

## Inheritance Law for Women: Islamic Feminism and Social Justice<sup>1</sup>

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### Abstract

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The deficient of females' portion compared to males' portion in the distribution of inheritance has always become an issue, especially to the feminists who are very opinionated about women's justice. Another issue is about females who were perceived as weak connector between two heirs which result the kinship as a weaker one. These issues were always under discourse in inheritance subject either in the East or West. For the feminists, this situation should not occur and the portion of women should be on par with the male heirs, especially when the females assigned for the household chores and of similar contribution. Therefore, this article is triggered to re-explain in a contrariwise perspective where Islam also favours feminisme, which indeed protects women for their own benefits. As a result, many household responsibilities were overloaded to males in comparison to the females, for instance in terms of the matrimonial sustenance, dowry and compensation after divorce as females' rights were protected. Apart from that, there are leeways given to females by Islam. This discussion will refer to al-Quran and Prophetic texts as the authoritative source in Islamic law.

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**Keywords:** Inheritance; feminisme; women; justice; Islamic law

### Introduction

The issue that is always discussed pertaining the rights of hereditary for the female heirs is about the deficient of inheritance that are received by them, which is half the amount of what received by the male heirs. The female heirs usually get half from the amount received by the male heirs. And that also echoes in the position as the linkage heir where female heirs are considered as the weak linkage until the School of Shafie classifies the position as *fasid* (broken) and the eligibility to inherit is reaped off. These heirs are known as *dhu arham*. Therefore, this discussion will try to reexplain the rules and regulations in the inheritance deficient for the women in the context of Islamic nature against women (feminism) and the Islamic perspective in the process of justifying social justice via equal inheritance deficient. The research methodology used in this research is based on the qualitative research by referring towards sources inspired by the debates amongst clerics and their interpretations, historical lineages and laws as well as the current scenario of these days. Analyses are based on the methods of Islamic epistemology which emphasize the fundamental laws and guidelines from the essence of Prophetic texts, *maslahat* (convenience) as well benefits to the society.

### The Inheritance History for Female Heirs

Before the arrival of Islam, the rights for the females to inherit were not guaranteed in absolute state. It depended on the development and the civilization of a society as well as the recognition towards the status of females as an eligible heir to inherit. Because of that, there are societies that permit female as the heir to inherit and there are societies that forbid such act.

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This oppression against female heirs are rooted from various factors and environments. For example, in the rituals amongst the Bedouin Arabs, the inability of females to help their respective entourages to get meadows and water sources which are inevitably the main focuses for community dwelling in the rural areas are treated as the benchmarks for them in determining the eligibility in the inheritance lineage. Whereas for the urban communities which do not emphasize on the empowering of meadows or water sources and have grow rapidly in terms of modernization, it is apparent to that the females are getting different kind of perceptions and given equal rights on par with the male heirs. (Gabor Korvin, 1999:23; Jasni Sulong, 2011). From the ages, the influence of customs has become the main barrier towards the execution of inheritance deficient for the females. As an example, the practices of customs which are *patriarchal* in nature that prioritizes the males and shun out the females from the inheritance lineage. Within the society that emphasizes property ownerships, the customary practices that are implemented in order to sustain the inheritance within the nearest range of family members (Kenneth Chukwuemeka Nwoko, 2012:70) and the females are put under the wings of responsibilities of the male heirs to avoid inheritance transmitted to the family of the husbands (Helen Lackner, 1995:81). That is why females are not given large portion of inheritance especially when the inheritance is in form of properties. If there are no male heirs, then only the female heirs are given rights to inherit the properties in question. Nevertheless, if the female heir gets married and want to move out following her husband, she would have to sell the inherited property to the other family members (Samina Isran and Manzoor Ali Isran, 2012). These practices are exercised since ages ago in Egypt whereby the female heirs were only given the small portion of the inheritance whereas the bigger portions were given to male heirs via statements that the release of the rights were done voluntarily (N. J. Coulson, 1996:263; Kenneth Chukwuemeka Nwoko: 2012).

For the primitive Arabs, the practices to defy the rights of the female heirs were fully exercised and found to be an immense practice within the Bedouins in Saudi Arabia, Palestine, Yemen. The arrival of Islam then has brought positive paradigm shifts away from this oppressing customs and changes were done by resisting the traditional Arabic customs that disallowed female heirs to inherit as well as to abort their exclusion from the inheritance lineage. According to Roy R. Anderson *et.al* (1987:38), the arrival of Islam on that particular time recognized the rights of the female heirs and also to give them the rights and privileges in inheritance lineage. These Islamic laws that were fully executed and effective to all female heirs are found to be on par with the essence of Islam which emphasizes equality and justice. In this matter, female heirs were included into the inheritance lineage irregardless to their ages, locations, intelligence and contributions to society which very much echoed to the rights received by Siti Khadijah. Moreover, Siti Khadijah can be exemplified as the epitome of a female heir that could inherit a lot from her family and then her ability to channel the inheritance into trading empires.

