

An Examination of the Implementation of Islamic Law of Inheritance in Yoruba Land

GERO AHMAD PhD

Department of Islamic Studies, University of Abuja, Abuja, Nigeria.

ahmad.gero@uniabuja.edu.ng

JAMIU ABDULMAJEED

Department of Islamic Studies, University of Abuja, Abuja, Nigeria.

alfruganmajid77@gmail.com

Abstract

This study critically explores the complexity between culture and the implementation of Islamic Inheritance Law (Ilm al-Fara'id) in Yorubaland; a region characterized by its unique coexistence of Islam, Christianity, and traditional Yoruba beliefs. Despite Islam's enduring presence and influence, the application of its inheritance laws faces considerable challenges due to deeply rooted cultural norms, historical legacies, and societal dynamics that often resist or alter the equitable principles of Islamic law. The research highlights key cultural factors impacting the implementation of these laws, including primogeniture practices, which prioritize the eldest male child, and polygamous household inheritance systems, such as idi-igi (division by the number of wives) and ori ojori (equal division among children), which aim to promote unity but frequently conflict with the precise allocations mandated by the Islamic law. These practices dilute the justice and equity principles inherent in the Islamic inheritance law and lead to a range of social issues, including prolonged estate disputes, intergenerational conflicts, litigation, and family fragmentation. Using a mixed-method approach, the study integrates critical analyses of Islamic legal texts with empirical data from interviews with religious scholars, community leaders, and affected families in South-West Nigeria. Findings reveal that societal ignorance, misinterpretations of the Shari'ah, and resistance to change further compound the challenges of implementing Islamic Inheritance Laws. To address these issues, the study recommends public sensitization to raise awareness, collaboration with traditional and religious leaders to harmonize practices, legislative reforms to integrate Islamic laws into the legal framework, and the establishment of the Shari'ah-compliant mediation mechanisms to resolve disputes. These strategies aim to bridge the gap between cultural practices and Islamic inheritance principles, ensuring justice and equity in the multicultural context of Yoruba land.

Keywords: Islamic Inheritance Law, Yoruba Culture, Yorubaland, Nigeria.

Introduction

This study examines the effect of culture on the implementation of Islamic inheritance law in Yoruba land, a region marked by a unique coexistence of Islam, Christianity, and traditional beliefs.

Despite Islam's long-standing presence and influence among the Yoruba people, the application of its inheritance laws often encounters resistance or modification due to deeply rooted cultural norms and practices.

The research critically examines the extent to which Yoruba customs and traditions shape, challenge, or dilute the implementation of Islamic legal principles on inheritance. By highlighting specific cultural practices, such as the preference for male heirs, per strip, equal distribution. The study demonstrates how these factors hinder the effective application of Islamic inheritance laws.

Through a combination of critical analyses of Islamic legal texts and empirical data gathered from field interviews with community leaders, religious authorities, and affected families, the research uncovers the complex challenges of implementing Islamic inheritance laws. These include societal ignorance, and misinterpretations of the Shari'ah.

Finally, this study seeks to unravel the complexities of applying Islamic inheritance laws within the social and cultural dynamism of South-West Nigeria, offering insights into potential strategies for reconciling cultural and religious requirements. By addressing the tensions between Yoruba traditions and Islamic inheritance laws, the research aims to contribute to ongoing challenges on the implementation of the Shari'ah in Multicultural Yoruba societies.

