

EQUALITY BETWEEN MEN AND WOMEN IN ISLAM ESPECIALLY IN RESPECT OF INHERITANCE AND ITS COMPATIBILITY WITH INTERNATIONAL HUMAN RIGHTS

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1. Introduction

Unlike the western concept of religion i.e. based on something between the believer and God,¹ Islam is not only a religion but also said to be a complete code of life based on the commandments of Allah (SWT) contained in the Holy *Qur'an* and the *Sunnah*² of the Prophet Muhammad (PBH). It is so called, as it is believed to be a religion that organizes all aspects of life on both individual and national or international levels. It has clearly told mankind about spiritual life, intellectual life, personal life, family life, social life, economic life, political life and international life. As a member of the society, a Muslim has no superiority on account of faith, colour, class, origin, wealth or sex.³ It has taught people that men and women are created equal and given equal standing.⁴ It professes equal treatment towards mankind and its lesson is based on equity. But there has been some misunderstanding that in Islam women have only equitable rights. This is not true because these have been cheaply taken from some Societies, which are ignorant of Islam and its treatment towards mankind.⁵

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1. http://www.islam4all.com/islam_and_rationality_6.html 26/06/2003.
 2. The *Sunnah* refers to the words, actions, and confirmations (consent) of the Prophet Muhammad in matters pertaining to the meaning and practice of Islam. Another common term, which some authorities consider to be equivalent to the *Sunnah*, is the *Hadeeth* (plural : *Ahadeeth*), which literally means 'sayings.'
 3. Siddiqi, Muhammad Mazheruddin, *Women in Islam*, The Institute of Islamic Culture, Lahore, 1952, p. 16.
 4. Ibid.
 5. Monsoor, Taslima , *From Patriarchy to Gender Equity : Family Law And Its Impact On Women In Bangladesh*, UPL, Dhaka, 1999, p. 1.

2.1. Spiritual Approach as to Equality between Men and Women

As to the same spiritual human nature between men and women, the *Qur'an* says: 'O mankind, Reverence your Guardian Lord Who created you from a single person created of like nature his mate and from them twain scattered (like seeds) countless men and women; reverence Allah through Whom you demand your mutual (rights) and (reverence) the wombs (that bore you): for Allah ever watches over you'.⁶ This declaration in plain meaning says that in essential human nature, all human beings of whatever sex or race or nationality stand on a footing of equality, as they all ultimately come from a single source.⁷ It is He who created you from a single person and made his mate of like nature in order that he might dwell with her (in love).⁸

2.2. Divine Approach as to Equality between Men and Women

About their same spiritual nature, the *Qur'an* again says: (He is) the Creator of the heavens and the earth: He has made for you pair from among yourselves and pairs among cattle: by this means does He multiply you: there is nothing whatever like unto Him and Her is the One that hears and sees (all things).⁹

Both men and women receive the 'divine breath' as they are created with the same human and spiritual nature (*nafsini-waahidah*)¹⁰: But He fashioned him in due proportion and breathed into him something of His spirit. And He gave you (the faculties of) hearing and sight and feeling (and understanding): little thanks to you.¹¹ Woman lends dignity and adds beauty to the existence of man, as man does to the woman. About the dignity of both

6. *Qur'an* 4:1, translated by Abdullah Yussuf Ali, The American Trust Publication, Plainfield, 1977.

7. Op. cit., Siddiqi (1952).

8. *Qur'an* 7: 189.

9. *Qur'an* 42:11.

10. <http://www.iad.org/books/GEI.html> 15/11/2003.

11. *Qur'an* 15:29.

genders¹², Allah says: We have honoured the children of Adam, provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours above a great part of Our Creation.¹³ Behold your Lord said to the angels: 'I will create a vicegerent on earth.' They said 'Will you place therein one who will make mischief therein and shed blood? Whilst we do celebrate Your praises and glorify Your holy (name)?' He said: 'I know what you do not.'¹⁴

About the accusation that the female caused the 'fall of man' and pregnancy and childbirth are punishments for 'eating from the forbidden tree, the *Qur'an* describes them to be bases for love and respect due to mothers. In describing the story of Adam and Eve, the *Qur'an* frequently refers to both of them, never singling out Eve for the blame.¹⁵ On the question of pregnancy and childbirth, the *Qur'an* states: And We have enjoined on the person (to be good) to his/her parents: in travail upon travail did his/her mother bear his/her and in years twain was his/her weaning: (hear the command) 'Show gratitude to Me and to your parents: to Me is (your final) Goal'.¹⁶

The *Qur'an* says: We have enjoined on the person kindness to his/her parents: in pain did his/her mother bear him/her and in pain did she give him/her birth. The carrying of the (child) to his/her weaning is (a period of) thirty months. At length when he/she reaches the age of full strength and attains forty years he/she says 'O my Lord! Grant me that I may be grateful for Your favour which You have bestowed upon me and upon both my parents and that I may work righteousness such as You may approve; and be gracious to me in my issue. Truly have I turned to You and truly do I bow (to You) in Islam [submission].'¹⁷

12. <http://www.iad.org/books/GE1.htm1> 15/11/2003.

13. *Qur'an* 17:70.

14. *Qur'an* 2:30.

15. *Qur'an* 7:19 & 27).

16. *Qur'an* 31:14.

17. *Qur'an* 46:15.

2.3. Equality between Men and Women in terms of Obligations

As to the fact that men and women have the same religious and moral duties and responsibilities, the *Qur'an* says: They both face the consequences of their deeds: And their Lord has accepted of them and answered them: Never will I suffer to be lost the work of any of you be it male or female: you are members of one another ...¹⁸ If any do deeds of righteousness be they male or female and have faith they will enter paradise and not the least injustice will be done to them.¹⁹

If they perform their duties, they will get the reward without being discriminated. The *Qur'an* says: For Muslim men and women and for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in Allah's praise, for them has Allah prepared forgiveness and great reward.²⁰

That the absence of women as prophets or 'Messengers of Allah' in prophetic history is due to the demands and physical suffering associated with the role of messengers and prophets and not because of any spiritual inferiority.²¹

3. Some Provisions that need to be tested

Islam is said to be the best protector and promoter of women rights. It is said that women in Islam have got to enjoy every opportunity as men and thus they have been respected. But critics say that discrimination has been practiced against women in various ways (marriage, polygamy, divorce, inheritance, testimony and leadership etc.) and the gross discrimination takes place in Islam in respect of inheritance. How far this criticism is true needs to be critically examined.

18. Qur'an 3:195.

19. Qur'an 4:124.

20. Qur'an 33:35.

21. <http://www.iad.org/books/GEL.htm> 15/11/2003.

3.1. Marriage

Islamic marriage is based on mutual peace, love, and compassion, not just the satisfaction of man's sexual needs²²: And among His Signs is that He created for you mates from among yourselves that you may live in tranquillity with them and He has put love and mercy between your (hearts); verily in that are signs for those who reflect.²³ (He is) the Creator of the heavens and the earth: He has made for you pairs from among yourselves and pairs among cattle: by this means does He multiply you: there is nothing whatever like unto Him and He is the One that hears and sees (all things).²⁴ The female has the right to accept or reject marriage proposals. Her consent is prerequisite to the validity of the marital contract according to the Prophet's teaching. It follows that if by 'arranged marriage' is meant marrying the girl without her consent, then such a marriage is voidable if she so wished. Ibn Abbas reported that a girl came to the Messenger of God, Muhammad (PBH), and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice ... (between accepting the marriage or invalidating it).²⁵ In another version, the girl said: 'Actually I accept this marriage but I wanted to let women know that parents have no right to force a husband on them.'²⁶ The husband has got the responsibility for maintenance, protection, and overall headship of the family (*qiwamah*) within the framework of consultation and kindness. The mutual dependency and complementary of the roles of males and females does not mean 'subservience' by either party to the other. The example of the Prophet Muhammad (PBH) who helped in household chores in spite of his busy schedule can be taken.²⁷

22. Shorish-Shamley, Zieba, 'Women's Rights Concerning Marriage' available in <http://216.239.57.104/search?q=cache:zk.../islam.pdf+inheritance+in+islam,+human+rights&hl=en&ie=UTF-19/11/2003>.

23. Qur'an 30:21.

24. Qur'an 42:11.

25. Ahmad, Hadeeth no. 2469.

26. Ibn Majah.

27. <http://www.iad.org/books/GEI.htm1> 15/11/2003.

