
The Status of Daughter in Muslim Law of Succession: Bangladesh Perspective

Most. Shamsun Nahar¹
Hasibuzzaman²

Abstract

Islam has given daughter a strong status in inheritance. Daughter is one of the primary heirs of the *propositus*. There are six primary heirs who are never excluded from succession by any other relatives of the *propositus* and Daughter is one of them. Daughter takes property as a sharer in inheritance in the absence of son and as a residuary in the presence of son. The aim of this paper is to improve the status of daughter in Bangladesh in case of muslim law of succession. This paper is qualitative in nature. Books, journals, articles, case law and statutory laws have been reviewed to formulate the work. This paper tries to improve the status of Muslim daughters in the light of amendments made in some Middle Eastern countries in the area of traditional Muslim Law of Succession. This paper further tries to focus on the change that has been made in Bangladesh by 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. Finding of this paper is that the Muslim daughters are deprived of their entitled share of inheritance by their male members of family in many aspects. Finally this paper makes some recommendations to improve the status of daughters in Bangladesh as regards to their entitlement in Muslim of succession.

Keywords: Daughter, Inheritance, *Propositus*, Collaterals, Eclecticism.

Introduction

In Pre-islamic Arabia, Daughters were deprived from their parents' property after her parents' death. They had no share in the property of their parents. But Islam has given daughter respectable status in all cases from her status in the society to her status in the property. After revolution of Islam, status of

¹ The author is a Lecturer at Department of Law of Bangladesh University (BU), Dhaka, Bangladesh. She has started her teaching career as Lecturer at Department of Law of Exim Bank Agricultural University Bangladesh (EBAUB). She completed her LL.B. (Hon's) and LL.M. degree from the University of Rajshahi. Her email address is nsheuly@gmail.com

² The author is a Lecturer at Department of Law of World University of Bangladesh (WUB), Dhaka, Bangladesh. He completed his LL.B. (Hon's) and LL.M. degree from the University of Rajshahi. His email address is hasibuzzamansaurav79@gmail.com

daughter has been totally changed. Daughter holds a strong status in the muslim law of succession. Daughter is one of the six primary heirs of the *propositus* who are never excluded from succession by any other relatives of the *propositus*. Other 5 primary heirs are the husband, wife, father, mother and son. So it is clear that Islam has given daughter a strong status in the succession and daughter cannot be excluded by any other relatives and daughter cannot also exclude any other relatives except uterine brothers and sisters. Daughter takes property as a sharer in inheritance in the absence of son and as a residuary in the presence of son. When daughter takes as a sharer one daughter gets 1/2 and two or more daughters get 2/3 of the property of the *propositus*. When daughter takes as a residuary heir in the presence of son *ta'sib* rule is applicable. When a son is present the children inherit as residuary heirs, sharing the estate or the residue thereof, in the proportion of two parts to a son and one part to a daughter. This is known as principle of *tasib*. Daughter can not exclude any other relatives except uterine brothers and sisters though daughter is a primary heir and so close in relation to the *propositus* and the *tasib* rule applicable in case of daughter is the burning question now. Some Muslim countries like Tunisia, Iraq, Turkey etc. amended the traditional Muslim Law of Succession to improve the status of daughter.

The techniques of data collection followed in this research are both primary and secondary in nature. As primary source women from different classes were taken interview. The research also used materials from secondary sources like Review of related literature and examination of important principle document, law Book, law reports, PLD etc. However, the modern technology like internet for collecting data has also been used for conducting this research.

The objectives of the study are to present the status of daughter in the traditional Muslim Law of Succession; to sort out the lacking or problems of traditional sharia law in case of daughter's share in inheritance in the contemporary world; to summarize the amendment which has been made in Muslim countries in traditional sharia law to improve the status of daughter in present context; to determine the status of daughter in Bangladesh in case of Muslim Law of Succession; to compare the status of daughter between Bangladesh and Muslim countries in case of inheritance; to determine whether it is necessary to amend the status of daughter in Bangladesh in case of Succession.