Culturally, Inheritance plays a crucial role in the distribution of a deceased's property among the Yoruba of the South West Nigeria; they showed greater interest to inheritance after the demise of their relatives. Historically, Yoruba customs have been guided by indigenous traditions, which often hinder the implementation of Islamic inheritance law (Ilm al-Fara'id). The interaction between these two systems reflects a dynamic legal and cultural landscape shaped by many factors, such as colonialism, religious doctrine and cultural factors like; Primogeniture, which often grants the eldest male child substantial rights to inherit family property. Within an extended family system, property is seen as collective asset, and decisions regarding its distribution are typically made collectively irrespective of their religious background. Yoruba custom of inheritance also reflects significant gender dynamics, as women and younger children often receive smaller shares or may be excluded entirely. In polygamous households, inheritance may follow the "idi-igi" or Ori ojori principle, where the estate is divided based on the number of the wives or among the children equally. While these practices emphasis unity, they can marginalise certain heirs, particularly women. From the Islamic point of view, all the above mentioned principles in one way or the other involved injustice, injustice which causes delay in the distribution of estates for many years, and sometimes generation to generations. In such cases, family landed properties and other assets are left untouched as a result of unresolved issues in the manners and ways of distribution among the family member. Some have generated to unsettled family feud, litigation and enmity. It is against these reasons that this paper through library studies and conceptual analysis examines the effects of culture in the implementation of Islamic Inheritance law (Sanusi 5).

The Yoruba are one of the largest ethnic groups in Nigeria, primarily residing in the south-western region, with smaller populations in Benin and Togo. The Yoruba have historically been highly urbanized, forming numerous kingdoms like Oyo and Ile-Ife, which played significant political and religious roles. Traditional occupations include farming, trading, and craftsmanship, with women dominating the market system. Inheritance and succession follow patrilineal descent, with communities organized around lineage and governed by an Oba (king) and a council of chiefs. (Akinwumi 25).

Yoruba Customary Law System of Inheritance

According to Adetunji (40) The Yoruba customary law of inheritance and succession appears to be general among the constituent Yoruba States. However, is not to say that there are no few differences among the sub-ethno cultural groups? He explained that inheritance among the Ijesha people is bilinear, among the Ijebus is patrilineal (although women can inherit). While among the Ilaje and Idanre people of Ondo State is bilinear. Furthermore, the Yoruba Native Law and Customary law of Inheritance, the brothers and sisters are entitled to inherit property. However, the tendency now is to remove the brothers and sisters and limit the right to inherit property to the children of the deceased. The rights of the brothers and sisters are in some areas only curtailed but not abrogated.

Generally, in Yoruba customary law, the concept of inheritance entails many keys principles and practices that govern the transmission of property, assets, and responsibilities from one generation to another within Yoruba customs. Some of the systems of inheritance in Yoruba Customary law include:

Primogeniture (Dawudu)

Primogeniture as defined in the King James Bible and historical context refers to right of firstborn child to inherit the majority of their parent's property, titles, and wealth upon their death. This tradition was prevalent in ancient times, particularly among the Israelites and other Cultures. (Deuthoronmy 21:17, chronicles 5:1).

Fadipe (119) viewed that, since the structure and organization of the family system is inherently germane to the rule of succession to headship of the family, it is pertinent to note that, when the funder of the family dies in Yoruba land, the eldest surviving son called the (Dawodu) succeeds to the headship of the family with all that it implies including the residence and giving of orders in his father's house or compound.

Primogeniture according to Fadipe also refers to the practice of the eldest son (Dawudu) Inheriting a larger share of the deceased father's estate compared to other children. This principle emphasizes the importance of maintaining family lineage and ensuring the continuity of leadership

within the patrilineal structure. According to him, the predominant system of inheritance among the Yoruba is patrilineal, where property and titles are passed down through the male lineage.

This system underscores the importance of maintaining family continuity and cohesion through the male descendant. The principle of primogeniture does not exist in Islam. The inheritance is governed by clear rules outlined in the Qur'an and Hadith. Instead, the shares are fixed: the male (son) receives twice the share of the female (daughter) not to take over all the properties. The Qur'an states:

"سَمَحُ يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمُ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ سَجَى سَجِدَ النِّسَاءَ : تَحَجَّحَ سَجِدَ

Allah commands you regarding your children: for the male, a share equivalent to that of two females" (Qur'an 4:11).

