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# Inheritance Laws of the Bahai Community and Gender Equality

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## ABSTRACT

*Through the course of this paper, I seek to enquire whether the Baha'i religion's chief prophecy, gender-justice and equality is reflected in the Laws of Inheritance enumerated within the holy book, Kitab-I-Aqdas. This shall be achieved by citing the commandments and critiquing them comparatively using the other commandments itself, and taking the help of scholarly-articles about the same subject. The congruency between the commandments is analysed and contrasted with Islamic provisions, for better comprehension of the gender-unjust inheritance laws' justifiability. The paper concludes by discussing the applicability of these provisions and comments on the situation of the Baha'i community globally.*

## I. INTRODUCTION

The Baha'i faith was borne in the late 19<sup>th</sup> century Persia (modern-day Iran), out of Islamic derivations as an autonomous religious movement by Prophet Baha'u'llah, making it a relatively 'novel' major religion. The central prophecies included the penchant for being a unifying world-religion and unbounded allegiance to the norms of equality, pluralism and social-justice. The religion is now virtually spread in every major country except North-Korea and the Vatican State, thus being demarcated as a global community. (Buck) The pervasive tripartite issue of diversity-equality-inclusion, as observed by Roshan Danesh, is being confronted by every major religious denomination in the world, with the Baha'i faith

being no different. The latter's determination to face the issues with its exceptional application of personal law, general theological commandments and related legislations is part subject of our enquiry in this paper.

## II. BAHAI JURISPRUDENCE AND GENDER EQUALITY

Baha'i jurisprudence has not been systematically developed and academically discoursed (like its root religion Islam's "Usul al-fiqh<sup>2</sup>"), thus the theological and original commandment's provide contextual understanding for interpretation purposes, with sporadic comprehension outside the community. The personal family-law of the religion, covering marriage, divorce and our subject of study: inheritance, is grounded on the

<sup>1</sup> Author is a student at OP Jindal Global University, India.

<sup>2</sup> Traditional procedural principles applied in Islamic jurisprudence

notion and central prophecy of equality of all subjects. Gender equality has been legally decreed, a promulgation of historical debut in the Baha'i faith's key religious book: *Kitab-i-Aqdas* (although the Quran expressed the notion too, but didn't do so explicitly). This legal principle, according to Schaefer's writings has been avowed as being "cardinal hermeneutic", and being absolutely applicable within the jurisprudential sphere.

The 'Kitab' although, mentions certain exceptions to this principle of gender-equality whilst applying the concept of "mutatis mutandis"<sup>3</sup>, one of which is within the law of inheritance, and the second being the limitation of membership within the 'Universal House of Justice'<sup>4</sup> (abbreviated as UHJ in the rest of the paper) to men. Could it be said then, that these exceptions render the "universally applicable" and notion of gender-equality within the Baha'i faith superficial and narrow? A closer look at the inheritance laws would facilitate in that regard.

### III. BAHÁ'Í LAWS OF INHERITANCE

The *Kitab-I-Aqdas* provides unhindered and absolute freedom to the testator whilst drafting his will, based on the principle that the testator has his final wishes fulfilled in the form of

voluntary distribution of wealth. There are no Baha'i legislative commandments to fetter a willing testator, or any form of restrictions placed upon him, except certain virtually applicable philosophical checks<sup>5</sup>. The only procedure listed in the *Kitab-i-Aqdas* regarding testamentary succession is the foremost payment of funeral cost(s), followed by the mandatory payment of the "Ḥuqúqu'lláh"<sup>6</sup> and successful settlement of debts (if any). Once all of these obligations are fulfilled, the testator is free to compose their will, howsoever and to whomsoever they please. (Schaefer)

If the testator dies intestate, only then the Baha'i provisions of inheritance are applied to dispense the estate/wealth of the deceased, according to the guidelines and the 'legal line of succession' mentioned in the *Kitab-i-Aqdas*. The estate or 'al-mawarith' is divided into 2,520 shares<sup>7</sup>, and then disseminated amongst 7 categorizations being allotted to a specific class of heirs. The 7 decreed categories are: (Taken from the *Kitab-I-Aqdas*)

1. The Children: Entitled to 9 parts, or 1,080 shares
2. The Spouse: Entitled to 8 parts, or 390 shares
3. The Father: Entitled to 7 parts, or 330 shares

<sup>3</sup> Latin phrase meaning "having changed what needs to be changed", essentially implying contextual alteration/exceptions

<sup>4</sup> The supreme governing body of the Baha'i religion globally, tasked with interpreting Prophet Baha'u'llah's commandments (laws and principles) and other issues for the community

