

## Principles of Sunni Law of Inheritance and Reformations needed in Bangladesh : An Observational Analysis

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*Abstract: The Islamic rules of Inheritance are the main rules implemented by the family, and community as well as upheld by the State. Yet, the application of these formal inheritance rules pertaining to designated shares must be understood in a broader socio-cultural and economic context and within wider inheritance systems in practice. In this context, this article gives an overview of the history of Islamic law of inheritance; improvements were introduced by Islam and the Holy Quranic view towards the Law of inheritance and some general rules of Sunni law of inheritance. After critically analyzing the concept of Islamic law of inheritance, this paper also finds some concepts which are the prospects for reforms which are also supported by showing reformations in Islamic succession around the world. Finally, the findings regarding Bangladesh are based on different prospects of a reformation which have already happened around the world, and in accordance of findings substantial recommendations has been curved.*

### 1. Introduction:

In Islamic society, as in most societies, inheritance represents the most important method of transferring wealth from one generation to the other. Islamic law of Inheritance is one of the most comprehensive systems of succession. It is exhaustive enough to meet most of the situations that have arisen and that may arise. It pays ample attention to the interests of all those who find natural place in the first rank of the affections of the deceased. It is difficult to find such just and equitable rules in any other system of succession containing such just and equitable rules

The Holy Quran states "*Allâh has purchased from the believers their persons and their wealth in lieu of Jannah.*"

Man is a trustee of the wealth that he owns only for the duration of his life. When his term of life expires, his trusteeship over his wealth and property expires. Then it is redistributed in accordance with the directive of The Absolute Owner - Allah Taala. Directives regarding the distribution of wealth after the demise of the provisional owner are explicitly detailed in the Holy Quran. [1]

The Holy Prophet *Sallallahu alayhi wa sallam* has said: "The first branch of

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*Principles of Sunni Law of Inheritance and Reformations needed in Bangladesh : An Observational Analysis*

knowledge which will be taken away from my Ummah will be *Ilmul Faraidh* [knowledge pertaining to inheritance]. This branch of knowledge is almost extinct. But most of the Muslims are blissfully unaware of the importance and essence of the Islamic law of succession. So, it is very important to analyze the real essence of inheritance and the main purpose of these rules as prescribed by Allah.

## **2. Objectives and Methodology:**

### **2.1 Objectives:**

The aim of the study is to identify the basics of Sunni law of inheritance along with the need of reformations in Bangladesh as required. In this context the main objectives of the study could state as below:

- To find out the applicability of inheritance in the life of Muslims.
- To find out some issues which are misinterpreted due to the lack of proper knowledge.
- To find out some reformations those have occurred around the world.
- To find out how the Holy Quran explains the rules of inheritance.
- To find out some concepts which will prospect for reform in the Islamic rules of Inheritance?
- To find out the consequences following the MFLO 1961..
- To find out some reformations what will be beneficial for the Muslims of Bangladesh yet the essence for Islam will remain intact.

### **2.2 Methodology:**

The article is basically based on Qualitative method. The writer has used facts and information already available and analyzed these to make a critical evaluation. The data and information used were collected from websites; articles and books of renowned writers; and legislations and conventions passed by states.

## **3. History of Islamic Law of Inheritance:**

### **3.1. Pre-Islamic rules of inheritance:**

The origin of the Islamic law of inheritance is in the pre-Islamic days in Arabia. The Holy Quranic injunctions brought radical changes in the principles of succession before the advent of Islam by eliminating all that were unjust and inequitable and by introducing more just and equitable principles. The Muslim jurists, both Sunni and Shia, further streamlined the rules of succession scientifically to make them applicable to actual situations. However, both the Sunni and the Shia jurists worked separately to lay down their own succession rules. [2]

In order to appreciate the Islamic rules of inheritance it is proper and relevant to examine the pre-Islamic law of inheritance briefly, which was rooted in the following ideas:

- (i) Individual Members of the family form the wealth and strength of the family;
- (ii) The nearest male agnates succeeded to the entire estate of the deceased;
- (iii) Females cognates were excluded;
- (iv) Females were not eligible to buy and sell any property. The property has to be assigned in payment of debt and to be owned and inherited by their males.
- (v) Descendants were preferred over ascendants and ascendants were preferred over collaterals;
- (vi) Where agnates were equally distant to the deceased, they together shared the estate '*per capita*'.

