inheritance serves as a fundamental mechanism for wealth distribution, intergenerational wealth transfer, and economic empowerment within Muslim families.

Some modern scholars contend that patriarchy is either embedded within the Islamic legal tradition or imposed upon it through historical and cultural processes.<sup>11</sup> They therefore advocate a comprehensive rereading of the primary texts where prevailing patriarchal interpretations discriminate against and disadvantage women.<sup>12</sup> According to Al-Sharmani, Islamic feminism generally pursues two objectives: first, to trace and deconstruct patriarchal religious interpretations, rulings, discourses, and hermeneutical methodologies developed by premodern and modern exegetes and jurists; and second, to advance interpretations that support gender equality and justice within an Islamic framework.<sup>13</sup> Barlas similarly argues that although patriarchal meanings have been read into the Qur'ān, such readings can be distinguished from the Qur'ān's broader message of justice.<sup>14</sup> She therefore seeks both to "challenge oppressive readings of the Qur'ān" and "to offer a reading that confirms that Muslim women can struggle for equality from within the framework of the Qur'ān's teachings".<sup>15</sup>

This article adopts an approach informed by both Al-Sharmani and Barlas by deconstructing dominant interpretations of the Qur'anic inheritance verses while advancing alternative readings that promote gender justice within an Islamic framework. Methodologically, it employs historical contextualisation by tracing the three developmental stages of Islamic inheritance law to situate dominant interpretations within particular juristic and cultural contexts rather than treating them as inevitable derivations from the primary texts. The article further critically examines the classical theory of abrogation (*naskh*) as applied to the bequest verses (Q2:180–182) and the widow verse (Q2:240), arguing that these verses retain both hermeneutical validity and normative force, and that the *ahād ḥadīth* "no bequest to an heir" lacks sufficient evidentiary authority to justify their suppression. To substantiate this argument, the

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<sup>11</sup> Anver M. Emon, "The Paradox of Equality and the Politics of Difference: Gender Equality, Islamic Law, and the Modern Muslim State," in *Gender and Equality in Muslim Family Law: Justice and Ethics in the Islamic Legal Tradition*, Ziba Mir-Hosseini, Kari Vogt, Lena Larsen, and Christian Moe (Eds) (London: IB Tauris, 2011).

<sup>12</sup> There are numerous scholars who have written on Islamic feminism and engaged with the Quranic text from a feminist perspective. In this regard see: Amina Wadud, *Qur'an and Woman: Rereading the Sacred Text from a Woman's Perspective* (Oxford: Oxford University Press, 1999); Fatima Mernissi, *The Veil and the Male Elite: A Feminist Interpretation of Women's Rights in Islam* (New York: Basic Books, 1992); Leila Ahmed, *Women and Gender in Islam: Historical Roots of a Modern Debate* (New Haven: Yale University Press, 1993); Asma Barlas, "Believing Women" in Islam: *Unreading Patriarchal Interpretations of the Qur'an* (Austin: University of Texas Press, 2002).

<sup>13</sup> Mulki Al-Sharmani, *Islamic Feminism: Hermeneutics and Activism* (London: Bloomsbury, 2024), 24.

<sup>14</sup> Barlas, "Believing Women", xi.

<sup>15</sup> Barlas, "Believing Women", xi.

article engages classical tafsīr works, particularly those of the eleventh-century grammarian Abū Muslim al-Iṣfahānī and the twelfth-century theologian Fakhr al-Dīn al-Rāzī, whose interpretations of the relevant verses yield more equitable outcomes for female heirs.

Through an analysis of the developmental stages of Islamic inheritance law, minority juristic opinions on abrogation, and cases such as the al-‘Umariyyatān, this article argues that alternative interpretations of the primary sources can recover the Qur’ān’s broader commitment to justice while enhancing women’s inheritance rights. Such interpretations are not only legally plausible but may also be necessary to align contemporary Islamic inheritance law with the Qur’ān’s foundational principles of equity and justice.

## II. The Stages of Development of Islamic Inheritance Laws

### 1. The first stage

In pre-Islamic Arabia, the tribe was the most important unit in society, with members tracing their lineage exclusively through male lines to a common ancestor.<sup>16</sup> These bonds of allegiance were referred to as ‘*asabiyya*.<sup>17</sup> The tribe was patriarchal and patrilineal.<sup>18</sup> To keep property within the tribe, rights of inheritance belonged to the male agnates of the deceased on the basis that those nearer in degree excluded those who were more remote from the deceased.<sup>19</sup> If he was able to participate in military expeditions, an adopted son had the same inheritance rights as a biological male descendant.<sup>20</sup> There were, furthermore, mutual rights of inheritance between two free tribesmen if they had entered into a sworn oath of allegiance to become “brothers” and assumed the obligations to

<sup>16</sup> Seyyed Hossein Nasr ed. *The Study Quran: A New Translation and Commentary* (New York, Harper One, 2015) 78 & 193; Abdur Rahman Doi, *Shari’ah: The Islamic Law* (United Kingdom, Ta Ha Publishers, 1984) 272; N. J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971), 29; N. J. Coulson, *A History of Islamic Law* (Edinburgh: Edinburgh University Press, 1964), 11; Hammudah Abd al’Atī, *The Family Structure in Islam* (Chicago: American Trust Publications, 1977), 8.

<sup>17</sup> Namely descent through the male links from a common ancestor.

<sup>18</sup> Given the patriarchal and patrilineal nature of inheritance, the order of priority was as follows: the male descendants of the deceased (male), followed by his father, his brothers and their male descendants, his paternal grandfather and lastly, his uncles and their descendants’ male descendants. Coulson, *Succession*, 16.

<sup>19</sup> Coulson, *Succession*, 16.

<sup>20</sup> Hamid Khan, *The Islamic Law of Inheritance: A Comparative Study of Recent Reforms in Muslim Countries* (Oxford: Oxford University Press, 2007), 27. During the pre-Islamic era an adopted son was called by the name of his adoptive father from whom he could inherit. This practice was subsequently prohibited by the Qur’ān in chapter 33 verse 4 which stipulates: ‘[n]or has He made your adopted sons your (real) sons; that is simply a saying of your mouths...’ Consequently an adopted child is not an Islamic law heir of his or her adoptive parent. In this regard see Ishaque ‘Islamic Principles on Adoption: Examining the Impact of Illegitimacy and the Inheritance Related Concerns in Context of a Child’s Right to an Identity.’ (2008) 22 (3) *International Journal of Law, Policy and the Family* 393 at 400.

support and protect each other.<sup>21</sup> Non-agnatic relatives were excluded from inheritance to preserve the tribal patrimony, and females and minor children were also excluded.<sup>22</sup> If a father or husband wished to make provision for his wives or daughters, he had to confer property on them during his lifetime.<sup>23</sup> In certain instances, females were considered part of the estate, with the stepson or brother of the deceased taking possession of the widow and her material possessions.<sup>24</sup> This practice was subsequently declared invalid with the advent of Islam.<sup>25</sup>

Islamic law did not completely abolish the customary pre-Islamic inheritance practices, but it did introduce some transformative changes.<sup>26</sup> In the domain of inheritance specifically, it prioritised allegiance to Islam over tribal affiliation. It elevated the status of the immediate family - the husband, wife, children, and parents - above that of broader tribal groupings, even if tribal ties retained social and political significance in practice.<sup>27</sup> Male agnatic relatives remained in a dominant position even after the new Qur'anic heirs were absorbed into the customary tribal rules.<sup>28</sup> Kimber notes that “[t]he Qur'anic rules serve[d] to qualify and mitigate the customary system of agnatic succession and [did] so, broadly speaking, only to the extent of their express terms”.<sup>29</sup> The new Islamic inheritance system, built on the existing tribal system of inheritance, superimposed new heirs to alleviate the difficulties that women and other vulnerable family members faced with respect to inheritance rights.