Status of Daughter in Traditional Muslim Law

Daughter in the Muslim Law of Succession (Both Sunni and Shia Law)

For the purpose of inheritance under Shariah law only legitimate children are entitled to inherit. Adopted children and fostered children are not entitled to inherit under Shariah. An illegitimate child cannot be legitimised. In Islamic

law conception must take place after marriage for a child to be legitimate. This is contrary to English Law where conception may occur before marriage and the child is still considered legitimate providing it is born after marriage. The minimum gestation period is Six lunar months. A child born within six months of a marriage is illegitimate unless acknowledged by the father. The maximum gestation period allowable is two lunar years according to the Hanafi Fiqh and four lunar years according to the Shafi and Hanbali Fiqh. The Maliki Fiqh recognises gestation period of five to seven years.³

Status of Daughter in Sunni Law

In Sunni Law of succession, daughter has some specific features. These are given below –

(a) Daughter is a primary heir

In Sunni law daughter is a primary heir. For the purposes of priority in succession, members of the inner family may be marshalled into three groups i.e. primary heirs, substitute heirs and secondary heirs. Primary heirs are those heirs who are never excluded from succession by any other relatives of the *propositus*. There are six primary heirs in number in Sunni law and they are Husband, Wife, Son, Daughter, Father and Mother.

(b) Daughter as a Qur'anic heir can't be a excluder

In Sunni law, Qur'anic heir does not exclude other relatives of the inner family. Daughter is a Qur'anic heir and like other Qur'anic heirs, a daughter can not also exclude either any ascendant or any agnatic collateral relatives, male or female of the *propositus*. The only exception to the rule is the exclusion of uterine brothers and sisters by the daughter or granddaughter. There is no exception at all to the rule that a Qur'anic heir including daughter can not exclude any male agnate in Sunni law but in Shia law daughter can exclude male agnate.

(c) Son's Daughter is a substitute heir of daughter

In Sunni law there are four substitute heirs who takes the place of four primary heirs in the absence of their respective primary heirs. The agnatic granddaughter, how low soever, is one of the four substitute heirs for the daughter. Rules relating to portion of son's daughter in muslim law of succession are given below:

- I. The granddaughter through son acts like daughter in the absence of any daughter as heirs.

³ Dr. Abid Hussain, The Islamic Laws of Inheritance, 1st ed. (2005) p.178.

- II. In spite of being substitute heirs of daughter, son's daughter is not totally excluded by daughter but actually son's daughter is totally excluded by son.

in the absence of any daughter, the agnatic granddaughter inherits in a similar manner to daughter –

- a) SD may inherit as a sharer or as a residuary.
 - b) SD, when inherits as sharer, inherits on a per capita basis. This means that the total share allocated to the son's daughter is divided equally amongst them irrespective of the number of son through whom they are related to the deceased.
 - c) in the presence of Son's son, Son's Daughter converted into a residuary heir.
- III. In the presence of only one daughter, SD does not become totally excluded, Daughter gets $\frac{1}{2}$ and son's daughter gets $\frac{1}{6}$ of the property.
- IV. Rules of exclusion of son's daughter
- a) SD is totally excluded by son.
 - b) SD is totally excluded by two or more daughters but where there is also son's son, SD is converted into a residuary heir.
- V. Rules of entitlement of son's daughter
- a) SD inherits as a sharer unless converted into a residuary heir by son's son
 - b) In the absence of any daughter _

one SD inherits a fixed share of $\frac{1}{2}$

Two or more SD together inherits a fixed share of $\frac{2}{3}$

- c) The maximum collective share allotted to the daughters and son's daughter h.l.s. inheriting as a sharer is $\frac{2}{3}$. SD (one or more) inherit a fixed $\frac{1}{6}$ if there is only one daughter who inherits $\frac{1}{2}$, this makes a total of $\frac{2}{3}$. This concept of daughters and son's daughters inheriting a collective share (similarly with full sisters and consanguine sisters) rather than individual separate shares may become important in situations where the right of pre-emption (Shuf'ah) is exercised by the co-heir.⁴

