



POSSIBILITY OF INCREASING DAUGHTER'S SHARE IN THE PROPERTY OF SONLESS PROPOSITUS IN SUNNI LAW OF SUCCESSION

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Abstract: Sharia law of inheritance, the most comprehensive system of doctrine of inheritance, represents the method of transferring property from the deceased to his heirs. It has been termed by a Hadith as half of the useful knowledge. The rules relating to the doctrine of inheritance have been streamlined, in detail, by the Almighty Allah in His Holy Book 'Al-Quran' and have been supplemented by the Sunnah of the Prophet Muhammad (God bless him and grant him peace). However, there are some areas in the inheritance scheme where there are prospects for reforms that have already been considered by showing reformations in the doctrine of inheritance around the world. This paper primarily rethinks the possibility of increasing the daughter's share in the sonless deceased's property. To accomplish the purpose, this paper has thoroughly reviewed verse 176 of Surah-an-Nisa relating to the concept of *walad* and *Kalala*, the views of the Sunni and Shia schools of thought, and the reformations brought in by the modern state in this perspective. Finally, the present paper, after interpreting the provisions of the Al-Quran in light of the modern-day social-cultural context, suggests the application of the doctrine of *takhayyur* or the introduction of the provisions of a mandatory gift for the possible increase of the daughter's share in sonless deceased's property.

Keywords: Succession, Daughter's Share, *Walad*, *Takhayyur*, Mandatory Gift.

1. Introduction

Islam being a complete code of life ensures an honorable and dignified position for every Muslim in society. It has established several rights and restrictions by Islamic Sharia which focused and insisted on changing the role and status of every Muslim in the society especially the women. Before the advent of Islam, women had a very poor status in the society that existed in the Arabian Peninsula. Therefore, Almighty Allah has issued many rules in the holy Quran and the Sunnah of the Prophet Muhammad (God bless him and grant him peace) confirming the rights and dignified position for women so that they can protect them from being discriminated against compared to pre-Islamic society. One such

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area where Islam has introduced changes to improve the status of women is the guaranteed property right for them through succession.¹

In pre-Islamic times, Arabian society was the land of patrilineal tribes consisted of persons linked to a common ancestor.² The distribution of the property of the deceased was based upon the customs of the society and reflected the tribal structure of that society. Therefore, the patrilineal descendants comprising the male agnates were only eligible to get the deceased's property and the property automatically passed to the nearest male agnates based on a system of priorities.³ No share from the deceased's property was given to the female relatives and cognates. But Islam has modified this illogical system of property distribution by the provisions of Al-Quran though not altogether replaced the whole system.⁴ Besides the agnatic heirs, the Quranic injunctions allow inheritance rights to husband, wife, parent, females and cognates who had either no such right in pre-Islamic times or inferior right compared to other surviving heirs.⁵ Thus Quranic provisions have eliminated all that was unjust and inequitable. However, these provisions have been further streamlined scientifically and logically into a complete set of inheritance rules by the Muslim jurists especially the jurists of different schools of thought, using the practices of the Prophet Muhammad (God bless him and grant him peace) and the methods of juristic reasoning i.e. *ijtihad*⁶, to cover all the questions that have arisen and that could arise in actuality. The

¹Clifford Edmund Bosworth and others (eds), "Mirath," *Encyclopaedia of Islam* (2nd edn, Brill Academic Publishers 1993).

²Ella Landau Tasserou, 'The Status of Allies in Pre-Islamic and Early Islamic Arabian Society' (2006) 13(1) *Islamic Law and Society* 6-32.

³Noel J Coulson, *Succession in the Muslim Family* (Cambridge University Press 1971) 29.