The first stage in the development of Islamic inheritance law involved the introduction of bequests for parents and close relatives through the revelation of the following Qur'anic verses:

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<sup>21</sup> Khan, *The Islamic Law*, 27. See also Alexander David Russel and Abdullah Al-Ma'Mun Suhrawardy, *Muslim Law: An Historical Introduction to the Law of Inheritance* (London: Routledge, 2008), 61–62 for a description of such sworn allegiances, and how Muhammad (PBUH) modelled these pacts of allegiance when he established the Islamic state.

<sup>22</sup> Khan, *Islamic Law*, 26, 31; Russel and Suhrawardy, *Muslim Law*, 44.

<sup>23</sup> Russel and Suhrawardy, *Muslim Law*, 39.

<sup>24</sup> Khan, *Islamic Law*, 26.

<sup>25</sup> The Quranic verse Q4:19 stated, “O ye who believe! Ye are forbidden to inherit women against their will ...”.

<sup>26</sup> Khan, *Islamic Law*, 27

<sup>27</sup> Coulson, *A History*, 23; Coulson, *Succession*, 135.

<sup>28</sup> Coulson, *Succession*, 33.

<sup>29</sup> Richard Kimber, “The Qur'anic Law of Inheritance,” *Islamic Law and Society* 5, no. 3 (1998): 291–325, 293. Kimber does not see the bequest verses and the inheritance verses as a reflection of two separate processes, namely testate and intestate succession. He considers both processes as a means to dispose of an estate through a last will in accordance with God's will. The bequest verses remind the testator in general of God's requirements, whilst the inheritance verses specify in greater detail those requirements.

“It is prescribed, when death approaches any of you, if he leaves 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 ... (181) But if anyone fears partiality or wrongdoing on the part of the testator, and makes peace between (the parties concerned), there is no wrong in him ... (182).”<sup>30</sup>

These verses were revealed before the verses on compulsory inheritance shares.<sup>31</sup> Verse 180 enjoined those approaching death to leave a bequest to parents and close relatives. Verse 181 cautions against altering a testator’s will, and verse 182 encourages parties to reconcile where there is a disagreement about the impartiality or correctness of the testator’s will.<sup>32</sup> Verse 180 does not stipulate the value of each parent’s share, nor does it provide a list of the close relatives that should be given bequests. Significantly, it did not distinguish between male and female close relatives; consequently, both male and female close relatives of the deceased were entitled to a bequest, left to the testator’s discretion. These bequest injunctions were groundbreaking at the time, as female relatives had previously been excluded from inheriting.<sup>33</sup>

These verses secured the mother’s right to receive a bequest on par with the right of the father. These verses may be referred to as the “bequest verses”. The bequest verses are followed by Q2:240, which may be referred to as the widow verse that stipulates:

“Those of you who die and leave widows should bequeath for their widows a year’s maintenance and residence; but if they leave (the residence), there is no blame on you for what they do with themselves, provided it is reasonable ...”<sup>34</sup>

The widow verse was highly progressive in the context of seventh-century Arabia, where widows had no guaranteed inheritance rights. It directs the testator to provide one year’s maintenance and residence for his widow, provided that she remains in the marital home during that period. This provision afforded widows a measure of financial support and security of tenure during the first year following their husbands’ deaths. Subsequently, another verse was revealed, prescribing the formal requirements for a valid will: that it be declared in the presence of two witnesses.<sup>35</sup>

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<sup>30</sup> Q2:180–182.

<sup>31</sup> Abū ‘Abdullāh Muhammad ibn Ahmad Al-Ansāri al-Qurtubi *Tafsīr Al-Qurtubi – Classical Commentary of the Holy Qur’an* (Vol.1) (trans) Aisha Bewley, (2003) Dar Al-Taqwa, 453.

<sup>32</sup> David Stephan Powers, *Studies in Qur’an and Hadīth: The Formation of the Islamic Laws of Inheritance* (Oakland: University of California Press, 1986), 11.

<sup>33</sup> Coulson, *A History*, 16.

<sup>34</sup> Q2:240.

<sup>35</sup> Q5:109 provides: “O ye who believe, when death approaches any of you, (take) witnesses among yourselves when making bequests, - two just men of your own (brotherhood) ...”.

The language in both the bequest and widow verses is prescriptive insofar as they direct a testator to make provisions for these categories of relatives. However, beyond this, the verses did not dictate fixed shares, nor did they provide any particular order of priority amongst those entitled to bequests.<sup>36</sup> At this stage, they solely stipulated the importance of making provisions for both parents, close relatives, and a widow.<sup>37</sup> The testator could determine the type and quantity of the bequest. This permissive and discretionary system prevailed during the first 13 years of the Meccan period of Islam.<sup>38</sup>

## 2. The second stage

The second stage of development occurred with the revelation of the inheritance verses. These verses were revealed in response to an incident in which a female companion, Umm Kuhha, complained to the Prophet Muhammad (PBUH) that she and her daughters had been unjustly deprived of their inheritance from the estate of her deceased husband, Sa'd, by his brother.<sup>39</sup> In response to this situation, the first verse revealed was verse 7 of chapter 4, entitled "The Women", which affirmed the right of women to inherit alongside men from their parents and close relatives. The verse states:

"From what is left by parents and those nearest related, there is a share for men and a share for women, whether the property be small or large, - a determinate share."<sup>40</sup>

This verse expanded women's inheritance rights by recognising their entitlement to inherit alongside their male counterparts from both parents and close relatives, although it did not yet specify precise shares. Nevertheless, it marked a fundamental departure from pre-Islamic custom, which generally excluded women and children from inheritance. Verse 7 was followed by the revelation of verses 11 and 12 of the same chapter, which introduced the compulsory fractional shares allocated to the deceased's

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<sup>36</sup> The allocation of a fixed share occurs in 'stage two', whilst the limitations on the bequest occur in 'stage three', both discussed below.

<sup>37</sup> Interestingly, contemporary scholar Shahrur notes that verse 180, in addition to the biological parents of the deceased, refers to caregiver father and caregiver mother of the deceased; ascendants, however high, of the deceased; the spouse of the deceased; descendants of the deceased, however low; siblings of the deceased as well as agnate and cognate aunts and uncles of the deceased. See Muhammad Shahrur, *The Quran, Morality and Critical Reason: The Essential Muhammad Shahrur*, trans. Adreas Christmann (Leiden: Brill, 2009), 232.

