

Comparative Analysis of Conventional and Islamic Inheritance Laws

Hasan Waheed

Department of Law, Dadabhoy Institute of Higher Education, Pakistan

Email: hasanwaheed147@gmail.com

Dr. Tansif Ur Rehman

Teaching Associate, Department of Sociology, University of Karachi, Pakistan; and
Visiting Faculty, Department of Law, Dadabhoy Institute of Higher Education,
Pakistan

Email: tansif@live.com / <https://orcid.org/0000-0002-5454-2150>

Aliya Saeed

PhD Fellow at School of Law, University of Karachi, Pakistan

Email: aaliasaeed@yahoo.com

Abstract

This paper will make a comparison between the conventional inheritance laws and the Islamic inheritance laws with the aim of demonstrating their key principles, the process through which the inheritance is allocated, and their implication for society. In the common ("Western") law systems, the inheritance law has much more stress on testamentary freedom, i.e., letting the individuals decide how their assets should be distributed when they die. By contrast, the Islamic law of inheritance, which is based on Sharia, fixes shares received by heirs, leading to a systematic division of wealth as dictated by the religious principles. This paper explores the fact that these divergent practices make a difference in family life, gender equality, and equal distributions of wealth in different cultures. This paper, through the legal analysis and case study of various jurisdictions, attempts to present the implications of these types of inheritance on individuals and society at large.

Keywords: *challenges, historical context, laws, opportunities, theoretical context*

Introduction

The law of the transfer of property of a deceased is controlled by the inheritance law, which is also very vital in bringing matters of justice, family responsibility, and order in society (Khasanofa & Larasati, 2024). It demonstrates legal, cultural, ethical, and religious assumptions of the society (Aziz, 2023). Two of the most common systems that affect inheritance in the world include the conventional (civil/common law) system of law and the Islamic (Sharia-based) inheritance laws (Muzakir, 2022). The conventional law of inheritance is founded on written statutes and case law (Wardi et al., 2024). It provides much liberty to people to allocate their resources in terms of wills and testaments (Yunatskyi & Shepeliuk, 2023). The equal treatment of heirs is frequently observed, and certain flexible rules are adjusted to different family patterns, social traditions, and tastes (Wicaksono & Hosein, 2024).

On the other hand, the Islamic law of inheritance is a divine decree based on the Quran, Sunnah, and classical jurisprudence (Habib et al., 2024). It distributes definite proportions of inheritance to the heirs who are qualified, such as parents, spouses, and children, in terms of kinship and financial liabilities (Zakri & Isnain, 2024). Only one-third of the estate can be given away freely to the testator, with the other two-thirds being abided to stringent rules. The Islamic family law assigns males twice the amount of the female heirs, which is based on the financial responsibilities of men (Ahmad et al., 2022). This paper examines the way in which the two systems are promoting justice and equality in inheritance.

Research Justification

A comparative study of the conventional inheritance law and the Islamic inheritance law is important in several ways. To begin with, the laws of inheritance have an enormous impact insofar as the family structure and the wealth distribution are concerned, touching on the lives of people and the system of society. In a way to investigate these two systems, this study will bring out the advantages and disadvantages attached to the two systems, giving a clear exposure on how such laws operate in a variety of cultural orientations. Second, since globalization is bringing various legal systems closer together, knowledge of the nitty-gritty of the law of inheritance is essential to legal practitioners, policy makers, and academicians. It is knowledge that can be used to implement superior practices and policies that will honor the differences in culture, but ensure equitable and fair allocation of assets.

Lastly, the study will result in the further development of the knowledge of the conventional and the Islamic laws governing inheritance, which can help to

advance the policies that apply to the area and provide guidelines to the individuals who have to appeal to the law in the process of solving their conflict.

