

Inheritance by Agnation

Does It Guarantee Women's Rights or Hinder Them?

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Executive Summary

This paper seeks to answer the following central question: How does the system of inheritance by agnation, in its current applications, contribute to producing injustice between men and women? In order to answer this question, we first undertook a reading of the texts and legal provisions that frame the issue of agnation in inheritance. We then moved to the question of agnation and its social and economic effects on the status of women in society. In this regard, we conducted 4 interviews with actors involved in the issue. At the end of the paper, we concluded that the system of agnation is a system that can be amended or overcome, given its impact on women's rights and its effects on the path toward their social and economic empowerment. It also obstructs opportunities to achieve parity within society. Accordingly, we proposed a set of recommendations, namely calling for the abolition of this system, adopting and activating the will as a basis for dividing inheritance, and protecting women's rights in inheritance more generally through the creation of a legal framework that guarantees this matter.

Keywords

System of agnation, women, inheritance, will, family, Morocco.

Introduction

Agnation is considered one of the ways through which heirs inherit under Islamic law. These are the same rules adopted by the Moroccan Family Code, on the basis of which the estates of all Moroccan Muslims are divided. Agnation is divided into agnation by oneself, agnation through another, and agnation with another. The first category includes heirs who are all male: the son, the father, the grandfather, the full brother, the paternal half-brother, the son of the full brother, the son of the paternal half-brother, the full paternal uncle, the paternal half-uncle, the son of the full paternal uncle, and the son of the paternal half-uncle. This category inherits by agnation without the need for another party to make them agnatic heirs. Their strength varies according to their closeness to the deceased: whenever an agnatic heir closer to the deceased exists, he excludes the more distant agnatic heir.

As for agnation through another, it concerns female heirs: the daughter, the son's daughter, the full sister, and the paternal half-sister. This means that a daughter does not inherit by agnation unless there is a son of the same degree with her, and that a full sister inherits by agnation when there is a full brother with her.

Agnation with another also concerns female heirs, namely full sisters and paternal half-sisters. Agnation with another means that an inheritance case includes daughters alongside full sisters or paternal half-sisters. In this case, the daughters inherit two-thirds of the estate, while the full sisters or paternal half-sisters inherit the remainder by agnation. There is also the case in which the deceased leaves one daughter: she inherits half, while the sister or sisters inherit the other half.

It therefore becomes clear that daughters cannot inherit the entire estate if there are other heirs who inherit by agnation, other than sons or sons' sons, because daughters originally inherit by fixed share. A single daughter, when she is the only daughter, inherits half of the estate, while multiple daughters inherit two-thirds of the estate, in accordance with the words of the Almighty in Surat An-Nisa: "Allah instructs you concerning your children: for the male, what is equal to the share of 2 females. But if there are only daughters, 2 or more, for them is two-thirds of one's estate. And if there is only 1, for her is half..." verse 11, Surat An-Nisa. This means that the remainder of the estate is taken by the agnatic heirs if there is no son of the same degree with her.

The latter inherits the entire estate or what remains of it by agnation, because he excludes all other heirs except the husband, wife, father, mother, grandfather, and grandmother. A daughter, however, does not exclude them all because she originally inherits by fixed share, while what remains of the estate is inherited by the agnatic heirs according to their strength and closeness to the deceased.

This paper relies on field data drawn from interviews. In this framework, we organized 4 interviews with stakeholders and actors in a number of fields related to the subject of the paper, during the period in which we were preparing it. Conducting these interviews took approximately 1 month, throughout February 2024. These stakeholders were as follows: a lawyer at the Casablanca Bar and researcher specializing in family issues; an adoul specializing in family and inheritance issues in the city of Guelmim; a judicial officer specializing in family and women's issues in the city of Agadir; and a philosophy teacher and researcher in religious affairs in the city of Agadir. We also returned to some references and literature that have addressed the subject, especially in its theoretical aspect.

This paper has been divided into 2 main sections. The first section discusses the texts in which the rules of agnation appear, while the second section begins from models of countries that are comparable to the Moroccan social and cultural context, before addressing women's right to fairness in inheritance as an entry point for their empowerment. In conclusion, we arrived at a set of recommendations in this framework.

Agnation in Inheritance: A Reading of the Texts and Provisions

The system of agnation in Islam derives its rules and provisions from Islamic law, which is the religion of the state under the Constitution. This is done by relying on Qur'anic texts and Prophetic hadiths, in addition to ijtiḥad as a third source that complements the 2 previous sources. Returning to the Holy Qur'an, we find in Surat An-Nisa a set of verses that address provisions referring to the issue of agnation with regard to heirs' shares. These provisions appear in 3 verses: 11, 12, and 176. They are as follows:

The Almighty says: "Allah instructs you concerning your children: for the male, what is equal to the share of 2 females. But if there are only daughters, 2 or more, for them is two-thirds of one's estate. And if there is only 1, for her is half.