A non-Muslim male is not allowed to marry a Muslim girl²⁸ on the ground that the male, who does not believe in her Apostle, by nature of his male chauvinism and domination, disregards her and forbids her to adhere to her faith or perform its rites²⁹, though a Muslim male can marry a non-Muslim girl (developed³⁰).³¹ Islam secures for this girl all the marital rights except the right to inherit. In this case neither does she inherit her husband nor does her husband inherit her- putting them on equal footing.³² If a non-Muslim woman embraces Islam and wants to get married, her non-Muslim parent loses authority to give her away to the bridegroom, rather be done by an appointed Muslim guardian.³³ If one parent is a Muslim, children must be raised as Muslims.³⁴ If the father is a non-Muslim and the mother converts to Islam, the marriage breaks down and the mother gets the custody of the child.³⁵ Moreover, the *Qur'an* says: '...and give not your daughters in marriage to non-Muslims till they believe in Allah alone verily a believing slave is better than a free non-Muslim.'³⁶

3.2. Divorce

A man can divorce his wife whenever he desires but a woman cannot except in special circumstances. The way dissolution of marriage takes place, includes mutual agreement, the husband's initiative, the wife's initiative (if part of her marital contract, court decision on the wife's initiative (for a cause), and the wife's

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28. Malik b. Anas, *al Muwatta*, translated by Aishah and Johnson, Norwich, 1982, p. 298.
 29. Tabbarah, A.A., 'Tolerance in the Religion of Islam', available in http://www.wponline.org/vil/articles/ibadah/tolerance_in_the_religion_of_islam.html 15/11/2003.
 30. For whom the Holy Book was revealed.
 31. Awang, A. R., *The Status of the Dhimmi in Islamic Law*, International Law Book Services, India, 1994, pp. 78-79.
 32. Op. cit., Tabbarah, A.A..
 33. Shahid, S., <http://answering-islam.org/NonMuslims/rights.htm> 26/05/2003.
 34. Op. cit., Shahid.
 35. Op. cit., Awang, p. 140.
 36. *Qur'an* 2:221, also available in <http://www.jannah.org/sisters/intermarriage.html> 26/05/2003.

initiative without a 'cause' provided that she returns the marital gift to her husband (*khul* [divestiture]).³⁷

Jamal A. Badawi says that under no circumstances does the *Qur'an* encourage, allow or condone family violence or physical abuse and cruelty. The maximum allowed in extreme cases is a gentle tap that does not even leave a mark on the body while saving the marriage from collapsing.³⁸

3.3. Polygamy

Islam did not out-law polygamy like many communities and religions³⁹, however, regulated it and restricted it.⁴⁰ It is neither required nor encouraged, but simply permitted and not outlawed completely.⁴¹ It is allowed only because adultery is more detestable than polygamy.⁴² Edward Westermarck cites numerous examples of the sanctioning of polygamy among Jews, Christians, and others.⁴³ The only reference in the *Qur'an*⁴⁴, which explicitly mentioned polygamy and restricted its practice in terms of the number of wives permitted and the requirement of justice between them was revealed after the Battle of Uhud in which dozens of Muslims were martyred leaving behind widows and orphans.⁴⁵ It indicates that the intent of its continued permissibility is to deal with individual and collective contingencies that may arise from time to time (i.e., imbalances between the number of males and females created by wars).⁴⁶ It brings a moral, practical, and

37. <http://www.iad.org/books/GEI.html> 15/11/2003.

38. Ibid.

39. Op. cit., Siddiqi, p.139.

40. <http://www.iad.org/books/GEI.html> 15/11/2003.

41. Ibid.

42. Ali, Naveen, 'Islamic Perspective of Human Rights' available in http://sdsd.essortment.com/educationfrom_rfx1.htm 19/11/2003.

43. Op. cit., Siddiqi, p.39.

44. *Qur'an* 4:3.

45. <http://www.iad.org/books/GEI.html> 15/11/2003.

46. Ibid.

humane solution to the problems of widows and orphans who are likely to be more vulnerable in the absence of a husband/father figure to look after their needs: financial, companions, proper rearing, and other needs.⁴⁷ If you fear that you shall not be able to deal justly with the orphans marry women of your choice two or three or four; but if you fear that you shall not be able to deal justly (with them) then only one...⁴⁸ Here the parties concerned have options: to reject marriage proposals as in the case of a proposed second wife or to seek divorce or *khul* (divestiture) as in the case of a present wife who cannot accept to live with a polygamous husband.⁴⁹ Though the *Qur'an* allowed polygamy, it did not allow polyandry (multiple husbands of the same woman).⁵⁰ From the anthropological point of view, polyandry is quite uncommon and its practice raises hectic complications related to the lineal identity of children, and incompatibility of polyandry with feminine nature.⁵¹

So the common myth, which is to associate polygamy with Islam as if it were introduced by Islam or is the norm according to its teachings, has found no support in the *Shariah*.⁵² While no text in the *Qur'an* or *Sunnah* enumerates that either monogamy or polygamy is the norm, demographic data indicates that monogamy is the norm and polygamy is the exception.⁵³ In the world the numbers of men and women are almost even, with women's numbers slightly more than men.⁵⁴ As such, it is a practical impossibility to regard polygamy as the norm since it assumes a

47. Ibid.

48. Qur'an 4:3.

49. <http://www.iad.org/books/GEI.html> 15/11/2003.

50. Ibid.

51. Ibid.

52. <http://www.iad.org/books/GEI.html> 15/11/2003.

53. Badawi, A., J., *Gender Equity in Islam*, WAMY Studies on Islam, World Assembly of Muslim Youth, available in <http://www.iad.org/books/GEI.html> 15/11/2003.

54. Ibid.

demographic structure of at least two-thirds females, and one-third males (or 80 percent females and 20 percent males if four wives per male is the norm!).⁵⁵ An impossible assumption like this cannot base an Islamic norm.⁵⁶

Islam goes for a heavy punishment in the case of *jina* i.e. illicit intercourse or adultery, putting the man and woman stoned to death⁵⁷ but the man has been frequently getting free though these two are involved in the same activity.

3.4. *Purdah*

Women in Islam are allowed to come out homes under the stress of economic, social and religious necessity, wearing modest dresses and in a particular way, which will not make them attractive⁵⁸, whereas men do not have to face any restrictions in this respect. Jamal Badawi says: 'Parameters of proper modesty for males and females (dress and behaviour) are based on revelatory sources (the *Qur'an* and authentic *Sunnah*) and as such are seen by believing men and women as divinely based guidelines with legitimate aims, and divine wisdom behind them'.⁵⁹ Though some societies, which are ignorant of Islamic dress code, very often wish the females to observe *purdah* and their wishes are the commands as well.⁶⁰ These are male imposed or socially imposed restrictions.⁶¹ The concept of near total seclusion of women is alien to the prophetic period.⁶² Problems of interpretation in justifying seclusion reflect, in part, cultural influences and circumstances in different Muslim countries.⁶³

55. Ibid.

56. Ibid.

57. I. Doi, A. R., *Shariah: The Islamic Law*, Ta-ha Publishers Ltd., London, 1984, pp. 237-239.

58. Op. cit., Siddiqi, p. 123.

59. <http://www.iad.org/books/GEI.html> 15/11/2003.

60. Khan, Saira Rahman, *The Socio-Legal Status of Bangali Women in Bangladesh*, UPL, Dhaka, 2001, pp. 56, 57, 197-199.

61. <http://www.iad.org/books/GEI.html> 15/11/2003.

62. Op. cit., Siddiqi, pp.123-131.

63. <http://www.iad.org/books/GEI.html> 15/11/2003.

3.5. Testimony

As to testimony (witness) the *Qur'an* does not make any reference to gender in most cases. Some references fully treat the testimony of males and females alike.⁶⁴ And for those who launch a charge against their spouses and have (in support) no evidence but their own solitary evidence (can be received) if they bear witness four times (with an oath) by Allah that they are solemnly telling the truth; And the fifth (oath) (should be) that they solemnly invoke the curse of Allah on themselves if they tell a lie. But it would avert the punishment from the wife if she bears witness four times (with an oath) by Allah that (her husband) is telling a lie; And the fifth (oath) should be that she solemnly invokes the wrath of Allah on herself if (her husband) is telling the truth.⁶⁵ The *Qur'an* distinguishes once between the witness of a male and a female. It is quite worthy to note this reference and explain it in its own context and in the context of other references to testimony in the *Qur'an*: O you who believe! When you deal with each other in transactions involving future obligations in a fixed period of time reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah has taught him so let him write. Let him who incurs the liability dictate but let him fear his Lord Allah and not diminish aught of what he owes. If the party liable is mentally deficient or weak or unable himself to dictate let his guardian dictate faithfully. And get two witnesses out of your own men and if there are not two men then a man and two women such as you choose for witnesses so that if one of them errs the other can remind her. The witnesses should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period whether it be small or big: it is just in the sight of Allah more suitable as evidence and more convenient to prevent doubts among yourselves; but if it be a transaction which you carry out on the spot among yourselves there is no blame on you if you reduce it not to writing. But take witnesses whenever you make a commercial contract;

64. Ibid.

65. Qur'an 24:69.

and let neither scribe nor witness suffer harm. If you do (such harm) it would be wickedness in you. So fear Allah; for it is Allah that teaches you. And Allah is well acquainted with all things.⁶⁶

So the proposition that the worth of a female's witness is only half the male's is not quite true. This presumed 'rule' is overruled by the earlier reference (24:69), which explicitly equates the testimony of both genders in the issue at hand. Moreover, the context of this passage (*ayah*) relates to the testimony on financial transactions, which are often complicated and laden with business jargon.⁶⁷ This citation does not make a blanket generalization, which would otherwise be inconsistent with the verse 24:69 cited earlier.⁶⁸ Again, the reason for difference in the number of male and female witnesses required is given in the same citation. Here no reference was made as to the inferiority or superiority of one gender's witness or the other's.⁶⁹ The only cause given is to corroborate the female's witness and prevent unintended errors in the perception of the business deal.⁷⁰ The term (*tadhilla*) used in the citation literally means 'loses the way', 'gets confused or errs'.⁷¹ But is it true that females are the only gender that may be mistaken and need corroboration of their testimony? Certainly not, and this is why the general rule of testimony in Islamic law is to have two witnesses even if they are both males.⁷² The only reasonable interpretation is possible that in an ideal Islamic society as envisioned by Islamic teachings, the female members will prioritise their feminine functions as wives, mothers, and pioneers of charitable works and thus making them more experienced in the inner function of the family and social life, may not give them enough exposure and experience to business transactions and terminology, as such a typical Muslim woman in a truly Islamic

66. Qur'an 2:282.

67. <http://www.iad.org/books/GEI.html> 15/11/2003.

