

The Scenario of Hanafi Laws of Inheritance in Bangladesh: An Overview

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Abstract

Bangladesh is a south Asian country in which most of the people maintain Hanafi School of inheritance which is one of the four major Schools of Sunni Islamic path. The Shiah thought has its own ways to distribute the Muslim heritable property. Every Muslim successor has some rights in heritable property of his/her kinships as well as some obligations to perform the funeral activities of a deceased person. All those rules are specified in Islamic Law of inheritance. The research will highlight the right of inheritance for both males and females under the Hanafi Law of inheritance and point out the present situation of practicing this power in Bangladesh. It also gives focus the Quranic portions of heritable property and try to distinguish among different principles and dogmas of inheritance. The research has been conducted applying the analytical method of study. Necessary data and information used in this study have been collected from primary as well as secondary sources of the relevant field such as various public and private documents, codified laws, case laws, books, booklets, books of hadith, articles and manuals relating to inheritance. Female portion in heritable property is another burning issue of present Bangladesh. So another objective of this research is to draw attention to this issue and to provide the real scenario by providing accurate Islamic rules. For practicing these celestial laws properly in Bangladesh some recommendations are also provided.

Keywords: *Heritable property, hermaphrodite person, illegitimacy, legacies, universal legatee.*

Prologue:

There is a popular statement attributed to the prophet Mohamed (peace be upon him-s.a.w) says "learn the laws of inheritance and teach them to the people for they are one-half of useful knowledge (half the sum of 'ilm')." ¹ This ideal statement has been embedded in the hearts of the Muslim Jurists in the world. On the basis of the statement they have been circulating that it is obligatory to all Muslims to learn the Islamic laws of succession. The modern law experts have admired the Muslim system of inheritance for its utility and formal excellence. ² British jurist Sir William Jones said, "I am strongly disposed to believe that no possible question could occur on the Muslim law of succession which might not be rapidly and correctly answered." Another famous professor N.J Coulson mentioned, "Within the framework of the Islamic legal system as a whole the law of succession occupies a particularly prominent and important position. Historically they provide an excellent example of the general process of legal development in Islam." ³

Objectives:

The main objective of this research is to find out the present situations relating to inheritance under Hanafi Muslim law in Bangladesh. However, the research will attempt to achieve the following objectives:

- a) To explore the meaning and significance of Muslim inheritance;
- b) To illustrate the right of inheritance for both males and females under the Hanafi Law of inheritance.
- c) To point out the exercise of this power of inheritance at present time in Bangladesh;
- d) To give stress the status of women and hermaphrodite persons in inheritance and to find out the practice in Bangladesh with proper recommendations. and
- e) To construct a conclusion recommending some suggestions.

Meaning of Muslim Inheritance:

Etymologically, in Arabic term inheritance, is known as '*faraid*,' which is the plural of '*fareedah*,' which means something that has been set, fixed or determined. The laws related to the shares of inheritance allotted to various relatives by the holy Quran. ⁴ In Islamic law '*faraid*' is the combinations of Islamic rules and principles by which heritable properties of a Muslim deceased are distributed among his/her successors. Inheritance is that ancient right of living person relating to properties which imposed upon that person from the descendant. ⁵ According to Fatawa-e-Alamgiri, Inheritance means the distribution of ownership of the estates of

¹ Hadith no: 2719 Chapter no: 26, Sunan Ibn Majah

² Rashid. Syed Khalid. (2004), *Muslim Law*, 4th ed., Lucknow, India, p.340

³ Coulson, N.J. (1971), *Succession in the Muslim Family*, Cambridge University Press, UK, p.2

⁴ Ibid., p. 3

⁵ Mulla, D.F. (2007), *Principles of Mahomedan Law*, 19th ed., Bombay, India, p:36

a deceased person to the living heirs. It is a right to the heirs and there is no consideration for this distribution. So, Inheritance and *faraid* are not synonymous at all. The first one means the right of a successor in the heritable property of a Muslim propositus and the last one is the Islamic procedural law to distribute that property. Broadly speaking, law of inheritance is classified into two-Sunni and Shia laws.

Definition of Sunni Muslim:

Sunni is called because they follow the Sunna of the Prophet Mohammad (s.a.w). Sunna means his sayings or doings. The majority of Muslims today are Sunnis. They accept the first four Caliphs (including Ali) as the "rightly guided" rulers who followed the Prophet. In theory, Sunnis believe that the leader (imam) of the Muslim community should be selected on the basis of communal consensus, on the existing political order, and on a leader's individual merits.⁶ They believe the first four caliphs, or supreme religious leaders, were the rightful successors of the Prophet Mohammed (s.a.w) but have chosen subsequent leaders based on Islamic political realities of the time. Within Sunni Islam, there are four schools of jurisprudence that offer alternative interpretations of legal decisions affecting the lives of Muslim believers. The four schools of jurisprudence rely mostly on analogy as a way to formulate legal rulings, and they also give different weight to the sayings of the Prophet and his companions (hadiths) within their decisions. The four legal schools, which vary on certain issues from strict to broad legal interpretations, are the (1) Hanafi: this is the oldest school of law. It was founded in Iraq by Abu Hanifa (d. 767 AD). It is prevalent in Turkey, Central Asia, the Balkans, Iraq, Syria, Lebanon, Jordan, Afghanistan, Pakistan, India, and Bangladesh; (2) Maliki: this was founded in the Arabian Peninsula by Malik ibn Anas (d. 795 AD). It is prevalent in North Africa, Mauritania, Kuwait, and Bahrain; (3) Shaf'i: this school was founded by Muhammad ibn Idris al-Shafi'i (d. 819 AD). It is prevalent in Egypt, Sudan, Ethiopia, Somalia, parts of Yemen, Indonesia, and Malaysia; and (4) Hanbali: this was founded by Ahmad Hanbal (d. 855). It is prevalent in Saudi Arabia, Qatar, parts of Oman, and the United Arab Emirates.⁷ Sunni Muslims live across Bangladesh and mainly adhere to the Hanafi school of thought. Its adherents constitute 83.4% of the total population.