<sup>38</sup> These verses were revealed between 610–622 AD, about 2 to 12 years before the Hijri calendar starts.

<sup>39</sup> The deceased was Sa'd b. al-Rabī, one of the companions of Muhammad (PBUH). The *hadith* appears in Abū Dawūd Sulaiman bin Ash'ath, *Sunan Abū Dawūd*, trans. Yaser Qadhi (London: Darussalam, 2008), 3(18) no. 2891, 431–43. For a slightly different version of this *hadith*, see Powers, *Studies in Qur'an and Hadith*, 12, as that version of the *hadith* mentions the paternal cousin and not brother of the deceased, taking his entire estate.

<sup>40</sup> Q4:7. Suyuti notes that "This was revealed to refute the custom in pre-Islamic times whereby women and children did not inherit." Jalalu'D-Din Al-Mahalli and Jalalu'D-Din As-Suyuti, *Tafsir Al Jalalayn*, trans. Aisha Bewley (London: Dar al Taqwa, 2007), 175. See also Nasr *The Study Quran* 193.

immediate relatives, including wives and daughters. These two verses constitute the foundation of Islamic inheritance law and provide the following:

(11) God (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females: if more than two daughters, 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 is) after the payment of legacies and debts. Ye 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, all-wise. (12) In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an 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 anyone). Thus God ordains it, and God is all-knowing, most forbearing.<sup>41</sup>

Following the revelation of Q4:11–12, the Prophet Muhammad (PBUH) instructed the brother of the deceased, Sa'd: "Give the two daughters of Sa'd two-thirds of the estate, give their mother one-eighth, and keep the remainder for yourself." This distribution accorded with the prescribed Qur'anic shares: the two daughters collectively received two-thirds, the widow received one-eighth, and the nearest male agnatic relative - in this case, the deceased's brother - received the residue of the estate. Verses 11 and 12, therefore, established the compulsory fractional shares of daughters, parents, spouses, and siblings. They also introduced the principle that, where sons and daughters inherit together, the male receives a share equivalent to that of two females.

In addition to Q4:11–12, a further verse was revealed, namely Q4:176, which allocated shares to the full or consanguine siblings of a deceased who died without leaving ascendants or descendants (*kalāla*). The verse states:

They ask thee [Prophet] for a legal decision. Say: 'God directs (thus) about those who leave no descendants or ascendants [*kalāla*] as heirs. If a man dies, leaving a sister but no child, she shall have half the inheritance. If (such a deceased was) a woman who left no child, her brother takes her inheritance. If there are two sisters, they shall have two-thirds of the inheritance (between them). If they are brothers and sisters, they

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<sup>41</sup> Q4:11-12. The reference to brother and sister in verse 12 has been interpreted, through consensus, to mean the uterine siblings of the deceased. See Ibn Rushd, *The Distinguished Jurist's Primer Vol II: A Translation of Bidayat Al-Mujtahid*, transl. Imran Ahsan Khan Nyazee (Berkshire: Garnet, 1996), 417; Abdullah Yusuf Ali, *The Holy Qur'an: Translation and Commentary* (London: Murray, 1946), 182.

share; the male having twice the share of the female. Thus God makes clear to you (His law), lest ye err. And God has 'perfect' knowledge of all things.<sup>42</sup>

These three verses—Q4:11–12 and Q4:176—collectively became known as the “inheritance verses” and form the basis of the entire science of Islamic inheritance shares. Powers observes that, whereas the earlier bequest verses allowed the testator to determine the type and quantity of provisions made to parents, spouses, and close relatives, the inheritance verses assign both the heirs and their respective shares by divine prescription. Nevertheless, a Muslim testator retained the ability to make bequests, as both Q4:11 and Q4:12 stipulate that the distribution of fixed shares occurs only “after payment of any bequest and debt”. At this stage, however, no limitation had yet been imposed on the value of a bequest. The third stage in the development of Islamic inheritance law involved the introduction of restrictions on testamentary bequests made by a Muslim testator.

### 3. The third stage

The third stage of development introduced restrictions on both the value of a bequest and the categories of persons entitled to receive one. Concerning limiting the value of a bequest, reliance is placed on a hadīth narrated by ‘Āmir ibn Sa‘d ibn Abī Waqqās, who reported that his father, while on his deathbed, asked the Prophet Muhammad (PBUH) whether he could donate his entire estate to charity.<sup>43</sup> The Prophet discouraged Sa‘d from doing so and advised that it was preferable not to leave one’s family destitute.<sup>44</sup> He therefore instructed Sa‘d that “a bequest may not exceed one-third of the estate”.<sup>45</sup> Based on this hadīth, jurists concluded that a testator may make a discretionary bequest of up to one-third of the estate. At the same time, the remaining two-thirds must be distributed among the compulsory share heirs in accordance with the prescribed inheritance rules.

In addition to limiting the value of a bequest, further restrictions were introduced through a hadīth concerning those eligible to receive a bequest. The majority of Sunni scholars<sup>46</sup> accepted the ruling of the hadīth in which the Prophet Muhammad stated that “there is no bequest to an heir”.<sup>47</sup> This hadīth has generally been interpreted to mean that a testator may not make a bequest in favour of persons who are already compulsory

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<sup>42</sup> Q4:176. The reference to brothers and sisters in this verse has been interpreted to mean the full and consanguine siblings of the deceased. See Ali, *Holy Qur’an: Translation*, 235.

<sup>43</sup>The full *hadīth* is reported in Malik ibn Anas, *Al-Muwatta*, trans. Aisha A. Bewley (London: Routledge, 2010), 315.

<sup>44</sup> Malik ibn Anas, *Al-Muwatta*, 315.

<sup>45</sup> Malik ibn Anas, *Al-Muwatta*, 315.

<sup>46</sup> Ibn Rushd, *The Distinguished Jurist’s Primer*, 406.

<sup>47</sup> The *hadīth* appears in Abū Dawūd, *Sunān Abū Dawūd*, 3(18) no. 2891, 431–33. See also Powers, *Studies in Qur’an and Hadīth*, 14; Ibn Rushd, *The Distinguished Jurist’s Primer*, 406. However, this *hadīth* was not accepted as authentic by all classical Sunnī scholars, as discussed below.

sharer heirs. According to another version of the hadīth, however, an heir may receive a bequest if the remaining heirs consent.<sup>48</sup> Such consent may be given only after the testator's death, once the heirs' rights to their respective shares have vested.<sup>49</sup> For example, if a testator is survived by his wife and two sons and leaves a bequest amounting to one-third of his estate to his wife, the sons would, upon the testator's death, have to consent to their mother receiving the additional one-third bequest alongside her fixed one-eighth inheritance share. Most jurists do not regard prior consent as valid or legally enforceable.<sup>50</sup>

Neither the hadīth discussed in the third stage nor the inheritance verses examined in the second stage explicitly clarified the status of the earlier bequest verses (Q2:180–182), and the widow verse (Q2:240) revealed during the first stage. The bequest and widow verses directed individuals contemplating death to make provision for parents, close relatives, and widows. The later inheritance verses, however, also established compulsory shares for parents, close relatives, and spouses, thereby creating potential tension with the earlier bequest provisions. This tension was compounded by the hadīth stipulating that there may be no bequest to an heir. Importantly, the Qur'ān itself does not expressly state that the later inheritance verses abrogated the bequest verses. On the contrary, the inheritance verses provide that fixed shares are to be distributed only after all debts and bequests have been settled.<sup>51</sup> To reconcile the apparent tension between these provisions, the majority of Sunni scholars concluded, through interpretive reasoning, that the later inheritance verses had abrogated the bequest and widow verses.<sup>52</sup> A minority of classical Sunni scholars, however, rejected this position and maintained that the bequest and widow verses were not abrogated. Their views are examined in greater detail below.