This system aims to ensure fairness and balance among all heirs, reflecting the responsibilities men have within the family as said by Allah in the Glorious Qur'an

سَمَحُ الرِّجَالُ قَوْمُونَ عَلَى النِّسَاءِ بِمَا فَضَّلَ اللَّهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا أَنْفَقُوا مِنْ أَمْوَالِهِمْ سَجَى سَجِدَ النِّسَاءَ : تَحَجَّحَ سَجِدَ

Man are the maintainers of women because Allah has made some of them excel others and because they spend out of their property. (Q4:34)

Islam entrusts the maintenance of the family on the men according to Badawi (13) gender equity in Islam presents an overview of the status and rights of Muslim women as by the Qur'an and Sunnah. He examines the spiritual, social, economic, and political aspect of women position in Islam. Specifically, financial security is assured for women. They are entitled to receive gift without limit and to keep present and future property and income for their own security, even after marriage. No woman is required to spend any amount at all from her property and income on the household. However in special circumstances, such as when her husband is ill, disabled or jobless, she may find it necessary to spend from her earnings. While this is not her legal obligation, it is care, love and cooperation among the family member where such assistance is rendered by the women.

However, woman is entitled to full financial support during marriage and during her (Iddah) waiting period. Allah says:

سَمَحُ أَسْكِنُوهُنَّ مِنْ حَيْثُ سَكَنْتُمْ مِنْ وَجْدِكُمْ وَلَا تُضَارُّوهُنَّ لِضَيِّقِهِنَّ عَلَيْهِنَّ وَإِنْ كُنَّ أُولِي حَمْلٍ فَأَنْفِقُوا عَلَيْهِنَّ حَتَّى يَضَعْنَ حَمْلَهُنَّ فَإِنْ أَرْضَعْنَ لَكُمْ فَآئُوهُنَّ أَجُورَهُنَّ وَأَنْتُمْ بِمَعْرُوفٍ وَإِنْ تَعَاَسَرْتُمَ فَسَتَرْضِعَ لَهُ الْآخَرَى ٦ لِيُنْفِقَ ذُو سَعَةٍ مِنْ سَعَتِهِ وَمَنْ قُدِرَ عَلَيْهِ رِزْقُهُ فَلْيُنْفِقْ مِمَّا آتَاهُ اللَّهُ لَا يُكَلِّفُ اللَّهُ نَفْسًا إِلَّا مَا آتَاهَا سَيَجْعَلُ اللَّهُ بَعْدَ عُسْرٍ يُسْرًا ٧ سَجَى سَجِدَ الطَّلَاق : تَمَد - تَمَخَّجَ سَجِدَ

لodge them where you lodge according to your means, and do not injure them in order that you may straiten them; and if they are pregnant, spend on them until they lay down their burden; then if they suckle for you, give them their recompense and enjoying one another among you to do good; and if you disagree, another (woman) shall suckle for him. Let him who has abundance spend out of his abundance and whoever has his means of subsistence straitened to him, let him spend out of that which Allah has given him; Allah does not lay on any soul a burden except to the extent to which He has granted it; Allah brings about ease after difficulty.

Equal Distribution among Siblings (Ori-Ojori) and Wives (Idi-Igi)

Some times where there is no clear designation of primogeniture, the deceased's estate may be shared equally among all children, regardless of gender. In line with this is, Ademola and Adekunbi (5), asserted that the Yoruba customary law of succession stipulates that upon the death intestate of the founder of a particular family, his death creates a family property and the eldest son, Dawodu, becomes the head of the family. He is the head and the manager the property for himself and the entire members of the family. It is the responsibility of the Dawodu as head of the family in Yoruba land upon assumption of office to decide which mode of distribution will apply to the distribution of the intestate's estate of the deceased.