68. Ibid.

69. Ibid.

70. Ibid.

71. Ibid.

72. Ibid.

society will not normally be present when business dealings are negotiated and if present, may not fully understand the dealings.⁷³ In such a situation, corroboration by two women witnesses helps them remind one another and as such give an accurate account of what happened.⁷⁴ Besides, it is the duty of a fair judge, in a particular case, to evaluate the credibility, knowledge and experience of any witness and the specific circumstances of the case at hand.⁷⁵

3.6. Leadership

Public affairs in the society are duly functioning with the participation and collaboration of males and female as the *Qur'an* says: The believers, men and women, are protectors one of another; they enjoin what is just and forbid what is evil: they observe regular prayers, practice regular charity, and obey Allah and His apostle. On them will Allah pour His mercy: for Allah is Exalted in power, Wise.⁷⁶ It is sufficiently evident from history that Muslim women participated in the choice of rulers, in public issues, in lawmaking, in administrative positions, in scholarship and teaching, and even in the battlefield.⁷⁷ Such involvement in social and political affairs was done without losing sight of the complementary priorities of both genders and without violating Islamic guidelines of modesty and virtue.⁷⁸ The *Qur'an* or the *Sunnah* does not preclude women from any position of leadership, except in leading prayer due to the format of prayer as Muslim prayers involve prostrations and body contact and the headship of State (based on the common and reasonable interpretation of *Hadith*).⁷⁹ Since the Imam i.e. prayer leader is supposed to stand in front of the congregation and may move forward in the middle of

73. Ibid.

74. Ibid.

75. Ibid.

76. Qur'an 9:71.

77. <http://www.iad.org/books/GEI.html> 15/11/2003.

78. Ibid.

79. Ibid.

crowded rows, it would be both inappropriate and uncomfortable for a female to be in such a position and prostrate, hands, knees and forehead on the ground with rows of men behind her.⁸⁰ The head of State in Islam is not a titular head; he leads public prayers in some occasions, constantly travels and negotiates with officials of other States (who are mostly males). He may hold confidential meetings with them. Such heavy involvement and its necessary format may not conform with Islamic guidelines related to the interaction between the genders and the priority of feminine functions and their value to society.⁸¹ Moreover, the conceptual and philosophical background of the critics of this limited exclusion is that of individualism, ego satisfaction, and the rejection of the validity of divine guidance in favour of other man-made philosophies, values, or 'ism'.⁸² The ultimate target of a Muslim man or woman is to selflessly serve Allah and the *Ummah* in whatever appropriate capacity.⁸³

3.7. Inheritance

Inheritance is the transfer of legal possession of deceased persons onto their descendants. According to *Bukhari*, inheritance is the entry of living persons into possession of dead persons' property and exists in some form wherever the institution of private property is recognized as the basis of the social and economic system.⁸⁴ It is really a very complicated task to determine the justified quantity or ratio of assets to be distributed among the dependants and relatives.⁸⁵

During the time of Prophet, women themselves were objects of inheritance and they were considered part of the possession of a

80. Ibid.

81. Ibid.

82. Ibid.

83. Ibid.

84. Translation of *Sahih Muslim*, Book 11, available in <http://www.witness-pioneer.org/vil/09/12/2003>.

85: Ara, Anjuman, 'Inheritance Law in Islam and Women' available in <http://www.jamaat.org/digest/inharitance.html> 15/11/2003.

man. At such a critical juncture of history Islam brought about a revolution in the domain of human thought and outlook towards women and established the right of women to inherit and has distributed the inheritance in a very upright way. Haifaa A. Jawad terms the establishment of the principle of women's right to inheritance as one of the crucial changes brought about by Islam. She maintains that it constituted a radical departure from pre-Islamic practices, which not only denied women any right to inherit, but also treated them as though they themselves were objects to be inherited.⁸⁶The *Qur'an* has got thirty-five references to inheritance.⁸⁷This determined share is calculated by Allah Himself and cannot be changed. 'To everyone, we have appointed shares and heirs to property left by parents and relatives...'⁸⁸

The *Qur'an* states: 'Men shall have a share in what parents and kinsfolk leave behind, and women shall have a share in what parents and kinsfolk leave behind, whether the property be small or large- a determinate share.'⁸⁹ This verse was revealed when an *Ansari* woman came to the Prophet and complained that after her husband's death she and her daughter were prevented from inheriting any of his property. Her husband's brother justified the action by stating that, 'Women do not mount horses, do not endanger themselves and go into battle', therefore they could not be allowed to inherit.⁹⁰ Before the revelation of the above-cited verse, inheritance was the prerogative of men only; women had no say or role in the matter. When a man passed away, his eldest son inherited his father's widow. He could then, if she was not his real mother, either marry her or ask his brother or his nephew, if he so wishes, to marry her in his place. Before Islam, women were not only deprived of their right to inheritance, but also had no impact over their own destiny, which was a matter between the men of the

86. Jawad, Haifaa A., *The Rights of Women in Islam: An Authentic Approach*, MacMillan Press, 1988, p. 61.

87. Op. cit., Doi, A. R., p. 271.

88. *Qur'an* 4:33.

89. *Qur'an* 4:7.

90. Al-Tabari, *Tafsir Al-Qur'an*, Vol. 4, p. 262.

husband's clan or her own relatives. During the *Jahiliyya*, when a man lost his father, brother, or son, and that person left a widow, the heir, taking advantage of the fact that her dowry was paid by the dead man, rushed to the widow, covered her with his cloak, thus claiming (unjustly) to himself the sole right to marry her. When he married her, he denied her of her right to the part of the inheritance constituted by the dowry. But if he decided, for one reason or another, not to have her as a wife, he could then ask another person to marry her. In return he would take (for himself) her dowry. However, if the widow (at the time of her husband's death) managed to get to her own clan before the arrival of the heir, he would lose his rights over her in favour of the males of her own clan.⁹¹ Thus, whether women can inherit at all is not the controversy. Rather, the dispute centres around the 'share' that is to be inherited.

The Islamic law of inheritance is extremely detailed and it is based on two most salient features: a) the extent of the share of inheritance is dependent on the closeness of the heirs' relationship to the deceased. b) 'Blood relations among each other have closer ties, in the Book of Allah, than (the brotherhood of) believers and *Muhajirs*'.⁹² In another verse it is said: 'From that is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large-a determined share.'⁹³ In most cases, man's share of the inheritance is the twice of woman's. 'Allah (thus) directs you as regards your children's (inheritance) to the male, a portion equal to that of two females, if only daughter, two or more, their share is two-thirds of the inheritance, if only one her share is a half.'⁹⁴

The *Qur'an* goes on to state in detail the division of property based on the number of relatives and the level of kinship of the inheritor.⁹⁵

91. Al-Tabari, *Tafsir Al-Qur'an*, Vol. 4, p. 306.

92. Qur'an 33:6.

93. Qur'an 4:7.

94. Qur'an 4:11.

95. Ibid.

The injunction that a male relative receives a share equal to that of two females applies only to the inheritance of children by their parents. Parents who inherit from a deceased child, for example, each inherit one-sixth of the property if a child of his or her own survives the deceased child. In that instance, the division is equal between the mother and the father of the deceased. The verse then states what the mother shall receive if the deceased left no children or if the deceased left siblings. Presumably, the father and the mother inherit equally in those situations.⁹⁶

Basically, this is due to the variant financial responsibilities of the male toward family and relatives. Moreover, this is amazing that according to the *Qur'an* and *Sunnah* 12 persons have been declared as *Jawil Furuz* (determined share-holders) in respect of inheritance where only four persons are men and the rest eight are women. That means that Islam has shown its utmost seriousness about ensuring the portion of women, as they had been the most deprived ones before the advent of Islam. Islam has determined the share of daughter (as she has the status of *Jawil Furuz*) but did not determine the share of son (as his status is one of *Asaba*).⁹⁷

The verse: 'Allah (thus) directs you as regards your children's (inheritance) to the male, a portion equal to that of two females, if only daughter, two or more, their share is two-thirds of the inheritance, if only one her share is a half' has been the centre of controversy. Some argue that the decision is fair and reasonable.⁹⁸ Others argue that this decision does not benefit women economically and they have stated that although Islam granted woman the right to inheritance, her share is by no means fair and equal to that given to man. The critics refer to the verse that allows the brother to take twice as much as the share of their sisters. (4:10) Therefore, they view this as detrimental to the dignity of women. By giving women half the share of men, they say, there is a clear implication that women are inferior to men. Both Muslims and