Inheritance in Al-Quran:

The law of inheritance has been given in the Qur'an in Surah Al-Nisa (the fourth chapter) verses 11 & 12 and then in verse 176. Some other verses focus the testamentary power.

The Holy Quran says, "Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah . Indeed, Allah is ever Knowing and Wise."⁸

⁶ Blanchard, Christopher M. (2010), *Islam: Sunnis and Shiites*, Congressional Research Service, p:3

⁷ Ibid, p. 2

⁸ Al Quran, Surah An Nisa, Verse no. 11

The Holy Quran says, "And for you is half of what your wives leave if they have no child. But if they have a child, for you is one fourth of what they leave, after any bequest they [may have] made or debt. And for the wives is one fourth if you leave no child. But if you leave a child, then for them is an eighth of what you leave, after any bequest you [may have] made or debt. And if a man or woman leaves neither ascendants nor descendants but has a brother or a sister, then for each one of them is a sixth. But if they are more than two, they share a third, after any bequest which was made or debt, as long as there is no detriment [caused]. [This is] an ordinance from Allah , and Allah is Knowing and Forbearing."⁹

The Holy Quran again says, "They request from you a [legal] ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]." If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child. But if there are two sisters [or more], they will have two-thirds of what he left. If there are both brothers and sisters, the male will have the share of two females. Allah makes clear to you [His law], lest you go astray. And Allah is Knowing of all things."¹⁰

General Principles of Sunni Law of Inheritance:

1. **Sources of Islamic Law of Inheritance:** Muslim jurists recognize only three sources of the Islamic Law of Inheritance namely:-the holy Quran, the Hadith; and the Ijma or consensus opinion.
2. **Heritable property:** All properties of the deceased Muslim are subject to inheritance by his/her heirs. In this regard there is no difference between movable property and immovable property. Cash, cheque, land, share of the company are considered as heritable property. Property acquired by the deceased during his lifetime via. sale and purchase, inheritance, gift (hibah), legacies (wassiyah) etc.
3. **Inheritance open at the time of death:** Islamic law does not recognize any birth right. Inheritance opens on the death of the propositus. The questions of devolution of inheritance, therefore, rests entirely on the exact time of such death, the order of death being the sole guide.¹¹ According to the provisions of clauses 39 and 40 of the Succession Act 1925, if a Muslim dies without making any will, all his property will devolve on his heirs immediately after his death.
4. **Survival of heirs:** The legal heirs should be alive at the time of deceased person (even for one minute should be determined).

⁹ Al Quran, Surah An Nisa, Verse no. 12

¹⁰ Al Quran, Surah An Nisa, Verse no. 176

¹¹ PLD 175 Lah 59 (DB), PLD 1975 SC 324

5. **Payment of legacies, debt, dower and funeral expenses:** The Quran states that the heirs are entitled to inherit from the property of the propositus only after the payment of legacies (not more than 1/3 of total property), if any, repayment of debts, if any, and also funeral expenses. This is why, Allah instructed in Sra Ma'ida (105, 106) that more than one trustworthy witness should attest the will of a dying person. He has to pay the dower, if any, to his widow. Because dower is a debt and for recover this a widow has right to get a decree for selling the deceased estate.¹² After discharging of the above, the residue, if any, shall be distributed among the heirs. So, all the heirs are responsible for contribution to the debt of a deceased person.¹³
6. **Whole of the estate must be brought to partition:** The general rule is that a suit for partition shall include the entire properties of the co-sharers.¹⁴ But there are specific situations calling for relaxation. They are generally (a) where different portions of the property lie in different jurisdictions or (b) when some portion of the property is at the time incapable of partition, or (c) when the property from its nature is impartible¹⁵, or (d) when property is held jointly with strangers who cannot be joined as parties to a general suit for partition, or (e) where co-tenants, by mutual agreement, decide to make partition of a part of the joint property retaining the rest in common.¹⁶ And this relaxation shall be exercised by the court in some equitable cases.¹⁷
7. **Doctrine of Ta'sib (Male shall take double than female) and its exceptions:** Both male and female have their rights over the properties of the deceased. But a female takes one half of the share of a male.¹⁸ . It means the share of a daughter is half the share of a son whenever they inherit together. A son for example, takes two portions and a daughter takes one portion. In the like manner, a brother takes double of a sister, when they inherit as residuary.
8. **Primary or fundamental heirs are never excluded:** Primary heirs (father, mother, husband, wife, son and daughter) are not excluded. Those six types of person must inherit if otherwise not excluded due to some contingency.
9. **Dual Capacity:** Six persons can enjoy the right of dual capacity. They can inherit both sharer and residuary. They are:
 - i) Father;

¹² *Bazayet Hossen v. Dooli Chand* 1877/8 5LR IA 211 quoted in Ali Chowdhury M. Jashim (2014) *A Text Book on Muslim Personal Law*, 1st Ed., Dhaka, Bangladesh, Sufi Prokashoni, p.498

¹³ *Jafri Begum v. Amin Muhammad Khan* 1885 ILR 7 All 822 quoted in Ali Chowdhury M. Jashim (2014) *A Text Book on Muslim Personal Law*, 1st Ed., Dhaka, Bangladesh, Sufi Prokashoni, p.498