Also Abdulwahab and Yusuf (6) viewed that Ori-ojori (per stirpes) simply means a system of distribution of a deceased estate whereby an intestate estate is shared among all the children of the deceased equally regardless of male or female. While, per strip (Idi-igi) is a system of distribution of a deceased estate according to the number of wives for the benefit of the children of each wife. A wife with a child and a wife with five children take same share from the deceased husband's estate.

From the above the following principles of law in respect of the Yoruba principle of customary law of intestate succession are observed:

Idi-igi principle of distribution is one the major formula of the Yoruba native law and customary distribution of estate.

Idi-igi a universal principle of distribution of estate among the Yoruba, except where there is a dispute among the descendants of the intestate in respect of the proportion with which the estate should be divided.

Whenever there is dispute on Idi-Igi method of distribution, the head of the family has the right to decide whether Ori-ojori should be used in such particular case instead of Idi-igi

Ori-ojori is contemporarily applied method of Yoruba Customary law estate distribution adopted in order to avoid litigation.

That Idi-igi method of distribution seems to be acceptable to the contemporary Yoruba rather than Idi-Igi which to them is injustice (Ademola and Adekunbi (5), Abdulwahab and Yusuf (6))

Islamic law of Inheritance does not advocate for equal distribution) among all siblings in regards to gender and closeness to the deceased. The two formula displayed injustice. Idi-Igi for instance, exempted the right of parents and other relative of the deceased. Secondly it muddled up the right of the mother and the children, and technically, the mother might be exempted if the children are matured enough to own a property, also the mother might equally take over the property when the children are still minor and use it at will. Likewise, in the ori ojori, the male folks and the parents were cheated. In some cases all are one way or the other short shared. This can be seen from the distribution formula given by the Qur'an where by sons receive a share that is double that of daughters.

سَمَحُ يُوْصِيْكُمْ اَللهُ فِىْ اَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْاُنثٰى

Allah instructs you concerning your children: for the male, what is equal to the share of two females. This is based on the principle that men are financially responsible for their families (Qur'an 4:34).

سَمَحُ اَلرِّجَالُ قَوْمُوْنَ عَلَى الْاِنْسَاءِ بِمَا فَضَّلَ اَللهُ بَعْضَهُمْ عَلَى بَعْضٍ وَبِمَا اَنْفَقُوْا مِنْ اَمْوَالِهِمْ سَجِدُ الْاِنْسَاءِ : نَحْمَدُكَ

Equal distribution as practiced in Yoruba law contradicts the specified shares in Islamic law, as such Islamic law is more appropriate, in that each heir has his or her share of the property without injustice.

In the whole, the general principles in Yoruba customary law of inheritance have gross misconduct in the distribution of estate. For instance, primogeniture and male of the same parents exempting their co-female of the same parents from inheritance of their deceased relatives, similarly, Ori-ojori and Idi-Igi principle display imbalance in the sharing formula among the heirs. In all, the Yoruba Customary Inheritance law tend to address certain injustice particularly from the angle of primogeniture and (ori-ojori, idi-Igi,) principles. Although, the principles of Yoruba customary law and Islamic inheritance law aim to protect vulnerable family members, there are significant differences and gaps that need to be addressed. One major issue is that these principles often promote a primogeniture mode of inheritance, which prioritizes the firstborn male. This approach neglects the inheritance rights of women.

Despite the shared goals of protecting vulnerable family members, Yoruba customary law and Islamic inheritance law differ significantly in their principles and practices. Yoruba law emphasizes family continuity and proximity, while Islamic law adheres to fixed shares and a broader attachment of relatives. Understanding these differences is crucial in communities where both systems are practiced, such as in Yoruba society. Ensuring that inheritance is handled in a manner that respects both cultural and religious principles requires the active engagement of scholars of Islam.

Recommendations

The following recommendations are to harmonizing the conflict over the implementation of Islamic Inheritance Laws in Yoruba Land.