96. <http://www.mwllusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

97. Op. cit., Ara, Anjuman.

98. Op. cit., Shorish-Shamley, Zieba.

non-Muslims have used this argument. But it is based on a fallacy.⁹⁹ If it happens for one reason or another that one sex receives a greater or lesser share than the other, this does not mean that the recipient of the lesser share is regarded as inferior. The whole issue of inheritance in Islam depends entirely on the social and economic context, and the role or function of a particular sex within it. If this crucial contextual factor is borne in mind, a proper understanding of the verses related to inheritance in the *Qur'an* would ensue.¹⁰⁰ The reasoning behind a brother receiving double his sister's share, on the other hand, is based on the Islamic legal presumption that he has an obligation to provide for her support. For example, a person is to inherit from his father TK1000, and his sister TK500, at her marriage she will take another TK500 as dower money, making her share one thousand; whereas when the person marries he will give TK500 as dower that shall leave with him half of what his sister has received.¹⁰¹ Bearing in mind that these verses were revealed in Arabia over 1400 years ago, when women had no financial security other than what was provided by men, these verses demonstrate the care and respect given to the family unit, and ensured that women's rights would continue to be protected. Hence, brothers with sisters were given larger shares than their sisters, together with the legal obligation to spend a portion of this wealth on those sisters.¹⁰² The fact that a woman inherits one of the shares of a man, as Murtada Mutahari says, is due to a special state of affairs. He says as woman is entitled to dower and maintenance, and as she is incapable of taking an equal part in the defence of the community, the proposition of Islam that her share is one half of her brother's is to some extent the result of a law of recompense. Islam seeks that the responsibility of providing for the family budget has been recompensed by

99. Op. cit., Jawad, Haifaa A, p. 65.

100. A. Engineer, *The Rights of Women in Islam*, C. Hurst & Company, London, 1996, p.70.

101. Op. cit., Jawad, Haifaa A., p. 67.

102. <http://www.mwlusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

inheritance, and so twice as much of the share of inheritance has been allocated to man as to woman i.e., it is the dower and maintenance which has decreased the woman's share in inheritance.¹⁰³ Before delving into the mainstream of discussion, laws relating to inheritance in other socio-religious systems need to be examined thoroughly.

According to the Confucius philosophy like many other religions the eldest son enjoys the right of possessing total assets of father (that is called the 'right of primogeniture'). Other systems prevalent throughout the world, with a very little variation, are very much one eyed towards women and in other words unjustified.¹⁰⁴

According to the Encyclopaedia Americana, in English Common law all the real property held by a woman at the time of her marriage became the property of her husband-he was entitled to the rent from the land and any profit that might be made from managing it.¹⁰⁵ It was not until the late 1870s onwards in Europe that married women achieved the right to enter contracts and own property.¹⁰⁶ In France this right was not recognized until 1938.¹⁰⁷ Many westerners have expressed astonishment that Islam should have recognized property rights for women as early as the 670th CE; this is because they wonder how the Prophet Muhammad (PBH) could have initiated these rights for women at a time when women themselves were considered object of inheritance and abuse.¹⁰⁸ They forget that Prophet Muhammad (PBH) himself was

103. Mutahari, Murtada, *The Rights of Women in Islam*, World Organization for Islamic Services, Tehran, 1981, p.245.

104. Maine, H. S., *Early Law and Custom*, London, 1891, p. 90; *Encyclopedia Britanica*, Vol. 12, p. 254.

105. *Encyclopedia Britanica*, Vol. 12, pp. 254-255.

106. Engineer, Ali Asgar, 'Muslim Family Law', *Women and Law: Contemporary Problems*, (ed.) Academic Publishers, Dhaka, 1994, pp. 50-62.

107. *Encyclopedia Britanica*, Vol. 12, pp. 254-255.

108. Op. cit., Ara, Anjuman.

not the maker of these laws, but it was Allah who acts unbiased to any social environment.¹⁰⁹

Western world seems very much critical regarding the share of woman and they think that in Islam women's share in inheritance is unfair and unjustified. The *Ikhwan al-Safa* (leading Muslim intellectuals of their time) had to say about the issue of female inheritance in Islam: 'Many of the intellectuals who engage themselves in the study of philosophy and metaphysics, when they reflect with their rationality upon the Divine Laws and compare them with their own thoughts, directions and understanding, their judicious acumen (*ijtihad*) and comparative reasoning' (*qiyas*) lead them to feel that most of the Divine prescriptions appear to be against justice, truth and rectitude. All this is because of their deficiency in understanding, paucity of discretion and lack of knowledge about the essence of the secrets of the Divine Law. For example, when they reflect upon the rule of inheritance that a male will have twice the share of a female, they feel that the correct position should have been the female getting twice the portion of a male. For women are feeble and have no venues for earning money. They (the intellectuals) do not know and understand that the rule laid down in the Divine Law actually leads to what they hint at and desire for.'¹¹⁰

3.7.1. Some Islamic Traditionalists' Approach Regarding Inheritance

According to the Islamic traditionalists, women are much more favoured financially than their male counterparts for the following reasons:

- a) Before marriage any gift given to the woman is her own and her husband has no legal right to claim on it even after marriage.

109. Badawi , Jamal A., G-15; *The Islamic Teaching Course*; Vol. 3, Islamic Information Foundation, available in <http://www.witness-pioneer.org/vil/09/12/2003>.

110. Op. cit., Jawad, Haifaa A, p. 67.

- b) On marriage she is entitled to receive a marriage gift (*Mahr*) and this is her own property.
- c) Even if the wife is rich, she is not required to spend a single penny for household; the full responsibility for her food, clothing, housing, medications and recreation etc. are her husband's.
- d) Any income the wife earns through investment or working is entirely her own.
- e) In case of divorce, if any deferred part of the *Mahr* is left unpaid, it becomes due immediately.
- f) The divorcee woman is entitled to get maintenance from husband during her waiting period (*iddat*).¹¹¹

3.7. 2. Women are Respected by Additional Advantages

In fact, a Muslim woman is guaranteed support in all stages of her life, as a daughter, wife, mother, or sister. These additional advantages of women over men are somewhat balanced by the provisions of the inheritance which allow the male, in most cases, to inherit twice as much as the female.¹¹² This means that the male inherits more but is responsible financially for other females: daughters, wives, mother, and sister, while the female (i.e., a wife) inherits less but can keep it all for investment and financial security without any legal obligation so spend any part of it even for her own sustenance (food, clothing, housing, medication, etc.).¹¹³ Zakaria EL-Berry correctly says: 'she has a right to inherit from the estate of a deceased relative or a deceased husband, though her share is often half that of her inheriting brother, a fair adjustment in view of the financial burden incumbent on man

111. Op. cit., Ara, Anjuman.

112. <http://www.iad.org/books/GEL.html> 15/11/2003.

113. Ibid

alone, (in having to provide for his wife and children whereas a woman as wife or daughter is provided for)'.¹¹⁴

Thus it is evident that men need some extra share to discharge the family responsibility, social responsibility etc. incumbent upon him and the following verses define the shares accordingly: 'In what your wives leave, your share is a half, if they leave no child; but if they leave a child, you get a fourth; after payment of legacies and debts. In what you leave, their (wives') share is a fourth, if you leave no child; if you leave a child, they get an eighth; after payment of legacies and debts....'¹¹⁵ The context in which the verse was revealed took place when an *Ansari* woman came to the Prophet and informed him that her husband had passed away and left her with five daughters. His male relatives, instead of helping her, had taken all his wealth, leaving her and her daughters with nothing to fall back on. The answer to her complaint was that the Prophet recited this verse and accordingly gave her and her five daughters their share of the inheritance.¹¹⁶ 'Allah directs about those who leave no descendants or ascendants as heirs: If it is a man that dies, leaving a sister but no child, she shall have half the inheritance.'¹¹⁷ Thus the traditionalists' view gets concretised when they say that the inheritance given to women in Islam is quite respectable share-without rendering upon her financially any family or social responsibilities.¹¹⁸

3.7. 3. Women's Privileges over Men in terms of Income

Again, what the women earn either by inheritance or by working themselves are exclusively their own and thus they get privileged over men. Azizah Y. al-Hibri has got the concurrent view when

114. EL-Berry, Zakaria, 'Man's Rights in Islam: Sex Equality' (Professor of the Shari'a Law, Faculty of Law, Cairo University and, now Minister of State for the Ministry of Religious Endowments), available in <http://www.witness-pioneer.org/vil/09/12/2003>.

115. Qur'an 4:12.

116. Al-Tabari, Vol. 4, p. 270.

117. Qur'an 4:176.

118. Op. cit., Ara, Anjuman.

she says: 'what women earn by inheritance is net earning without any expenditure while men's earning is subject to all the expenditure what the family might require'. She further adds that while the woman does not need to spend her own money for maintenance, she may accumulate money through a variety of ways: such as work, marriage and inheritance. It has been often argued that the *Qur'an* gives the Muslim woman half the inheritance of the man. This is erroneous. She continues that the relevant verse speaks only of siblings, and the rationale for giving the sister half of what the brother inherits is missed by looking at the verse in isolation as opposed to studying the whole *Qur'anic* financial/ social system. She maintains that given the totality of this system, what the sister inherits is net income to her. The brother's share is a gross income, which he uses to meet his maintenance obligations towards his children, elderly parents, wife and others. The woman has none of these obligations regardless of her financial status.¹¹⁹

3.7. 4. Women's Social and Family Responsibilities Released

The westerners say that

- a) Islamic law of inheritance is recompensed by dower and maintenance
- b) The Muslims proceed in a circuitous and a round about way
- c) Men and women should not be given equal shares so that Muslims should not be obliged to compensate the deficit by way of dower and maintenance.