⁴Coulson (n 3)

⁵Coulson (n 3) 35

⁶*Ijtihad* refers to independent reasoning or interpretation of problems not directly answered by the Quran, Hadith and Ijma. By *ijtihad* the provision of Quran and Sunnah are interpreted rationally and contextually. Though it is argued that the scope of applying this doctrine was closed in the 10th century, the notion of closure is not true. The Privy Council in the case of *Aga Mahomed v Koolsom BeeBee* [1897] 24 I.A. 196 held that the application of *ijtihad* is not practicable in modern time. But this observation of the Privy Council was based on insufficient understanding of the spirit of Quran and Hadith, blocking the road of progressive development of Muslim law.



rulings given by the Sunni jurists differ fundamentally from that of the Shia jurists both in their foundational structure as well as in their implications. However, the most noticeable basic difference is that the Shia jurists put more emphasis on the recognition of female bloodlines than Sunni jurists.⁷ Therefore, some analysts have argued that the reforms introduced by the Shia jurists have better protected and improved the position of the female in society.⁸ This view has also been reflected in the legislation and judicial decisions of many modern Muslim countries.⁹

Bangladesh, like the other modern Muslim countries, has already introduced some progressive changes by state legislation¹⁰ in Islamic Sharia law which have better ensured the protection of women's rights and thus improved their position in society. Also, the higher judiciary has brought some changes by progressive interpretation of the provisions of the Holy Quran. Despite that, some issues need to be addressed by both the state authority and the judiciary. One such issue is the entitlement of a daughter in competition with the collaterals. The majority of Muslims in Bangladesh who follow Sunni schools of thought allow the collaterals to inherit with daughters when the deceased is survived by daughters only.¹¹ However, in the present-day situation, most of the parents having only daughters desire their daughters to inherit the full share of the property excluding the

⁷Coulson (n 3)

⁸Mark Cammack, 'Inching toward equality: Recent developments in Indonesian inheritance law' (1999) 5(1) Indonesian Law and Administration Review 19.

⁹Alamgir Muhammad Serajuddin, *Shari'a law and society tradition and change in the Indian subcontinent* (Asiatic Society of Bangladesh 1999); Alamgir Muhammad Serajuddin, *Muslim Family Law, Secular Courts and Muslim Women of South Asia, a study in judicial activism* (Oxford University Press 2011) 110; Mohiuddin Khaled and Ridwanul Hoque, 'Right to post-divorce maintenance in Muslim Law' (1999) VI Chittagong University Journal of Law 23.

¹⁰Bangladesh has already enacted the Muslim Personal Law (Shariat) Application Act, 1937, the Dissolution of Muslim Marriages Act, 1939, the Muslim Family Laws Ordinance, 1961, the Muslim Marriages and Divorces (Registration) Act, 1974 and The Family Courts Ordinance, 1985. All these Acts have brought changes in matters like marriage, dower, divorce, and so on to improve women position in the society and to provide better protection to their rights. But little change has been brought in succession law. See for details; *Serajuddin* (n 9).

¹¹Begum Asma Siddiqua, 'Reviewing the Interpretation of the Inheritance Law with Special Reference of Kalala' (2007) 4(3) Rajshahi University Law Journal 26.



collaterals. This issue has recently been addressed by the Law Commission of Bangladesh¹² in its report¹³ published on 2 February 2012 in which the commission suggested to increase daughter's share in sonless deceased's property ignoring the entitlement of the collaterals though there are both criticism and appreciation of this report.

2. Objectives

In this paper, the author primarily reviews the possibility of increasing the daughter's share in the sonless deceased's property. To this end, the author at first tries to figure out the actual position of the daughter while inheriting with the collaterals considering the standpoint of both Sunni and Shia schools of thought. At the same time, the author has thoroughly reviewed verse 176 of Surah-an-Nisa relating to collaterals inheritance rights with daughters, views of the Sunni and Shia schools of thought in this perspective, and reformations brought in by the modern state. Finally, the author, after interpreting the provisions of the Al-Quran in light of the modern-day social-cultural context, suggests the application of the doctrine of *takhayyur*¹⁴ and the introduction of the provisions of a mandatory gift for the possible increase of the daughter's share in sonless deceased's property.

3. Methodology

This paper is qualitative. The descriptive analysis method is used to analyze the collected information to achieve the objective of the study. As a primary source, the relevant verses of the Holy Quran and Sunnah of the Prophet Muhammad (God bless him and grant him peace) are referred to in this paper. At the same

¹²Here in after refers to as the commission.