### **Islamic Feminisme in Inheritance**

The spirit to fight for the rights and the emancipation of the female heirs is a resonance from the oppression done to them since ages ago. Histories recorded that since the beginning of the time, female heirs were oppressed and persecuted in various aspects of life. Therefore, it is not surprising when Islam came with the aim to defend the rights of the female heirs and that include the in aspect of inheritance. A proof to reflect the seriousness of Islam in upholding the rights of the females was inscripted in an exclusive Surah in the al-Qur'an which is *Surah al-Nisa'* which carries the meaning of "women" (Q4:1-176). There is no Surah dedicated for males in the al-Quran and that alone is sufficient enough to illustrate the specialties adhered by females in Islam, and that also represents the Islamic feminism which also existed in the stipulated laws of *al-fara'id* (Jasni Sulong, 2011). Based on the uncertainties of the rights for the female heirs to inherit depicted from the canvas of history, Islam came with clear-cut rules via al-Quran and al-Hadith which strictly allocate the rules and regulation in the inheritance aspects. Female heirs are not only to be guaranteed to inherit along with their male counterparts but also the inheritance rates are set accordingly. This fixed allocation made the female heirs as one of the *ahl al-fardu* heirs which are entitled to receive inheritance deficient based on the fixed rates stipulated by the Islamic laws. A reversal state happens to majority of male heirs that receive inheritance dubbed as *ahl al-asabah* whereby there is no particular parts allocated for them of which only based on the remaining of the inheritance, left by the *fardu* heirs who already claim their rights. In conclusion, the rights of the female heirs to gain inheritance are guaranteed, very clear with certain allocation, as well as the fixed rate which make the rights free from any manipulations from any parties (Mohd Zamro Muda, Mohd Ridzuan Awang, 2006). Based on the scenario, the Islamic feminism is apparent in the regulations of the laws where the from the perspective of hierarchy or the priorities in inheritance deficient, the female heirs would be the earliest ones to be given the portion from the inheritance deficient.

This is aligned with what has been preached about on the rationality of the parts for *ahl al-fardu* to be distributed prior to the parts for *ahl al-'asabah* which illustrates that all female heirs would be getting their inheritance parts before the male heirs. This definitely shows that Islam prioritizes female heirs in the inheritance aspect in comparison to the male counterparts (Abdul Rahman bin Ibrahim, 2012). Al-Quran already set that the female heirs should be getting either one second, one third, one fourth, one sixth, one eighth or half of the male heirs' inheritance according to their positions (al-Qurtubi, t.t. (5):38-41). Whereas al-Hadith strengthened the inheritance deficient as per stated by al-Quran and added another part which is one sixth that would be gained by the female heirs via the rights to inherit from the lineage of the grandmother's. These parts are already clearly set and prioritized in the inheritance deficient in order to ensure that the rights of the female heirs are in good conditions and guaranteed (al-Bukhari, t.t.(12):11).

### Elements of Feminism within the Prophetic Texts

Verses pertaining laws and regulation in the prophetic texts especially in the al-Quran give a lot of priority to the upholding of the rights of the females such as verses on hadanah, alimony, dowry, patriarchal representation and inheritance deficient which are clearly explained in order to give protection as well as privileges to females. These verses served as the *code of reference* in order to avoid any oppressions towards the females. If one peruse carefully, the allocation for the inheritance rules and regulations are stipulated accordingly in the Surah al-Nisa' which means "women" and that illustrates the inclination of Islam in ensuring the rights of the females are to be safeguarded. Therefore, any applications or pleas involving rights that are being violated could be referred to parties that are responsible in taking care of these aspects as per the case that happened to the wife of Abdul Rahman bin Thabit when his brother took everything left by Abdul Rahman and nothing for the wife (al-Qurtubi, t.t. (5):39).

The emphasize and the inheritance rates for the female heirs can be viewed in the Quranic Verse 4:11 from Surah al-Nisa where Allah s.w.t said:

"Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise." In this prophetic text, the inheritance part for the female heirs were already explained with details in comparison to the part inherited by the male heirs. According to Ibn 'Abbas, this verse is a continuation from Quranic verse 4:7 which in depth discussed about the inherited parts obtained by the sons, daughters, parents. On top of that, based from this verses the owner of property cannot simply divide the property which would possibly result to oppression to the female heirs (Abdul Rahman bin Ibrahim, 2012).

Another example that showcased the priority towards the female heirs is based on the lineage of rights for the female heirs (*furu*). The branch for the female heirs consist of the daughters and the granddaughters and they could share in the aspect of inheritance deficient whereas for the *furu*' male heirs, it is not allowed. In this case, the daughters could bring the granddaughters to have a co-inheritance whereas the sons will automatically hinder the grandsons if both are alive after the demise of the original owner of the property. The *furu*' female heirs could share to complete the inherited parts for the females in the inheritance lineage in the amount of two third (*takmilah al-thuluthayn*) via a daughter to co-inherit with a granddaughter. This condition enables the granddaughter to inherit the property although the her own daughter is alive. The granddaughter cannot be stopped from the inheritance as well (Abdul Rahman bin Ibrahim, 2012). In referring to the Quranic verses 4:11, Quranic verses 4:12 and Quranic verses 4:176, all the rates fixed by the prophetic texts are either 1/2, 1/4, 1/8, 1/3, 1/6 atau 2/3 and these are inherited by the female heirs. Whereas the male heirs would be inheriting only portions of it with the rates of 1/2, 1/4, 1/3 and 1/6 only. This shows that female heirs adhere more advantages than the male counterparts along with the eligibility to inherit for both male and female heirs either individually or collectively. Therefore, this statement clearly illustrates that Islam is *feminism* in the essence and that the same time recognizes equal rights where the main heirs are in equal numbers between male and female heirs.