Mutahari responds to the western writers by saying that they are mistaken regarding the cause for the effect and vice versa. Though they consider that dower and maintenance is the effect of the special situation that holds as regards a woman's share in inheritance, that special situation is in fact the effect of dower and maintenance.¹²⁰ Again the west thinks that what really counts is financial and economic aspect of the question. Mutahari says that

119. al-Hibri, Azizah Y., 'Islam, Law and Custom', *American University Journal of International Law*, vol. 12, no. 1, 1997, pp. 1-44, [esp. pp. 25-34].

120. Op. cit., Mutahari, p. 246.

obviously, if the financial and economic aspects were in view, there should have been no justification for dower and maintenance for the share in inheritance being unequal. He continues that Islam has taken in view many aspects of the question some of which are based on nature and some psychological.¹²¹ There are enormous requirements and complications in connection with pregnancy and childbirth in one side, whereas man is free from all of this. Again, man has got strength of working, producing and earning more than woman.¹²² Again, Mutahari continues, the more consumption of wealth by women, the characteristic psychology of men and women and the fact that a man should always be there as the person responsible for the expenses of women and subtle psychological and social considerations which are the source of family ties- are all these taken into consideration by Islam. Mutahari justifies that this is because of the responsibilities laid upon man's shoulders in recompense; man should have twice as much share in inheritance as woman.¹²³ As the international human rights formulation is the cause and development for the human being, it must support the Islamic law of inheritance though seeming apparently discriminatory when it favours man by entitling him more share than woman, because man is burdened with some responsibilities and expenses which woman need not share and by way of this man should certainly have something as subsidy.

3.7. 5. Whether Will can Fill out the Deficit (if any)

Within the field of Islamic scholarship, there is much discussion on the topic of inheritance. There are scholars who maintain that these rules apply only if the deceased left no will and that the division can be changed by a will.¹²⁴ Presumably, the will would be analogous to a debt and would be paid prior to any other

121. Ibid.

122. Ibid.

123. Ibid.

124. <http://www.mwlnusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

disbursement of property.¹²⁵ Moreover, a tradition of the Prophet Muhammad (PBH) states that a person can will up to one-third of his or her property in any manner, thus allowing equalization of gender-based default presumptions.¹²⁶ (It should be noted that a majority of the Sunni schools of thought state that the one-third share cannot be bequeathed to natural heirs; however, others, including the Shiite school, disagree with this limitation.) Besides, transfers of property can be made during the life of the testator.¹²⁷

4. Position of Equality between Men and Women in International Human Rights Law

Article 7 of the Universal Declaration of Human Rights¹²⁸ has talked about the equality of men and women without any discrimination. Article 26 of the International Covenant on Civil and Political Rights¹²⁹ has spoken about the equality before the law and urged the State Parties to enact laws prohibiting any discrimination irrespective of sex, race or religion etc. Article 3 of the International Covenant on Economic, Social and Cultural Rights¹³⁰ speaks of the obligations of the State parties to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the Covenant. Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women¹³¹ has urged the State parties to abolish or modify laws, which discriminates men and women.

125. Qur'an 4:11; Fathi Osman, *Muslim Women in the Family and in the Society*, pp. 24-25, available in <http://www.witness-pioneer.org/vil/15/11/2003>.

126. <http://www.mwllusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

127. Ibid.

128. Adopted by General Assembly Resolution 217 (A) (III) of 10 December 1948.

129. Adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966.

130. Adopted by General Assembly Resolution 2200 A (XXI) of 16 December 1966.

131. Adopted by General Assembly Resolution 34/180 of 18 December 1979

Critics have found the verses of the *Qur'an* and the principles of *Sunnah* containing the principle of inheritance defining the share between men and women discriminatory and a clear case of the violation of international human rights enshrined in the International Bill of Rights and CEDAW. They maintain that the principles of inheritance have even violated the principle of equality laid down in Article 1 of the Cairo Declaration of Human Rights in Islam¹³² which says that '...All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the grounds of ...sex, ... religious belief...' ¹³³ or Article III of the Universal Islamic Declaration of Human Rights¹³⁴ which says that 'all persons are equal before the Law and are entitled to equal opportunities and the protection of the Law' ¹³⁵.

Most of the Muslim Countries have signed those international conventions, a few of them have ratified but with reservation regarding the clauses urging them to abolish or modify their existing laws, which are discriminatory on ground of sex, religion or race etc. Like others, Bangladesh is a Muslim country which has made reservation of the CEDAW¹³⁶ as it might think that its laws are discriminatory either by way of giving less portion of inheritance to women or by its failure to ensure women's equal right and this sort of incidence can be treated as inconsistency with the equality principle as enshrined in the international law of human rights.

4. 1. Responses to the Western Criticism

1. Some can reply to that approach by saying that one should not forget that unlike OIC, UN is not a forum for the Muslim countries only, but it is an aggregate of 187 countries of different religious

132. Adopted by Muslim Counties at Cairo in 5 August 1990.

133. Khan, Borhan Uddin, *Fifty Years of the Universal Declaration of Human Rights*, IDHRB, Dhaka, 1998, p. 608.

134. Adopted by Islamic Council in 19 September 1981.

135 <http://www.alhewar.com/ISLAMDECL.html> 15/11/2003.

136 *The Independent, Bangladesh*, 10.09.97 and 11.09.97.

and cultural background and of different constitutions and national distinctiveness. Naturally while taking any program, UN takes little concern about *Shariah* or Islamic law. So every Muslim country is supposed to retain some reservations in accepting any program decreed by the UN with a view to keeping the Islamic law intact. Hence it is worthy of appreciating such reservations in such cases and as well as a bold undertaking. There is no reason to relent an Islamic law, as on comprehensive analysis this is a just system.¹³⁷

2. But if it is observed with calculation of the shares enjoyed by men and women at the end, the apparent inconsistency will disappear. Qaradawy has spoken of this solution to the question of inequality between men and women as regards Islamic law of inheritance. The disparity of shares between man and woman in inheritance established by Allah's statement: 'Allah commands you as regards your children's (inheritance); to the male, a portion equal to that of two females', is clearly due to the difference in the duties and costs that each has to cope with by virtue of the Islamic teachings (*Shariah*).¹³⁸ As for an illustration, if a man dies leaving a son and a daughter, the son gets married and pays the obligatory bridal money (dower) to the bride and as soon as they live together, he has to provide and pay for their living expenses. While when his sister gets married, she receives the bridal money from her bridegroom and when they live together, the husband provides for her without her paying a single penny, even if she is among the richest of people. Poor or rich, her living costs are estimated in proportion to her husband's financial ability. The *Qur'an* reads thus: 'Let the rich man spend according to his means'.¹³⁹ To simplify matters, if the father leaves a wealth of about TK 150,000, the son would get TK 100,000 and the daughter would get TK 50,000. Then the son pays the bridal money (dower), gives presents and furnishes a flat, which may

137. Ibid.

138. Qaradawy, Yusuf Al, 'The Status Of Women In Islam' available in <http://www.witness-pioneer.org/vil/15/11/2003>.

139. *Qur'an* 65:7.

cost at least TK 25,000. If the daughter gets married and has the bridal money and the gifts, she would get another TK 25,000. This makes them almost even and in some cases more.¹⁴⁰ So the question of inconsistency as raised by the western writers is mere a propaganda, nothing else.

Qaradawy maintains that it is not all that woman's share is balanced when she gets dower and gifts on marriage; the man's duties and spending increase as he provides for his children, in some cases his ageing parents, his brothers and sisters who have no earning of their own and no one else to provide for them, and further still his relatives who are in similar circumstances-all by virtue of (*Shariah*) and under certain conditions. For her part, though, the woman is not directed by the *Shariah* to be benign unless she chooses on her own accord to do so out of good manners and morals.¹⁴¹ Again, this might shun the western contention of violation of equality principle in the case of Islamic inheritance law.

So women are not discriminated, rather they are getting equal and sometimes more. That's why Qaradawy rightly says that nor is the allegation of discrimination in any sense absolute. Sometimes the woman's share equates to that of the man's automatically.¹⁴² As for an example, when the two parents inherit from their children; the *Qur'an* prescribes that: 'For parents, a sixth share of inheritance to each if the deceased left children'.¹⁴³ The reason in this case is that the parent's necessities are often similar. If siblings inherit from a brother who has neither parents nor children, the *Qur'an* establishes that: ' If the man or woman whose inheritance is in question has left neither ascendants nor descendants, but has left a brother or a sister, each one of them gets a sixth; but if more than two, they share in a third.'¹⁴⁴ Thereby, the sister by the mother gets

140. Op. cit., Qaradawy.

141. Ibid.

142. Ibid.

143. Qur'an 4:11.

144. Qur'an 4:12.

a sixth, which is the same as the brother by the same mother. If there are more than two siblings, they inherit a third to be distributed equally among them. All this is to say that equality of inheritance exists in many cases, and they are well known to jurists and experts in these matters.¹⁴⁵ This contention again shows that the western allegation against Islamic law of inheritance is erroneous and out of context, the law of inheritance is very much consistent with international law of human rights.