Orientation about the Principle of Islam

To safeguard the Islamic faith within families and ensure adherence to its principles, a dedicated effort is required to orient children and the younger generation about the core teachings of Islam. A committee comprising knowledgeable Islamic scholars, community leaders, and parents should be established to take on the responsibility of providing consistent and structured guidance. This committee can organize seminars, workshops, and community sessions to emphasize the importance of remaining steadfast in Islam and the spiritual, moral, and societal benefits it offers.

Muslim parents, as primary caregivers, also play a critical role in this orientation. They must actively teach their children about the tenets of Islam, the significance of Tawheed (the oneness of Allah), and the consequences of deviating from the path of Islam. Parents should also instill a deep understanding of the principle that Islam is the ultimate path to success in both this life and the hereafter, as affirmed in the Qur'an and Sunnah.

It is crucial to emphasize the divine ruling that a Muslim cannot inherit from a non-Muslim and vice versa, as prescribed by the Prophet in the Hadith. This principle should be taught not only as a rule but also as an aspect of the justice and divine wisdom in Islamic inheritance laws. By embracing another faith, a child voluntarily excludes themselves from the rights and responsibilities defined within the Islamic framework, including inheritance.

A collaborative approach involving schools, mosques, and community organizations can further reinforce this orientation. Educational curriculums should include topics that clarify Islamic rulings, the significance of Islamic identity, and the dangers of losing one's faith. Social programs like youth camps, mentorship initiatives, and peer groups can create supportive environments where young Muslims feel empowered to hold onto their beliefs despite external pressures.

By implanting these orientations deeply into family and community life, children will grow up with a clear understanding of their faith, its expectations, and the consequences of deviation. This proactive approach ensures that the next generation of Muslims is rooted in Islamic values, fostering unity, resilience, and steadfastness in the face of challenges.

Establishing Interfaith Dialogue and Sensitization

Organizing regular interfaith dialogue sessions can foster mutual understanding and respect among adherents of different religions. These sessions should involve key stakeholders such as religious leaders, community elders, legal practitioners, and representatives of civil society. These platforms can address misconceptions about Islamic inheritance laws and highlight their objectives, ensuring they are perceived as equitable and just. Additionally, religious leaders, judges, and lawyers should undergo sensitization workshops focused on the importance of respecting the diverse legal frameworks governing inheritance. These initiatives will create conducive environment for addressing conflicts and fostering cooperation among stakeholders.

Capacity Building for Islamic Courts and Judges

Strengthening the competence of Islamic courts is vital in a pluralistic society. Capacity-building programs for judges and staff should cover both technical aspects of Islamic inheritance laws and strategies for resolving conflicts in diverse settings. These programs could also include comparative studies on how other pluralistic societies manage such challenges. Furthermore, establishing a robust system for appeals and reviews will enhance public confidence in Islamic courts, ensuring fairness and consistency in judgments.

Public Awareness and Education

Public awareness campaigns are crucial to dispel misconceptions about Islamic inheritance laws and foster acceptance of their principles in a pluralistic society. These campaigns should leverage media platforms, community forums, and educational institutions to reach a broad audience. Developing educational materials in local languages, as well as organizing workshops, can help demystify the laws and address concerns about gender equity and fairness. This initiative will empower individuals with the knowledge to navigate inheritance issues while promoting societal harmony.

Conclusion

The harmonious implementation of inheritance laws in Yoruba land requires a multi-pronged approach that addresses the complexities of religious plurality and societal dynamics. Establishing interfaith dialogue, harmonizing legal frameworks, building the capacity of Islamic courts, raising public awareness, and introducing alternative dispute resolution mechanisms are all essential steps. These measures will promote mutual respect, reduce conflicts, and strengthen the application of Islamic inheritance laws within the diverse Yoruba society.

By fostering collaboration among religious leaders, legal practitioners, and community stakeholders, these solutions can pave the way for a more inclusive and equitable legal environment.

This approach will not only uphold the rights of individuals but also ensure that the principles of Islamic inheritance law are effectively applied, contributing to societal cohesion and justice.

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