¹³Law Commission, *Recommendation of the Law Commission for Possible Increase of Daughter's Share in the Succession of Parents' Property in Absence of Son* (Law Com No 113 2012). Available at <http://www.lawcommissionbangladesh.org/reports.htm>, last visited on 19 October 2019.

¹⁴Takhayyur literally means choosing or selecting. In Sharia law, it refers to the practice of searching for precedents to follow from different schools of jurisprudence as well as the opinions of Islamic scholars. This device is used where there is a conflict of evidence or conflicting fatawa in a particular case. In that case the jurists can favour one over another for solving the case. This device has already been used by many Muslim counties to solve many cases relating to family matters. See for details, *Sirajuddin* (n 9) *Sharia Law and Society Tradition*.



time, the author used information for explanation and interpretation from relevant Islamic literature, scholarly articles and books, laws of different countries, reported cases, newspapers, and websites as a secondary source. The author also addressed the report of the Law Commission of Bangladesh on certain arguments.

4. Succession in General under Islamic Sharia

Islamic law of inheritance is a complete doctrine of inheritance. Almighty Allah has left no stone unturned regarding the doctrine of inheritance. The Holy Qur'an provides in detail all the information relating to the administration of the property of the deceased among his surviving heirs. On the part of the Prophet, he is the role model for all Muslims as stated in Qur'an in verse 21 of Surah-al-Azhab where Allah says: "You have an excellent example in the Messenger of God; for anyone who seeks God and the Last Day and remembers God frequently"¹⁵. He paid much attention to teach this mandatory knowledge to his followers until they are fully acquainted with it. The Prophet (God bless him and grant him peace) takes notice of the fact that his followers might neglect the importance of learning the knowledge regarding inheritance. Therefore, he warned Muslims to learn it at all cost so that the number of Islamic scholars endowed with the knowledge of inheritance would not be rare.¹⁶ The divination of Prophet Muhammad (God bless him and grant him peace) has already been reflected in every sphere of Muslim's life as most of the Muslims of present time lack adequate knowledge of *ilm-ul-faraid*¹⁷ as prescribed in the Holy Qur'an. That is why Muslim jurists are repeatedly acknowledging the most famous saying of the prophet that learn the

¹⁵Talal Itani (tr), *The Holy Quran* (1st edn, Clear Quran 2012). <https://www.islamicsupremecouncil.com>.

¹⁶Zakariya Idakwoji Muhammad, 'Administration of Estate and Succession under Islamic Law', *Promoting Judicial Performance Through Innovations and Reforms* (The Administrator of the National Judicial Institute and the Management 2016).

¹⁷The Arabic term *ilm-ul-faraid* literally means knowledge or study of injunctions (concerning inheritance). Coulson said: '*Fard* is the root Arabic term for a duty imposed by divine command, but the word is also used both in the singular and in one of its plural forms, *faraid*, specifically to denote the shares of inheritance allotted to various relatives by the Qur'an. See for details; Muhammad Ekramul Haque, *Islamic Law of Inheritance* (1st edn. London College of Legal Studies 2009) 11-12; Coulson (n 4) 3.



laws of inheritance and teach them to the people for they are one-half of useful knowledge.¹⁸

Sharia law of succession is known as *al-mirath*¹⁹ which provides a detailed methodology of calculating and distributing the property of the deceased to his surviving heirs.²⁰ *Al-mirath* also guides on who inherits and who does not inherit the deceased's property.²¹ Under Islamic Sharia, the property of the deceased is initially distributed among the Quranic heirs who are entitled to the prescribed fractional shares as mentioned in the Holy Quran.²² These Quranic heirs are those surviving heirs of the deceased who had either no inheritance right under pre-Islamic tribal law e.g. daughters, mothers, sisters, spouses, or been excluded in the presence of nearer agnatic male relative e.g. fathers who under pre-Islamic tribal law was excluded in the presence of a son. After satisfying the entitlement of the Quranic heir whatever remains as the residue is distributed among the paternal heirs i.e. *Asaba*, both in the ascendant and descendant degree. They get their share being the nearest male agnatic relatives who were the sole heir under the pre-Islamic tribal law.²³ This group includes, apart from daughter, son's daughter, full sister, and consanguine sister in some anomalous cases, the male agnates of the deceased namely descendants, ascendants, and collaterals.²⁴ If there is residue property but there is no *Asaba*, the share of the Quranic heirs will be increased in

¹⁸Sunan Ibn Majah.