3. Again, there are cases in which the woman is entitled to a larger share than the man:¹⁴⁶

- a) if a woman dies leaving a husband, mother and two brothers and one sister by her mother, the sister alone gets a sixth; whereas only one sixth is given to the two brothers;
- b) if a woman dies leaving a husband, a full sister and a brother by her father, the husband gets half the inheritance and the sister the other half, whereas the half-brother gets nothing being merely an agnate. But if the half sibling is a sister and not a brother, she gets a sixth, as sustenance;
- c) where the woman gets more than the man follows Ibn 'Abbas's interpretation of the verse: ' If no children, and the parents are the (only) heirs, the mother has a third'.¹⁴⁷ So by no means it can be said that Islamic law of inheritance is anti-human development and promotion of human rights.

4. It has to be remembered that Islam claims itself to be a complete code of life. It has formulated its theories to the betterment of human being. If it has given women a less share or right in one occasion, it has given them more in another occasion by balancing the share or right. If it fails to do so or deprives one, its uniqueness in claiming to be the complete code of life would have faded out automatically. But still Islamic law survives and the Almighty has taken challenge to keep it up in all odd situations.¹⁴⁸ Again, Allah

145. Op. cit., Qaradawy, Yusuf Al.

146. Ibid.

147. Qur'an 4:11.

148. Qur'an 2

has made men and women as two distinct species and their duties and responsibilities are also distinct to some extent. In some cases, Islam gives men more duties and in some variant other cases, women have to perform more. In some respects, men enjoy more privileges and vice-versa. It cannot be denied that both males and females have some limitations and both are not competent for every job and duty. When both of them pursue their respective duties and are given them due rights, only then justice to both the sexes will be established. On the contrary, if we take the word 'equality' in its literal sense, it will make both the sexes fall into rivalry, which will not bring any good to either of the sexes. Both the sexes should be friendly and help each other to make a better world. The women are complementary to men, not competitive. So the word equity is more appropriate than equality as far as Islamic position is concerned.¹⁴⁹

5. It is better to have something than nothing. Islamic law of inheritance is providing woman something and ordains some provisions to balance the deficit, whereas woman in the western countries gets nothing as inherited property. On their part it is a clear violation of the human rights, which they claim as the outcome of their thoughts designed to the promotion and development of human kind, social progress and better standards of life in larger freedom.¹⁵⁰

6. Some argue that the *Qur'an* has explicitly spoken about the superiority of men over women by saying the word '*qiwamah*'. Discarding this view, Jamal Badawi says: 'Nowhere in the *Qur'an* it is stated that one gender is superior to the other'.¹⁵¹ Some mistakenly translate '*qiwamah*' or responsibility for the family as superiority.¹⁵² The *Qur'an* makes it clear that the sole basis for superiority of any person over another is piety and righteousness not gender, colour, or nationality: O mankind! We created you

149. Op. cit., Badawi.

150. Preamble to the Universal Declaration of Human Rights, 1948.

151. <http://www.iad.org/books/GEL.html> 15/11/2003

152. Ibid

from a single (pair) of a male and a female and made you into nations and tribes that you may know each other. Verily the most honoured of you in the sight of Allah is (one who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things).¹⁵³This is quite unsatisfactory as says Azizah Y. Hibri that 'some men use their maintenance obligation to turn the woman into a ward'. They hang that on a particular *Qur'anic* verse, which states in part that 'men are *qawwamun* over women.' Men have traditionally interpreted this verse to mean that men are in charge of women, or even superior to them. This gross misreading conflicts both with the *Qur'anic* principle of equality and the purpose of the affirmative action specified in the *Qur'an*.¹⁵⁴

7. In support of her proposition Azizah Hibri argues with the interpretation of the verse 'males are *qawwamun* over females' that a) the word *qawwamun* means 'to advise or take care of;' b) the verse puts a limitation upon not a permission for males. It limits their advisory function to cases where two conditions are simultaneously satisfied i.e. the male is supporting the particular female he is purporting to take care of or advise, and he has a greater edge in the subject matter of the advise. She says that the male's status, as *qawwam* thus does not extend by virtue of his gender to all females. This is exactly what the verse came to deny and limit. She adds, it is more important, if the female is better informed about the topic of the advice, the male has no standing to offer his. Thus he may, Azizah continues, advise the female on financial matters if she is naive about money, but not if she has an MBA, regardless of whether he is supporting her or not. It is probably for this reason that males tried to encage females to the home so that they might depend on the male's advice about the real world.¹⁵⁵

8. There is a misunderstanding as regards the dignity and status of man and woman in Islam, caused by the misinterpretation of the

153. Qur'an 49:13.

154. Op. cit., Hibri, Azizah Y.

155. Ibid.

verse 4:34 of the Holy *Qur'an*. The verse goes that 'men are the protectors and maintainers of women, because Allah has given the one more (strength) than the other, and because they support them from their means. Therefore the righteous women are devoutly obedient, and guard (in the husband's absence) what Allah would have them guard....' This particular verse has given rise to controversy as some people want to establish the superiority of men over women as if men are boss and women are subordinate. The word that makes the controversy is *qawwamuna*. This word does not really speak of superiority of men or inferiority of women. The proponents of this freakish idea of 'superiority and inferiority' translate the word as (men are) superiors and leaders of (women).¹⁵⁶ But this meaning is totally rubbish as Abdullah Yousuf Ali translates it as men are the protectors and maintainers of women.¹⁵⁷ Muhammad Asad in the Message of the *Qur'an* translates it 'men shall take full care of women...'¹⁵⁸ Moulana Muhammad Ali, in the Holy *Qur'an*, translates '(men are) the maintainers (of women).' Sayyid Abul A'la Mawdudi, in the *Tafhimul-Qur'an* translates 'Men are the protectors and maintainers of women'.¹⁵⁹ In the footnote he writes, a *Qawwam* or *Qawwim* is a person responsible for administering and supervising the affairs of either individual or an organization, for protecting or safeguarding them and taking care of their needs.¹⁶⁰ None of them has interpreted the verse mentioning any idea of superiority of men over women.¹⁶¹ Hammudah Abd al-Ati in the Family Structure in Islam interprets the verse 2:228 along with the verse 4:34 to

156. <http://www.wponline.org/vil/articles/15/11/2003>.

157. The footnote used says, *Qawwam*: one who stands firm in another's business, protects his interests and looks after his affairs; or it may be standing firm in his own business, managing affairs, with a steady purpose. (Cf. 4:135).

158. <http://www.wponline.org/vil/articles/15/11/2003>.

159. *Tafhimul-Qur'an*, English version; The Islamic Foundation, London.

160. <http://www.wponline.org/vil/articles/15/11/2003>.

161. Ibid.

clarify that ‘... men have a degree (of advantage) over them (women)...’¹⁶² Furthermore Al-Ati continues, ‘This degree is usually interpreted by Muslims in conjunction with another passage which states, among other things, that men are protectors of women and managers of their affairs because Allah has made some excel others and because men spend of their means. The righteous women are therefore devoutly obedient and conscientiously guard what Allah would have them guard. This degree may be likened to that sociological parlance calls instrumental leadership or authority in the household due to role differentiation on the basis of sex.’¹⁶³ So these interpretations has neither worked for the freakish who by referring to the verse, have been trying to mislead people and tarnish the image of Islam nor for those who have been trying to dominate the women by virtue of their strength of propaganda and distortions and thus it can be said that this verse has contained anything contrary to the principle of equality as envisaged by the international law of human rights.

9. Each school of thought in Islam has interpreted the verses relating to inheritance in their own context but the majority of schools argue that the verses provide guidance as to who should be provided for and at what level.¹⁶⁴ Again, there are scholars who maintain that these laws are applicable only in an Islam-based legal system and government where a woman would have recourse against a relative who was obligated to provide for her but failed to do so. Some put forward the argument that if majority of the laws in Islam in a non-Muslim or Muslim country is not followed, there should be no use of applying the law of inheritance.¹⁶⁵ It may be an argument that in the absence of a complete application of Islamic law, where the rights of women will have no teeth, Muslims should turn to the spirit of that law, which is justice, and

162. Ibid.

163. Ibid.

164. <http://www.mwlusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

165. Ibid.

find ways to accomplish this goal.¹⁶⁶ This is especially true where Muslims are a minority, as in the United States. Muslim scholars, legislators, and researchers must— and are beginning to—boldly address this issue to focus on these challenges.¹⁶⁷ The Islamic laws of inheritance are, like all issues in Islamic law, a dynamic process that must respond to the many challenges and opportunities that world changes present.¹⁶⁸

4. 2. Compatibility

1. The traditionalists may not admit but in reality, the Islamic law of inheritance is a source of significant controversy both inside and outside the Muslim community. This ‘law’ is in fact a continuing process of interpretation of *Qur’anic* rules and principles to form the complex ‘laws’ of inheritance under Islam. It is a dynamic process which, based on specific text in the *Qur’an* and traditions of the Prophet Muhammad, continues to be discussed in each Islamic age by Muslim scholars addressing changing issues and times.¹⁶⁹

2. Whatever or whatsoever complications or controversies there may be, one must first realize that Islam revolutionized women’s inheritance rights. Prior to the *Qur’anic* injunction— and indeed in the west until only recently— women could not inherit from their relatives, and in the case of Arabia at least, were themselves bequeathed as if they were property to be distributed at the death of a husband, father, or brother. Thus, Islam, by clearly stating in the *Qur’an* that women have the right to inherit for themselves, changed the status of women in an unprecedented fashion.¹⁷⁰

3. So some Muslim traditionalists tend to make Islamic law of inheritance compatible with the international law of human rights by saying that when a female gets share with a male as inheritor

166. Ibid.

167. Ibid.

168. <http://www.mwlnusa.org/publications/postionpapers/inheritance.html> 15/11/2003.