Research Objectives

1. To discuss the historical context of conventional and Islamic inheritance laws.
2. To highlight the theoretical context of conventional and Islamic inheritance laws.
3. To analyze conventional and Islamic inheritance laws.
4. To identify the key challenges regarding the comparative analysis of conventional and Islamic inheritance laws.
5. To explore the opportunities for comparative analysis of conventional and Islamic inheritance laws.
6. To propose effective prevention and intervention strategies.

Research Methodology

This study employed a systematic review methodology, with research objectives established accordingly. A comprehensive literature review was conducted (Komba & Lwoga, 2020). Research findings were categorized based on their content (Hiver et al., 2021; Petticrew & Roberts, 2006), and classified information was incorporated into the study by organizing it into headings (Gan et al., 2021; Pawson et al., 2005). The evaluation of classified information and titles formed the basis of the study (Page, 2021; Rahi, 2017), ensuring the integrity of the research subject and its contents (Egger et al., 2022; Victor, 2008). The criteria for selection are listed.

1. **Relevance:** Researches that directly addressed the questions posed by this study are included.
2. **Quality:** Studies that meet a certain quality threshold (e.g., methodological rigor, bias risk) are included. Most of the research is from Scopus-indexed and Clarivate Analytics journals and reputed publishers.
3. **Recency:** Consideration of the publication date to ensure that the review reflects the most current evidence. Most of the studies are from the last three years.
4. **Language:** Only studies published in English are included.
5. **Data Completeness:** Previous studies must provide sufficient data on outcomes of interest for practical synthesis; this is also ensured in this research.

This study did not use primary data from human participants; therefore, no ethics clearance letter from the ethics committee was required.

Literature Review

A comparative analysis of the inheritance law shows how various legal systems understand the issues of justice, equity, and family obligations (Muzakir, 2022). The conventional systems of inheritance emphasize the freedom of a

testament, providing an individual with a large margin of freedom in matters concerning the disposition of the property. This autonomy is a sign of liberal values, which are focused on individual rights and equality between genders (Khasanofa & Larasati, 2024). Under these systems, testators may make dispositions or bequeath to some heirs at their own will and, though, be assured of some protection of the legal interests of dependents (Aziz, 2023).

Conversely, the Islamic inheritance law is grounded on the religious sources such as the Quran and the Hadith that should be later explained by the classical jurists with references to the *Ijma* (consensus) (Saujan et al., 2024). It demands the heirs like spouses, children, and parents to possess fixed shares which must be distributed compulsory and leave one-third portion of the estate to the individual at his will. As Ahmad et al. (2022) point out, the reason behind the 2:1 ratio, favoring heirs of the male gender, is explained in Islamic principles by economic demands and roles of men, such as the obligation to support the family (Zakri & Isnani, 2024).

The recent literature is becoming increasingly focused on legal pluralism in the Muslim-majority states, where the Islamic and conventional systems of law are not in conflict (Wardi et al., 2024). The study will investigate the issues of hybrid legal systems, especially in those countries where statutory law conflicts with Islamic and customary laws (Habib et al., 2024). Such jurisdictions are struggling to balance both religious duty and constitutional duties, equality (Wicaksono & Hosein, 2024), which are the constant discussions regarding changes and the ability to balance the old inheritance norms and the new legal standards.

Historical Context of Conventional and Islamic Inheritance Laws

The history of the development of the law of inheritance in conventional legal systems, namely the civil and common law, has its roots in Roman law that had an emphasis on the freedom of tests, i.e., the right to decide what to do with property upon death (Wicaksono & Hosein, 2024). This idea developed in the era of enlightenment under the impact of the legal philosophies, which supported the concept of the autonomy of people and their gender equality (Khasanofa & Larasati, 2024). Contemporary Western systems of inherited wealth emphasize the principle of freedom of disposition, equality of heirs, and flexibility in the dynamics of family formation (Muzakir, 2022).