<sup>5</sup> "The Baha'i faith discourages accumulation of wealth, and places a "social conscience" upon the testator by decreeing that there's a social function of wealth.", taken from a letter notated on behalf of the grandson of Baha'u'llah and appointed guardian of

the faith- Shoghi Effendi, cited in the *Kitab-i-Aqdas's* 'Notes' section by the UHJ

<sup>6</sup> A form of wealth tax voluntarily necessitated to be paid by every Baha'i to the Universal House of Justice, as a contribution to the community-building and token of support

<sup>7</sup> The number holds esoteric significance: 2520 is the lowest common multiple of every integer until 9, and 'Baha' or the name of God is considered synonymous with the number 9 (also used in the 9-pointed star symbol to represent the faith)

4. The Mother: Entitled to 6 parts, or 270 shares
5. The Brothers: Entitled to 5 parts, or 210 shares
6. The Sisters: Entitled to 4 parts, or 150 shares
7. The Teachers<sup>8</sup>: Entitled to 3 parts, or 90 shares

Resolutions pertaining every plausible situation wherein any of the abovementioned successors are absent are listed within the holy-book, but only the specific points which are of relevant significance to our study have been enumerated below:

- When there's no issue: share of children relapses to the UHJ
- Pre-deceased son leaving a son: son inherits father's share. If the estate includes a "personal residence": eldest son inherits it.
- Pre-deceased daughter leaves an issue: her shares reimbursed to the 7 categorizations
- Personal clothing and residence of deceased father: Male issues inherit, never females
- Several residences: principal residence passes to the male issue. Outstanding residences with other belongings divided amongst heirs.
- No male issue of deceased father:  $2/3^{\text{rd}}$  of the personal clothing and principal residence revert to the female issue and  $1/3^{\text{rd}}$  to the UHJ
- If brother of the deceased from the same father exists: inherits allotted share totally.

If he's from another father: inherits  $2.3^{\text{rd}}$  of allotted share, remaining  $1/3^{\text{rd}}$  reverts to the UHJ. The provision correspondingly applicable to the deceased's sister.

- More than 1 heir in any categorization: allotted share equally divided across the category, regardless of gender
- No aforementioned heirs: entire inheritance to UHJ
- Non-Bahá'í heirs do not inherit

#### IV. ANALYSIS OF CONGRUENCY

As is evident, the male successors in cases of the book proposed inheritance laws inherit more than the female counterparts, with only seldom notions of gender equality being reflected in these aspects (like the presence of a brother/sister of the deceased). The first-born son, or the eldest male issue is always given preference over daughters and even widows, whilst the allotted shares within the 7 categorizations reflect a gender-based numerical gulf between male and female inheritors. Baha'i scholars and academics have attempted contextual justifications for this discrepancy with the gender-just principle, with varying arguments and contestations towards the notion of subjective interpretation.

- Seená Fazal: Mentions the significance of historical perspective and the conditions under which these legislations were drafted to be taken into context whilst analyzing. Agreeing to the fact that these inheritance laws do indeed seem contradictory to the gender-just *modus operandi*

<sup>8</sup> Could be construed as the education system's synonym in the urban context. An expression reflecting the distinctive level of importance

conferred upon education under the Baha'i doctrine, this provision still requires explicit legal specification.

of the Baha'i faith, he argues that the presence of "complete freedom" to the testator to will away his estate to anyone being attestation to the "fact" that Baha'u'llah was all-for promoting amongst other things, gender-justice. He attempted justification of discrepancy in cases of intestate succession by reasoning that these laws were laid down in a "haste" for temporary redressal for early followers as they were concentrated in Islamic countries, thus the patrilineal archetypes of such societies being reflected. States that these laws may have been drafted in a way they become "irrelevant" in the future.

- Sen McGlenn: Critiques the notion that males receive more than females because of sociological reasons <sup>9</sup>, but argues that the historical context argument of Fazal is valid, a legislation written in the 19<sup>th</sup> century would naturally reflect its contemporary societal norms, in line with his argument that Baha'u'llah assumed the deceased is a male. Introduces the concept of "symmetrical-equality": Aqdas has virtually but not literally symmetrical distinct provisions for both male and females unlike the Quran, thus males not being categorically favored over females. Assumes that distribution of shares in case of a deceased woman would also be the same as a man, and that primogeniture doesn't apply to female line of descent

- Peter Smith: Baha'i faith gives women priority in other spheres like education, and believe it is the males' "duty" to support women, thus the differential inheritance shares.