And for one's parents, to each 1 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 1 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.” (11)

Then the Almighty says: “And for you is half of what your wives leave if they have no child. But if they have a child, for you is 1 fourth of what they leave, after any bequest they may have made or debt. And for them is 1 fourth if you leave no child. But if you leave a child, then for them is 1 eighth of what you leave, after any bequest you may have made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each 1 of them is a sixth. But if they are more than that, they share a third, after any bequest which was made or debt, as long as there is no harm caused. This is an ordinance from Allah, and Allah is Knowing and Forbearing.” (12)

Surat An-Nisa concludes with the Almighty's words: “They request from you a ruling. Say: Allah gives you a ruling concerning one having neither descendants nor ascendants. If a man dies, leaving no child but only a sister, she will have half of what he left. And he inherits from her if she has no child. But if there are 2 sisters, they will have two-thirds of what he left. If there are both brothers and sisters, then the male will have the share of 2 females. Allah makes clear to you, lest you go astray. And Allah is Knowing of all things.” (176)

After reading these 3 verses, it becomes clear that the Qur'an did not include provisions related to agnation, especially those concerning the persons who inherit by agnation, nor their ranking. This system is based on rules that clarify the methods of preference among them according to their degree of closeness to the deceased. The researcher Mohamed Abdelwahab Rafiki pointed out in his intervention at a seminar¹ that “agnation does not exist in the Qur'an at all.” He specifically referred to agnation by oneself, which constitutes the core of the problem and includes paternal uncles, cousins, brothers, and nephews, in addition to agnation with another, which relates to the sister. According to him, there is only a solitary Prophetic report and hadith narrations that are not compatible with the cultural and historical context and have been surpassed. Therefore, the Qur'anic text speaks of agnation through another, not agnation by oneself.

In the Qur'an, which is a sacred book, contexts and occasions of revelation are taken into account; how much more, then, should this be the case with hadith narrations, which are part of the Prophet's daily life and his rulings on a number of issues and incidents that arose before him.

As for the hadiths attributed to the Messenger, the Book of Obligatory Shares in Sahih al-Bukhari contains 31 chapters, including 49 hadiths. These include a set of hadiths that address the most important provisions regulating the rules of agnation in Islam. In Islamic jurisprudence, agnation means that after the relatives of the deceased take their legally prescribed shares, the remainder of the inheritance goes to the male agnatic heirs, excluding females. This is based on the hadith attributed to the Messenger in this book: "Give the prescribed shares to those entitled to them, and whatever remains is for the closest male relative." This hadith includes the aspect related to agnation, meaning giving what remains after the fixed-share heirs have received their shares to the remaining male agnatic heirs, in order according to their degree of closeness to the deceased.

In this sense, agnation may in many cases involve social injustice. One of the clearest forms of this injustice, as seen in our reality, is that when a father dies leaving behind 1 daughter or a group of daughters, any relative from the father's side, not the mother's side, even if distant — such as a paternal uncle, a cousin, or the son of a cousin — has the right to share with the daughter or daughters in their father's estate. The manifestations of this injustice appear in a set of facts, as agnation leads some paternal uncles to expel daughters and their mother from the home, leaving them exposed to homelessness. Ancient jurisprudence was therefore undoubtedly influenced by its inherited social reality, which had not changed much in its economic and social relations from the reality of the society of prophethood and the accompanying "customs of pre-Islamic society," which Islam worked to refine gradually in some of their aspects.

In this regard, the researchers Siham Benchekroun and Maryam Yakout note that "most of the inheritance shares defined in the science of obligatory shares are jurisprudential interpretations, since the Book of Allah specifies only children, male and female, parents, spouses, and siblings, male and female, as heirs. We find in Sahih al-Bukhari only 6 hadiths on inheritance. Yet the Companions and jurists nevertheless gave inheritance to the grandfather, paternal uncles, sons of sons, grandmothers, and others."² On the other hand,

the researcher Mohamed Ikij points out that “when ancient jurists exercised ijtihad in matters of agnation, they based it on the Qur’anic and hadith texts; however, alongside this, they also took into account a factual consideration, namely the factor of wealth production in the family and society, which was monopolized by males rather than females — except rarely — in ancient societies generally, whether Muslim or non-Muslim. Therefore, its distribution and entitlement after death would not depart from the same framework.”³