Quite on the contrary, Islamic inheritance law, which was revealed 1,400 years ago as a part of the Quran, gives women, orphans, and their frail relatives predetermined shares, which is socially just (Ahmad et al., 2022). In contrast to traditional law, it is based on the formula that is prescribed by Allah and focuses on moral and religious duties (Wardi et al., 2024). The comparison of both systems shows that there is a great difference in terms of culture, ethics, and society

regarding inheritance, property, death, and the roles of the family (Habib et al., 2024).

Theoretical Context of Conventional and Islamic Inheritance Laws

The Theoretical background of the comparative study of conventional and Islamic law of inheritance includes a range of legal, cultural, and ethical systems etc. Fundamentally, the traditional inheritance law tends to have an individualistic or autonomy base since it focuses on the ownership of property by an individual who is allowed to decide the way it should be distributed on their death. On the contrary, Islamic law of inheritance has its foundations in collectivist ideals; family cohesion and societal responsibility. Islamic theoretical legal principles are based on the religious texts, forming shares to which the heirs will have a right to receive their portion to avoid conflicts by forming the fixed shares.

Also, a feminist theory gives essential information about the two systems, focusing on gender equity. Although traditional systems might admit of testamentary freedom, they also can create inequalities when not well controlled. On the other hand, the Islamic law of inheritance, although organized, has been criticized as being unequal to male heirs. In such a way, theoretical insights into this set of laws demonstrate intricate relationships between personal rights, social duties, and gender issues, which is why its implications for modern society have to be approached with subtlety.

Conventional and Islamic Inheritance Laws

A) Conventional inheritance laws:

- 1. Inheritance (Family and Dependents) Act 1975 (UK):** Gives provisions of courts that were allowed to take care of dependents who are not written in a will or intestate scheme.
- 2. Administration of Estates Act 1925 (UK):** The law regulates the administration of those estates under which a person dies without a will.
- 3. Intestate Succession Act 1987 (South Africa):** This act explains the procedure to be followed for dividing the assets when one passes without leaving a will.
- 4. Family Provision Act 1982 (Australia):** Such a person may be inadequately provided by the rest of the family, and in that case, has an opportunity to claim a part of the estate.

B) Islamic inheritance laws:

- 1. West Pakistan Muslim Personal Law (Shariat) Act 1962:** It regulates the Islamic succession of Muslims in Pakistan.

2. Malaysia Islamic Family Law (1984): It governs the personal and Islamic succession of inheritance in Malaysia.

3. Muslim Family Laws Ordinance 1961 (Pakistan): This ordinance brings reforms to the Islamic inheritance, especially to encourage the rights of women.

4. Administration of Muslim Law Act 1966 (Singapore): Elaborates a system of laws based on the *Shariah* as the personal and inheritance laws.

Challenges for Comparative Analysis of Conventional and Islamic Inheritance Laws

1. Cultural Sensitivity: The main difficulty in the comparative analysis of the conventional and the Islamic inheritance laws consists in the necessity of cultural sensitivity. Laws are very entrenched in the culture, and in order not to misinterpret the laws or oversimplify them.

2. Gender Iniquity: There are issues pertaining to gender iniquity in both systems. According to the conventional inheritance legislation, it is possible to continue inequalities based on unequal distributions, whereas the Islamic inheritance legislation, which is conducted with the purpose of equally, offers privileges to males more frequently.

3. Legal Pluralism: The pluralism in law may result in incompatibility between the conventional and Islamic laws, and at times, confusion may overcome the need to apply a uniform system of analysis, which, in turn, makes it hard to draw a logical framework.

4. Lack of Standardization: In Islamic laws of inheritance, the Lack of standardization makes comparative analysis a difficult task by requiring the researchers to consider various meanings and uses of Sharia.

5. Socioeconomic Factors: Inheritance laws vary according to differences in social systems and economic conditions. The connection between law and socioeconomic aspects is exactly what comprehended helps in having a detailed evaluation of both systems.

Opportunities for Comparative Analysis of Conventional and Islamic Inheritance Laws

1. Legal Reform: There are continued arguments about the laws relating to inheritance, which present a chance of reforming them both under conventional laws and Islamic tradition.