¹⁹ There are almost thirty five verses in the holy Quran that is directly or indirectly connected to the concept of *al-mirath*. See for details; *Muhammad* (n 16).

²⁰Al-Sabuni, *AL-Mawarith fi AL-Shariyyati Fi Dhaul AL-Kitabi Wal Sunna* (2nd edn, Darul Kalam, Beirut 1993).

²¹*Fiqh-Al-Sunnah* (Vol. 3) 498.

²²The Quranic heirs get fixed fractional share from the deceased's property one-half, one-fourth, one-third, one-sixth, one-eighth, two-third. Their entitlement under the provisions of Quran is sometimes made their entitlement from the deceased's property is sometimes made contingent on the existence of other heirs. As for example, the widows get one-fourth where there is no children whereas they receive one-eighth where there is surviving children. Therefore these Quranic heirs are termed in the Holy Qur'an as *ahl-al-faraid* means those heirs who are entitled to fixed share. See for details; *Coulson* (n 3).

²³Ibid.

²⁴Haque (n 17) 39.



proportions to cover the whole property.²⁵ In the rare cases where there exist no heirs from either of these two categories, the property is given to the third category of heir namely distant heirs or uterine heirs. This group is neither necessarily distant nor uterine rather it includes every such heir who is neither a Quranic heir nor an agnatic heir.²⁶ Next, should the previous classes not have consumed the estate in its entirety, come, respectively: certain relationships analogous to adoption; beneficiaries of legatees without the one-third restriction; and, finally, any undistributed or unclaimed share escheats to the public treasury.²⁷

5. Daughter's Share under Islamic Sharia Law

The position of the daughter is very much clear under the Islamic Sharia. The daughter is considered both as a primary heir and as a Quranic heir. As a primary heir, she is never excluded from inheritance, and as a Quranic heir daughter gets a fixed fractional share which has been prescribed in the Holy Quran. The entitlement of a single daughter is one half but more than one daughter equally inherits two-thirds of the deceased's property.²⁸ However, these rules are applicable only when the deceased left behind no son. In the presence of the son, the daughter gets the deceased's property as an agnatic. In that case, daughters share the property with the sons where each son gets double of what each daughter gets.²⁹ On this point, there is no difference of opinion among the Sunni and Shia

²⁵This is technically known as the doctrine of *radd*. The Arabic term *radd* literally means return back where the undistributed property returns to the Quranic heirs in proportion to their original share in the absence of any *asaba*. But this rule is not applicable in case of husband and wife unless he or she is the sole heir. This doctrine has been widely accepted by most of the Companions of the Prophet (God bless him and grant him peace), the Tabiun, Imam Abu Hanifa, Imam Ahmad bin Hanbal as well as the Shi'ites. On the contrary, Zaid bin Thabit opined that where *radd* is applied the residue property will go to the public treasury. This view has been adopted by Imam Malik, Imam Shafi and Ibn Hazm. See for details; *ibid* 148-158.

²⁶Fyzee (n 18) 428.

²⁷Joseph Schacht, *An Introduction to Islamic Law* (Oxford: Clarendon Press 1964) 170.

²⁸Verse 11 of Sura-an-Nisa: God instructs you regarding your children: The male receives the equivalent of the share of two females. If they are daughters, more than two, they get two thirds of what he leaves. If there is only one, she gets one-half. See for details; *Itani* (n 14).