This is the philosophical underpinning that leads the pre-Islamic world to adopt the following rules of inheritance [3]:

- a) Only males will be inherited and the chain of inheritance goes only through males.
- b) Amongst males only who were capable of bearing arms could inherit. All minors and infirm persons were excluded from succession.
- c) The nearer in degree excluded the more remote.
- d) Succession was per capita and not per stirpes.
- e) Heirship would be determined by consanguinity, adoption or contract. Thus the adopted son and the natural born son stood on the same footing and thus succession by contract was also possible.
- f) Descendants were preferred to ascendants and ascendants to collaterals.
- g) Only blood relations could succeed and not those by affinity e.g. the husband or wife.

### 3.2 Improvements Introduced by Islam:

- (i) The husband and wife were made heirs;
- (ii) Females and cognates were made competent to inherit;
- (iii) Parents and ascendants were given the right to inherit even when there were male descendants;
- (iv) As general rule, a female was given one-half the share of a male; this is because of her lesser responsibilities and obligations in comparison with males.

All the newly created heirs were assigned specific fraction of estate, called Share (sahm), and were called Holy Quranic heirs or simply 'sharers'. Moreover, the newly created heirs were mostly females.

#### **4. Holy Quranic View of Muslim Law of Inheritance**

##### 4. 1. What property may be inherited? :

The Muslim law of inheritance makes no distinction between different kinds of property. It is immaterial whether property is real (land) or personal, movable or immovable – it covers all assets.

##### 4. 2. Who may inherit property? :

Given the wide range of beneficiaries that the Islamic inheritance system seeks to cater through a sophisticated balancing process, the results can turn out to be hairsplitting permutations and combinations varying according to a given scenario, there are some differences in Sunni and Shia positions.

##### 4. 3. Basis of Islamic Law of Inheritance:

The Muslim law of inheritance is based on –

- (i) the rules relating thereto laid down in the Holy Quran or in the traditions;
- (ii) the customs and usages prevailing amongst the Arabs insofar as they had not been altered or abrogated by the Holy Quranic injunctions or traditions;

##### 4.4 Major Holy Quranic Verses regarding Islamic Law of inheritance:

There are a number of verses on inheritance in the Holy Quran, as laid out below in English translation (M.Asad). While these verses appear to be quite detailed and comprehensive, there was also a great deal of juristic elaboration and systematization through the different schools of law, as well as some differences as to the interpretations of certain terms, such as the interpretation of the word “*walad*” (child), and its implications for agnatic siblings or male relatives. [4]

Some verses also appear to provide for a certain flexibility, e.g., Surah an-Nisa 4:8, and many verses also appear to stress the importance of honouring the testamentary bequests that have been made by the deceased by emphasizing the priority to be given to bequests. [5]

- Surah an-Nisa 4:7

Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether it be little or much – a share ordained by Allah..

- Surah an-Nisa 4:8

And when [other] near of kin and orphans and needy persons are present at the distribution [of inheritance], give them something thereof for their sustenance, and speak unto them in a kindly way.

- Surah an-Nisa 4:11

Concerning (the inheritance of) your children, God enjoins [this] upon you: The male shall have the equal of two females' share; but if there are more than two females, they shall have two-thirds of what (their parents leave behind; and if there is only one, she shall have one-half thereof. And as for the parents [of the deceased], each of them shall have one-sixth of what he leaves behind, in the event of his having [left] a child (*walad*); but if he has left no child (*walad*) and his parents are his [only] heirs, then his mother shall have one-third; and if he has brothers and sisters, then his mother shall have one-sixth after [the deduction of] any bequests he may have made, or any debt [he may have incurred]. As for your parents and your children – you know not which of them is deserving of benefit from you: [therefore this] ordinance from God. Verily God is all-knowing, wise.

- Surah an-Nisa 4:12 – 4:14

And you shall inherit one half of what your wives leave behind, provided they have left no child (*walad*), but if they have left a child (*walad*), then you shall have one-quarter of what they leave behind, after [the deduction of] any bequests they may have made, or any debt [they may have incurred]. And your widows shall have one-quarter of what you leave behind, provided you have left no child (*walad*), but if you have left a child (*walad*), then they shall have one-eighth of what you leave behind, after [the deduction of] any bequest you may have made, or any debt [you may have incurred]. And if a man or woman has no heir in the direct line, but has a brother or a sister, then each of them two shall inherit one sixth; but if there are more than two, then they shall have in one-third [of the inheritance], after [the deduction] of any bequest that may have been made, or any debt [that may have been incurred], neither of which having been intended to harm [the heirs]. [This is] an injunction from God; and God is all knowing, forbearing. (4:13) These are the bounds (*hudud*) set by God. And whoever pays heed unto God and His Apostle, him will He bring into gardens through which running waters flow, therein to abide: and this is a triumph supreme. (4:14) And whoever rebels against God and His Apostle and transgresses His bounds, him will He commit unto fire, therein to abide; and shameful suffering awaits him.