2. Interdisciplinary Approaches: Comparative analysis can be used to have interdisciplinary teamwork between legal scholars, sociologists, and economists. It

may result in better comprehension of the influence of inheritance laws on family interactions, wealth allocation, and social justice, resulting in a complex resolution of the problems based on the cost.

3. Globalization and Integration: As the world is being globalized, societies are increasingly becoming integrated, and thus legal structures are increasingly being required. Comparison may help to combine and come to the best practices of conventional and Islamic inheritance laws to adopt a comparatively more accommodating law that does not suppress the religious differences.

4. Education and Awareness: Educational programs that empower a person to negotiate their inheritance choices effectively may be informed by comparative analysis as the basis on which more well-informed decisions are taken.

5. Conflict Resolution Mechanisms: This will facilitate the creation of a more social harmony and family tensions that usually develop around these issues of inheritance will be minimized to the benefit of the entire community.

Discussion

Comparative discussion on the conventional legacy and the Islamic legacy system shows some important gestures on the structure of the two systems with regard to similarities and differences. The rights-based inheritance laws apply the testamentary freedom as the doctrine that provides supremacy of individual autonomy as it is implemented in distributing assets. Conversely, the Islamic law gives inheritance much concern and the idea of the collective welfare and social justice, where the religious texts give fixed portions to inheritors.

It is this disparity that comes up with major concerns about gender equity since both systems have flaws regarding treating female heirs fairly. Although the conventional systems may provide more flexibility, they may follow the pattern of inequalities when not well designed. On the other hand, Islamic laws, inasmuch as they lead to the promotion of fairness, end up giving results where inequality gives the male heirs an upper hand.

Conclusion

The analysis of conventional and Islamic laws of inheritance provides opportunities to define the complexities and peculiarities of both systems. Whereas the traditional law concentrates on recognition of the rights of the person and their adaptability, the Muslim law draws attention to fair adjustments and family roles. Both structures have their issues associated with the aspect of gender equity and culturally perceived understanding, yet they have their paths towards improving and bringing them together. Being aware of the positive and negative sides of the

existing systems, the stakeholders will be able to strive to have a fairer and broader inheritance system.

Recommendations

- 1. Encourage Gender Equity:** Campaign both for legal changes so that women and all genders have equal rights to inheritance along the lines of the inequality found in both the conventional and the Islamic system.
- 2. Improve Legal Education:** Prepare new educational courses that advise people on their rights and or duties according to the conventional as well as the Islamic laws of inheritance to encourage better judgment.
- 3. Promote interdisciplinary research:** Stimulate cooperation among legal experts, sociologists, and economists to study socioeconomic consequences of inheritance laws, and this exposes them to more detailed studies.
- 4. Standardization of interpretations:** Currently, there is disunity, and varying interpretations are given to the Islamic laws of inheritance by different schools of thought, so the interpretations should be standardized to reduce confusion and increase uniformity in applications.
- 5. Encourage Communication:** Provide forums of communication between people who practice the two law systems so that they can exchange best practices and tackle issues that are facing both systems in the inheritance law.
- 6. Adopt the Alternative Dispute Resolution:** Establish the purpose of mediation and arbitration as the proper systems of resolving the inheritance disputes and lessen the load on the formal legal systems.
- 7. Engage in Comparative Studies:** Advocate additional comparative studies that compare the effectiveness and efficiency of the two systems in terms of equal results.
- 8. Go on Cultural Sensitivity:** Legal reforms and analysis should be made culturally sensitive to incorporate the opinions and culture of the different communities.
- 9. Utilize Technology:** Use technology to create more readily available resources and tools that allow individuals to know the inheritance laws, online resources to write wills, and plan their inheritance.
- 10. Policy Advocacy:** Be an advocate of implementing policies based on the findings of comparative analyses and which make the practice of inheritances more just and fair in the various jurisdictions.