#### 4. Dissenting opinions on the abrogation of the bequest and widow verses

The 12<sup>th</sup>-century theologian and polymath Fakhr al-Dīn al-Rāzī (al-Rāzī) was a Qur'anic commentator who held that the bequest and widow verses were not abrogated. He penned the Qur'anic commentary titled *Mafatih al-Ghayb* (Keys to the Unknown), also known as *Tafsīr al-Kabīr* (the Great Commentary).<sup>53</sup> It is a 32-volume *tafsīr* of the Qur'ān, and of which Usmani notes that, “[t]his book has no equal in interpretation of the

<sup>48</sup> See Ibn Rushd, *The Distinguished Jurist's Primer*, 406 for another version of this *hadīth*.

<sup>49</sup> Muneer Abduroaf, *The Impact of South African Law on the Islamic Law of Succession* (LLD thesis, University of Western Cape, 2018), 30. See also Malik ibn Anas, *Al-Muwatta*, 316 for *hadīth* on “Bequests to heirs and rights of possession”.

<sup>50</sup> Abduroaf, *Impact of South African Law*, 30.

<sup>51</sup> Q4:11 states, “[t]he distribution in all cases is after the payment of legacies and debts ...”.

<sup>52</sup> For an exposition of the companions and scholars who thought that the bequest verses were abrogated, see Powers, *Studies in Qur'ān and Hadīth*, 172–88.

<sup>53</sup> Fakhr al-Din al-Rāzī, *Al-Tafsīr al-Kabīr* (32 vol.) (Place unknown: Abdulhamīd, 1934–62).

meanings of the Quran”<sup>54</sup> and “[t]he legal injunctions relating to a verse have been described with detailed reasons”.<sup>55</sup> In his commentary, al-Rāzi relies on the opinion of Abū Muslim, an 11th-century grammarian who authored a 20-volume commentary on the Qur’ān.<sup>56</sup> Al Rāzi discusses the position of Abū Muslim, who also held that the inheritance verses did not abrogate the bequest verses. Powers has written extensively on this issue and provides a comprehensive analysis of scholars’ opinions.<sup>57</sup>

Abū Muslim did not perceive any contradiction between the bequest verse (Q2:180) and the inheritance verses. Instead, he advanced several alternative interpretations.<sup>58</sup> He argued, for example, that inheritance and bequests to parents and relatives were not mutually exclusive, because inheritance may be understood as a gift from God. In contrast, a bequest constitutes a gift from the testator. Consequently, a compulsory heir could receive both a fixed inheritance share and a bequest under the two sets of verses. Thus, a mother or wife could receive a bequest in addition to her prescribed inheritance share. Abū Muslim further argued that, even if the two sets of verses were regarded as potentially contradictory, the inheritance verses could be interpreted as specifying rather than abrogating the bequest verse (Q2:180).<sup>59</sup> Accordingly, although the inheritance verses prescribe fixed shares for parents, non-Muslim parents - who are excluded from inheritance under the inheritance verses - could nevertheless benefit from a bequest under the bequest verse.

Al-Rāzi reinforced Abū Muslim’s position and challenged the dominant view that the bequest verses were abrogated by the hadīth, “no bequest to an heir”. He advanced several compelling arguments against the proponents of abrogation, two of which are particularly persuasive.<sup>60</sup> First, he correctly observed that the hadīth “no bequest to an heir” constitutes an isolated report (āḥād hadīth)<sup>61</sup> and that such a report lacks the authority necessary to abrogate a Qur’anic verse.<sup>62</sup> Powers highlights weaknesses in the isnād (chain of transmission) of this hadīth and persuasively argues that the rule “no

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<sup>54</sup> Justice Mufti Mohammad Taqi Usmani, *An Approach to the Quranic Sciences*, trans. Mohammad Swaleh Siddiqui (Karachi: Darul Isha’at, 2000), 516.

<sup>55</sup> Usmani, *Quranic Sciences*, 516.

<sup>56</sup> Powers, *Studies in Qur’an and Hadīth*, 175.

<sup>57</sup> See Powers, *Studies in Qur’an and Hadīth*, 175–88; Pavel Pavlovitch and David S. Powers, “A Bequest May Not Exceed 1/3’: An *Isnād-cum-Matn* Analysis and Beyond”, in *Islamic Cultures, Islamic Contexts*, Behnam Sadeghi, Patricia Crone, Asad Q. Ahmed, Adam J. Silverstein and Robert G. Hoyland (Eds) (Leiden: Brill, 2014), 133.

<sup>58</sup> Powers, *Studies in Qur’an and Hadīth*, 175-176; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:67.

<sup>59</sup> Powers, *Studies in Qur’an and Hadīth*, 175-176; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:67.

<sup>60</sup> Powers, *Studies in Qur’an and Hadīth*, 174–178; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:68.

<sup>61</sup> Powers, *Studies in Qur’an and Hadīth*, 174–178; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:68.

<sup>62</sup> Powers, *Studies in Qur’an and Hadīth*, 174–178; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:68. Auda also notes that this *hadīth* is questionable and may therefore not abrogate the Qur’ān. See Jasser Auda, *A Critique of the Theory of Abrogation*, trans. Adil Salahi (Leicestershire: Islamic Foundation, 2019), 106.

bequest to an heir” originated as a legal maxim that was only later formulated as a hadīth during the ninth century.<sup>63</sup> Significantly, despite having circulated for at least half a century before the compilation of the two *Ṣaḥīḥ* collections, no version of the hadīth appears in either *Ṣaḥīḥ* al-Bukhārī or *Ṣaḥīḥ* Muslim because its isnād was considered incomplete.<sup>64</sup> The hadīth, therefore, lacked the evidentiary strength required for inclusion in the two *Ṣaḥīḥ*s. As Powers correctly notes, because it qualified only as an isolated report, it produced merely probable rather than certain knowledge. It could not, therefore, serve as a basis for the abrogation of a Qur’anic verse.