¹⁴ *Nurul Afsar v. Rafiqul Ahmed* 51 DLR 1999 (AD) 155; Para 6 quoted in Ali Chowdhury M. Jashim (2014) *A Text Book on Muslim Personal Law*, 1st Ed., Dhaka, Bangladesh, Sufi Prokashoni, p.501

¹⁵ *Maniruddin Biswas v. Sorab Ali Mir* (1953) 5 DLR 544

¹⁶ *Ibid*, Para 7

¹⁷ *Md. Shahidul Alam Khan v. Md. Golzar Alam* 36 DLR 1984 (HCD) 290

¹⁸ Al Quran, Surah An Nisa, Verse no. 11

- ii) True Grandfather (The agnatic Grandfather between whom and the deceased no female link intervenes; e.g. Father's Father and so on);
- iii) Daughter;
- iv) Son's Daughter;
- v) Full Sister; and
- vi) Consanguine Sister or half sister (The daughters of the same father, but by different mothers).

10. Barriers of inheritance: The following reasons a person is excluded from inheritance:

- a) **Homicide:** Under the Sunni law, a person who has caused the death of another person, whether intentionally or by mistake, negligently or accidentally, is debarred from the right of succession of the property of the victim.¹⁹ But under the Shia law of inheritance, homicide is an impediment to inheritance only when the person has been slain intentionally and unjustly. If death was caused rightfully or by mistake, the killer is not excluded from inheritance.²⁰ An abettor of a murderer cannot also inherit.
- b) **Difference of religion:** Under Islamic law, a non-Muslim cannot inherit and vice versa.²¹ When a person has changed his religion and changed his personal law, the new law will govern him in the matter of inheritance. So a non-Muslim cannot claim to inherit a relation who has been converted to Islam.²²
- c) **Illegitimacy (Walad-uz-Zina):** A child born out of marriage wedlock is an illegitimate child. According to Hanafi law, an illegitimate person cannot inherit from the father, but he or she can inherit from the mother.²³ And only mother and her successors have right to obtain the estate of an illegitimate child.²⁴ When a Hanafi woman dies leaving a husband and an illegitimate son of her sister, the husband takes one-half as share and the rest half goes to the illegitimate son of her sister, as he is related to the deceased through his mother.²⁵

¹⁹ Hadith no: 2255, Book 29, Jami At Tirmidhi, Abu Hurairah narrated that the Prophet (s.a.w) said: "The murderer will not inherit."

²⁰ Hadith no: 2736, Chapter no: 26, Sunan Ibn Majah, Narrated / Authority of: Abdullah bin Amr that the Messenger of Allah (s.a.w) stood up, on the day of the conquest of Makkah, and said: "A woman inherits from the blood money and wealth of her husband, and he inherits from her blood money and wealth, so long as one of them did not kill the other. If one of them killed the other deliberately, then he or she inherits nothing from the blood money or wealth. If one of them killed the other by mistake, he or she inherits from the other's wealth, but not from the blood money."

²¹ Hadith no: 2254, Book 29, Jami At Tirmidhi, Jabir narrated that the Prophet (s.a.w) said: "The people of two religions do not inherit from each other."

²² *Mohammed Abdul Aziz Khan v. Mahbub Sinh*, AIR 1936 All 202

²³ Hadith no: 2259, Book 29, Jami At Tirmidhi, Amr bin Su'aib narrated from his father, from his grandfather, that the Messenger of Allah (s.a.w) said: "Any man who fornicates with a free woman, or a slave woman, then the child born from Zina does not inherit, nor is it inherited from."

²⁴ Hadith no: 2897, Book 18, Sunan Abu Dawud, Narrated Makhul: The Messenger of Allah (s.a.w) assigned the estate of a child of a woman about whom she had invoked a curse to her mother, and to her heirs after her.

²⁵ *Bafatun v. Bilaiti Khanam* (1903) I.L.R 30 Cal. 683

d) **Alien enemy:** An alien enemy is excluded from the right of inheritance. Alien enemy means a person who is or has been fighting against the sovereignty of the state in which he is a citizen. He is deprived from the right of inheritance of a person of that state.

e) **Slavery:** A slave, in Islamic law, is not entitled to inherit from a free man.²⁶ The concept of slavery is not applicable in modern Bangladesh.

11. **Universal Legatee:** A testator may bequeath his entire property in favour of any person, who is known universal legatee. The law of one third (which is for Islamic will) is not applicable in this case, because there is no heir and as such the whole of his property can be bequeathed.

12. **Escheat or Public Treasury (Baitulmal):** In absence of heirs and successors, the property of a deceased goes to the public treasury, provided that the state is an Islamic one, which spend the property for the benefit of the Muslims. Thus property shall be escheated to the state in absence of all his heirs and successors. Bangladesh is a country of secular identity.²⁷ So, Islamic concept of Baitulam is absent in Bangladesh. In this case the residue reverts back to the sharers as additional portion with their actual shares.

13. **Nearer in degree excludes the more remote:** There are eighteen numbers of residuary who inherit only when residue is left after satisfying the claims of the shares or when there is no sharer. The residue goes to the residuary in order of preference. The first excludes the second, second excludes the third and so on. For example, father excludes the father's father, mother excludes the mother's mother and son exclude's the son's son.

14. **Principle of Aul /Increase-** When the total portion of the heirs exceeds the estate of the deceased, then the portion of the heirs should be proportionately reduced by applying a principle, which is called Aul. Under Sunni law of inheritance, the principle of Aul is recognized.