In this matter, the nearest heirs would not be explicitly stopped to inherit and they consist of three females and three males which are the son, the daughter, the mother, the father, the husband and the wife (Zahari Mahad Musa, Jasni Sulong, 2013).

### **The Female Emancipation Movement and its Influence**

The female emancipation movement or *feminism* is believed to start as ripple effects from the publication of articles about the oppressions of females by the males approximately at the early 1792 and 1861. Since then, there have been a lot of female movements demanded their rights within the society such as the rights to cast votes in the 19th century. In line with that, the gender differences issues became the focus of discussions in the ideas that justified the selection of males within the society in the aspects such as level of educations, experience of working, social interactions, the household chores and many more. These unequalities had resulted to several demands for gender equalities in terms of their rights to be defended by the laws as well as politics especially in the attempts of to free females from the oppression of males. From this juncture, almost the whole parts of the world were began to experience the ripple effects where heroic female spokespersons and some of liberal-minded males began to demand the equalities of gender (K. Blore, 2010: 5). The second phase of feminism became a household issue in the 1960s. It became more apparent in the 1980s with the commencement of *postmodernism* era that really flared the emancipation spirit of females. The focuses of the oppression issues basically revolved around the females who sociologically were expected to be at home full time, had to be separated from the males, to cover up the body parts when they were outside the houses, had to be accompanied by males when they went out, were not allowed to raise the tone of their voices, no says in the *patriarchal* community and not allowed to work. Females are said to be the second class citizens in society and treated like slaves. In this matters, a lot of focuses were given to the Islamic women and females that were in certain customary cliques that were confined with such elements (K. Blore, 2010: 6).

In the Islamic society, the position of females that can be wedded via polygamous marriage by a male, male to be the leader of a family, the position of witness by a female is valued as half to the witness by a male where a male witness is equal to two female witnesses and also to gain half of the inheritance as opposed to the male heirs had caused Islam to be labelled as a religion that oppress the females (K. Blore, 2010: 9). Although Islam has done a lot of protections as well as charity works for the females, the female emancipation movements demanded equal rights where females are also expected to be able to function as the protector and the one who possess power in a family. This demand was done from the Western foundation where equality refers to the equality in positions and of same values. The difference in managing the power of executing talaq and reconciliation of marriage, polygamy, the final words in a family and inheritance deficient exhibited the unequal values in the Islamic social system (Bryan S. Turner, 2014). Therefore, the female emancipation movement groups would always criticize the Islamic system as being unfair, especially in regards of inheritance deficient that differentiate the deficient on the basis of gender (Suleiman al-Hageel, 2001:197). On top of that, the measurement of judgement is made from the perspective of Western perception and not on the Islamic values of justice where "something is put in its place in accordance to its nature". The lack of skills of the female is rooted to the less of responsibilities shouldered. As the matter of fact, Islam has exercised justice as the difference in inheritance deficient is due to the difference in responsibilities between the males and females such as to prepare dowry, to shoulder the burden of alimonies and also patriarchal representation towards the females (Nahed Samour, 2002:108-109). For example in terms of financial responsibilities on the females, the males are not only made compulsory for the alimony and dowry but also the financial responsibilities such as mut'ah and alimony are also to be shouldered by the males when divorce is taking place. Whereas the financial responsibilities on the children will remain until the children grow up irregardless whether the children choose to be with the father or to be with the mother of a divorced family. Nonetheless, these effects and financial responsibilities are not scrutinized by the female emancipation movement members.

There have been a lot of defiance committed by the female movement groups in the issues pertaining inheritance deficient. For example, in the 1923 incident happened in Egypt which involved the supporters of *Egyptian Feminist Union* along with the Christian and Socialist societies that demanded the inheritance deficient to be distributed equally between the males and the females. The same suggestion was written by a Moslem Egyptian reporter, Mahmud Azmi (Margot Badran, 1995:134). They claimed that the principle of *al-fara'id* which is in the essence of *unequal gender distribution* as an antiquated practice (*anachronism*) and not suitable for the modern era. They were on the opinion that the principle needed to be revised especially when the females now have changed rapidly in terms of becoming the breadwinner of families and equal to the ability of males.