(d) Daughter with Agnatic Sisters

- In Sunni Law, in the presence of a daughter or agnatic granddaughter, and in the absence of brothers who would convert them into

⁴ *Ibid*, p.234.

residuaries, Full Sisters (FS) or Consanguine Sisters(CS) inherit as ‘Accompanying Residuaries’(AR) or *asaba maa ghayriha*.⁵

- Sunni Jurisprudance formally rests this doctrine upon the authority of a precedent of the prophet who, according to the report of Ibn Mas’ud, resolved a competition between a daughter, a granddaughter and a sister by giving the daughter one-half, the granddaughter one-sixth and the sister the residue of one-third.

(e) Daughter in competition with collaterals

- In Sunni Law, Daughter can’t exclude collaterals and in the presence of Daughter collaterals get share in the property of the *propositus*. Daughter can totally exclude uterine brothers and sisters but they can’t exclude agnatic collaterals. In the presence of daughter, where there are only agnatic sisters i. e. Full Sister(FS) or Consanguine Sister (CS), and no brothers, FS or CS becomes ‘Accompanying Residuaries’(AR). In the presence of daughter, FS or CS becomes residuary in the presence respectively of Full Brother (FB) or Consanguine Brother (CB). So in Sunni Law Daughter can’t exclude agnatic collaterals.⁶

Status of Daughter in Shia Law

In Shia Law of succession, daughter has some specific features. These are given below –

(a) Daughter in Class I

Perhaps the most striking and significant divergence between the Sunni and the Shia legal systems as a whole lies in their respective laws of inheritance. The principles of inheritance of Shia law are totally different from Sunni law.⁷ The heirs are divided into three two groups:⁸

- (a) Heirs by consanguinity (*nasab*) that is all blood relations and
- (b) Heir is by marriage (*zowjeeat*) that is the husband or wife.

All blood relatives are divided into three classes as follows:-⁹

Class I: Parents and lineal descendants how low soever.

⁵ N. J. COULSON, Succession in the Muslim Family (Cambridge, 1971) p. 71.

⁶ D.F. Mulla, Principles of Muslim Law.

⁷ B.R. verma, Mohammedan Law, 5th ed. 1978, p. 400.

⁸ *Ibid*, p. 401.

⁹ N. J. COULSON, Succession in the Muslim Family (Cambridge, 1971) p. 109.

Class II: Grandparents how high soever, brothers and sisters and their issue how low soever.

Class III: Uncles and aunts, paternal and maternal and their issue how low soever, followed by great Uncles and aunts and their issue how low soever.

In Shia Law, Daughter's status is in Class I.

(b) Daughter can be excluder

In Shia Law, any relative of Class I completely excludes from succession any relative of Class II who in turn excludes any relative of Class III. In Shia Law, Daughter's Status is in Class I and so Daughter can exclude any blood relative of Class I and Class III. A daughter, in Shia law just as a son, will de jure exclude any grandchild, male or female, agnatic or non-agnatic and any grandchild will in turn exclude any lower grandchild.¹⁰

For example:-

H- $\frac{1}{4}$

D- $\frac{1}{2} + \frac{1}{4}$ (by radd) = $\frac{3}{4}$

CB- excluded by D

CS- excluded by D

H- $\frac{1}{4}$

M- $\frac{1}{6}$ by radd $\frac{1}{5}$ of $\frac{3}{4}$ = $\frac{3}{20}$

2D- $\frac{2}{3}$ by radd $\frac{4}{5}$ of $\frac{3}{4}$ = $\frac{12}{20}$

FB- excluded by 2D

FS- excluded by 2D

(c) No substitute heir of Daughter

In Sunni law, Son's Daughter is the substitute heir of Daughter. Where there is no son and daughter, SD is entitled to take the property in the same way as that of Daughter. But in Shia law, there is no idea of substitute heir. In the absence of any children of the *propositus*, the grandchildren whether of son or daughter get share in the property of the *propositus*. In the absence of son or daughter of the *propositus*, children of the daughter get the same portion of property as their mother get.¹¹

(d) Special Rule of awl

In Shia law, in the event of the estate being over-subscribed the burden of necessary reduction should fall exclusively upon the portions of daughters or full sisters or consanguine sisters.¹²

For example –

Husband- $\frac{1}{4}$

¹⁰ N. J. COULSON, Succession in the Muslim Family (Cambridge, 1971) p. 109.