15. **Doctrine of Radd/Return-**If the sum of total fraction allotted to sharers is less than unity (that is, something left behind after satisfying the claims of each share) and there is no residuary to take the residue, the residue reverts back to the sharers in portion of their shares. It is called principle of Radd. Under Sunni law of inheritance, husband or wife take no property of Radd if there are other Quranic sharers with them. But when there is only husband or wife he or she is entitled to the property of Radd.

²⁶ Fyzee, Asaf A.A (1965). *Outline of Muhammadan Law*, 3rd ed. Oxford University Press, Indian Branch, p.402

²⁷ Arts. 8 & 12 of the Constitution of the Peoples Republic of Bangladesh, 1972

Classification of Sunni Law of Inheritance:

Under the Sunni Law of succession the heirs are divided into three classes:

- a) Quranic Heirs or Sharers (Dhawul Furud): Quranic heirs are those successors of the deceased persons whose names and portions are directly or indirectly mentioned by Allah almighty in holy Quran.
- b) Residuary or Agnatic Heirs (Asaba)²⁸: Residuary are those heirs who are entitled to residue of the estate (if any after giving the Quranic heirs their portions).
- c) Distant Kindreds or Uterine Heirs (Dhawul Arham): Distant kindreds are those who are blood relations other than the sharers and residuaries, and succeed generally in the absence of sharers and residuaries.

1. **List of Quranic Heirs under Sunni Law of Inheritance:** The list of Quranic heirs under Sunni law of inheritance contains following twelve persons:

- a) Heirs by Marriage-
 - i) Husband;
 - ii) Wife;
- b) Heirs by Consanguinity/Blood-
 - iii) Father;
 - iv) True Grandfather (Father's father-h.h.s);
 - v) Mother;
 - vi) True Grandmother;
 - vii) Daughter;
 - viii) Son's Daughter ;
 - ix) Full Sister;
 - x) Consanguine Sister;
 - xi) Uterine Brother;
 - xii) Uterine Sister.

2. **List of Residuary under Sunni Law of Inheritance:** The list of residuary under Sunni law of inheritance contains following eighteen persons:

- a) Descendants of the deceased person (how low so ever-h.l.s)-
 - i) Sons and Daughters (with Sons); and
 - ii) Son's Sons (h.l.s) and Son's Daughters (with Son's Son);
- b) Ascendants of the deceased person (how high so ever-h.h.s)-
 - iii) Father (In absence of a Child or Child of a Son or other residuary); and
 - iv) True Grand Father (In absence of a Child or Child of a Son or other residuary or Father);
- c) Descendants of the Father of deceased person (h.l.s)-
 - v) Full Brother;²⁹

²⁸ Hadith no. 724, Volume 8, Book 80, Shahi Bukhari, Narrated Ibn 'Abbas: The Prophet (s.a.w) said, "Give the Fara'id (the shares of the inheritance that are prescribed in the Qur'an) to those who are entitled to receive it. Then whatever remains, should be given to the closest male relative of the deceased."

- vi) Full Sister [with Full Brother or with Daughter(s) or Son's Daughter(s) in absence of other residuary];
- vii) Consanguine Brother;
- viii) Consanguine Sister [with Consanguine Brother or with Daughter(s) or Son's Daughter(s) in absence of Full Sister];
- ix) Full Brother's Son;
- x) Consanguine Brother's Son;
- xi) Full Brother's Son's Son; and
- xii) Consanguine Brother's Son's Son;
- d) Descendants of the Father's Father of deceased person (h.l.s)-
 - xiii) Full Paternal Uncle;
 - xiv) Consanguine Paternal Uncle;
 - xv) Full Paternal Uncle's Son;
 - xvi) Consanguine Paternal Uncle's Son;
 - xvii) Full Paternal Uncle's Son's Son ; and
 - xviii) Consanguine Paternal Uncle's Son's Son

(All persons of residuary are in three types. These are- i) Residuaries in their own rights such as all male heirs in the list of residuary ii) Residuaries in the right of another such as Daughter along with Son and iii) Residuaries with others such as Full Sister along with Daughter.)

3. List of Distant Kinder under Sunni Law of Inheritance:

- a) Descendants of the deceased person:
 - i) Daughter's children and their descendants;
 - ii) Son's Daughter's children (h.l.s) and their descendants
- b) Ascendants of the deceased person:
 - i) False Grand Father (h.h.s)
 - ii) False Grand Mother (h.h.s)
- c) Descendants of the parents:
 - i) Full Brother's Daughter and their descendants;
 - ii) Consanguine Brother's Daughter and their descendants;
 - iii) Uterine Brother's children and their descendants;
 - iv) Full Brother's Son's Daughter (h.l.s) and their descendants;
 - v) Consanguine Brother's Son's Daughter (h.l.s) and their descendants;
 - vi) Sister's (F/C/U) children and their descendants
- d) Descendant of immediate Grandparents:
 - i) Full Paternal Uncle's Daughters and their descendants;
 - ii) Consanguine Paternal Uncle's Daughters and their descendants;
 - iii) Uterine Paternal Uncles and their children and their descendants;
 - iv) Full Paternal Uncle's Daughter's son (h.l.s) and their descendants;
 - v) Consanguine Paternal Uncle's Daughter's son (h.l.s) and their descendants;

²⁹ Hadith no: 2739, Chapter no: 26, Sunan Ibn Majah, Narrated / Authority of: Ali bin Abu Talib "The Messenger of Allah (s.a.w) ruled that the sons from the same mother inherit from one another, but not sons from different mothers. A man inherits from his full brother from the same father and mother, but not his brothers from his father."