Al-Rāzi also argued that even though the *imāms* of the four schools may have reached a consensus on the authenticity of this isolated report, which consequently resulted in its widespread circulation, this consensus was insufficient to abrogate verse Q2:180, as the Qur’ān cannot be abrogated by consensus.<sup>65</sup> He argued further that, since there was no consensus on whether the inheritance verses were abrogated by the bequest verses in the first place, the *imāms* could not claim consensus on the fact that this solitary hadīth abrogated the Qur’ān. Al-Rāzi concludes that none of the four sources (Qur’ān, hadīth, *ijmā*, and *qiyās*) invoked by the proponents of abrogation constitutes sufficient proof of abrogation.<sup>66</sup> Consequently, there was no logical reason why an heir could not receive a bequest in addition to his or her compulsory inheritance share.

Although the dissenting opinions of Abū Muslim and al-Rāzi did not gain traction among the majority of Sunnī scholars, they remain valid legal opinions grounded in logical, rigorous, and sound arguments.<sup>67</sup> Interestingly, Imām Shāfi’ī also mentioned alternative interpretations of the inheritance and bequest verses. After quoting both the bequest verses and the inheritance verses, he articulates the following interpretation:

“The two [foregoing] communications may be interpreted either to confirm bequests for the parents and the near relatives, bequests for the wife, and inheritance together with bequests, so that inheritance and bequests are lawful; or that [the legislation concerning] inheritance abrogates [that concerning] bequest. Since both interpretations are possible, as we pointed out, it is obligatory upon the learned to find

<sup>63</sup> Powers, *Studies in Qur’an and Hadīth*, 168.

<sup>64</sup> Powers, *Studies in Qur’an and Hadīth*, 168. Auda notes, “This hadīth does not meet al-Bukhārī’s criteria of authenticity ...”. Auda, *A Critique*, 52.

<sup>65</sup> Powers, *Studies in Qur’an and Hadīth*, 176-177; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:68.

<sup>66</sup> Powers, *Studies in Qur’an and Hadīth*, 176-177; Al-Rāzi, *Al-Tafsīr al-Kabīr*, 5:68.

<sup>67</sup> With respect to jurists exercising *ijtihād* on matters, Zahraa notes, “Should there be more than one view on the matter, the application of any of the well-known jurists’ views will be Islamically valid so long as the jurist has provided sufficient evidence for his view.” Mahdi Zahraa, “Characteristic Features of Islamic Law: Perceptions and Misconceptions,” *Arab Law Quarterly* 15, no. 2 (2000): 168–96, 175.

evidence in the Book of God [as to which of the two is valid]; if nothing is found in the text of the Book of God, they should try the Sunna of the Apostle”.<sup>68</sup>

Apparently, Imām Shāfi’i conceived of a similar interpretation to that adopted by Abū Muslim and al-Rāzi, when he contemplated the following: “so that inheritance and bequests are lawful”.<sup>69</sup> However, he diverges from the view of the latter two in that he first accepted the consensus of scholars on the existence and authenticity of the isolated hadīth, “no bequest to an heir”, and second, he opined that this isolated hadīth could abrogate the inheritance verses of the Qur’ān.<sup>70</sup> Seyyed Hossein Nasr notes that for some scholars, such as al-Qurtubi the acceptance of this hadīth as binding is proof that the Sunnah can abrogate the Qur’ān, while others would argue that the bequest verse was not abrogated for the very same reason, as “[a] hadīth, about which one has less certainty (yaqīn) than about the Qur’ān, cannot replace a ruling of the Qur’ān...”.<sup>71</sup>

Those who argue that verse Q2:240 was abrogated contend, first, that the verse Q2:234<sup>72</sup> (the *iddah* verse) abrogated the widow verse in that it reduced the *iddah* of a widow from one year to four months and ten days.<sup>73</sup> Second, they argue that the inheritance verse, Q4:12, which awards a fixed share to the widow, abrogated the one-year maintenance ruling contained in the widow verse (Q2:240).<sup>74</sup> However, there is no explicit indication in the Qur’ān of an abrogation of Q2:240. Similarly, any reliance on the hadīth “no bequest to an heir” is met with the same difficulties discussed above. As a result, Abū Muslim argued against the abrogation of the widow verse, too.<sup>75</sup> He argued that before the advent of Islam, a widow was obliged to remain in her deceased husband’s home for one year and that Islam, through the *iddah* verse (Q2:234), reduced the widow’s *iddah* to four months and ten days. The widow’s verse offered her the option of remaining in her deceased husband’s home beyond the four months and ten days for a maximum of one year. Her right to maintenance would therefore remain as long as she remained living in her deceased husband’s home.<sup>76</sup>

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<sup>68</sup> Muḥammad ibn Idrīs al-Shāfi’ī, *al-Risāla Fī Usūl al-Fiqh* (Treatise on the Foundations of Islamic Jurisprudence) trans. Majid Khadduri (Baltimore: Johns Hopkins Press, 1961), 141–44.

<sup>69</sup> Muḥammad ibn Idrīs al-Shāfi’ī, *al-Risāla Fī Usūl al-Fiqh*, 141–44.

<sup>70</sup> Muḥammad ibn Idrīs al-Shāfi’ī, *al-Risāla Fī Usūl al-Fiqh*, 141–44.

<sup>71</sup> Seyyed Hossein Nasr, *The Study Quran: A New Translation and Commentary* (San Francisco: HarperOne, 2015), 179.

<sup>72</sup> Q2:234 stipulates: “If any of you dies and leave widows, the widows should wait for four months and ten nights before remarrying ...”.

<sup>73</sup> For an exposition of those who argue in favour of abrogation, see Powers, *Studies in Qur’ān and Hadīth*, 179–81.

<sup>74</sup> Powers, *Studies in Qur’ān and Hadīth*, 179–81.

<sup>75</sup> Powers, *Studies in Qur’ān and Hadīth*, 182.

<sup>76</sup> Powers, *Studies in Qur’ān and Hadīth*, 184.

Al-Rāzi supported Abū Muslim’s arguments against the abrogation of the widow verse but further developed them based on three principles. First, he argued that abrogation should be avoided whenever possible; second, the order in which the two verses appear in the Qur’ān and are recited is not chronological, suggesting that the *iddah* verse did not abrogate the widow verse. Thirdly, Abū Muslim’s argument, which requires specification<sup>77</sup> of the widow verse, is superior to the arguments of those who argue for the abrogation of the verse.<sup>78</sup> The arguments presented by both Abū Muslim and al-Rāzi are legally sound and persuasive, albeit minority opinions. Their arguments are reinforced by the views of contemporary Islamic scholars who oppose abrogation. Seyyed Hossein Nasr, in his commentary on verse Q2:240, notes that some scholars believe the verse’s ruling was abrogated by Q2:234, which stipulates the waiting period of a widow to be four months and ten days, whilst others see no contradiction between the two verses.<sup>79</sup> According to the latter group, Q2:240 allows the widow to receive one year’s maintenance while living in her late husband’s house, but if she remarries before the expiry of the one year, there is no blame on the heirs of the deceased husband to stop their support. He notes that some opine that Q2:240 was abrogated by the inheritance verse Q4:12 but argues that if Q2:240 “is seen as a right to reside and receive sustenance for a year with the option of leaving earlier, there is no necessary contradiction and no need for abrogation”.<sup>80</sup>