169. Ibid.

170. Ibid.

and from other sources as with different status, her share equates with that of a male. A deep perusal of this verse i.e. 'Allah (thus) directs you as regards your children's (inheritance) to the male, a portion equal to that of two females' in conjunction with other verses related to inheritance and their critical scrutiny find that females in the last analysis are beneficiaries, or at least they are not worse off.' Now there poses the question- in what way?

Firstly, the *Qur'an* has made it clear ensuring that women could get their shares of inheritance not only as daughters, but also as mothers and wives.

Secondly, it is true that sometimes females have been given half the share of male heirs but it has to be looked at within its social and economic framework. In Islam the wife gets cared for by her husband, even if she is wealthy enough to maintain herself. The law has entitled her to claim maintenance from her husband. At the same time she is not bound to spend any of her wealth or income on the household. Again, a Muslim female receives at the time of her marriage a considerable sum of money, which the husband is obliged to pay. It constitutes her dower, or *Mahr*, which belongs to her alone. She has got the freedom to use, spend or invest it whatever way she likes. Haifaa A Jawad continues by saying that 'as a wife she adds to whatever she receives through inheritance in her capacity as daughter and that, too, without any legal commitment to support either herself or her children.'¹⁷¹

4. Again, some traditionalists strive to level the Islamic law of inheritance with the international law of human rights by saying the above equation along with the possibility that a father can increase his daughter's portion by making a will.¹⁷² And this is not true that a man cannot make will in favour of her daughter to make her position alike with the brother. In the words Haifaa Jawad: 'The *Qur'an* makes it clear that a person is entitled to make a will. Indeed, it is highly recommended by the Prophet that a person

171. Op. cit., Engineer, A., p.71.

172. http://www.qantara.de/webcom/show_article.php/c-285/_nr-4/_p-4/i.html
15/11/2003.

should prepare a will as early as possible and not wait until it is too late.¹⁷³ There is some misconception held by large sections of the Muslim public that a person has no right to make a will, but both the *Qur'an* and the *Sunnah* encourage people to do so. Even there are some misguided jurists who argue, contrary to clear principles in the *Qur'an*, that Islam does not recommend the making of wills. This misinterpretation advocated by a small band of jurists has confused ordinary Muslim people and has led many to abandon the idea of making wills. Given that at present the majority of Muslims do not think seriously of wills, let alone making ones of their own.¹⁷⁴ The *Qur'an*, on the other hand, has specifically asked for the distant relatives, the needy people and the orphans to be treated kindly and to be helped if they are present at the time of the division of inheritance: If relatives, orphans, or needy men are present at the division of an inheritance, give them, too, a share of it, and speak to them in kind words.¹⁷⁵ So, if the *Qur'an* is so sympathetic even to distant relatives and needy people by virtue of the fact that it encourages people to give them some share of the inheritance, there must not be any problem, in keeping with this spirit of Divine Justice, that a bequest or will be made in favour of a needy person, particularly if this person is a close member of the family. The point here is emphasized that if parents think that their daughter is unable to get married for whatever reason and she is in a disadvantaged position, they can write a will in her favour in order to secure her future. This accords with the spirit of the *Qur'an* and the *Sunnah*.¹⁷⁶ The Prophet is reported to have said: 'It is better to leave your inheritors well off than destitute'.¹⁷⁷

5. Some traditionalists attempt to make the Islamic law of inheritance superior to any law of inheritance known to humanity, even where the question of female is concerned, rather than to

173. Op. cit., Jawad, Haifaa A., p. 68.

174. Ibid.

175. Qur'an 4:7.

176. Op. cit., Jawad, Haifaa A., p. 68.

177. *Ibn al-Arabi, Akham al-Quran, Dar al-Kulub al-'Ilmiya*, Beirut, Vol. 1, 1988, p. 431.

draw the line of compatibility in respect of Islamic law of inheritance with the international law of human rights.¹⁷⁸ They maintain that in a world in which females are the weaker party and the male dominance is entrenched, the tendency is for male heirs to cart away the entire inheritance. Islam guaranteed all daughters, wives and mothers a minimum share in the estate and it is impossible for either the deceased or the society to deprive them legally of their shares.¹⁷⁹ Some societies allow the son alone taking everything e.g. Germany or the spouse taking everything e.g. U.K. or absolute discretion on a person willing entire of his/her property to a dog or cat or a mistress or a club. The family, male or female is denied a share of the wealth. Islam neither stops nor disallows a male from making a will and giving his property to a charity or some person who does not inherit this wealth by law, but limiting this will to one-third of the estate on the principle that a male should prefer to leave his family well catered for than destitute and that the close family is most deserving of charity.¹⁸⁰ Again, inspired by *Ash'arite* theology they maintain that as the Islamic law of inheritance is superior to other laws, they do not need seeking for reasons or rationality behind Divine injunctions. The task of scholarship is to extract the injunctions and interpret them for the Muslims to obey without question.¹⁸¹

6. To reply the question what happens if the society evolves to the level where the tasks to maintain the family and household are undertaken by men and women in equal measure where the financial burden of families rests with its male as well as female members to the same degree, where the women may be, in fact, the bread winners as a norm or whether there is any other possibility for a hermeneutic of the *Qur'an* that provides even a theoretical possibility for adjustments to this ratio without losing its authenticity, Shahrur, a traditionalist interprets the *Qur'anic* text

178. http://www.nigerdeltacongress.com/darticles/democracy_human_rights_and_islam.htm 15/11/2003.

179. Ibid.

180. Ibid.

181. Ibid.

in a way which makes the Islamic law of inheritance compatible with the international law of human rights.¹⁸² He formulates that 'what we have is a determination of the upper limit for men and the lower limit for women, irrespective of whether the woman was a breadwinner. Where a son and a daughter are, for example, the only ones inheriting the estate, the woman must never be given less than 33.3% and the man never more than 66.6%. Should society, given its objective conditions at a particular time, choose to give the daughter 40% and the man 60% or share the estate equally for example, it would be moving freely in the range set by these limits. What it may not do is to give the daughter less than half the share son's share or, which is the same thing, give the son more than twice the daughters' share.'¹⁸³

Shahrur's fix to the controversy regarding Islamic law of inheritance is a bit new approach suited to the reinterpretation of the *Qur'anic* text. In the words of Sanusi Lamido Sanusi: 'In view of the intricate link between law and the social, any attempt to reinterpret Islamic law must be based on a new hermeneutic that, instead of attacking Islam and seeking the abandonment of its teachings, provides a different way of examining the text and drawing conclusions consistent with progressive discourses. In other words the success of any reform of the *Shariah* is dependent entirely on its authenticity, viewed primarily as belief in and loyalty to the theoretical constants of the law, with the *Qur'an* and authentic traditions as a minimum.'¹⁸⁴ He maintains that Human Rights scholarship has failed in this regard, particularly in respect of the complicated questions of penalties, inheritance and polygamy.¹⁸⁵

7. In a non-Islamic State where Muslim personal law is not recognized, the Muslims have to follow all of the laws prevalent there and consequently they have to conform with the existing inheritance law as well. So it does not matter whether Islamic law of inheritance resembles with international human rights. Again,

182. Ibid.

183. Ibid.

184. Ibid.

185. Ibid.

in an Islamic State, whatever provisions may be therein the *Shariah*, the State can legislate ensuring equality of shares between men and women and can thus overcome the accusation relating to the unequal provision of *Shariah* in respect of inheritance. And if the proportion of share is increased, it will cause nothing wrong but will ameliorate the position of women in the society.