²⁹This is because of the doctrine of *tasib*. *Tasib* literally means to make one *asaba*. This is the process of conversion of a Quranic heir into an *asaba* by another *asaba*. For example daughter is originally a Quranic heir but in this process she is converted into an *asaba* by son. This is why the



schools of thought. But the difference of opinion appears where the daughters share the deceased's property with collaterals. According to Sunni schools of thought, in the absence of a son, a daughter gets half of the property and the brothers of the deceased take the residue half but if there are two or more daughters, they get two-thirds of the property and the residue one-third property goes to the brothers of the deceased.³⁰ But in the presence of son, brothers, and sisters of the deceased, whether full, consanguine, or uterine, will get nothing from the deceased's property. This view was not accepted by the Shia school of thought. According to Imam Jafar al Sadiq of Shia school, daughter like son will get the full property excluding the brothers.³¹ This difference of opinion appears due to different interpretations of verse 176 of the Sura-an-Nisa as regards the meaning of the Arabic word *walad*.

Almighty Allah in verse 176 of Surah-an-Nisa instructs Prophet Muhammad (God bless him and grant him peace), if "they ask you for a ruling, Say, God gives you a ruling concerning the person who has neither parents nor children. If a man dies and leaves no children, and he had a sister, she receives one-half of what he leaves. And he inherits from her if she leaves no children. But if there are two sisters, they receive two-thirds of what he leaves. If the siblings are men and women, the male receives the share of two females. God makes things clear for you, lest you err. God is Aware of everything".³² The literal meaning of the Arabic word *walad* as used in this verse refers to both male and female children. Therefore, the brother and sister of the propositus get property only in absence of any child of any case. But Prophet Muhammad (God bless him and grant him peace) allowed brother to inherit with daughters in Sad's case and sister to inherit with daughter in Ibn Mas'ud case.

doctrine of *tasib* is also termed as doctrine of conversion. According to this doctrine a male heir always gets twice than a female heir. See for details; Haque (n 6) 188.

³⁰Coulson (n 3) 65

³¹Coulson (n 3)

³²Itani (n 15)



Sunni school of thought while interpreting the meaning of the Arabic word *walad* accepted the established practices of the Prophet Muhammad (God bless him and grant him peace) and thus they argues to interpret term *walad* as used in verse 176 of Sura-an-Nisa of the Holy Qur'an to mean either son or agnatic grandson. However, they accepted the term *walad* as it appears elsewhere in the Holy Qur'an to mean any child or agnatic grandchild. On the contrary, Shia schools of thought interpreted the *walad* to mean either male or female child. Therefore, according to Shia's interpretation, the brother or sister of the deceased could inherit only if the deceased dies leaving no child. Thus they completely ignored the decisions of the Prophet Muhammad (God bless him and grant him peace) as given in Sad's case and Ibn Mas'ud's case. They instead rely upon the contradictory principle voiced by the Imam Jafar al Sadiq: "Dust in the teeth of residuary".³³

6. Law Commission's Arguments for Increasing Daughter's Share in Sonless Deceased's Property

The Commission has published a report on 2 February 2012 titled 'Recommendation of the Law Commission for Possible Increase of Daughter's Share in the Succession of Parents' Property in Absence of Son' in which the commission has suggested some way out of this problem.³⁴ Firstly, the commission has recommended applying the doctrine of *ijtihad*, and based on that the commission has attempted to interpret liberally the famous principle on inheritance that 'nearer in kingship excludes the remoter'. Based on the liberal interpretation of this principle the law commission argues that both sons and daughters are nearer in kingship than collaterals. The commission also suggested adopting the literal meaning of the Arabic term *Kalala*, as used in verse 176 of the Sura-an-Nisa, to mean child so that daughters like sons can also exclude collaterals from inheriting the deceased's property. This progressive view has been recognized under the Shia school of thought. According to Shia law, in the absence of a son, both the daughter of a pre-deceased father and the daughter of a

³³Coulson (n 3)