- vi) Paternal Aunts (F/C/U) and their children and their descendants;
- vii) Maternal Uncle³⁰ and Aunts and their children and their descendants; and
- viii) Descendants of remoter ancestors (h.l.s)

Quaranic Heirs under Sunni law of inheritance and their obtained portions:

It has been ensured the heritable portions of twelve types of Muslim person which are unchangeable and unalterable by the declaration of verses of 11, 12 and 176 of Surah Al-Nisa (the fourth chapter) of the holy Quran and by exercising of Ijma (the universal and infallible agreement of the Muslim community, especially of Muslim scholars, on any Islamic principle, at any time).

1. Husband-

Sl. no.	Conditions	Portions (out of one)
01	When there is a child or child of a son (h.l.s)	1/4
02	In absence of above person or persons	1/2

2. Wife-

Sl. no.	Conditions	Portions (out of one)
01	When there is a child or child of a son (h.l.s)	1/8
02	In absence of above person or persons	1/4

3. Father³¹-

Sl. no.	Conditions	Portions (out of one)
01	When there is a son or son's son (h.l.s)	1/6
02	When there are one or more daughters, son's daughters and there is no son nor son's son (h.l.s)	1/6+ Residue
03	In absence of above person or persons	Residue

4. True Grandfather³²-

Sl. no.	Conditions	Portions (out of one)
01	When there is son or son's son (h.l.s)	1/6
02	When there is one or more daughters or son's daughter (h.l.s)	1/6+ Residue
03	In absence of above person or persons	Residue
04	In presence of father or nearer true grandfather	Excluded

³⁰ Hadith no: 2250, Book 29, Jami At Tirmidhi, Aishah narrated that the Messenger of Allah (s.a.w) said: "The maternal uncle inherits from the one who has no heirs."

³¹ Hadith no: 2245, Book 29, Jami At Tirmidhi, 'Imran bin Husain narrated: "A man came to the Prophet (s.a.w) and said 'My son died, so what do I inherit from him?' He said: 'For you is a sixth.' When he turned to leave, he called him and said: 'For you is another sixth.' So when he turned to leave, he called him saying: 'The last sixth is consumable for you.'"

³² Hadith no: 2723, Chapter no: 26, Sunan Ibn Majah, Narrated / Authority of: Maqil bin Yasar "The Messenger of Allah (s.a.w) ruled concerning a grandfather who was among us, that he should receive one sixth."

5. Mother-

Sl. no.	Conditions	Portions (out of one)
01	When there is a child or son of a child (h.l.s) or two or more brothers or sisters (whether full, consanguine or uterine)	1/6
02	In absence of above person or persons	1/3
03	In absence of above person or persons and when there is a husband/wife and father	1/3 of residue what remains after deducting the husband or wife's portion (Principle of Umariyyatan)

6. A) True Grandmother [Maternal Grandmother or Mother's Mother(h.h.s)]³³-

Sl. no.	Conditions	Portions (out of one)
01	In presence of mother or nearer true grandmother	Excluded
02	In absence of above person	1/6
03	In absence of above person and presence of paternal grandmother	1/6 (collectively with paternal grandmother)

B) True Grandmother [Paternal Grandmother or Father's Mother (h.h.s)]-

Sl. no.	Conditions	Portions (out of one)
01	In presence of mother or nearer true grandmother or father or true grandfather	Excluded
02	In absence of above person or persons	1/6
03	In absence of above person or persons and presence of maternal grandmother	1/6 (collectively with maternal grandmother)

7. Daughter³⁴-

Sl. no.	Conditions	Portions (out of one)
01	In absence of son, if there is a daughter	1/2
02	In absence of son, if there are two or more daughters (collectively)	2/3
03	In presence of a son or two or more sons	Residue (1:2=son: daughter)

³³ Hadith no: 2885, Book 18, Sunan Abu Dawud, The Prophet (s.a.w) appointed a sixth to a grandmother if no mother is left to inherit before her.

³⁴ Hadith no: 2720, Chapter no: 26, Sunan Ibn Majah, Jabir bin Abdullah reported, "The wife of Sad bin Rabi came with the two daughters of Sad to the Prophet (s.a.w) and said: 'O Messenger of Allah, these are the two daughters of Sad. He was killed with you on the day of Uhud, and their paternal uncle has taken all that their father left behind, and a woman is only married for her wealth.' The Prophet (s.a.w) remained silent until the Verse of inheritance was revealed to him. Then the Messenger of Allah (s.a.w) called the brother of Sad bin Rabi and said: 'Give the two daughters of Sad two thirds of his wealth, and give his wife on eighth, and take what is left.'"

8. Son's Daughter-

Sl. no.	Conditions	Portions (out of one)
01	In presence of son or son's son (h.l.s) or two or more daughters	Excluded
02	In absence of son or son's son or one or more daughters, if there is one son's daughter	1/2
03	In absence of son or son's son or one or more daughters, if there are two or more son's daughters	2/3
04	In presence of one daughter, if there are one or more son's daughter (collectively)	1/6
05	In presence of two or more daughters with the presence of son's son	Residue (1:2 with son's son after giving 2/3 portion of daughters)

9. Full Sister³⁵-

Sl. no.	Conditions	Portions (out of one)
01	In presence of son, son's son (h.l.s) or father, father's father (h.h.s) or one or more daughters or son's daughters	Excluded
02	In absence of above person or persons and in absence of full brother, if there is one full sister	1/2
03	In absence of above person or persons and in absence of full brother, if there are two or more full sisters	2/3
04	In absence of above person or persons and in presence of one or more full brothers	Residues (2:1=full sister: full brother)
05	In absence of above person or persons and presence of one or more daughters or son's daughters	Residue (collectively with daughters or son's daughters)