The effect to the cause uphold by this movement resulted to a death of an Egyptian named Aminah Hanim Afandi in 1931 who decided to give equal inheritance deficient for her two daughters and her son (Margot Badran, 1995:134). The same influence could be felt in Turkey in 1926, Iraq in 1959 and Somalia in 1975 when the inheritance deficiencies were amended into the principle of equality between the male and female heirs. These amendments were clearly antagonistic against the Quranic verses which said that "Allah instructs you concerning your children: for the male, what is equal to the share of two females" (Q4:11, 176). Nevertheless, these people interpreted the Prophetic text wrongly when some emerged with opinion that the verse was not an "order" from Allah s.w.t but more of an "encouragement" (S. H. Amin, 1989:458). Based on the influence to execute the principle equally, the Iraqi Laws had given freedom to a property owner to do a will if he or she refuses to distribute the property in accordance to the Shariah laws. This amendment is definitely contradictory to the Islamic laws because by right, the heirs are not eligible to receive the will and this development shows us the significance of secularisation and liberation movements that are rampant in the Islamic countries during that particular time (Jasni Sulong, 2011). In Malaysia, the movement of such also exist via a few bodies and female movements. This echoes to the fact that those students sent to study abroad had come back and also the prominence of heroic figures of the Westernized education systems who unabashedly demanded for the equality of treatment between males and females in all aspects and that includes the Shariah laws. For them, everything about Shariah laws are flexible in nature that can be bent and changed according to time (Sisters in Islam, t.t.:1). These groups are mostly comprising the educated females from the Westernized education system and are dominating the senior positions in various sectors either in the Government services or the privatized sectors. From the historical facts, the Malay women actually have always been prominent since ages ago with domination in a few fields such as trading, craftsmanship and also agricultural. Their presences were somewhat more prominent and equal to the male counterparts when they do something (Syed Hussein Alatas, 2009:120).

With these successes as well as significant contributions in the families and societies, the dominant female figures were intrigued to fight for equality of gender in all aspect of conditions and that includes the inheritance deficient. These demands were triggered on the basis of the reflection of realities of modern life, that sometimes juxtaposed the condition of whereby females are the one who contribute more than the males in a family. Nevertheless, these contributions by the females are not in the form of compulsory acts which will result them to take over the burdens that are supposed to be shouldered by the husbands or the males. Islam still put the responsibility task to safeguard a family on the shoulder of the husband which in line with the scenario that males are to be the leaders of families. This responsibility is not to be replaced. This status is not based on choices but it is *taklif* (burden of responsibility) which must be shouldered by every males. In this matter, Islam never curb any females to go forward, helping their husbands if the husbands were unable to fulfil his duties yet this would not change the fact that the husbands are still made compulsory by Islam to be responsible to his own family. Because of that, females or women will always be under the wings of responsibility of a male or man (*wala*) and males must not take this for granted. These fixed situations are important to ensure the rights of the females so that they would not be manipulated by some of the society members by enforced to shoulder unnecessary burden (Jasni Sulong, 2011).

### **Feminisme in Bilateral Inheritance**

Apart from the movements that are female-oriented, there are also neutral opinions stating that the Islamic inheritance system is actually a bilateral concept, which prioritize the both heirs where the male and female heirs are given equal inheritance rights in terms of property deficient (Hazairin, 1967: 1; Cammark, 2002). There are no priorities between the two genders unless they were given equal rights. This practice or tradition is named as *bilateral-parental* inheritance that is believed to be rooted from the Shiite culture which now has become a major influence to this part of shore of the world. The practice of bilateral inheritance was found to in the Shiite community in Pasumamah, Sumatera and is dispersed to this region and also to the Malay Peninsular via processes of migration between territories (A. Rahman Zainuddin *et al.*, 2000: 144). Conceptually, the method of equal inheritance deficient in Islam is analogous to the concept of *al-qarabah* where the lineages of male and female possess the same rights in hereditary lineage without the difference of origins (*usu*) to be perused. There are no priorities to the females or males especially when referred to the Islamic emphasizes on the formation of families and societies (Hazairin, 1967: 9). If it is absed upon the traditional or customary practices, the rationality is inclined to accept the *bilateral-parental* principle.

This is because the mind is easily persuaded to interpret that justice in inheritance deficient should be exercised in equal amounts. The approach that can be considered is that the female physical attributes are weaker than the males and would not be able to clear up a field for agriculture (*ihya' al-mawat*), to manage paddy-field, to build homes, to go hunting or to be anglers. Therefore, if priority is solely given to males, it would be oppression against the females; when they also contribute a lot in managing the household chores and nurturing the children. In this context, it is apparent that females and males have their respective responsibilities and rights that are balanced towards one another in a family. Therefore, it is unsurprising that the female heirs such as widows and the daughters are given equal deficient of inheritance due to safeguard their lives. In this position, there is the element of *feminisme* because although the females only contribute fewer or lighter services in comparison to those done by the males, they are still given equal treatment. In other word, females are given more rights than the supposed amount surpassing the contributions given and this is also reflected in the inheritance deficient parts where the female heirs obtain an equal amount of inheritance (Jasni Sulong, 2011). In the customary practices, usually, this allowance is given based on the practice of "alliance" (Sharifah Zaleha & Sven Cederroth, 1997: 46-47), between the female and male heirs after the demise of the original owner. This practice exhibits the harmony in the olden Malay families always practiced in the villages, hence is dubbed as the "Village Customs" (Jasni Sulong, 2011)). Based on records, these practices were abundant in several places in Malay Peninsular such as Perak, Pahang and Selangor, for instance amongst the Bugis people dwelling around Johor and Selangor. In the Southern Perak Region for instance, the practice of inheritance deficient ala "alliance" could be detailed via this statement (Winstedt, 1958: 48-49): "... where the family agreed on the distribution of an inheritance, the result was usually to give a specific piece of land to the widow or dependent daughter and for sons to share equally with daughters or even to waive altogether in favour of daughters.