¹¹ *Ibid*, p. 111.

¹² *Ibid*, p. 114.

Father- 1/6
 Mother- 1/6
 2Daughter- 2/3 by awl 5/12

(e) Daughter with father

In Shia law in the presence of daughter, Father does not become residuary. In Sunni law, in the presence of daughter, father at first take his Qur'anic share 1/6 and if there remains any residue after satisfaction of the Qur'anic heir, the father gets the residue as a residuary heir.

But in Shia law, in the presence of daughter, father does not become residuary, but the residue of the property will be distributed among the Qur'anic heirs by radd.¹³

For example –

Father- 1/6 by radd 1/5	Father- 1/6 + 1/6(residuary)= 1/3
Mother- 1/6 by radd 1/5	Mother- 1/6
Daughter- 1/2 by radd 3/5	Daughter- 1/2
Shia law	Sunni law

Amendment in Traditional Law in Case of Daughter's Succession

Most Islamic countries of the world follow traditional Sunni or Shia law. For example, Bahrain, Qatar, Syria, Oman, Iran etc. follows traditional law of inheritance. But some Muslim countries like Iraq, Turkey, Indonesia, and Tunisia have taken revolutionary step to improve the status of daughter in case of succession. The steps taken by these countries are given shortly below so that it becomes helpful for our country to take steps to improve the status of daughter in succession in our country.

Iraq

In Iraq after the amendment made by the Laws No. 11/1963 adding the Shia order of priorities of succession in Chapter 9, daughter status in succession has been totally changed. Under this law any lineal descendant can totally excludes all collaterals. Revolutionary though this step might appear from the general standpoint of Sunni Islam, it is not so in the particular context of Iraq, where approximately half of the population are Shias.

However, the Iraqi Law confines itself to laying down the bare order of priorities by class under the Shia system and then enacts that: "With due regard to the foregoing, the distribution to the heirs by relationship of their

¹³ D.F. Mulla, Principles of Muslim Law.

entitlement and their shares shall be according to the rules of the Shari'a which were followed before the enactment of the Law of Personal Status." Apparently the courts have interpreted this provision to mean that the detailed rules of Shia law apply only to cases of succession concerning Shias, and that as far as Hanafi cases are concerned the traditional Hanafi principles of distribution still apply, subject only to the statutory order of priorities.¹⁴

It is apparent that this interpretation of the Law will result in considerable divergence as regards the class of of lineal descendants. Since the Shia system applies the strict rule of priority by degree within this class, a daughter will totally exclude any grandson or granddaughter in a Shia case. But in a Hanafi case an agnatic granddaughter will take a basic Qur'anic portion of one one-sixth along with a daughter, and an agnatic grandson will take the residue of the estate after the daughter has taken her Qur'anic portion of one-half. Again in a Shia case of a competition between a father, mother and daughter, the distribution will be: father one-fifth, mother one-fifth, daughter three-fifth (all taking Qur'anic portions increased by radd). But the same case in a Hanafi court will result in the father being allotted one-third (one-sixth as a Qur'anic portion and one-sixth as the agnatic residuary), the mother one-sixth and the daughter one-half. Finally in a Shia case, a daughter child will take one-third when in competition with a son's child who will take two-thirds (according to the Shia principles of representational entitlement), but in a Hanafi case the son's child will totally exclude the daughter's child.¹⁵

Turky

Book III of the *Turkish Civil Code* deals with the law of inheritance. It introduces an entirely novel scheme of intestate succession adopted *in toto* from the *Civil Code* of Switzerland. The *Hanafi* law of succession followed in Turkey till 1926 stands replaced by this new scheme.