Research Limitations

The comparative study of the common and the Islamic law of inheritance has various limitations. First, its legal interpretation is diverse with multiple schools of thought, making the standardization and comparison a difficult task. Second, the use of both legal systems may vary according to different cultures, causing the research results might be inconsistent, and generalization may be a challenging issue. Also, comprehensive data on inheritance practice might not be readily available, especially in such parts where Islamic law dominates. Besides, legal text may remain the area of focus, not considering the practical significance and the attitude of the broader community on the rules of inheritance. Last, interdisciplinary research can also be associated with the difficulty of merging the expertise of different disciplines, which can be the weak point of analysis. These weaknesses indicate the necessity to interpret results carefully and take into account the context of studies in law.

Research Implications

- 1. Policy Development:** The results of the comparative analysis have the potential to benefit policymakers in the development of legislations that foster fairness and equity in inheritance practices, combating the issue of gender disparities and cultural sensitivities.
- 2. Legal Reform:** findings of the comparative analysis can be used to influence legal practitioners to support legal change that can add consistency between conventional and Islamic laws of inheritance.
- 3. Cultural Awareness:** The research will result in increased awareness regarding cultural differences in laws of inheritance, making legal systems of different cultures more respectable and bringing cross-cultural communication to a new level.
- 4. Educational Resources:** Emphasizes the necessity of educational programs to inform a person about their rights acquired within the two regimes.
- 5. Interdisciplinary Collaboration:** The study promotes interdisciplinary collaboration among legal scholars, sociologists, and economists so as to adopt a multidisciplinary approach to the comprehension of socioeconomic effects of inheritance laws.

Future Research Directions

- 1. Gender Equity Studies:** Look through the effects of the inheritance laws on gender equity in different cultures how reforms can be implemented to correct the unfavorable results of the conventional and Islamic law.

2. Effects of Globalization: Discuss the role globalization plays in the practice of inheritance, especially in multi-cultural communities where people are finding their way through the traditionally established society and the Islamic jurisprudence system.

3. Conflict Resolution Mechanism: The research on the effectiveness of other dispute resolution mechanisms in resolving inheritance conflicts according to various legal systems.

4. Socioeconomic Impacts: Socioeconomic impact of the inheritance on families and societies, specifically in areas where the legal system is available.

5. Comparative Case Studies: There should be detailed case studies of selected jurisdictions, in order to examine which areas the inheritance laws are practiced in and what the results of these practices are in different cultural contexts.

References

- Ahmad, M. Y., Jamsari, E. A., Safia, M. H., Omar, A. F., Nor, N. M.A. (2022). Justification of inheritance distribution for women according to Islamic inheritance law. *International Journal of Advanced Research*, 10(7), 110-114. <https://doi.org/10.21474/ijar01/15136>
- Aziz, H. (2023). The distribution of children's inheritance in the Islamic law and custom law's perspective. *International Journal of Law Reconstruction*, 7(1), 12–25. <http://dx.doi.org/10.26532/ijlr.v7i1.30895>
- Egger, M., Higgins, J. P., & Smith, G. D. (Eds.). (2022). *Systematic reviews in health research: Meta-analysis in context*. John Wiley & Sons.
- Gan, J., Xie, L., Peng, G., Xie, J., Chen, Y., & Yu, Q. (2021). Systematic review on modification methods of dietary fiber. *Food Hydrocolloids*, 119, 106872. <https://doi.org/10.1016/j.foodhyd.2021.106872>
- Habib, M., Pratama, R. E., Kurniawan, J. J., Saputro, M. S. A., Prianto, A., & Yarmanto, Y. (2024). Review of Islamic law on the distribution of inheritance in Muslim families. *Jurnal Ilmu Sosial dan Pendidikan*, 8(3), 1110-1114. <https://doi.org/10.58258/jisip.v8i3.6864>
- Hiver, P., Al-Hoorie, A. H., Vitta, J. P., & Wu, J. (2021). Engagement in language learning: A systematic review of 20 years of research methods and definitions. *Language Teaching Research*, 13621688211001289. <https://doi.org/10.1177/13621688211001289>
- Khasanofa, A., & Larasati, S. (2024). Comparative analysis of inheritance rights of children with different religions from their heirs according to Islamic law and civil law. *Jurnal Penelitian Pendidikan*, 10(2), 825-834. <https://doi.org/10.29210/020243854>
- Komba, M. M. & Lwoga, E. T. (2020). Systematic review as a research method in library and information science. In P. Ngulube (Ed.), *Handbook of research on connecting research methods for information science research* (pp. 80-94). IGI Global Scientific Publishing. <https://doi.org/10.4018/978-1-7998-1471-9.ch005>
- Muzakir, K. (2022). Inheritance law in the perspective of customary law, civil law, and Islamic law. *International Journal of Social Development*, 1(2), 119-124. <https://doi.org/10.55927/ijsd.v1i2.2295>
- Page, M. J., McKenzie, J. E., Bossuyt, P. M., Boutron, I., Hoffmann, T. C., Mulrow, C. D., Shamseer, L., Tetzlaff, J. M., & Moher, D. (2021). Updating guidance for reporting systematic reviews: Development of the PRISMA 2020 statement. *Journal of*