- Surah an-Nisa 4:33

And unto everyone has, we appointed heirs to what he may leave behind; parents and near kinsfolk, and those to whom you have pledged your troth; give them, therefore, their share. Behold, God is indeed a witness unto everything.

- Surah an-Nisa 4:176

They will ask thee to enlighten them. Say: "God enlightens you [thus]

*Principles of Sunni Law of Inheritance and Reforms needed in Bangladesh : An Observational Analysis*

about the laws concerning [inheritance from] those who leave no heir in the direct line (*walad*): If a man dies childless and has a sister, she shall inherit one-half of what he has left, just as he shall inherit from her if she dies childless. But if there are two sisters, both [together] shall have two-thirds of what he has left; and if there are brothers and sisters, then the male shall have the equal of two females' shares. Allah makes [all this] clear unto you, lest you go astray; and God knows everything.

**5. General Rules of Sunni Law of Inheritance:**

Most common and important general rules regarding Sunni Law of Inheritance are as follows : [6]

- a) When a Muslim dies there are three duties of (a) payments of his funeral expenses, (b) payment of his debts and (c) execution of his will (*vasiyyat*) need to be performed. After that remaining estate is distributed amongst the heirs according to sharia.
- b) Distribute property of deceased according to the law of the sect to which he belonged at the time of death or which he covered. Heirs' sect is not relevant.
- c) Inheritance right vests only after death. Until then the heir-apparent does not have any entitlement of the property that would devolve on him on the death of the ancestor.
- d) The earlier class excludes the later. Generally persons who are related by others do not inherit with them, except in case of uterine brothers and sisters.
- e) Heir's subsequent death does not affect inheritance. It passes to beneficiary's heir.
- f) Immediately on the death of the prepositus the heirs are vested with the right of inheritance according to their allotted shares. This vesting of the right is not dependant on actual distribution of their shares; it does not wait for a moment.
- g) On the death of the ancestor, each heir gets his share in separate form as assign to him according to Muslim law of inheritance. Joint family and joint property concept are foreign to Muslim law.
- h) Inheritable interest cannot contract away even for consideration. No 'Spes Successions'
- i) Female is the absolute owner of her inherited property, no disabilities imposed upon her right of ownership.
- j) Male's share twice that of female except relatives connected by mother, uterine brothers and sisters, when inheriting from other's, takes equally.

- k) According to Muslim Law of Inheritance a non-Muslim cannot inherit from Muslim. Thus, if a Muslim apostizes, he is excluded from inheritance.
- l) Both under the Sunni and Shia laws, the status of slavery is a bar to succession.
- m) The Muslim Law of Inheritance makes no distinction between different kinds of property. It is immaterial whether property is real (land) or personal, movable or immovable rather- it covers all assets.
- n) The Muslim Law of Inheritance makes no distinction between ancestral and self-acquired property. There is no 'joint family property, or 'separate property'. Heirship does not necessarily go with membership of the family. A member of the family may not be an heir, and *vice versa*.
- o) Muslim Law of Inheritance recognizes a distinction between *ayn* (corpus) and *manafi* (usufruct) property. Over the corpus the law recognizes only absolute dominion, heritable an unrestricted in point of time. The *manafi* may be of limited duration and limited interest, and through this *manafi* the dominion over the corpus may take effect subject to any such limited interest; but over the corpus as such, the Muslim recognizes no limited interest.
- p) Muslim Law of Inheritance does not recognize the law of primogeniture; the eldest son has no special privileges. But Verma has noted some exceptions to this rule. The eldest son is entitled to succeed exclusively to the wearing apparel, Holy Quran, sword and ring (collectively called *habua*) of the father.
- q) The right to inherit the property of a missing person would arise only on the date on which he would be presumed to have died, and heirs would be determined on that date and not on the date on which he disappeared. Sections 107 and 108 of the Evidence Act, 1872, will govern this period. If the person reappears, his property will be returned to him.
- r) If at the time of death of the ancestor any of his heirs is missing his share will be reserved until he reappears or is proved to be dead. The others will be given their shares. If he reappears, he will be given their shares. But if he does not return, and is declared dead, the share reserved will devolve on the heirs of the deceased ancestor and not on his (missing person) heirs. Sections 107 and 108 of the Evidence Act, 1872, will govern the presumption of his death.
- s) Under the Sunni law, a person who has caused the death of another, whether intentionally, or by mistake, negligence, or accident, is debarred from succeeding to the estate of other. But under the Shia law homicide is not a bar to succession unless the death was caused intentionally.
- t) For the purpose of safe guarding property interest of a child of the womb (an unborn child) is deemed to be born on the date of his conception.