One of the most prominent features of the newly introduced law, which makes it wholly detached from the corresponding provisions of Islamic law, is the principle of equality of males and females with regard to the right to inheritance. The *Qur'an* provides that degrees of proximity to the *propositus* being equal a male shall take a share double that of a female.¹⁶ There has been a consensus of Juristic opinion in the world of Islam on the fundamental place of this *Qur'anic* rule in the scheme of inheritance; there being no differences in the matter between the various schools of law.

Book III of the *Turkish Civil Code* now provides in general terms that children of the deceased shall inherit equally.¹⁷ The very foundations of the Islamic and

¹⁴ N. J. COULSON, *Succession in the Muslim Family* (Cambridge, 1971) p. 141.

¹⁵ *Ibid.*

¹⁶ Al-Qur'an, Surah An-Nisa: 11.

¹⁷ Article 439 of *Turkish Civil Code*.

the existing Turkish laws of succession being diametrically opposed to each other, no fruitful comparison between the two systems can be made.¹⁸

Indonesia

The Indonesian Supreme Court in H. Nur Said bin Amaq Mu'minah, (reg. No. 86 K/AG/1994) has adopted the liberal interpretation of verse 176 of "Surah al-Nisa" of Ai-Quran. In this verse it has been held that child will exclude the collaterals from succession but nowhere has it been clearly stated that here child means only male child. So the Indonesian Supreme Court has adopted the interpretation that here child means either a male or female child. The traditional concept of Sunni law was different in this case. There the Arabic word "Al-Khalala" was interpreted to mean only the male child. Consequently the male child would exclude his uncle from his father's property whereas the female child would not. However, the Supreme Court of Indonesia asserted 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."¹⁹

Tunisia

In Tunisia before 1959, the law which was generally applicable was the Maliki Law, which does not recognize radd. Though Maliki law does not recognize Radd, it was not altogether unknown in Tunisia because since Ottoman times Hanafi law had been applied through the official courts to a fraction of the urban population which professed allegiance to this school. In Tunisia, reform in case of daughter's succession was formally effected under the doctrine of Radd through the Law of 1959. The relevant provision 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 radd even in the presence of a male agnate, like a brother or an uncle or the Public Treasury." The proper interpretation of this provision appears to be that it is the daughter or agnatic granddaughter alone who is entitled to take the surplus of the estate by radd when she is in competition with other Qur'anic heirs. Consequently, therefore, the daughter or granddaughter virtually becomes a residuary heir in her own right, not only excluding all collaterals from inheritance but also restricting the mother or grandmother to their basic Qur'anic portions of one-sixth. It seems reasonably certain, however, that the reform was not intended to prejudice the residual rights of succession of male agnate ascendants as distinct from collaterals. Since the father, or agnatic grandfather, in competition with a daughter is entitled to take both a Qur'anic portion of one-sixth and any surplus after the satisfaction of other Qur'anic portions as residuary heir, there is no occasion for radd and the daughter will accordingly

¹⁸ Tahir Mahmmod, *Family Law Reform in the Muslim World* p. 25.

¹⁹ H. Nur Said bin Amaq Mu'minah, (reg. No. 86 K/AG/1994).

be restricted to her basic Qur'anic entitlement of one-half. From the way in which the reform was effected it is certain that the Tunisian Law is not the result of any conscious preference for Shia principle. Nor was any express attempt made to justify the daughter's priority, as indeed it might well have been, by reference to the Qur'anic verse which states that a brother or sister is an heir only "if the deceased dies without a child".²⁰

Status of daughter in Bangladesh

Though Bangladesh is a secular kind of state, persons of this area are governed mainly by their own personal laws as regards to their family matters i.e. inheritance, divorce, marriage, dower etc. It is matter of great concern that in case of inheritance right, women face discrimination by the male heirs of *propositus* and get unequal and smaller portion of shares than the male. Most of the people living here are Muslims and governed by hanafi law of Sunni school. No amendment has yet been made in traditional Sunni law till now to improve the status of daughter in Bangladesh.