The doctrine of abrogation has remained a subject of significant debate in modern scholarship.<sup>81</sup> By abrogation, I refer to the cancellation of a legal ruling contained in one primary source by a subsequent ruling grounded in textual evidence from another.<sup>82</sup> In this article, I adopt the position advanced by Auda, who argues that there is no conclusive evidence demonstrating “that anything in the Qur’ān refers to abrogation in the sense of annulment of the rulings outlined in specific verses”.<sup>83</sup> He contends that the Qur’anic verse relied upon by proponents of abrogation - Q2:106, “any revelation We annul or consign to oblivion” - refers instead to the Qur’ān’s supersession of earlier Abrahamic legal systems, such as Jewish law.<sup>84</sup> Auda further argues that any claim that a Qur’anic

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<sup>77</sup> Abū Muslim’s alternative interpretation of Q2:240 was, “And those of you who die [leaving] a bequest to their wives”, thereby attributing the words to the husband and not as a ruling from God. See Powers, *Studies in Qur’ān and Hadīth*, 183.

<sup>78</sup> Powers, *Studies in Qur’ān and Hadīth*, 183; Al Rāzi, *Al-Tafsīr al-Kabīr*, 6:170.

<sup>79</sup> Nasr, *The Study Quran*, 105.

<sup>80</sup> Nasr, *The Study Quran*, 105.

<sup>81</sup> Imran Ahsan Khan Nyazee, *Islamic Jurisprudence (Usul al-Fiqh)* (Herndon: International Institute of Islamic Thought, 2000), 317. For a summary of the opposing views on the doctrine of abrogation, see Auda, *A Critique*, 33–78.

<sup>82</sup> Auda, *Critique*, 31.

<sup>83</sup> Auda, *Critique*, 38.

<sup>84</sup> Auda, *Critique*, 35–38. Auda notes that Quranic commentator, Al-Rāzi, agreed with his predecessor, Abū Muslim, in holding that abrogation was limited to the abrogation of earlier messages and codes of law

verse and its corresponding legal ruling have been abrogated must be supported by conclusive evidence and a coherent methodology capable of establishing “not only the annulment but also its finality”.<sup>85</sup> Based on this reasoning, and having weighed the relevant evidence, I concur with al-Rāzī and Abū Muslim that the subsequent inheritance verses did not abrogate the Qur’anic bequest and widow verses.

If this dissenting view is accepted within the contemporary context, it would support two important legal consequences. First, a Qur’anic sharer heir would be entitled to benefit from a bequest without requiring the consent of the remaining heirs. Second, a testator could provide in his will for one year’s maintenance for his widow, on condition that she continues residing in the marital home during that period. These rulings may significantly benefit female heirs, who often receive smaller shares than their male counterparts, by permitting them to receive a bequest in addition to their fixed inheritance shares. They would also strengthen widows’ financial security by allowing a testator to direct that maintenance be paid from his estate for one year following his death. Such maintenance could be treated either as part of a bequest to the widow or as a liability against the estate to be deducted before the distribution of inheritance shares. In addition to maintenance and accommodation, a widow could potentially receive a bequest of up to one-third of the estate alongside her fixed share of one-quarter or one-eighth. This approach would substantially enhance the financial protection of widows and would accord with the Muhammad’s (PBUH) guidance that it is preferable not to leave one’s dependants destitute through excessive charitable bequests, as reflected in the hadīth of ‘Āmir ibn Sa’d ibn Abī Waqqāṣ discussed above.

Having established that the bequest and widow verses remain legally and hermeneutically valid and may enhance the inheritance rights of female family members, it is equally important to examine how interpretive choices in other inheritance contexts have systematically disadvantaged women. The mother’s inheritance share provides a particularly compelling example of how patriarchal interpretations have overridden the plain meaning of Qur’anic texts, and how alternative readings advanced by classical scholars may yield more equitable outcomes that remain faithful to the literal wording and broader spirit of revelation.

### **III. Securing Greater Inheritance Rights for the Mother**

Parents, and particularly mothers, occupy an elevated status in Islam. Numerous Qur’anic

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by previous Prophets. This view is shared by Shahrur who notes that “[t]here are no abrogating or abrogated verses that were stated within a one single messengerhood”. Shahrur, *The Quran*, 489–90.

<sup>85</sup> Auda, *A Critique*, 39.

verses<sup>86</sup> and *abādīth*<sup>87</sup> emphasise the importance of honouring and caring for one's parents. Although the father was already recognised as an heir under the pre-Islamic Arab tribal system, the mother was introduced as a new category of ascendant heir under the Islamic law of inheritance.<sup>88</sup> Qur'anic verse Q4:11 firmly established the mother's status as a compulsory sharer in the inheritance and ensured that other relatives could not exclude her. The mother's share varies depending on which relatives survive the deceased. If a child or an agnatic grandchild survives the deceased, however remote, the mother receives one-sixth of the estate.<sup>89</sup> Likewise, if siblings survive the deceased, the mother is also entitled to one-sixth, as Q4:11 provides: "[i]f 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". All Sunni schools interpreted the term "brothers" to include full, consanguine, and uterine siblings, although they disagreed regarding the minimum number of siblings required to reduce the mother's share from one-third to one-sixth<sup>90</sup>

Among the leading Companions, 'Alī and Ibn Mas'ūd held that the presence of two or more brothers reduced the mother's share to one-sixth, a position later adopted by the Mālikī school.<sup>91</sup> Consequently, if the deceased were survived by two brothers, the mother's share would automatically be reduced from one-third to one-sixth. Ibn 'Abbās, however, advanced an alternative interpretation, maintaining that only the presence of three or more brothers would reduce the mother's share, and that two brothers were insufficient to trigger the reduction.<sup>92</sup> The disagreement centred on the minimum number denoted by a plural noun.<sup>93</sup> Those who maintained that the plural referred to a minimum of three concluded that only three or more brothers could reduce the mother's share, whereas those who interpreted the plural as encompassing two or more siblings held that two brothers were sufficient. Adoption of Ibn 'Abbās's interpretation would clearly operate to the mother's benefit, as her share would be reduced only where at least three

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<sup>86</sup> By way of example Q2:215 stipulates: "They ask you (O Muhammad), what they should spend. Say, 'whatever you spend of good is (to be) for parents and relatives and orphans and the needy and the traveller.'"; Q17:23 stipulates: "Thy Lord hath decreed that ye worship none but Him, and that ye be kind to parents. Whether one or both of them attain old age in thy life, say not to them a word of contempt, nor repel them, but address them in terms of honour,"; Q31:14 stipulates: "And We have enjoined upon man [care] for his parents. His mother carried him, [increasing her] in weakness upon weakness, and his weaning is in two years. Be grateful to Me and to your parents...".