*Principles of Sunni Law of Inheritance and Reformatations needed in Bangladesh : An Observational Analysis*

And thus he is treated as in existence on the date the prepositus dies and the succession opens out. The other heirs would be entitled to distribute the estate among themselves only after reserving the share of the unborn of one son or one daughter, whichever is greater.

- u) Where more than one person dies in a common calamity and it is not proved as to who died first, the property of each of them would be inherited by his heirs, and there would be no mutual rights of inheritance between them. That is, the property would be distributed among the surviving heirs as if the intermediate heirs who died at the same time with the original proprietor had never existed.
- v) An illegitimate person (*walad-uz-zina*) is considered to be the child of his mother only. He has no father; as such an illegitimate person does not inherit from his father nor does the father inherit from him. Under the Sunni law he can only inherit from mother or mother's side and *vice versa*. But under the Shia law he cannot inherit.
- w) Adoption is not recognized in Muslim law. An adopted child is not entitled to get share as an heir under Muslim law of inheritance.
- x) The child of a woman who impregnated and therefore divorced by her husband by the method of *lina* (*walad-ul-mula'inah*) is treated for the purpose of inheritance on the same footing as the illegitimate person. That is, he inherits from the mother only but not from the father.

**6. Some Concepts which prospect for bringing reformatations in the Islamic rules of Inheritance**

- The language of the Holy Quran is not mandatory :

In terms of Surah an-Nisa' 4:11, which says that a male child shall inherit twice as much as a female, some argue that the traditional interpretation, as laid out in the traditional rules of inheritance, is incorrect. Instead of requiring that the male child *always* receives twice that of the female, means that the male can interpret no more than twice the female or that the female must inherit at least one half of the male. For instance, a committee member involved in reviewing Indonesia's inheritance laws argued that "the language of the Holy Quran is not necessarily mandatory. The provision stating that the daughter's share is one half that of the son should be interpreted to mean that daughter's share must be at least half that of her brother. The Holy Quran does not, however, preclude equal shares for males and females if social realities warrant such a distribution and the Muslim community desires it" (Cammack 2000, p. 7). [7]

Related to this idea, Mohammed Shahrour, an engineer from Syria, proposed in his book entitled *al-Kitab wal-Holy Quran: Qira'a Mu'asira* a theory called the "Theory of Limits", meaning the limits (*hudud*)

divinely ordained in the Holy Quran and the *sunnah*. According to this theory, the Holy Quran and the *sunnah* set a Lower Limit (minimum) and an Upper Limit (maximum) for all human actions, and man-made legislation and rules are permitted anywhere in between those Limits. Nothing that falls below the Lower Limit or exceeds the Upper Limit is permitted – this is the mandatory aspect of the revelations. [8]

- The revelations in the Holy Quran about inheritance were the only first stages of what was

meant to be progressive reform :

According to N.J. Coulson in *A History of Islamic Law*, the references in the Holy Quran and Sunnah related to inheritance provide examples of the progressive, supplementary nature of Islamic law. Before the time of the Prophet, rules and customs related to property and inheritance were focused on supporting and strengthening the tribe, which was defined exclusively by its male descendents. To ensure that property was kept within the tribe, only male relatives of the deceased, generally the relative closest in relation, could inherit such property. The order for inheritance started with male descendents, then the person's father and his brothers and nephews, the paternal grandfather, uncles, and their descendents.[9]