These justifications have different interpretations of the same statute, but none offer a convincing argument against the discernment, and blatant patriarchal blueprint which seems to be a polar opposite of the chief theory and prophecy of the religious faith: the notion of equality and gender-justice. Even the concept of social-justice seems to get superseded when the rightful shares of the brother-less daughter get diminished in the name of "reimbursement" to the UHJ, whilst the same doesn't apply to the cases of a sister-less brother, who gets the whole share indiscreetly. Homosexuality is also forbidden, implying same-sex marriages stand void. The insinuated-notion of pluralism gets practically mitigated here too.

The Baha'i personal laws do seem hypocritical and self-contradictory in this context, whilst being swept into obliviousness under the façade of "exceptions". Furthermore, only people of the Baha'i faith partake in the intestate inheritance process, everyone including the teacher should be a 'declared<sup>10</sup>' Baha'i or they would be disqualified from involvement. Testamentary-succession however allows distribution to everyone regardless of religious affiliation (Kitab-i-Aqdas, p 254). There's recurring incongruity in the legislative-procedure and philosophical-directives.

Although I partly agree with Fazal's historical standpoint perspective, it only adds justification to the argument that the commandments are inherently patrilineal or rather, influenced by patrilineality. Smith and Schaefer in their

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<sup>9</sup> Patrilineal families = males assume responsibility of the house, therefore requiring more incentive in the estate for managing fiscal matters

<sup>10</sup> Baha'is prefer the phraseology of "declaration" over "religious conversion"

respective works have reiterated the idealistic justification towards this inequality that women are given priority and benefits like dowry, hence males are provided more shares for balance, which might appear evenhanded. McGlenn under-clifies his conceptual-justification of “symmetrical-equality”, which appears rather rhetorical than pragmatic. He confesses that the commandments seem to favor “aesthetic” over reasonableness, and acknowledges the gender-inequality via logically-imbalanced analogies.

## V. RELATIONSHIP AND SIMILARITIES WITH ISLAM

Baha’ism’s relationship with Shia-Islam can be paralleled with Christianity’s to Judaism. Islamic Scholars often categorized Bahaism as an Islamic sub-sect but recently the latter’s autonomy has propounded, supposedly fulfilling Islam’s eschatology. (Schaefer)

Being born out of Islamic roots, both have plenty commonalities especially in personal laws: categorization of inheritors, exclusion of non-believers and enhanced male shares etc. But the most striking correspondence can be found in the religious justification of inferior female share-allotment. Like the Shia Ithna-Ashari Inheritance-Law of recompense, the Baha’i

commandments also contend that since females are benefitted elsewhere<sup>11</sup>, males getting a greater share is justified.

## VI. APPLICABILITY OF LAWS AND SITUATION OF THE COMMUNITY IN INDIA

India houses the largest Baha’i population in the world<sup>12</sup>. Legislations frequently denote different communities<sup>13</sup> under the blanket-term ‘Hindu’, but maintain that they are distinct religions whose subjects are integrated within the legislation’s sphere(s). The Baha’i community is not yet recognized legally as a religious-minority, and continue to operate their marital-procedures without State obligations.<sup>14</sup>

Since there is a lack of academic material about the legal situation of the Baha’is in India, I contacted the Indian Baha’i Office of Public-Affairs, and was fortunate-enough to be invited to the Baha’i House-of-Worship<sup>15</sup> to facilitate my research for this paper. The dialog with Ms. Nilakshi Rajkhowa<sup>16</sup> garnered the following points:

- Annually elected administrative bodies at both International and National Levels look after the affairs of the community, the speaker

<sup>11</sup> Women receive “mahr” (dowry), and maintenance from her husband. Thus, the husband’s obligations and responsibilities seem more than the wife, especially in financial matters. Furthermore, as reiterated by Schaefer and Smith, women are given priority in education under Baha’i philosophy

<sup>12</sup> Although the community statistically form less than 1% of the total population

<sup>13</sup> Including: Sikhs, Buddhist, Jains and sometimes Baha’is

<sup>14</sup> There is no legal practice or requirement for Baha’i marriages to be registered with the State registry. No

particular system for the Baha’is regarding transmission of marriage records to any State controlled authority is in place. Solemnization of Baha’i marriages is conducted by religious officials of their community.

<sup>15</sup> Commonly known as the Lotus Temple in New Delhi, this arranged visit couldn’t be facilitated due to the Covid-19 pandemic, but the conversation went through telephonically.

<sup>16</sup> Director in the Office of Public Affairs, at the National Baha’i Centre (New, Delhi)

herself being the Director of the Indian department.

- Gender-Equality central to the faith, and such administrative bodies work at various levels to implement these provisions.