<sup>87</sup> Muhammad (PBUH) was reported to have said: "The best of deeds is the (observance of) prayer at its appointed time and being dutiful to the parents." Al-Imam Abu Zakariya Yahya ibn Sharaf An-Nawawi, *Riyad as-Salihin (Gardens of the Righteous)*, trans. Mahomed Mahomed (Karachi: Zam Zam, 2008), 207.

<sup>88</sup> As-Suyuti, *Tafsir Al-Jalalayn*, 175; Nasr *The Study Quran* 193.

<sup>89</sup> As stipulated in Q4:11.

<sup>90</sup> Ibn Rushd, *The Distinguished Jurist's Primer*, 416.

<sup>91</sup> Ibn Rushd, *The Distinguished Jurist's Primer*, 416.

<sup>92</sup> Ibn Rushd, *The Distinguished Jurist's Primer*, 416.

<sup>93</sup> In Arabic, words are categorised as singular, dual, or plural, so where an ambiguity occurs in plural words it could potentially refer to two or three and more.

brothers survived the deceased. Although grounded in a literal and grammatical reading of the text, his interpretation also produces a more equitable outcome for the mother. This conclusion is further supported by the *maqāsid al-shari‘ah*, since protecting and enhancing the financial welfare of the mother accords with the broader objectives of Islamic law in safeguarding the family and preserving human dignity.

The two decisions of ‘Umar arose in situations where the deceased left no descendants or siblings, but only parents and a spouse.<sup>94</sup> According to the Qur’anic inheritance verse Q4:11, where parents survive the deceased but have no descendants, the mother is entitled to inherit one-third of the estate, as the verse expressly states that “if no children, and the parents are the only heirs, the mother has a third ...”<sup>95</sup> Although the wording of the verse is unequivocal, its interpretation became highly controversial in cases where the deceased was survived by both parents and a spouse, particularly where the deceased was a woman.<sup>96</sup> Under a literal reading of the text, the husband would inherit one-half of the estate, since the deceased left no descendants, the mother would receive one-third, and the remaining one-sixth would devolve upon the father. Ibn ‘Abbās endorsed this distribution, maintaining that the mother was entitled to one-third of the net estate because the Qur’ān explicitly prescribed this allocation<sup>97</sup>. By the same reasoning, he argued that where the deceased was survived only by his wife, mother, and father, they would inherit one-quarter, one-third, and five-twelfths respectively.<sup>98</sup> Ibn ‘Abbās’s interpretation is both textually sound and legally persuasive, as it adheres to the clear wording of the Qur’anic text while producing a more favourable outcome for the mother.<sup>99</sup> Nasr similarly notes that the Shi‘ite position, as well as a minority Sunni view, maintains that the mother is entitled to one-third of the total estate, with the father inheriting the residue after the shares of the spouse and mother have been allocated.<sup>100</sup>

The four Sunni schools, however, rejected Ibn ‘Abbās’s interpretation and instead held that the mother should not receive the stipulated one-third share of the total estate, but rather one-third of the residue remaining after the spouse’s share has been deducted. Under this interpretation, the mother shares in the residue alongside the father and

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<sup>94</sup> Umar, the second Caliph of Islam, was the first jurist to grapple with these scenarios, hence the cases are referred to as *‘Umarīyyatan* (the two decisions of ‘Umar).

<sup>95</sup> Q4:11.

<sup>96</sup> See Ibn Rushd, *The Distinguished Jurist’s Primer*, 416 for the differences of opinion on this point amongst the companions.

<sup>97</sup> Ibn Rushd, *The Distinguished Jurist’s Primer*; Coulson, *Succession*, 45.

<sup>98</sup> Ibn Rushd, *The Distinguished Jurist’s Primer*; Coulson, *Succession*, 45.

<sup>99</sup> His view was shared also by Shurayḥ ibn al-Ḥārith al-Kindī a prominent *Tabi‘ī* (successor to the Companions) and a celebrated judge (*qāḍī*) in early Islamic history. Appointed by the second Caliph, Umar ibn al-Khattab, he served as the chief judge in Kufa, Iraq, for approximately six decades.

<sup>100</sup> Nasr, *The Study Quran*, 194.

effectively receives half of his share.<sup>101</sup> Consequently, where the deceased is survived by her husband, mother, and father, their respective shares become one-half, one-sixth, and one-third. Similarly, where the deceased is survived by his wife, mother, and father, their shares become one-quarter, one-quarter, and one-half, respectively. In both scenarios, the mother ultimately receives half of the father's share, notwithstanding the Qur'anic wording that appears to entitle her to one-third. This interpretation departs from the plain and definitive wording of the Qur'anic text. It is rooted in the interpretive precedent established by 'Umar, which was subsequently adopted by the majority of jurists.<sup>102</sup> 'Umar was the first Companion to confront and resolve the issue of parents inheriting alongside a surviving spouse. By analogy, his ruling was extended from cases involving a husband to those involving a wife.<sup>103</sup> These rulings consequently became known as the two decisions of 'Umar (*al-'Umarīyyatān*). The jurists reconciled these cases with the Qur'anic text by interpreting the verse to mean that "the mother takes one-third of the residue"<sup>104</sup> or by construing the phrase "where the parents are the only heirs" as though the surviving spouse were absent for the purposes of calculating the mother's share. Coulson aptly observes that neither of these interpretations possesses the intrinsic coherence of the interpretation advanced by Ibn 'Abbās.<sup>105</sup>

The principal rationale underlying the forced interpretation adopted in the al-'Umarīyyatān cases was the reluctance of the Companions to accept that the mother of the deceased could inherit a greater share than the father.<sup>106</sup> The possibility of a mother inheriting more than the father was particularly difficult to conceive within a social context in which mothers had previously possessed no guaranteed inheritance rights. Their interpretation reflected the continued influence of a legal principle that privileged male agnates<sup>107</sup> over the Qur'anic sharer heirs, a feature inherited from pre-Islamic Arab customary law.<sup>108</sup> It was argued that there existed no precedent for a female heir receiving a larger share than a male heir of the same class and degree in relation to the deceased.<sup>109</sup>

Although this argument carries some force, the Qur'ān nevertheless provides examples of male and female heirs of the same class and degree inheriting equal shares.

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<sup>101</sup> Coulson, *Succession*, 45.

<sup>102</sup> However, there was in fact no consensus of the companions as Ibn'Abbās did not share this interpretation of the said verse.

<sup>103</sup> Coulson, *Succession*, 45.

<sup>104</sup> See the hadith of "Inheritance of Fathers and Mothers of Children" in Malik ibn Anas, *Al-Muwatta*, 201.

<sup>105</sup> Coulson, *Succession*, 45.

<sup>106</sup> Coulson, *Succession*, 45.

<sup>107</sup> For a discussion on agnatic line, see footnotes 11 and 12 above.

<sup>108</sup> According to Coulson, the Qur'anic legislation on succession supplemented and did not substitute the existing customary law of succession: Coulson, *A History*, 17.

<sup>109</sup> Coulson cites the views expressed by the Māliki authority, al-'Adawī (in *Hāshiyat* 11,346): Coulson, *Succession*, 46.