Although property was occasionally bequeathed to other close relatives, females, and minor children were generally excluded from rights of inheritance. The Prophet's revelations gradually changed the status quo, first in requiring Muslims to give shares to men and to women from what parents and near kindred leave (Surah an-Nisa' 4:7), providing some property distribution to females. [10] The revelations also signaled a shift in prominence from the tribe to the family unit. A later series of revelations responded to the circumstances of the times, namely the deaths of many early Muslims in battles. These revelations laid out specific shares to be granted to different categories of relations, primarily relations who had formerly been excluded from receiving inheritance.[11]

The reformations that took place in the early years of Islam are clearly progressive, changing with the needs of the society. They were meant in part to protect women, requiring that at least a minimum share, as specified in Holy Quran, be given to women who were closely related to the deceased. The more detailed rules that were laid out by the Sunni classical jurists allowed many pre-Islamic customs to continue, and also reflected the needs, customs and expectations of the society in which they lived instead of continuing the progressive reform that was started during the time of the Prophet. [12]. Over 1000 years have passed, and the modern world is incredibly different than it was during the early centuries of Islam. The *ummah* should take up the example of progressive reform and work to ensure that the rules of inheritance reflect the needs of the people today.

## **7. Reforms in Islamic Succession:**

A number of countries have reformed various aspects of their inheritance laws to better serve the needs of modern society. The followings are a few brief examples of how countries have addressed some of the unjust aspects of traditional inheritance rules.

### 7.1 Reforms in Islamic Succession around the world:

- Exclusion of Daughters by collateral male agnates:

In the Sunni schools of law, one daughter can inherit one-half of the estate and two or more daughters can share in two-thirds of the estates, but the remainder must revert to a male agnate residuary, regardless of how close or distant a relative he is. Iraq adopted the Shi'ite rules of inheritance, which allows female descendants to exclude such collateral male agnates (Esposito 2001). In reforms in 1959, Tunisia also adopted a rule that allows daughters and sons' daughters to exclude collateral heirs.

- Reforms in Indonesian law and case law related to male-female equality:

In the past 25 years, Indonesia has been standardizing and reforming its Muslim family and inheritance laws. In the late 1980s and early 1990s, the laws were compiled into a document entitled *Kompilasi Hukum Islam* (Compilation of Islamic Laws). In the process of this compilation, the Government's Religion Minister presented a proposal to equalize inheritance between men and women so as to bring it into line with Indonesian *adat*, or customary law, and theoretical arguments of Indonesian scholars.

According to Mark Cammack (2000), "The primary justification put forward by the government in support of the proposal was that treating male and female relatives equally is consistent with Southeast Asian social realities and Indonesian legal sensibilities." This proposal failed before it was actually outlined in a formal draft.

However, as described by Cammack (2000), in a 1994 decision of the Indonesian Supreme Court (*H. Nur Said bin Amaq Mu'minah*, Reg. No. 86 K/AG/1994) that considered the inheritance rights of a daughter in competition with collateral relations, the Court said that either a male or female child of the deceased could exclude collaterals. [13]

The case was based on an interpretation of "Surah an-Nisa" (4:176) which allows collaterals to inherit in the absence of a "child" of the deceased. Although the Arabic word for child (*walad*) often refers to a child of either sex, and has been interpreted as such in other inheritance verses, a majority of Sunni scholars have interpreted the word *walad* in verse 176 as referring to male children only, such that agnatic siblings

are entitled to a share of the inheritance when the deceased is survived by a daughter, but not when the deceased is survived by a son. This interpretation of the Holy Quran was necessary in order to preserve consistency with a well known Tradition in which the Prophet divided the deceased's estate between his daughters and their uncle, the deceased's brother. [14]

It was also consistent with the general principle that Holy Quranic heirs do not exclude other relatives of the inner family. Most importantly, though, interpreting the word "child" in verse 176 to refer to sons but not daughters had the effect of systematically advantaging male relatives.

In the *Kompilasi Hukum Islam*, the absence of a child is required for collaterals to inherit, but the Indonesian word for child (*anak*) is, like *walad*, also gender-neutral. The lower courts followed the traditional Sunni rules, but the Supreme Court reversed. [15]

In a very brief and concluding decision, the Court stated simply that "so long as the deceased is survived by children, either male or female, the rights of inheritance of the deceased's blood relations, except for parents and spouse, are foreclosed". The only reasoning or authority cited in support of this interpretation was a brief reference to the views of Ibnu Abbas, one of the companions of the Prophet, who construed the word *walad* in Holy Quran 4: 176 as embracing both male and female children. [16]

If this is an indication of the direction in which Indonesia is heading with regard to inheritance rules, there are possibilities for neutralising the systematic advantage provided to male relatives by the traditional human interpretations of the Holy Quran, like the interpretation of the word *walad* in Surah an-Nisa' 4:176.