Sometimes they would agree to give the whole estate to their mother, no doubt on the understanding that she would not sell it, thus in effect postponing distribution till after the death of both parents." It is apparent that although the method of inheritance illustrates the justice between the males and females, it actually prioritizes the justice for the female heirs such as the widows and the infant daughters. Based on the abovementioned statement, it is clear that in the normal inheritance deficient, the male heirs would be getting more from the rest. Nevertheless, it is found that the village tradition as well as customary had caused the normal laws to be neglected and advantages are given to the females in the family. The influence of rational and alliance which has given better level of rights to the females without ever the less contributions in a family taken into account is also accepted and practiced by the people of Adat Perpatih in Negeri Sembilan and Nanning, Melaka especially when it involves inheritance deficient of the "non customary". They execute inheritance deficient in equal amounts for both male and female heirs. This statement is based on reports by Taylor (1929) who used to work there, which was, "*Rubber land, money and moveables generally, descend to sons and daughters in equal shares per capita*". This practice has been exercised since ages ago before the arrival of Islam. This is considered not to be contradictory to Islam when the inheritance deficient is done on basis of alliance among all the involved heirs. Under the umbrella of this concept, as long as the heirs especially the male heirs express their agreement and permit the lessen of the inheritance deficient amounts which by right are supposed to be theirs but transferred to the female heirs, then the inheritance deficient is considered to be permitted under the laws of Shariah (Siti Mashitoh Mahamood, 2012: 151). Under the umbrella of *faraid*, this concept is known as *al-takharuj* where, every heir is entitled to reject the right of inheritance deficient either on whole or partially by doing it voluntarily, especially on the basis of filial piety within family.

In the practice within the current community of these days, the influence of *feminisme* could exist in the bilateral-parental community via the influence of a mother towards her married son or the sister towards the brothers. Usually, the married sons or the brothers would kowtow to the demands of the mothers and the sisters and from this perspective it is evident that these figures emerge as the primary power sources towards other elderly female heirs. In this matter, the females can heighten their influences towards a property or the management of property within family via the control towards the younger male. This scenario always occurs within our society under the tokens of love and care towards the weaker female heirs who definitely have limited capabilities in the social and economical activities (Samina Isran, Manzoor Ali Isran, 2012).

### **Feminisme in Matrilineal Inheritance**

The matrilineal inheritance means to prioritize the female heirs in the inheritance deficient by giving them a large amount of inheritance by allocating certain amounts specifically for them. In certain custom in African societies, the females were wedded off with the females as well or children who are yet to reach puberty to ensure that the inheritance would be solely inherited by females.

For the case where the females were wedded off with females, that were not on sexual basis but under the umbrella of social life context in the eyes of to retain the rights of females as well as the family inheritance (Kenneth Chukwuemeka Nwoko, 2012). In the eastern region, the influence of pengaruh *matrilineal* is believed to be part of the Hinduisme. The reason derived from the words "harta pusaka" (inheritance) which basically rooted from the Sanskrit words that equalled to two words which are "arta" that means riches whereas "saka" referred to the female inherited lineage (Abdullah Ishak, 1990: 16). Therefore, the inheritance referred to the riches that should be owned by the female lineages only. This practice is aligned to the inheritance deficient at Kerala, India. Whereas in this region, the practice of *matrilineal* inheritance is found to be common among the people of Perpatih custom in Negeri Sembilan and also within the Minangkabau communities of Pagar Ruyong, Sumatera. The Minangkabau people either in Malaysia or Indonesia pronounce the words "harta pusaka" with the enunciation of "harto pusako" which gives the same meaning but differs in dialect. The influence of *matrilineal* and feminisme in the dalam Adat Perpatih community is believed to be the original practices of the Minangkabau people that existed prior to the arrival of Hinduism to this region (J. Minattur, 1964: h. 783-784). This is due to the customary principle of this community that binds stoically with their ancestral customs and this is implied via the famous *stanza* of "biar mati anak, jangan mati adat" (it is alright if you lose your children but it is not alright to lose your customs) (M. B. Hooker, 1986: 453). Apart from that, they are also known as the *exogamous* community that refutes the external influence to influence their lifestyles. Therefore, it is impossible that these people accepted Hinduism or other external customs to be blended into their customary cultures.

In the inheritance deficient of *matrilineal* custom, the emphasizing of inheritance is acknowledged to the female heirs and the male heirs would only savour the "hak pakai" (the right to use). The term 'right to use' is coined to reflect rights to savour or to take advantage of the property or inheritance but would not be eligible to own as personal asset. The male heirs also are burdened with the responsibility to safeguard the female heirs' inheritance when appointed as the "manager" of the inheritance in question (Taufik Abdullah, 1985: 99-100). In this matter, the female heirs are eligible to inherit the property of their people as they are being dubbed as the "beneficiary custodians" of their people (R. J. Chadwick, 1991: 56). Taylor (1929) explained that, "*All ancestral property belongs to the tribe; it vests in the female members but they hold it as trustees for their tribe rather than as owners*". This *matrilineal* custom is common in the southern part of Peninsular Malaysia especially in the districts of Sungai Ujong, Jelebu, Kuala Pilah and Rembau in the sovereign of Negeri Sembilan as well as in the district of Nanning, in Melaka. Records from these customary laws such as Kumpulan Hukum Adat from Sungai Ujong and Kumpulan Undang-undang Minangkabau from Kuala Pilah reflected the inclination essence of feminisme in the inheritance deficient (M. B. Hooker, 1968: 158). The priority towards the female heirs in this custom is done based on the theory that females are the inter-generations linkage heartbeats. At the same time, females are the weaker heirs in comparison to their males counterpart and must be protected in terms of their welfare and place to stay (Abdullah Siddik, 1975: 21, 86, 149). Therefore when someone die, the immovable assets such as site of the house, orchards and paddy-fields ownership would be exclusively transferred to the female heirs. Usually, the lasy daughter would inherit the house of the mother or the customary house because they usually would be the last heir who take care of the parents before the demise.