10. Consanguine Sister-

Sl. no.	Conditions	Portions (out of one)
01	In presence of son, son's son (h.l.s) or father, father's father (h.h.s) or one or more daughters or son's daughters, or two or more full sisters	Excluded
02	In absence of above person or persons, if there is one consanguine sister	1/2
03	In absence of above person or persons, if there	2/3

³⁵ Hadith no. 734, Volume 8, Book 80, Shahi Bukhari, Narrated Huzail: 'Abdullah said, "The judgment I will give in this matter will be like the judgment of the Prophet, i.e. one-half is for the daughter and one-sixth for the son's daughter and the rest of the inheritance for the sister.

	are two or more consanguine sisters	
04	In absence of above person or persons and presence of one full sister	1/6 (and the full sister takes 1/2)
05	In presence of two or more full sisters with the presence of consanguine brother	Residue (1:2 with consanguine brother after giving 2/3 portion of full sisters)

11. Uterine Brother-

Sl. no.	Conditions	Portions (out of one)
01	In presence of son, child of a son (h.l.s), daughter, father, father's father (h.h.s)	Excluded
02	In absence of above person or persons, if there is one uterine brother	1/6
03	In absence of above person or persons, if there are two or more uterine brothers (Collectively)	1/3

12. Uterine Sister-

Sl. no.	Conditions	Portions (out of one)
01	In presence of son, child of a son (h.l.s), daughter, father, father's father (h.h.s)	Excluded
02	In absence of above person or persons, if there is one uterine sister	1/6
03	In absence of above person or persons, if there are two or more uterine sisters (Collectively)	1/3

Some special rules regarding Islamic inheritance in Bangladesh:

- 1. Doctrine of Representation:** In the past, the traditional law was that, the orphaned grand children were excluded from inheriting from their grandparents' property. This previous rule of succession excluding orphaned grand children from their grandparent's property aroused much attention and controversy. Later, many Muslim countries adopted the doctrine of representation and allowed share to the grand children of predeceased father, though the share of such children varied from country to country.³⁶ The Muslim Family Laws Ordinance, 1961 (Sec. 4) of the then Pakistan, predominantly a Sunni state, rectified the traditional law by the doctrine of representation, which was also incorporated in Bangladesh after liberation war. This very doctrine means, in the time of the death of any son or daughter of the propositus before the opening of the succession, the children or such son or daughter, if the, living at the time the succession opens, shall per stripes receive a share equivalent to the share of which such son or daughter, as the case may be, would have received if alive. The Pakistani Supreme Court settled that section 4 could not

³⁶ Muhibbullah, Shkeh md. (2015). *Doctrine of representation in Islamic inheritance: Daughter's share demands reconsideration*, The Daily Observer [Online] p.1. Available at: <http://www.observerbd.com> [Accessed 19 Oct. 2016]

be interpreted against the interest of others heirs of the deceased who are entitled to share the inheritance.³⁷ And the Supreme Court of Bangladesh confirmed that the date of death of the propositus, whether it was before or after the coming into force of the Ordinance, is material not the date of the death of the predeceased child.³⁸

- 2. Female rights of inheritance and reality in Bangladesh:** Women in Islam are recognized as equal partner in the procreation of humankind. Allah says in the Holy Quran: “And (as for) the believers, both men and women –they are friends and protectors of one another: they [all] enjoin the doing of what is right and forbid the doing of what is wrong, and are constant in prayer, and render the purifying dues, and pay heed unto God and His Messenger.”³⁹

An issue comes to light in Bangladesh that female heirs are not capable to inherit the equal portion as a male heir because of principle of ta'sib (male shall take double than female). The demand has no proper logic. In Islam, there are three essential sources to obtain property by a woman. These are inheritance, dower and maintenance. Dower is considered as the exclusive source to achieve property for being a woman. In this type of asset she has inclusive right. Another matter, a male heir is liable to carry the maintenance of a woman in every sphere of her life. If she is child, her father is liable to carry her maintenance, if she is young, her husband is liable and if she is elder, her children and so on. But no female heir is liable to carry the burden of a male's maintenance. This means that a man shoulders at least double the burden of a woman within the family and in the Islamic social system. This is how justice is maintained in this wise distribution which achieves the perfect balance between rights and duties, claims and liabilities. Another interesting matter is that there are eight female Quranic heirs out of twelve. So, it may be said, half share does not mean half status.

Bangladesh has enacted a number of laws at the national level to protect equality of rights and opportunities although a full review of their implementation and impact has not yet been undertaken. Women have several privileges acknowledged by the Bangladesh constitution. These are given below:

Article 27: Equality of all citizens before law and equal protection under law and equal protection under law.

Article 28(1): No discrimination on grounds only of religion, race, caste, sex or place of birth.

Article 28(2): Equal opportunity for men and women in all spheres of state and public lives.

Article 28(3): No discrimination on grounds only of religion, race, caste, sex or place of birth in providing access to any place of public entertainment or resort, or admission to any educational institution.

Article 29(1): Equal opportunity for all citizens in respect of employment or office in the service of the republic.

Article 65(3): Women are free to contest election from any constituency.

³⁷ *Farid v. Manzooran* PLD 1990 SC 511

³⁸ *Sheikh Ibrahim v. Nazma Begum* 44 DLR 1992 (AD) 276

³⁹ Al Quran, *Surah At-Tawbah*, Verse no. 71

There are lots of Acts and Ordinance to safeguard women's equal rights such as the Dowry Prohibition Act, 1980, the Child Marriage Restraint Act, 1929 (amended in 1984), the family courts ordinance of 1985 and the Muslim Family Law Ordinance, 1961.