In the presence of the deceased's children, both the father and the mother receive equal Qur'anic shares of one-sixth each.<sup>110</sup> Likewise, uterine siblings inherit equally regardless of gender in accordance with Qur'anic injunctions.<sup>111</sup> Despite these precedents, the principle of *ta'sīb*<sup>112</sup> was applied where the deceased was survived by a spouse and both parents, thereby rendering the mother a residuary heir alongside the father and limiting her to half of his share. This interpretation departs from the plain wording of the Qur'anic text. It may be attributed to implicit patriarchal assumptions that elevated male agnates above other categories of heirs, including the mother, notwithstanding the mother's exalted status in Islam.

This elevated status of the mother is reflected in the well-known hadīth in which a man asked the Muhammad (PBUH) who was most deserving of his finest treatment and companionship. The Prophet replied, "Your mother", three consecutive times before answering, on the fourth occasion, "Your father".<sup>113</sup> The threefold emphasis is significant, as it recognises the unique sacrifices and hardships mothers endure during pregnancy, childbirth, nursing, and child-rearing. Viewed in this light, awarding the mother one-third of the net estate of her deceased child, where no descendants or siblings survive, is both morally and juridically coherent. Within the framework of *maqāṣid al-sharī'ah*, such an allocation reflects a legally cognisable claim grounded in the preservation of family welfare and distributive justice. The mother's unparalleled investment in the life and upbringing of the child constitutes a form of relational entitlement that Islamic inheritance law, properly understood considering its higher objectives, ought to recognise and protect. The allocation is therefore not merely an act of moral acknowledgement, but a juridically grounded expression of the *sharī'ah's* commitment to proportional justice within the family structure.

#### IV. Conclusion

This paper has demonstrated that Islamic inheritance law is neither as rigid nor as immutable as commonly assumed. Through careful analysis of the developmental stages of inheritance legislation, examination of minority scholarly opinions, and investigation of specific interpretive controversies, this study reveals significant space for gender-equitable readings within the Islamic legal tradition itself.

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<sup>110</sup> Q4:11 states, "For parents, a sixth share of the inheritance to each, if the deceased left children ...".

<sup>111</sup> Uterine siblings are dealt with in verse Q4:12, which *inter alia* states that "[i]f the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but left a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third ...".

<sup>112</sup> The principle of *ta'sīb* stipulates that a male agnate convert a female sharer heir, of the same class, degree, and strength of blood tie, into a residuary heir. In this scenario, the male agnate will inherit double the female's share. This principle applies to lineal descendants and relatives on the paternal side.

<sup>113</sup> The full hadīth is reported in Muḥammad ibn Ismā'īl Bukhari, *Book of Muslim Morals and Manners*, trans. Yusuf Talal DeLorenzo (Alexandria: Al-Saadawi, 1997), 2–3.

The arguments of the 11th-century grammarian Abū Muslim and the 12th-century theologian Fakhr al-Dīn al-Rāzī against the abrogation of the bequest verses (Q2:180–182) and the widow verse (Q2:240) are grounded in coherent jurisprudential principles. Their position that the isolated hadīth “no bequest to an heir” lacks sufficient authenticity to nullify explicit Qur’anic verses provides a legitimate jurisprudential foundation for allowing testators to make bequests to heirs, including widows, mothers and daughters. If adopted, this interpretation would permit widows to receive up to one-third of their deceased husband’s estate through bequest, in addition to their fixed inheritance share, while also securing one year’s maintenance and residence rights.

Similarly, Ibn ‘Abbās’s literal reading of Q4:11 regarding the mother’s inheritance share offers a more textually faithful interpretation than the forced reading underlying the *al-Umariyyatan*. His position that a mother should receive one-third of the entire estate (rather than one-third of the residue after the spouse’s share) when competing with a father and spouse honours both the explicit Qur’anic language and the elevated status of mothers repeatedly emphasised in Islamic teachings. The hadīth that identifies the mother as deserving three times the honour of the father finds its logical reflection in granting her one-third of her deceased child’s estate when no descendants or siblings survive. The alternative interpretation, which reduces her share to ensure she never receives more than the father, appears to reflect the cultural biases of patriarchal pre-Islamic Arabia more than the transformative spirit of Quranic justice.

These alternative interpretations are not radical innovations but rather represent legitimate scholarly positions within classical Islamic jurisprudence.<sup>114</sup> They demonstrate that disagreement and *ijtihād* on inheritance matters have existed since the time of the Prophet’s companions. The fact that these minority views did not prevail in the dominant schools of law does not diminish their juristic validity or their potential applicability in contemporary contexts. As Zahraa correctly notes, when multiple views exist on a matter, the application of any well-evidenced jurist’s view remains Islamically valid.<sup>115</sup>

The persistence of interpretations that disadvantage female heirs, despite the availability of more equitable alternatives grounded in rigorous textual analysis, suggests that cultural assumptions about gender hierarchy may have influenced Islamic legal development in ways that are not always faithful to the Qur’ān’s original intent. The verses on inheritance were revealed precisely to challenge and reform pre-Islamic practices that excluded women. Yet subsequent interpretations have, in some instances, reimposed patriarchal limitations that undermine this reformist spirit.

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<sup>114</sup> *Ikhtilaf al-fuqahā* (disagreement of the jurists) is an established classical doctrine that offers multiple interpretations of the primary sources of law. See: Masud, Muhammad Khalid. “Ikhtilaf al-fuqaha: Diversity in fiqh as a social construction.” *Wanted: Equality and justice in the Muslim family* (2009): 65-93.

<sup>115</sup> Zahraa, “Characteristic Features”, 168.

Contemporary Muslim communities face a choice: to accept interpretations shaped by patriarchy uncritically, or to engage seriously with alternative readings that may better serve the Qur'ān's foundational commitment to justice and equity. The widow left financially destitute despite a lifetime of domestic contribution, the mother whose profound sacrifices are inadequately recognised in inheritance calculations - these are not merely theoretical problems but lived realities affecting thousands of Muslim women today.

This paper has shown that addressing these injustices does not require abandoning Islamic law or imposing external frameworks. Rather, it requires the intellectual courage to revisit interpretive choices made centuries ago, to acknowledge that some of these choices reflected cultural biases rather than divine mandate, and to embrace equally legitimate alternatives that yield more just outcomes for women while remaining faithful - indeed, more faithful - to the letter and spirit of Qur'anic revelation.

The path forward requires recovering the interpretive flexibility that characterised early Islamic jurisprudence, recognising that fidelity to God's word sometimes means challenging human consensus. As al-Rāzi argued, abrogation should be avoided whenever possible, and clear Qur'anic texts should not be overridden by isolated hadīth of questionable authenticity or by cultural assumptions about gender hierarchy. The alternative readings explored in this paper - whether regarding bequest rights, widow maintenance, or the mother's inheritance share - represent not departures from Islamic law but returns to its textual foundations and its commitment to justice. Muslim jurists and communities willing to engage these alternatives can reclaim Qur'anic justice for women in inheritance law, honouring both the sacred text and the dignity of those it was revealed to protect.

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