Practical Scenerio of Daughter's Right of Inheritance in Bangladesh

It is necessary to meet daughters to understand the practical scenerio of daughter's right of succession in Bangladesh. We have taken interview of 22 daughters to know about practical status of daughter's right in Bangladesh. A table on the interview is given below-

Table of the interview

Description of the interview	Form of Distribution (written or oral)	Time of Distribution	Amount of Property Entitled	Other Information
Interview No. 1	No Distribution has been made	Property has been cheated by local <i>adhians</i>	Nothing	The daughter has knowledge about succession but has not been able to recover her property from local <i>adhians</i> .
Interview No. 2	Oral Distribution	After 6 months of the death of the <i>propositus</i>	1.5 <i>bigha dhani</i> land and 2 <i>katha vita</i> land	The daughter has knowledge about daughter's right but has no idea how the distribution has been made.

²⁰ N. J. COULSON, Succession in the Muslim Family (Cambridge, 1971) p. 142.

Interview No. 3	Oral Distribution	After 6 months of the death of the <i>propositus</i>	1.5 <i>bigha dhani</i> land and 2 <i>katha vita</i> land	The daughter has knowledge about daughter's right but has no idea how the distribution has been made.
Interview No. 4	Written Distribution	Before the death of the <i>propositus</i>	1.5 <i>katha vita</i> land	The <i>propositus</i> had himself made the distribution in his lifetime and the daughter has knowledge about distribution.
Interview No. 5	Written Distribution	Before the death of the <i>propositus</i>	1.5 <i>katha vita</i> land	The <i>propositus</i> had himself made the distribution in his lifetime and the daughter has knowledge about distribution.
Interview No. 6	Written Distribution	Before the death of the <i>propositus</i>	1.5 <i>katha vita</i> land	The <i>propositus</i> had himself made the distribution in his lifetime and the daughter has knowledge about distribution.
Interview No. 7	Written Distribution	After 1 year of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land and 1 <i>katha vita</i> land	The daughter has knowledge about distribution and <i>tasib</i> rule has been applied in the distribution under Sunni law.
Interview No. 8	Written Distribution	After 10 years of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter has knowledge about daughter's right of succession and she has attained her right after a long time.
Interview No. 9	Oral Distribution	After 6 months of the death of the <i>propositus</i>	1.5 <i>bigha dhani</i> land and 2 <i>katha vita</i> land	The daughter has knowledge about daughter's right but has no idea how the distribution has been made.

Interview No. 10	Written Distribution	After 6 years of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter has knowledge about daughter's right of succession and her brothers has made the distribution after the death of the <i>propositus</i> .
Interview No. 11	Oral Distribution	After 1 year of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter with her two other sisters are the only children of the <i>propositus</i> and the collaterals of the <i>propositus</i> has got share in the property and the daughters has not been able to exclude the collaterals.
Interview No. 12	Oral Distribution	After 4 years of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter has knowledge about distribution and tasib rule has been applied in the distribution under Sunni law.
Interview No. 13	Written Distribution	After 1 year of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land and 1 <i>katha vita</i> land	The daughter has knowledge about distribution and tasib rule has been applied in the distribution under Sunni law.
Interview No. 14	Oral Distribution	After 1 year of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter with her two other sisters are the only children of the <i>propositus</i> and the collaterals of the <i>propositus</i> has got share in the property and the daughters has not been able to exclude the collaterals.
Interview	Written	After 1 year	1 <i>bigha</i>	The daughter has