- Reformatations in Somalia's law of inheritance :

In Somalia, males and females are now completely equal with regard to inheritance rights. When there are no children or grandchildren, the widow or widower inherits one-half of the estate. When children or grandchildren exist, this amount is reduced to one-fourth of the estate. So, if the deceased leaves only a parent, or a sibling or only a single child then, the parent or sibling or child (regardless of gender) inherits the entire estate.

- Updated concept of *radd* (return) :

In the traditional Maliki rule about the return of excess property, if the amount of shares to be distributed to the sharers is less than 100% of the estate and there is no residuary, the *radd* (return) goes to *bayt almal*, the public treasury. Tunisia rejected this rule and allows wives to take a portion of the extra shares.

*Principles of Sunni Law of Inheritance and Reforms needed in Bangladesh : An Observational Analysis*

- New idea regarding adopted children and adoptive parents :

Relationships based on adoption are generally excluded from traditional Islamic inheritance rules. In Indonesia's *Kompilasi Hukum Islam* (Compilation of Islamic Laws), however, an adopted child must receive an obligatory bequest of up to one-third of the estate when the child has not been named in an express bequest by the adoptive parents. The adoptive parents also receive an obligatory bequest out of their child's estate. In Islamic Southeast Asia, it is common to raise children outside of the birth home, so the obligatory bequest provides for fair inheritance distribution to the adopted children.[17] This rule derived from the Egyptian law providing for obligatory bequests for orphaned grandchildren (Cammack 2000).

- Obligatory Bequests:

Under the traditional Sunni rules of inheritance, bequests of up to one-third of the estate can be made, but not to an heir unless (for some schools) the other heirs agree. As an attempt to expand the rights of individuals to dispose of their property according to their wishes, Egypt, Sudan, and Iraq adopted the Shi'ite law of inheritance, which allows heirs to receive a bequest of up to one-third of the estate without the consent of the other heirs (Hallaq 1997; Esposito 2001). In addition, Tunisia and Somalia allow bequests to be made in favour of an heir or beyond the one-third limit if other heirs agree to it. Tunisia also requires a bequest to be carried out for the entire estate if there are no heirs or creditors so that the estate does not go to the public treasury (Esposito 2001). [18]

#### 7.2 Reforms in Islamic Succession in Bangladesh:

- Doctrine of Representation:

The word 'Representation' has several meanings in law. For instance, we may speak of representation to estate of a deceased person, and in this context we speak of 'personal representation'. The second meaning is the process whereby one person is said to 'represent' the share receivable by him through another person, who was himself an heir. Here we are concerned with the second meaning.

In Sunni law of inheritance, the Doctrine of Representation is not accepted. Professor Anderson, in his book *Islamic Law in the Modern World*, has criticized the rule against Representation as causing much hardship. He says that this rule is of pre-Holy Quranic origin.

In recent years, several Islamic States have made provisions to mitigate hardships of the son of a pre-deceased son. Such provisions were enacted by Egypt, Syria, Morocco, Pakistan and Bangladesh. In Bangladesh, section 4 of the Muslim Family Laws Ordinance, 1961 provides:

“In the event of the death of any son or daughter of the porosities before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes, receive a share equivalent to the share which such son or daughter, as the case may be, would have received if alive”. [19]

#### 8. Findings regarding Bangladesh :

- While it is very true that revelations related to inheritance drastically improved the position of women, and that the Islamic situation of inheritance was by far the most progressive and comprehensive in the world for hundreds of years, those reformations happened 1400 years ago. In addition, a number of aspects of the Sunni rules (e.g., the primacy of agnatic heirs) are derived from pre-Islamic inheritance rules, not the revelations as laid out in the Holy Quran.
- It is true that in individual cases and when comparing people who have different relationships to the deceased (e.g. children of the deceased versus siblings of the deceased), women can inherit as much as more than men. On the other hand, women generally inherit only half compared to men who have the same relationship (e.g. just children of the deceased). For example, the deceased's daughter is likely to inherit as much or more than the deceased's brother, and they have very different relationships with the deceased. In contrast, the deceased's son is guaranteed to inherit twice that of the deceased's daughter, and they have the exact same relationship (children of the deceased).
- On account of a fundamental rule of inheritance under Muslim law that "a nearer in degree excludes the remoter " the children of a predeceased son or daughter cannot inherit the property of their grandfather or grandmother who is survived by a son or sons. All the schools and sub-schools of Islamic law unanimously accepted this fundamental rule. So it is evident that in the opinion of Islamic jurists the provision of representation in respect of inheritance is absent in Muslim law. As under this principle grandchildren are excluded from inheritance, different Muslim countries of the world attempted to solve this problem by taking various devices.