The inclination to prioritize female heirs does not merely confined within the customary community but also is practiced by those outside of the circle such as the people in Pahang, Perak dan Selangor. These influence and inclination are believed to derive from the culture assimilation and acculturation, due to the mobilization between the people from various territories. In response to this, Mackeen (1969:14) said that, "*Although under this system society was bilateral leaning toward patriliney, the laws of property and inheritance in such states as Perak, Pahang and Selangor tended to follow the practise in matrilineal Negri Sembilan.*" The most apparent is that for the people of Minangkabau that migrated to Perak circa 1878 due to the factors of the colonial trading and protection effects. Therefore, there have been apparent influences within the people of Perak, for instance, the Perak State Council via the records dated 4<sup>th</sup> March 1879 had ordered that the inheritance of Tengku Long Jaffar should e transferred via *matrilineal* concept. The property and the house of Tengku Long Jaffar was inherited to his female relative, Che Alang Sepiah who happened to be the mother of Che Puteh Hawiah (Jasni Sulong, 2011). In the case of inheritance deficient due to the marriage (joining property), the feminisme element was also practiced when there is a custom that states if the husband dies, the inheritance shall be bestowed to the wife (*mati laki tinggal ka-bini*).

Nonetheless if the wife dies, the inheritance shall be transferred to the *matrilineal* heirs unless if the couple does not bear any child, then the husband will have the right (Ahmad Ibrahim, 1964: 356). The same goes with the recipients of awards, female line would be prioritized as per the case in Naning after the death of Dato' Sri Maharaja where he was replaced by a nephew from the line of his oldest sister (Wilkinson, 1908: 64). This cemented the essence that feminisme existed in the inheritance deficient as well as the bestowment of awards and titles practiced by the olden society. Nevertheless, this method is not fully practiced because there are also the male and female heirs from the lineage of the males that are given the rights to inherit such as the daughters of the man's sister's daughters (Maxwell, 1885: 127). Therefore, Perak is a territory that is located out from the Adat Perpatih society and that is why the practices are only specific in certain aspects and not wholly-natured. On top of that, the content of *An Old Minangkabau Legal Digest* found in Perak did not contain any principle of *matrilineal*, but to allocate slots for inheritance deficient based on the laws of *al-fara'id* (Winstedt, 1958).

### **The Social Justice in Inheritance Deficient**

The social justice is referred to the justice in the wealth, opportunity, education deficient and many more within a society. Every society and religion puts value and certain benchmarks in order to ensure that justice is upheld within their respective societies. In Islam, the justice in the wealth or inheritance deficient does not meant it should be of the same amounts but refers to the eligibility of the heirs. The balance in the social responsibilities will happen if the heir is burderned with rights and responsibilities that are aligned with their functions in the societies. Islam as the religion that is obedience-in-nature and governed by its laws and regulations, put the certain responsibilities to the Moslems of where the males are to shoulder heavier responsibilities than the females. The females need to be defended and protected by the males in terms of physical and mental, usually those with of stronger sturdiness as well as diligence. This make the females as the special group and is so precious in the eyes of the religion. As the religion that is always on par with the development of civilization, the status of males within society has always been aligned with any societal practices in this world where males are the leaders and to shoulder more responsibilities within families as well as the societies. A western researcher Steven Goldberg (1993:64), once quoted in his anthropological statement which was deemed as controversial, "*all known societies have in fact been patriarchal. Authority and leadership are... associated with the male in every society*". Although this statement referred to as if the whole world is assuming males as the *superior* ones and always the leader, but Islam puts the leadership of males towards females under the basis of several responsibilities needed to be shouldered by the males. In Islam, the large amount of inheritance rate is based on the responsibilities needed to be shouldered. In Islam, the large amount of inheritance allocated for the male heirs is on par with the amount of tasks and commitment needed to be shouldered and solved as the patriarchal representator of the family (*wali*) in terms of being custodians as well protector of the family. Allah s.w.t said in surah al-Nisa' Q4:34, which means, "Men are in charge of women by [right of] what Allah has given one over the other and what they spend [for maintenance] from their wealth". Some of the examples on regards of other financial responsibilities meant in the Prophetic text are tithe, dowry, diyat (compensation for the taunted criminal victims) and alimony for the children and wives.