-
- Clinical Epidemiology*, 134, 103-112.
<https://doi.org/10.1016/j.jclinepi.2021.02.003>
- Pawson, R., Greenhalgh, T., Harvey, G., & Walshe, K. (2005). Realist review - A new method of systematic review designed for complex policy interventions. *Journal of Health Services Research & Policy*, 10(1), 21-34.
<https://doi.org/10.1258/1355819054308530>
- Petticrew, M., & Roberts, H. (2006). *Systematic reviews in the social sciences: A practical guide*. Blackwell Publishing.
<https://doi.org/10.1002/9780470754887>
- Rahi, S. (2017). Research design and methods: A systematic review of research, sampling issues, and instruments development. *International Journal of Economics Management Sciences*, 6(2), 403. <https://doi.org/10.4172/2162-6359.1000403>
- Saujan, I., Marahir, M.M., Ibrahim, N.M. (2022). Islamic law of inheritance and its implication amongst Muslim society: An empirical analysis. *Journal of Contemporary Islamic Law*, 7(1) 35-51. <https://doi.org/10.26475/jcil.2022.7.1.04>
- Victor, L. (2008). Systematic reviewing in the social sciences: Outcomes and explanation. *Enquire*, 1(1), 32-46.
<https://www.nottingham.ac.uk/sociology/documents/enquire/volume-1-issue-1-victor.pdf>
- Wardi, U., Yaswirman, Y., Ismail, I., & Gafnel, G. (2024). Comparative analysis of Islamic family law and customary law in the settlement of inheritance disputes in Indonesia. *Hakamain: Journal of Sharia and Law Studies*, 3(1), 13-25.
<https://doi.org/10.57255/hakamain.v3i1.330>
- Wicaksono, A., & Hosein, Z. A. (2024). Comparison of inheritance law in Islamic law and civil law. *Mandub: Jurnal Politik, Sosial, Hukum dan Humaniora*, 2(4), 167-179. <https://doi.org/10.59059/mandub.v2i4.1754>
- Yunatskyi, M., & Shepeliuk, V. (2023). Comparative analysis of inheritance legislation in Ukraine and Poland: Civil and tax aspects. *Public Administration and Law Review*, 4(16), 46-56. <https://doi.org/10.36690/2674-5216-2023-4-46-56>
- Zakri, M., Isnani, M. (2024). Distribution of inheritance in the perspective of Islamic law: Analysis of the procedures and roles of heirs. *Alhamdulillah Journal Agama Islam*, 3 (1), 13-18. <https://doi.org/10.54209/alhamdulillah.v3i01.310>
-