According to Section 4 of MFLO, a grandson or granddaughter represents his or her father or mother at the time of death of grandfather or grandmother and inherit what their parents would have inherited if they had been alive, it is called representation. So representation means a more distant relative steps into the shoes of a nearer relative (e.g. a son representing his father) and inherits in an identical manner to the individual he represents. This doctrine of representation has brought in some cases caustic injustice to some heirs of the deceased.

For the better understanding the latent injustices in section 4 of MFLO; we can discuss it by giving some examples;

*Principles of Sunni Law of Inheritance and Reforms needed in Bangladesh : An Observational Analysis*

Firstly, suppose A dies leaving behind one daughter and one son's daughter. So under Islamic law of inheritance daughter gets three-fourths and granddaughter gets one-fourth but according to this ordinance daughter gets one-third and granddaughter gets two-thirds. Only this single injustice upsets the whole community. Here both the heirs are female one is one degree nearer than the other one but nearer gets half of property of remoter.

Secondly; under the ordinance the doctrine is applied only for the descendants of the deceased. It means the entire property which the deceased son would have inherited, if alive, goes to his children, depriving his wife and other relatives. For example; A dies leaving B, a son and D a grandson from predeceased son C and C's wife E. Here the property will be divided into two. B gets half and the rest half goes to D. So E is completely deprived. Is it justice?

Thirdly; the propositus dies leaving a daughter of a predeceased son and a full brother. Under MFLO, the entire property goes to son's daughter and she completely excludes full brother. Is it not injustice?

Fourthly, Son is duty-bound to maintain his father but son's son is not obliged to maintain his grandfather. So equal distribution among son and grandson is not justice.

- Relationships based on adoption are generally excluded from Islamic inheritance rules followed in Bangladesh.

## **9. Conclusion**

Inheritance is often treated as peripheral to, or semi-detached from, general debates and policy formation concerning security of tenure, land rights, land reform or regularisation. However, inheritance is one of the commonest ways of acquiring land or access to land. General knowledge of the basic legal system pertaining to inheritance appears to be embedded within Islamic communities, but the specific rights are not generally publicised, and certainly not widely articulated or agitated. This is due to several factors, the widespread illiteracy of particularly Muslim women in some societies, a perception that the rules are complex, which is deliberately reinforced by authority figures and the marginality of certain categories within families and communities. Though inheritance rules are considered only as part of the wider Islamic property regime, still, these rules are presented as a completely divine code without room for compensation through other tools.[20]

So, as Islam is clearly a religion of justice, fairness and equality, the principles also form the basis of international human rights law. By recognizing the core ethical and spiritual values of Holy Quranic revelation, the egalitarian aspects of Islam and the inherent dynamism that allow the religion to be sensitive assist the changing needs of society.

**10. Recommendations regarding Law of Inheritance in Bangladesh:**

- Islamic inheritance rules have not been reformed but just incorporated into the man-made system that was formalized by the classical jurists one thousand years ago. Islam is a religion for all times and places because it is dynamic and sensitive to the changing needs of times and societies. It cannot remain stagnant, especially if it includes aspects that are unjust or unfair.
- Although section 4 of MFLO protected the right of grandchildren, the above mentioned injustices to the heirs should be amended by way of implementing the concept of “obligatory bequest” in Bangladesh.
- The concept of Radd where Husband and Wife do not get properly should be changed.
- The concept of adoption should be reintroduced to better facilitate society.
- A new section should be added after Section 4 of the Muslim Family Laws Ordinance 1961 with the provision of increasing the share of daughter/s by prohibiting any part of the property going to the collaterals i.e. uncles in the absence of son in usual course of inheritance.

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*Principles of Sunni Law of Inheritance and Reforms needed in  
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