Therefore the large amount of responsibilities and not simply limited to their ownelves make the male heirs eligible to gain more portion of the inheritance deficient so that they would be able to protect those who are under his care (Abdul Rahman bin Ibrahim, 2012). On the contrary for a female, although they would get half of the rate from the male heirs' inheritance (Q4:11, 176), but the part would be fully become her right and hers alone. She could also keep the part and not obliged to spend the money on the children or the rest of family members because as women, the females would always be under the responsibility of the males either as daughters, wives or widows. Therefore, this scenario really accentuates how the Shariah laws has put the social justice in terms of inheritance deficient which involve the male and female heirs (Abdul Rahman bin Ibrahim, 2012). The position of the male heirs that are responsible towards the female heirs within a family is definitely fully stipulated, either in matrimonial, property or trusts (Siti Mashitoh Mahamood, 2012). Nevertheless, the position of the female heirs to obtain half of the inheritance amount of the male heirs is not fully stipulated because there have been situations where the female heirs will be getting the same amount of inheritance deficient as per their male counterparts. Based on the al-Quran, parents would be getting equal shares (1/6) when the deceased have children (Q4:11). Whereas the brother of the same mother and the sister of the same mother in any situations would be getting equal shares either one third if there are many of them or one sixth if alone (Q4:12). This shows that not all female heirs would be getting lesser amount of inheritance in comparison to their male counterparts. The exception in this Prophetic text illustrates to us that females are given more spaces to get equal shares of inheritance deficient (al-Qurtubi, t.t.(5):46).



All heirs that have the nearest familial connections to the deceased would inherit without any hiccoughs and that includes the female heirs. Therefore, the male and female heirs have equal shares of eligibility as well as the strength to inherit without any prejudices or barriers. All heirs would be directly inheriting the property in question after the death of the owner of property. There is no formal accepting recital or *qabul* needed in order to verify the validity of the inheritance. The same goes to the heirs or the owners of the property where they have no rights to determine who would inherit their property and who would be barred as all these are already pre-determined by Allah s.w.t. Therefore, any attempts to deviate the inheritance deficient from what have been pre-determined under the Shariah laws would be considered as invalid. A father could not prevent his son or daughter from inheriting his property and vice versa as long as one of them have not been committing anything could jeopardize their inheritance rights under the Shariah laws. This will indirectly guarantee a heir by *de facto* and *de jure* that they will be able to inherit the property from the *ipso facto* owner irregardless the difference in gender (Alarmic Rumsey, 1994:10; Jasni Sulong, 2011). If one were to peruse another aspect, females are given equal positions to the males, and sometimes even better and this is reflected via a few statements to describe the polemic in a family such as "heavens are underneath the foot palms of a mother" (al-Nasa'i and al-Tabarani; Q17:23-24). From the point of view of the relationship with Allah s.w.t, females and males are all equal. This was emphasized by Prophet Muhammad s.a.w when he was asked by one of his wives, Ummu Salamah ra, "Oh, Prophet of Allah! If in the inheritance deficient, a female to receive half of the male's part, will that also be considered as charity whereby the females also to receive half of the rewards received by the males?". Therefore, Rasulullah s.a.w had denied the assumption which was aligned with what Allah s.w.t said that only those who do goodness and attempt to do that would be rewarded by Allah s.w.t (Q4:32) irregardless of the gender (Muhammad Uthman el-Muhammadi, 1997:3).

In other point of view, the females are given special places with so many flexibilities under the Shariah laws. For example from the perspective of religious rituals where females or women who experience menstrual periods and also the after-birth blood are prohibited to perform prayers and they are not made compulsory to replace that. On contrary for the males where no flexibilities are given to them in terms of prayers' replacement. In the aspect of crimes, females are excepted from the Hudud when there are *syubhat* such as taking father's money or the husband's money without permission because maybe the money contains elements of unsettled alimony. Whereas for the husbands or fathers who steal the money of the daughters or wives would definitely be punished accordingly. Another example is that females would not be sentenced to death in a war, would not be burdened with the kafarah to fast for two months if they were to commit sexual intercourse with the husband during the daylight of Ramadhan and would not be associated with jizyah if they are not Moslem. There are a lot of Prophetic texts that protect as well as uphold the needs for the females and this also implies how that Prophetic texts also are feminisme-inspired. It is clear that the females are always taken care and prioritize by Islam and also regarded as the entrusted treasure for males to guard upon. Prophet Muhammad s.a.w once said in his famous last sermon entitled *Khutbah Wida'* that, "Be scared to Allah s.w.t in things dealing with women for you have taken them as the entrusted treasure of Allah s.w.t" (al-Nasa'i). The fixed settings of the inheritance deficient show the seriousness of the rights and the inherited parts of the females to shield them from any manipulations or persecutions. Nevertheless, the fixed settings are not to be contradictory to the rates and eligibility that are already pre-determined under the Shariah laws. In Islam, the rules and regulations under the Shariah laws engender effects from the other responsibilities and burdens under the laws as the set of essence of justice pre-determined by God.