Bangladesh signed and ratified CEDAW in 1984 with reservations on Articles 2, 13.1[a], 16.1[c] and [f] on the basis of religious sentiments conflicting with religious Islamic Shariah laws in 1993. In 1996, the government withdrew its reservation on articles 13.1 [a] and 16.1 [f], still retaining reservations on article 2 and 16.1[c]. Article 2 commits states to 'agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women'.

Historically it is true that females are discriminated in every sphere in Bangladeshi society. It is a matter of regret that the right of inheritance which has been fixed by holy Quran is not properly obtained by most of the female successors. While distributing estate of the deceased, female are either totally or partially deprived from the portions fixed by the holy Quran. Sometimes women are being induced mentally or physically to transfer her portions to her brother. 'Brothers are the future shelters for a widow sister or for a divorced sister'-the rural society has established the doctrine. So, a sister is bound to be reluctant about her portions in spite of having her rights and desires. Brothers sometimes hide the vital documents related to heritable property as well as its real quantity. So, In Bangladesh, many barriers like unconsciousness, lack of knowledge, threat, pressure, family and social influences are the hindrances to ensure female rights.

3. **Debate about the heritable portion of daughters in absent of other heirs in Bangladesh:** If father dies living only daughter/s, she does not obtain whole property. She gets 1/2 if she is single and 2/3 if she is with other sister/s. So, the rest of the property goes to other residuaries like uncle etc. In such case the practice in Bangladesh is that the father makes gift (hiba) to his daughter/s before his death. The Law Commission of Bangladesh has recommended to the Government for possible increase of daughter's share of parents' property in absence of son by amendment of the Muslim Family Law Ordinance, 1961. Their logic is 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.
4. **Inheritance of a divorced woman in Bangladesh:** The prophet Muhammad (SAW) said, "the most hated of permissible things to Allah is divorce (talak)."⁴⁰ In Islam a woman has no right to divorce. The wife may divorce her husband only when such power of divorce is delegated to her by her husband. She shall be entitled to obtain a decree for divorce for the dissolution of her marriage on any one or more of the recognized ground provided by the Dissolution of Muslim Marriages Act 1939. Sometimes a divorced woman inherits from her husband and sometime she does not. It depends on the kind of divorce. When the divorce is revocable; in this case she inherits from her husband but when the divorce is irrevocable, she cannot

⁴⁰ Hadith no. 2018, Chapter 12, Sunan Ibn Majah

inherit. A divorced wife is entitled to inherit from the property of her husband suffering from death illness, if he dies within the period of iddat (the period a woman must observe after the death of her spouse or after a divorce, during which she may not marry another man.).⁴¹ According to the Islamic scholar the iddat period for a divorced woman is three menstrual periods and for a widow is four month and ten days. The Muslim Family Laws Ordinance, 1961 has, however, provided for a notice to be given to the Chairman of a local Government after the pronouncement of divorce of a Muslim wife and the divorce will be effective after the expiry of ninety days from the date of notice. So, now this rule of ninety days is applicable in both revocable and irrevocable divorces in Bangladesh. By this rule Talaq-ul-bidat (pronouncement of talak three times by husband in one menstrual period and effective immediately) has been abolished practically. There are no more obstacles in Bangladesh to get heritable portions by a divorced woman who is divorced by the rule of talak-ul-bidat if his husband dies within ninety days after her divorce. It is needless to say that the provision of ninety days notice to the chairman of local government which is given by the Muslim Family Laws Ordinance, 1961 has been executing a big role in the field of Islamic inheritance of a divorced woman in present Bangladesh.

- 5. Inheritance right of hermaphrodite persons or Hijra community (Khunta Al-Mushkal) in Bangladesh:** Hermaphrodites are those- 1) who have some biological or physiological abnormality; 2) or who are anatomically males or females but exhibiting behaviors appropriate for the opposite gender.⁴² According to Hanafi School, if a hermaphrodite person is considered as male it would get the heritable portions of son, brother and paternal uncle and if it considered as female it would be entitled to the portions of daughter, sister and maternal aunt. But in case of hermaphrodite difficulties it will get the share as like as female sharers. It brief lesser share would be given to hermaphrodite difficulties.

There is no appropriate statistics of the real number of hermaphrodite person in Bangladesh. But from various sources it seems it may be from 40000 to 50000 and they are being deprived from their inheritance right. There are no specific laws regarding the inheritance of hermaphrodites in Bangladesh. Islamic principles relating to inheritance of hermaphrodites also applicable in this country as per the followers of different imams.⁴³ Many of them do not know about their heritable rights which are given by the declaration of holy Quran. They are considered as the burden of the society. But the Constitution of Bangladesh has ensured the protection of fundamental rights of every citizen. Article 27 of the Constitution provides that all citizens are equal before law and are entitled to equal protection of law. Article 28(1) further provides that the State shall not discriminate against any citizen

⁴¹ PLD 1976 Lah. 118

⁴² Sheik Mufti Allie Haroun, (2008), *Sexual Issues in Modern Era*, Dilhi, India, Adam Publishers & Distributors, p:260

⁴³ Uddin, Mohi, (2017), *"Inheritance of Hermaphrodite (Khuntha) under the Muslim Law: An Overview"* Beijing Law Review [Available at: <http://www.scirp.org/journal/blr>]. P:235

on grounds of religion, race, caste or sex. The government of Bangladesh recognised hermaphrodite community as separate gender or third sex in 2013.