In addition to all this, the Parity Coordination, in its memorandum for equality in inheritance, stated that “the emergence of agnation was in reality political at the beginning, as a result of the conflict between the Abbasids and the Alawites, the descendants of Ali and Fatima al-Zahra, over who had the greater right to the caliphate. The Abbasids claimed that the daughter, Fatima al-Zahra, did not exclude paternal uncles from inheritance, and therefore those with greater claim to the Prophet’s succession were the descendants of al-Abbas, not the descendants of Fatima al-Zahra, on the grounds that the Prophet left no male children. Thus, agnation here belonged to the descendants of al-Abbas, the Prophet’s uncle. This is the historical and political reality that many overlook, and which consecrated the rule of agnation, which has no basis in the Qur’an. Women have paid its price for the past 14 centuries and continue to do so, with political ambitions being the main reason behind all of this.”⁴

Even if the system of agnation was just at the time of the emergence of Islam, when it played a prominent role in the care of girls — something that was clear through the duties borne by men in caring for women, including daughters, mothers, wives, sisters, nieces, and others — in our present time, this system has become absent in that sense. Agnatic heirs now appear immediately after the death of the deceased in order to divide the estate and take their share. This often leads them to call on all heirs to sell the deceased’s estate, whether real estate or movable property, which sometimes results in the displacement of the deceased’s daughters, who do not have the right to keep their father’s or mother’s home if they do not have the money to buy the share of their paternal uncles or paternal aunts.

Fairness in Inheritance: A Legitimate Right for Women and a Basis for Their Empowerment

The debate on inheritance, including the system of agnation in Morocco and in Maghrebi and Arab countries more broadly, reflects the social and economic transformations experienced by these societies. Morocco therefore cannot be separated from the Maghrebi and Arab context, as social and economic conditions are similar in most Arab countries, whether in terms of women entering the labor market and assuming financial responsibility within families, or in terms of the declining influence of the agnatic kin group and the social and economic protection it provides to women. This new social reality has led many countries that had adopted agnation in inheritance in a form that excludes the daughter's rights to subject it to questioning and review. These countries are close to and similar to Morocco in terms of laws and legislation, the religious background of society, and the cultural level in general. Among the countries we will refer to are Tunisia, which has advanced in inheritance matters, as well as Iraq.

If we consider the Tunisian model, we find the following: "Under the law dated 19 June 1959, the legislator added Article 143 bis to the Code of Personal Status, introducing the theory of 'return in inheritance.' Its second paragraph states that: the daughter, whether multiple or alone, or the son's daughter however far down, shall receive the remainder by return, even in the presence of agnatic heirs by themselves, siblings, paternal uncles, and the state treasury."⁵ This means that the daughter, whether alone or multiple, and in the absence of a male brother in open inheritances, receives, in addition to her prescribed fixed share mentioned above, the remainder of the inheritance by way of return; that is, the remaining estate is returned to her.

As for Iraq, Article 89 of Personal Status Law No. 188 of 1959 and its amendments states, under "heirs by kinship and how they inherit": "The full sister shall be considered equivalent to the full brother in exclusion."⁶ Then, in Article 91, we find: "The daughter or daughters, in the absence of a son of the deceased, are entitled to what remains of the estate after the parents and surviving spouse have taken their prescribed shares; they are entitled to the entire estate if none of them exists."⁷

These data indicate that amending the system of agnation within the inheritance system is not impossible, especially in terms of its social acceptability. If these countries share with us religion and a set of cultural elements, and have proceeded toward abolishing this matter, what prevents reopening the debate on the possibility of changing the system of agnation, while requiring equality between males and females in this issue? This would help realize rights, guarantee equality between the sexes, and enable women to obtain their legitimate right without conflict with another party.

Based on the models mentioned, the legal rule, regardless of its source, remains a social rule. It arises in order to contribute to institutionalizing and organizing social ties and relations in a way that preserves the rights of individuals and citizens. Therefore, this legal rule cannot be isolated from the development of society and its economic, social, and cultural transformations. In this regard, Moroccan society has witnessed deep structural transformations, such as the transition from extended families to nuclear families, alongside the decline of family solidarity that had been framed by the extended family. This imposed a new reality in which women shifted from being persons who require support at every stage of life to individuals who contribute to the family economy, and sometimes even to breadwinners on whom the family depends entirely.

In this sense, the system of agnation, as a law that prevents the daughter from excluding other heirs in the absence of a male heir alongside her, establishes a maladapted reality, one that places women at the bottom of the social structure. Ahmed⁸ addressed this issue by saying: “The amount that women contribute to family wealth and to the economy in general, in addition to their regular and competent work, makes the system of agnation a system that contributes to impoverishing females and stands as an obstacle to benefiting from their rights and developing themselves.” Hassan⁹ points out: “The family today, whether we like it or not, has undergone a kind of fragmentation, and the agnatic kin group no longer protects orphan girls. The issue here is social, and therefore laws must be changed to protect this group.” Thus, the logic of the system of agnation may have been understandable in social contexts in which the paternal uncle spent on his brother’s daughter, since agnation in its historical dimension is linked to a society in which the male agnatic group protected the tribe’s inheritance, in connection with the concepts of patriarchal society.