### **Planning and Administration of Inheritance Deficient**

The current scenario exhibits the development in the methods of inheritance deficient via management & the deficient planning of the inheritance in question. The Shariah laws encourage property planning as long as it is done along the riverbank of Shariah as per methods like *takharruj*, will, hibah and trust fund. In the context of the society of these days, most people are to safeguard the rights of the females by implementing inheritance deficient planning. For example, when most of the heirs left are of the female heirs and only a few of them are male heirs, usually the property would be divided equally where the male heirs would implement *takharruj*. *Takharruj* is where the heir who is entitled for certain amount of inherited property has decide to abort some parts or the whole parts of inheritance of which he is entitled to. This method is encouraged by the Shariah, on the condition it has to be done voluntarily.

To ensure that there are the essence of sincerity or volunteering mentioned, the heir must be informed first by the officer in charge on the amount he would be receiving if the concept of *takharruj* to be implemented. Usually, *takharruj* is done by male heirs because they would be getting a larger amount of inheritance in comparison to the female heirs. This scenario definitely shows the inclination of *feminisme* in the society whereby the rights of the female heirs in a family are safeguarded (Jasni Sulong, 2011; Wan Abdul Halim Wan Haron, 2006). In the administration of the will cases of the recent years, it seems as if that usually, the female heirs would be included as the beneficiary who is eligible to inherit the property. Although Shariah laws discouraged wills to the heirs but the *feminisme* inclination occurs in society shows that these practices are done via wills bestowment filed cases, either by naming the daughter or the female sibling (Abdul Rashid Abdul Latif, 1986). Based on this inclination to uphold the rights of the female, an adopted female daughter would be getting parts of the inheritance from the point of view of wills bestowment when the court decided that the naming of beneficiary with the non-heir would be aligned with the rules and regulation of the wills bestowment. This is evident in the case of *Wan Puziah binti Wan Awang lawan Wan Abdullah bin Muda dan Seorang lagi* (2001) which was decided by the Shariah High Court of Terengganu. The owner of property can also do love-giving or *hibah* to the heirs when they were still alive. This method is encouraged by the Shariah laws and is not contradictory to the Islamic inheritance deficient of *faraid*, but it must be enforced while the owner is still alive unless it involves the context of giving related to naming the beneficiary of the trust fund.

According to Siti Mashitoh (2012), the giving of *hibah* or the trust is so popular these days and can be considered as one of the inheritance plannings. Some of the factors that influenced this are due to polygamous marriages, no male heirs and also having adopted children. These factors are apparently inclined towards *feminisme* where the plannings are in accordance of *hibah* and trust and it is done to ensure the rights of the wives, the daughters and the adopted children will be protected after the demise of the property owners. On top of that, the laws of these days have allocated rights to the wives to demand her rights in joining property (*harta sepencarian*) when their husbands commit polygamous marriage (Ibrahim Lembut, 2007; Noor Aziah Mohd Awal, 2010). This right is already recognized although if one were to peruse the custom, the females could only demand the “*harta sepencarian*” only after the demise of the husband. The fact that the property bought and owned throughout the marriage is considered as *prima facie* whereby the “*harta sepencarian*” is a guaranteed law to the females as most of them were housewives back then. This exhibits the inclination of the olden days as well as the recent years via alternative methods of inheritance deficient and also the laws that really take care of the women. Therefore, it is not surprising to say that most of the inheritance deficient in Malaysia has always been based upon the spirit of *feminisme* yet in the forms that are permitted by the Shariah laws.

## Conclusion

Based on the discussions above, the inclination of *feminisme* from various aspects of life has been getting a lot of attentions since the olden days of the civilization. The oppression against the females in all aspects has been reviewed and getting limelights until now that the females are demanding equal rights on par with their male counterparts. Nevertheless, these demands received mixed reviews from the citizens of the world based upon the religious and cultural perspectives. There are positive things for the females to demand that as well negative things if such demands to be granted. From the perspective of to ensure the rights of the females, Islam does not only shows that religion emphasize the justice and also to prioritize the females (*feminisme*), but extrapolates far beyond that where justice, laws and the inclination towards the females is within a bigger skeleton and beyond the common normalcy of simple discussion. Therefore in the issues of gender and social justice, the Islamic law of *faraid* has depict clearer vision in ensuring the rights of the females to be safeguarded and this is proven in the glorious days of Islamic civilization years ago. Although there have been a lot of protests but it is undeniable that the Islamic law of *faraid* was descent due to the objective of to safeguard females from being oppressed and persecuted. On top that, there are also a few alternative methods in the inheritance deficient aspects as per discussion above and it is apparent that the usage and the practices are to safeguard the female heirs. There has been a lot of violation rooted from the local customs and cultures of the society perceiving females from a narrow point-of-view. On the contrary, Islam and its laws via al-Quran and al-Sunnah has already been upholding the rights for the females and to exclude them out from any forms of oppressions and atrocities via clear rules dictated as per the inheritance deficient. The fixed setting for the rights and the amount of inheritance gained without any sharing with the other heirs, as well as free from any entanglement of burden to take care of other people is definitely the special recognition given to the females by Islam. The situation as someone who “has the right” yet “not being made compulsory to shoulder any burden towards others” made females as those who are always protected by society.

Therefore, it is apt to say that Islam ensures justice for the females in terms of Islamic inheritance deficient. It is not only to guarantee the rights for the females from the point of view of Shariah laws but also in terms of social justice within society via the balanced tasks for each of the members in terms of rights and responsibilities as well as the practices of wills, hibah dan trust funding.

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