No. 15	Distribution	of the death of the <i>propositus</i>	<i>dhani</i> land and 1 <i>katha</i> <i>vita</i> land	knowledge about distribution and <i>tasib</i> rule has been applied in the distribution under Sunni law
Interview No. 16	Oral Distribution	After 1 year of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter with her two other sisters are the only children of the <i>propositus</i> and the collaterals of the <i>propositus</i> has got share in the property and the daughters has not been able to exclude the collaterals.
Interview No. 17	Written Distribution	After 1 month of the death of the <i>propositus</i>	Nothing (Brothers have deprived her)	The daughter has knowledge about succession but has not been able to recover her property.
Interview No. 18	Written Distribution	After 10 years of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter has knowledge about daughter's right of succession and she has attained her right after a long time.
Interview No. 19	Written Distribution	After 6 years of the death of the <i>propositus</i>	2 <i>bigha dhani</i> land	The daughter has knowledge about daughter's right of succession and her brothers has made the distribution after the death of the <i>propositus</i> .
Interview No. 20	Written Distribution	After 10 years of the death of the <i>propositus</i>	1 <i>bigha dhani</i> land	The daughter has knowledge about daughter's right of succession and she has attained her right after a long time.
Interview No. 21	Written Distribution	After 6 years of the death	2 <i>bigha dhani</i> land	The daughter has knowledge about

		of the <i>propositus</i>		daughter's right of succession and her brothers has made the distribution after the death of the <i>propositus</i> .
Interview No. 22	Written Distribution	After 10 years of the death of the <i>propositus</i>	1 <i>bigha</i> <i>dhani</i> land	The daughter has knowledge about daughter's right of succession and she has attained her right after a long time.

From the above table we see that most of the daughters of Bangladesh get property from their father after the death of the *propositus*. In only some cases the *propositus* distribute his/her property in his lifetime orally or in written. In maximum cases distribution takes place between 1 to 6 years after the death of the *propositus*. The daughters are aware of their right in the property of their father and mother but in most cases they have no knowledge to what extent they are entitled to inherit. In maximum cases, male members of the family like son or brothers of the *propositus* take the responsibility to distribute the property of the *propositus* among the heirs and the female members like daughter have no opinion in the distribution. So the male members who take the responsibility of distribution, distribute the property according to their own whim. So daughters accept the portion which has been given to them after distribution by the male members without any excuse even in some cases they do not know what portion of share has been given to them. In some cases daughters relinquished their portion willingly in favour of their brothers.

Rationales for increasing Daughter's Share in the absence of Son

1. An important amendment has been made in the traditional Sunni Law of the then Pakistan by Section 4 of the Muslim Family Law Ordinance, 1961. By this amendment the status of the orphaned children has been totally changed in the property of their grandparents. Before this amendment under the traditional Sunni Law the Orphaned child could not inherit in the property of their grandparents in the presence of son and daughter. But after this amendment now the children as the representatives of the pre-deceased shall inherit his or her share from the grandfather on the basis of the principle of representation.

Now the very important point to be noted here that if the daughter of the predeceased father can inherit the full share of her father from her grandfather, why she will not fully inherit her father's property after latter's death.

2. Islam is the comprehensive code of life and we get the solutions of all problems from Quran and Sunnah. In the lifetime of our great Prophet, if any problems arise our great Prophet gave the solutions of the problems. After the death of the prophet (sm) two more sources of Muslim law i.e. Ijma and Qiyas emerged to deal with the issues not clearly covered by Qur'an and Sunnah. There are many examples of changes in the Muslim law on the basis of Ijma and Qiyas to adopt the law in our present life. So we can get the solutions of our new arising problems from Ijma and Qiyas.
3. Increase in daughter's share on the basis of Ijtihad: The word 'Ijtihad' is an Arabic term which originates from 'Zahad' which literally means 'striving', 'exerting', 'trying utmost' in any activity which involves a measure of hardship. Juridically, Ijtihad mainly consists not of physical, but of intellectual exertion on the part of the jurists or lawyers. So Ijtihad means the all-out efforts made by a jurist in order to infer with a degree of probability, the rules of Shariah from their detailed evidence in the sources. In other words, Ijtihad is the capacity for making deductions in matters of law in cases to which no express text or a rule already determined by Ijma.