In our current time, however, “the factual data confirm that women contribute significantly to the production of wealth in different parts of the world and across various productive sectors. In our country, for example, according to statistics from the High Commission for Planning, and based on working time by gender provided by the National Employment Survey and by branches of economic activity, women contribute around 21% of national wealth. Women represent more than one-third of the country’s active labor force and are present in all public facilities at significant rates: 59% in the national education sector; women also constitute 45.6% of doctors, 41% of pharmacists, and 31.6% of health workers. In the justice sector, they represent 49.1% of administrative staff, 34% of the judiciary, workers. In the justice sector, they represent 49.1% of administrative staff, 34% of the judiciary, and 15% of the legal profession. Moroccan women also represent 70% of all senior executives.”¹⁰

On this basis, and according to these data, the system of agnation contributes to harming women’s economic and social status. It is considered an obstacle to their empowerment and integration into society, and at times exposes them to poverty and vulnerability, while at other times it may expose them to homelessness. In this context, one of the female interviewees¹¹ states: “The family today has become nuclear, and relatives no longer care for their female kin or cover their expenses. Rather, you find that they know nothing about these women and that no kinship ties connect them, but they appear at death in order to divide the cake.” This issue reflects the reality of family disintegration in our society, which requires protecting the rights of these women against the greed and avarice of other members of their families. One of the interviewees¹² says: “If we activate the will and give it its rightful place in the Family Code, it can be a solution, since the owner of the estate would have the right to dispose of the entirety of his estate. Therefore, priority should be given to this will.” On this basis, reviewing the issue of agnation could push toward a just society, by ensuring that the law keeps pace with society and its development.

In order to address the debate on agnation in depth, “here is the case of Zineb, as it was presented to us: a young Moroccan woman whose father died suddenly, leaving behind Zineb, her sister, and her mother. On the day of the funeral, they were surprised by cousins who came to share the inheritance as soon as the burial ceremonies had ended.

After the mourners left, the mother collapsed from the shock of the sudden loss of her husband. The cousins then objected to taking her to the hospital in the deceased's car, claiming that the car was no longer the property of the family. After that, the cousins rushed to the bank to prevent any dirham from being withdrawn from the deceased's account before the inheritance was divided. The 2 daughters and their mother were surprised to find that overnight they no longer had control over anything, and that the house where they had spent the prime of their lives — and had even contributed to its expenses — had to be sold so that its price could be shared with other people.”¹³ In another case: “A woman had been living in a house only with her parents, and she knew no one else, whether paternal uncles or cousins. Her father died, and 6 months later her mother died. When she wanted to sell the 3-story house in order to look for a home that suited her, the adouls refused on the grounds that an inheritance-establishment procedure had to be carried out, which required summoning the other heir to half the house. They asked her to search for a person who had a close, even if distant, relationship with her father, and the inheritance would remain dependent on that situation until then.”¹⁴

Thus, applying the rule of agnation leads to manifestations that make members of society feel injustice. This rule conflicts with several principles, including justice, fairness, and equality. It can also demean women, forcing families to take illegal measures to protect female rights, such as fictitious sales, gifts, or wills. This highlights society's rejection of the ongoing injustice in an inheritance system that is no longer compatible with modern social contexts. It confirms the necessity of reviewing the inheritance system and guaranteeing women's rights, since inheritance is a transaction that requires consideration of the objectives of Sharia and social justice.

Conclusion

What can be concluded from this paper is that social reality in Morocco has undergone several transformations, and women have been at the heart of these transformations. We have moved from an extended family that supported all its members, especially women, to a nuclear family in which women contribute to its wealth and to the management of its financial affairs. This reality requires reconsidering a set of laws that treat women on the basis of the past. Among these laws is the system of agnation in inheritance. It becomes clear that the system of agnation currently applied in the inheritance system obstructs the path toward achieving justice and fairness between men and women. Amending it would strengthen this justice in order to keep pace with the developments and changes experienced by Moroccan society, and to ensure greater opportunities for women's economic and social empowerment.

Recommendations

- **Abolish agnation-based inheritance from Moroccan inheritance law, following the precedent of other Muslim-majority countries**
- **Adopt and activate the will (wasiya) as the basis for dividing inheritance, to guarantee women's inheritance rights equal to men's**
- **Protect wills and gifts from legal challenges in court**
- **Create an institutional legal framework protecting women's rights in cases where they don't receive their inheritance rights**

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