³⁴Commission(n 13)



deceased father shall inherit the property per-stripes.³⁵ Secondly, the commission resorted to the doctrine of *siyasa*³⁶ to justify their opinion though the term *siyasa* was not directly used in the report.³⁷ The commission argues that as the daughter of the pre-deceased father or mother can get a total share of her father or mother from the propositus as per section 4 of the Muslim Family Laws Ordinance, 1961³⁸, so under normal circumstances she shall also inherit the full share of the deceased excluding the collaterals. Finally, the commission has recommended the application of the doctrine of *takhayyur*. Under this doctrine, the commission suggests following the Shia law in this regard which allows all heirs of the same relationship to the deceased, whether male or female, agnatic or non-agnatic, to exclude other heirs and to transmit their entitlement to their heirs.³⁹ Therefore by applying the Shia law daughter's share can be increased in the sonless deceased's property excluding the collaterals. The commission further suggests following the modern inheritance laws of different modern Muslim countries where a daughter's entitlement in competition with collaterals has been increased applying this doctrine.

7. Reforms Adopted by Modern Muslim Countries

In 1963, Iraq has brought an amendment to the Law of Personal Status, 1959 to cover all those provisions which were not in conformity with Islamic Sharia.⁴⁰ By

³⁵Ibid.

³⁶*Siyasa* is actually a procedural device on the basis of which the political authority of an Islamic State enforces new rules of procedure through administrative orders and regulations. The caliphs often issued administrative orders to meet the new situation about which no guidelines were available in Shariah, the most important example of which are the *Siyasa* of the Mamluk sultans of Egypt and the *kanunnamas* of the Ottoman sultans.

³⁷Md. Khaled Miah, 'Increase of Daughter's Share in the Succession of Sonless family: Does it contravene the Spirit of Shariah Law?' (2017) 2(1) BiLD Law Journal 7-34.

³⁸Section 4 of the Muslim Family Laws Ordinance, 1961 provides 'In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time of 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.'

³⁹*Commission* (n 6); *Coulson* (n 7) 108, 133.

⁴⁰James Norman Dalrymple Anderson, 'Recent Reforms in the Islamic Law of Inheritance' (2008) *International and Comparative Law Quarterly*; Miah (n 37).



this amendment, Iraq adopted the Shia law of inheritance regarding the order of priority, which allows female descendants to exclude collaterals.⁴¹ Tunisia also reformed this rule in 1959 by amending Article 143 of the Law of Personal Status of 1956. The relevant portion of the Article reads; “As for the daughter, whether one or many, or the son's daughter, how low so ever, she shall take the residue of the estate by the ‘return’ even in the presence of an agnate in his own right, like a brother or an uncle, or the Public Treasury.”⁴² Thus they resorted to the doctrine of *radd* and allowed daughters and son’s daughters to exclude collateral heirs⁴³. In the late 1980s and early 1990s, Indonesia compiled a document entitled *Kompilasi Hukum Islam* (Compilation of Islamic Laws) in which the Government’s Religion Minister presented a proposal to equalize inheritance between men and women to bring it in line with Indonesian customary law and theoretical arguments of Indonesian scholars. The proposal failed before it was outlined in a formal draft. However, in 1994 the Indonesian Supreme Court in the case of *H. Nur Said bin Amaq Muminah* (1994)⁴⁴, held 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.⁴⁵ Here the court accepted liberal interpretation of verse 176 of Surah-an-Nisa where it was held that the word *walad* as used in this verse referred to both male and female child though it contradicts the traditional concept of Sunni schools of law.⁴⁶ Consequently, a female child similar to a male child could exclude the collaterals from inheriting the deceased’s property.

8. A Critique on the Suggested Solutions

To address the problem, different solutions have been suggested by different prominent scholars, state legislation, and judicial interpretation. All of these are

⁴¹John Louis Esposito, *Islam: The Straight Path* (New York: Oxford University Press 1991)

⁴²Anderson (n 40).

⁴³James Norman Dalrymple Anderson, ‘The Tunisian Law of Personal Status’ (1958) 7(2) *The International and Comparative Law Quarterly* 262–279.

⁴⁴Reg. No. 86 K/AG/1994.

⁴⁵Cammack (n 8).

⁴⁶*Ibid*.



mainly based upon the liberal interpretation of the Arabic word *walad* or *Kalala*. Also, the doctrines of *ijtihad*, *siyasha*, and *takhayyur* have been reported to solve the problem. But these views have both criticism and appreciation.