The improvement in the law of inheritance can be possible under this device. One of the basic principles of Muslim law of inheritance is "a nearer in kinship excludes the remoter from inheritance". This basic principle can be interpreted liberally to justify the increase of share of daughter.

4. Verse 176 of Surah Al-Nisa may be interpreted widely to increase the daughter's share in the Muslim Law of Succession. In this verse it has been held that child will exclude the collaterals. The traditional Sunni law interprets this child to mean only male child. Consequently the male child would exclude collaterals from property of the *propositus* whereas the female child would not exclude the collaterals. The liberal meaning of the Arabic word "Al-Khalala" (meaning child) can be used to justify the increase of share of daughter. An example from the Indonesian Apex Court can be taken in this respect. Indonesian Supreme Court interprets that child means either male or female child.
5. Increase in daughter's share on the basis of Eclecticism: Eclecticism which is known as *takhayyur* is the method of searching for precedents, not only in the four orthodox schools but even in the opinions of individual jurists to meet the need of modern life.²¹ Through this eclecticism Islamic jurists are allowed to follow one school in one particular issue and to follow other schools in other issues if the situation requires such application. Many Muslim countries have adopted the

²¹ <http://www.lc.gov.bd/reports/113.doc>

principle of takhayyur in various matters. For example, Saudi Arabia has legalized the grounds of dissolution of Muslim marriage stated by Maliki law though they follow Hanbali Doctrine. In our country on the basis of takhayyur The Dissolution of Muslim Marriage Act, 1939, has given the right to divorce to the women on the grounds of husband's torture and desertion for a period of four or more years.

Though both the Sunni and Shia school adopted the same principles of succession laid down in Qur'an but the both school has interpreted it differently. Under Shia law all heirs of the same relationship to the deceased, whether male or female, agnatic or non-agnatic, have the same ability to exclude other heirs and to transmit their entitlement to their own heirs.²² There is no reason to undermine the Shia version. Richard Kimber after a thorough research observes that Shia law is much closer than Sunni law in respect of rules laid down in Qur'an regarding inheritance.²³ Therefore there is no harm if the interpretation of Shia law is taken in increasing daughter's share in absence of son.²⁴

Judicial precedence

In Federation of *Pakistan v. Mst. Farishta*, the children of pre-deceased daughter, who herself died in 1942, were given inheritance from the legacy of their grandfather. Although, in this case, there is a reference of the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962, but the children of predeceased daughters have been held entitled to the inheritance of their grandparents on the principle of section 4 of the Muslim Family Laws Ordinance, 1961.²⁵

Recommendation to Increase of Daughter's Share in the Succession of Parents' Property

So the status of orphaned child has already been improved by reforming traditional law to meet up the necessities of modern times. It is high time we should take some steps to improve the status of daughter in inheritance by reforming the traditional law to cope up with the modern times.

- ❖ It is suggested that a new Act should be enacted with a provision following The Iraqi law of 1963, The Tunisian legislation of 1959 to enable a daughter or a son's daughter to exclude collateral male agnates form inheritance in the absence of son of *propositus*.

²² NJ Coulson, *Succession in the Muslim family*, Cambridge 1971, pp. 108, 133.

²³ Richard Kimber, The Qur'anic law of inheritance, *Islamic Law and Society*, Vol.5, No.3.

²⁴ <http://www.lc.gov.bd/reports/113.doc>

²⁵ PLD 1981 Supreme Court 120.

- ❖ It is further suggested that a new Act can be enacted given male and female child equal status by providing that the children of the deceased shall inherit equally as it is made by the Turkish Civil Code.
- ❖ We can take examples of different Muslim countries and take such proper steps which will be fruitful in our country to improve the status of daughter in succession.

Conclusion

From the above discussion, we can understand that it is very important for our present situation to take steps to improve the status of daughter in succession as early as possible. So the Parliament can add a new Section in the Muslim Family Law Ordinance, 1961 effecting the recommendation of the Law Commission by restricting the right of collaterals to inherit in the property of the *propositus* in the presence of daughter by improving the status of daughter in Muslim law of succession.

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