6. **Rules regarding inheritance of a missing person (Al-Mafqud) in Bangladesh:** Missing person is defined in Islamic law as an individual whose where-about is unknown and no one is sure that such a person is still alive or not.⁴⁴ If any of the missing person's relatives die during the period of time before the missing person is officially declared dead, then the missing person's share of the inheritance will be legally transferred to his or her estate in full. The missing person is considered as a living inheritor.⁴⁵ On the other hand, no one may inherit from the missing person's estate during the period of time before the person has been officially presumed as dead. Once this period of time is over and the person is legally presumed as dead, then the missing person's estate is distributed among his or her inheritors who are alive at the time of the declaration of presumed death.⁴⁶ The time of death of such a person is calculated from the time when he/she disappeared and the legal heirs of such person are ascertained from that date. The periods of a missing person to be declared as dead or known as presumption of death are not the same times in eye of different Islamic schools. A missing person can be considered dead when their ages reach the age around the 120 years in accordance of Hanafi School.⁴⁷ According to section 108 of the Evidence Act, 1872, when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it.
7. **Right of an unborn child to inheritance:** A child in the womb of its mother is competent to inherit provided it is born alive. An unborn child is regarded as a living person and, as such, the property vests immediately in that child. The presumption of the law is that a child born alive is possessed of the right of inheritance under Islam from the time of conception. But, if such a child in the womb is not born alive, the share already vested in it is divested and, it is presumed as if there was no such heir (in the womb) at all.
8. **Inheritance relating to step-relations:** In Islam, there is no right of inheritance between two step relations. The mother and the stepchild as well as the father and the stepchild cannot be the heirs between one another.

⁴⁴ Zubair M., Khattak Sadia., Rehman Hidayat-ur-., and Khan Muhammad Aqeel., (2014), *The Laws of Inheritance in Islam*, Journal of Basic and Applied Scientific Research [Online] Available at: [https://www.textroad.com/pdf/JBASR/J.%20Basic.%20Appl.%20Sci.%20Res.%204\(8\)84-89,%202014.pdf](https://www.textroad.com/pdf/JBASR/J.%20Basic.%20Appl.%20Sci.%20Res.%204(8)84-89,%202014.pdf) (Accessed: 12 July, 2016)

⁴⁵ B. Sheikh Mâjid and Faryân Abd al-Rahmân Al, Islam Today, Available at: <http://en.islamtoday.net/quesshow-67-867.htm> (Accessed: 12 Dec, 2016)

⁴⁶ Loc. cit

⁴⁷ Sulaiman M.A., Yusoff W.Z Wan., & Edrus S.M.D al-(2016)., *Management of Missing Person's (Al-Mafqud) Property in Islamic Perspectives: Issues and Challenges*, The European Proceedings of Social and Behavioral Science [Online] Available at: <http://www.futureacademy.org.uk/files/images/upload/ISSC%202016%2035.pdf> [Accessed: 5 Jan, 2017]

- 9. Partition suits in Bangladesh:** Islamic family law is applied through the regular court system in Bangladesh. The judiciary is organised at two levels, with subordinate courts and a Supreme Court with Appellate and High Court Divisions. Though the disputes of Muslim family issues like maintenance and dower are adjudicated by the Family Court incorporated under the Muslim Family Law Ordinance, 1985, the suits of partition are being settled by the ordinary civil court. There are five types of civil court in Bangladesh namely Assistant Judge, Senior Assistant Judge, Joint District Judge, Additional District Judge and District Judge. The jurisdictions of these civil courts are organized in accordance of amount of money, territory and subject of suit. But it is a matter of sorrow, the number of total pending cases lying with the High Court Division till March 31, 2016 is about 4 million due to shortage of judges and other obstacles.⁴⁸ This is one of the darkest sides of Bangladesh judicial system. So, a lot of aggrieved parties do not want to go to court premises and for this, the complexity of partition suit is increasing day by day. As a result, ordinary people especially backward sections such as women, poor, dwellers of village are being oppressed by this malpractice and cannot get their heritable portions in their whole life even by their next generations.
- 10. Joint Muslim family and Islamic inheritance in Bangladesh:** The presumption of joint family is a concept of Hindu Law and it is not applicable to Muslim and hence the property should remain with the person in whose name it was brought.⁴⁹ But there is no principle of Muslim Law prohibiting the members of a particular family acquiring some property jointly.⁵⁰

Conclusion and Recommendations:

Inheritance is the most important right of a living person in the assets of a deceased Muslim. It is fixed and determined by the holy Quran which has a scientific value. So, it is mandatory for all Muslim communities to distribute their portion in accordance of the holy rule. But in Bangladesh the female heirs and hermaphrodite persons have been deprived from their legitimate portion of inheritance due to ignorance, poverty, illiteracy and local practices from enjoying whatever legal inheritance rights they may have. These conditions reflect the lower status of women and hermaphrodite persons in the society at large. So, barrier in this field should be removed gradually by enlightening the backward female sections and third genders and by enacting necessary laws to distribute their portions without any delays. The current parliament of *Bangladesh* contains 350 seats, including 50 seats reserved for women. So, women of Bangladesh have a great opportunity to participate enacting the laws relating to inheritance in the light of holy Quran to fill up the gaps for which they are discriminated by the society in spite of having proper Islamic rules. And it is demand of time to abolish the backlog of cases and to bring all suits in a single click of mouse. However, a positive socio-cultural role can make the land simple and uncomplicated for the females and hermaphrodite persons by obtaining their righteous portions of heritable property.

⁴⁸ See, eg, “3,99,303 cases pending with High Court till March 2016: Anisul” The Independent, Dhaka, June 16, 2016, National. [Available at <http://www.theindependentbd.com/post/47872>]

⁴⁹ *Basir Uddin Sarkar v. Jashim Uddin Sarkar* 24 DLR (AD) 243; Para 10

⁵⁰ *Ibid*, Para 12

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