Between the Sunni and Shia law, the Shia law has allowed the daughters to exclude the collaterals from inheriting the sonless deceased's property. There is no scope to undermine the Shia ruling as Richard Kimber argues that Shia ruling is much closer than Sunni ruling in respect of the Quranic provisions of inheritance.⁴⁷ Hazarian, based on his assumption that male and female blood lines have equal weights, has also accepted the Shia view in this respect.⁴⁸ He argues that the application of the interpretation of Sunni law of the verse relating to collaterals reinforces the patrilineal kinship system of pre-Islamic time which is not desirable from the theological and spiritual perspective of Islam.⁴⁹

The commission in its report suggested the application of the rule 'nearer in kinship excludes the remoter' between two different classes of the heir. But according to orthodox schools of law, this principle is only applicable in respect of the same class of heir but not in respect of different classes of the heir. Therefore, the subjective interpretation of the inheritance rule will create an anomaly in the case of the doctrine of priority. Also, the commission while excluding the brothers from inheriting his deceased's brother property didn't clarify the position of other collaterals. The commission in its report interpreted the word *Kalala* to mean child but the actual meaning of the term *Kalala* is a person having no ascendants or descendants.⁵⁰ By this interpretation, the collaterals of all categories would be excluded from inheriting the property of the deceased.⁵¹ Therefore it is absolutely

⁴⁷Richard Kimber, 'The Quranic law of inheritance' (1998) 5(3) *Islamic Law and Society* 291-325

⁴⁸Hazairin, *Hukum Kewarisan Bilateral Menurut Al-Qur'an dan Hadith* (Jakarta: Tintamas1982); *Cammack* (n 8).

⁴⁹Md. Maimul Ahsan Khan, 'Women's Rights in Islamic Legal System Vis-à-Vis Conventional System' (2007) 4(11) *Rajshahi University Law Journal* 154.

⁵⁰David Pearl and Warner Menski, *Muslim Family Law* (3rdedn, Sweet and Maxwell, London 1998) 453.

⁵¹Tanzim Alam, Review of Inheritance in Muslim Law, *The Daily Star*, 1 July, 2012 p.12.



against the spirit of *ijtihad*, based on equity, justice, and good consequence.⁵² Also the legislations of modern Muslim states like Iraq, Tunisia didn't clarify the position of other collaterals especially the female while increasing the daughter's share.

9. Concluding Remarks and Suggestions

To conclude, it can be said that increasing the daughter's share in her deceased's property excluding the collaterals may do justice but justice based on the literal interpretation of the Quran without considering the Sunnah of the Prophet Muhammad (God bless him and grant him peace) is errant. In an observation by the Peshawar High Court, it was reported that if we confine ourselves to the text of the Quran alone without considering the Sunnah of the Prophet, we are violating the rulings of the Quran itself.⁵³ Now to solve the present problem, we can resort to either three of the following solutions or a combination of these. Firstly, we can adopt the literal interpretation of the Arabic word *Kalala* rather than the literal interpretation of the Arabic word *walad* which according to most of the jurists means a person having no ascendants or descendants. The daughter not being a descendant can exclude the collaterals and get the full share in the sonless deceased's property. Secondly, based on the doctrine of *takhayyur*, we can use the practice of the Shia law where daughters in competition with the collaterals get the full share in the sonless deceased's property. Finally, most of the parents in present socio-cultural reality, desire their daughters to get all the property in exclusion of the collaterals. Therefore they gift the property in favour of their daughters. Considering the fact, the state can make provisions for a mandatory gift by state legislation whereby the daughters will get the whole property excluding the collaterals. This paper argues that the state authority and the judiciary may adopt these progressive views to increase the daughter's entitlement to the sonless deceased's property.

⁵²Shahjahan Mondol and Reba Mondol, Daughter's Share in Succession: Our Reply, The Daily Star, 7 July, 2012 p.12.

⁵³PLD 1980 Peshawara 47 (Shariat Bench) at 66.