- State hasn't recognized the community's minority status yet; the application still being pending. The application although, explicitly mentions denial of state-funding (usually granted) to minorities as the Baha'i faith discourages fiscal-contributions from non-Baha'i entities.

- The community tries to follow its own religious-laws to the best extent, otherwise they cordially comply with the civil-laws in exceptional instances.

- Inheritance and Succession: The faith actively encourages members to compose their own wills, so that the intestate provisions don't have to be applied every-time. These wills are submitted to local religious centers who subsequently take care of the inheritance and estate-division. In cases of intestacy these centers intervene and implement religious-guidelines, with Ms. Rajkhowa quoting that "We're not aware of any cases where the courts were approached to settle inheritance matters".

- States that the community has maintained "good-terms" with the State throughout its history in India, and the State is

very much aware about the internal-functioning of the community in matters like inheritance settlements, and have no problems with it<sup>17</sup>.

- Maintains that the Indian State has been "helpful + cooperative" towards the faith, unlike Iran/Iraq<sup>18</sup>.

- Reiterates Schaefer, McGlenn and Fazal's argument that Baha'u'llah was gender-just in "most" spheres,<sup>19</sup> but offers no comments on the inheritance-laws' inequality between male-female shares.

- Gender-equality professed and encouraged to be inculcated within the community by the commandments and the Baha'i International Center, also through delegatory-representation in the United Nations. Local authorities also playing a major part in encouraging gender-fairness.

- National Level programs conducted by the National Bahai Centre to promote gender-equality by engaging with the local communities regardless of faith, in collaboration with other local institutions working towards a similar goal.

- Local Institutions-conducted grassroots level activities encourage members to think about social-responsibility and strive towards contributing to the betterment of the whole society. No specific vision for the future of the community, future of the whole society in

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<sup>17</sup> Referring to the application of Kitab-I-Aqdas provisions by local religious centers to settle intra-community disputes

<sup>18</sup> Her comments on the Iranian persecution of Baha'is have been cited in the next section titled "Applicability of Laws and Situation of Baha'is in Other Countries"

<sup>19</sup> Recurring argument of females getting priority in education, dowry and males having social obligation of running the house as a justification of imbalanced inheritance shares. Denial of gender-injustice but restatement of the notion of reimbursement through equality

conflation with the Baha'i community being projected and spread.

- Indian Baha'i community thus striving in peace and working towards Baha'u'llah's prophecy of community building via individual development, and proliferation of the idea of "unity over uniformity".

## VII. APPLICABILITY OF LAWS AND SITUATION OF THE COMMUNITY IN OTHER COUNTRIES

The Baha'i faith has a globally-respected reputation of being a peaceful religion, and the community mostly thrives serenely in most countries. They are typically allowed to apply their personal-religious-commandments based laws, with the UHJ occasionally exercising supervisory control over the global-community. It can thus be said that their religious laws are mostly universally-applicable. The community faces complications in certain countries however, which do not recognize the religion and impose their own legislations upon them, thus-forth leaving no room for application of their personal-religious laws. Some of these countries are enumerated below:

- Iran, the foundation of the faith notoriously maltreats the community and doesn't recognize Baha'i community. Ms. Rajkhowa termed this as "systematic state-sponsored" persecution and that the international Baha'i community is protesting against it. Inheritance of property and legal protection in family-law issues is denied, and State-imposed legislations apply universally.

- Iraq prohibits the Baha'i faith, imposing 10-year imprisonment for defaulters. No recognition of marriages and legal protection in inheritance disputes. State-imposed legislations apply.

- Egypt doesn't recognize the Baha'i religion, implying Baha'i married-couples aren't subject to legal rights, including inheritance. Baha'is individually file for marriage recognition in civil court. State-imposed legislations supreme.

- Jordan doesn't recognize the Baha'i religion, implying complications registering marriages and resolving inheritances. Baha'is are redirected to Islamic courts to settle legal-issues, as there are no Baha'i courts.

The widespread nature of non-recognition has forced the Baha'is globally to settle legal-disputes amongst-themselves, as approaching civil-courts imply non-application of Aqdas' principles. (Ersan)

## VIII. CONCLUSION

The Baha'i faith's chief prophecy of gender-justice is not universally applicable across the religious legal jurisprudence, most blatantly in inheritance legislations. Scholarly and theological justifications fall short to bridge the discrepancy, and the self-contradictory religious commandments seem inexplicable. Perhaps they were in-fact meant to be subjectively interpreted applying the mutatis mutandis principle against changing societal norms, as would seem the most plausible elucidation for the faith which is otherwise laudably progressive, relatively.



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