8. Laws encapsulate principles. In some cases they appear to conflict. A notable example is the apparent inconsistency between the principle of the equality of men and women especially in the cases of inheritance. Seeing this apparent inconsistency, many western Scholars, who have examined the Muslim formulation of human rights and have said that the Muslim world has borrowed the concept from the West, have concluded that these schemes run far short of the protections provided by the international human rights, enshrined in the International Bill of Rights and CEDAW.¹⁸⁶ Mawdudi has refused to accept their view and said until the seventeenth century the western world never knew that the Magna Carta contained the human rights and civic rights but the human rights in Islam existed before that point of time and unlike the traditional human rights, the rights in Islam cannot be suspended or withdrawn because of its divine nature and sanctions are followed in the violations.¹⁸⁷

9. Mayer, who believes in universalistic approach, contends that contemporary endorsement of international human rights by Muslims is more apparent than real, because all human rights pronouncements by Muslim individuals and groups have been curtailed by qualifications rooted in *Shariah*. The application of *Shariah* law would lead, she concludes, to serious breaches of international human rights. More specifically, the application of *Shariah* law would lead to discrimination against ... women.¹⁸⁸

186. Safi, Louay M., 'Human Rights and Islamic Legal Reform' available in <http://www.wponline.org/vil/books/shariah/human3.pdf> 15/03/2003.

187. Mawdudi, A. A., *Human Rights in Islam*, available in http://www.wponline.org.vil/books/M_hri/index.htm 15/03/2003.

188. Mayer, Ann Elizabeth, *Islam and Human Rights: Tradition and Practice*, 2nd Edition, Westview Press, 1995, pp.64-65.

10. Rhoda Howard points out that traditional *Shariah* fails to provide for equal protections of the law for ... women. She writes 'according to traditional interpretations, Islam excludes entire categories of people, most notably women, slaves [sic], and non-Muslims, from equality under the law, although it does set out careful rules for their unequal protection.'¹⁸⁹ Howard, though critical about *Shariah*, makes caution, however, in saying that against any conclusion that would suggest that the classical legal system was unjust, and continues to argue that compared with Europe until barely a century and a half ago, Islamic societies might well be characterized as far more just in the modern sense of protecting human rights. Still, Howard is quick to deny the possibility of developing a modern human rights tradition, rooted in Islamic worldview, insisting that 'Islamic conception of justice is not one of human rights.'¹⁹⁰

11. Heiner Brelefeldt supports the contention made by Mayer regarding historical *Shariah's* capacity to provide for human rights protections, particularly for women. Examining areas of conflict between *Shariah* and human rights, he notes: 'Due to the timing of its development, it is hardly surprising that the classical *Shariah* differs from the modern idea of universal human rights. Although the *Shariah* puts a great deal of emphasis on the equality of all the faithful before God, it traditionally assumes unequal rights between men and women and between Muslims and members of other religious communities'.¹⁹¹

12. An-Na'im though realizes that the possibility and importance of evolving human rights tradition from within the Islamic normative system, and warns against any external imposition, discusses specific examples of violation of religious freedom by *Shariah* rules, and cites instances of discrimination against women and non-Muslims in the historical legal system.¹⁹² To do this, he

189. Howard, Rhoda, *Human Rights and the Search for Community* (Boulder, Co.: Westview Press, 1995), p. 93.

190. Ibid, p. 94.

191. Biefeldt, Heiner, 'Muslim Voices in the Human Rights Debate', *Human Rights Quarterly*, 17.4 (1995), p. 596.

192. AnNa'im, A.A., *Toward an Islamic Reformation*, Syracuse University Press, Cairo, 1990, pp. 52-56.

calls for an Islamic reformation aimed at overcoming contradictions between international human rights and *Shariah* rules, and proposes a methodological approach based on what he calls “the evolutionary principle” introduced in the seventies by his late mentor, Mahmoud Muhammad Taha. According to this principle, An-Na’im calls for the application of reverse *naskh*, i.e. the abrogation of the Madinan *Qur’an*, which places the solidarity of male Muslims above all others and exerts Muslims to compel the unbelievers, to accept Islam, and introduces measures that discriminate against women and against non-Muslims,¹⁹³ whenever contradicts the Makkan *Qur’an*, which embodies the eternal principles of the Islamic revelation which emphasize human solidarity and establish the principle of justice for all, regardless of religion, gender, or race.¹⁹⁴ An-Na’im concludes by making a passionate plea that succinctly summarizes his approach: Unless the basis of modern Islamic law is shifted away from those texts of the *Qur’an* and *Sunnah* of the Medina stage, which constituted the foundations of the construction of *Shariah*, there is no way of avoiding drastic and serious violation of universal standards of human rights. There is no way to abolish slavery as a legal institution and no way to eliminate all forms and shades of discrimination against women and non-Muslims as long as we remain bound by the framework of *Shariah*. He maintains that Islamic inheritance laws should also reflect the principles of fairness and justice. In order to do so, the laws for intestacy in Islam must be seen in their appropriate historical context.¹⁹⁵

Though An-Na’im’s proposal seems apparently to provide a quick fix to the contradictions between historical *Shariah* and international human rights, the “evolutionary principle”, is not sustainable, as it can be easily faulted on both theoretical and practical grounds.¹⁹⁶ First, since Muslims consider the *Qur’an*, which An-Na’im himself agrees, as a divine revelation, one has to accept the totality of the *Qur’anic* statements as a single discourse. Secondly, negating the Madinan *Qur’an* would not be acceptable

193. Ibid, p. 176.

194. Ibid, p. 49.

195. Ibid, p.180.

196. Op. cit., Safi.

by the Muslims, including those who agree with An-Na'im that there should be a fresh reading of the Islamic sources so as to effect a sweeping legal reform.¹⁹⁷ For the Madinan Qur'an do not only comment on family matters including marriage, divorce, inheritance etc and relationships with non-Muslims, but also on issues relating to fundamental Islamic practices, such as the performance of prayer, *Zakat*, fasting, and hajj. Thirdly, negating one-third of a book which the majority of Muslims consider to be incontrovertible is counterproductive, particularly when it can be shown, that the contradictions between the Makkan and Madinan statements on women and non-Muslims are more apparent than real, resulting from faulty interpretations by classical scholars, as well as the application of an atomistic methodologies of derivation.¹⁹⁸

13. So, while the traditionalists treat Islamic law of inheritance as compatible with international human rights and the modernists view that apparent formulation of human rights by the Islamic States towards women are not real human rights as it gets circumscribed by qualifications rooted in *Shariah*, it can be said that Islamic law i.e. *Shariah* has been in line with the human rights but the modernists have failed to discern human rights tradition in Islam because of their static and ahistoric outlook that isolate the *Shariah* rules developed by classical scholars from the socio political structure of early Muslim society. For a modern human rights tradition to take hold in modern Muslim society, it should be rooted in the moral/ religious commitments of Muslims. Not through an imposition of human rights tradition evolved in an alien culture, but by appealing to the conception of human dignity embedded in the *Qur'anic* texts, and by employing the concept of reciprocity which lies at the core of the *Qur'anic* notion justice, it can be achieved. Human rights tradition capable of ensuring equal protections of the moral autonomy of both individuals and groups is bound to evolve by the application of the Islamic sources through a paradigm that incorporates the principles of human dignity and moral reciprocity into a modern society, characterized

197. Ibid.

198. Ibid.

by cultural plurality and globalizing technology.

Though the verse 4:11 of the *Qur'an* apparently seems to privilege sons over daughters in the division of an estate violating western human rights doctrine of equality, women are humanely and strongly protected and maintained by men because Allah has given the one more (strength) than the other and because they support them from their means¹⁹⁹ and they are burdened with obligations less than men and fashioned with some other facilities which can equate her shares with men in practice.

14. Western Scholars, who are always ignorant of Arabic text, basically rely on the interpretations, which are sometimes misinterpretations, or distorted interpretations. Sometimes, they treat so-called Muslim writers who never practise Islam by submitting to the Almighty, which is the basic test to be Muslims as the authority of Islamic law. If these so-called Muslims practise Islam, they could have interpreted the *Qur'an* and *Sunnah* otherwise.²⁰⁰ When the western writers move around the Muslim world, they can closely glimpse the true practise of Islam i.e. how the Muslims are treated in the Islamic society, whether inequality is practised between men and women. It is foremostly believed that they will find a different picture, which is totally contrary to their assertions. To her surprise, Fernea writes, 'Islamic belief is also the stated basis of most of the behaviour I felt to be feminist.' Many Islamic women, she points out, begin with the assumption that the possibility of gender equality already exists in the *Qu'ran* and the problem, as they see it, is malpractice, or misunderstanding, of the sacred text.²⁰¹ That's not the end, again everywhere Fernea asked about the veil, inequality and everywhere Islamic women responded with their own query: Why was it such a focus of interest in the West? Why did it seem to be equated with oppression in the Western mind?²⁰² As Muslim women are quite satisfied with what they have or what has been ordained in the *Qur'an* or

199. *Qur'an* 4:34.

200. <http://www.ii-pt.com/web/papers/islam&h.html> 15/11/2003.

201. Fernea, Elizabeth Warnock, *In Search of Islamic Feminism: One Woman's Global Journey*, New York: Doubleday, 1998, p. 430.

202. *Ibid.*

Sunnah, whether be it share in the inheritance or her role in the society.²⁰³ Fernea writes, 'Sometimes women are forced to cover, as in Iran and Afghanistan, and that is certainly a restriction. But in other countries, *hijab* appears to be a matter of the woman's choice, of her own decision based on her reading of religious texts. ... Cover or *hijab* is an important new development in Muslim countries, where it is equated with piety and belief.'²⁰⁴

15. The *Shariah* law of inheritance has got extension in its scope in Tunisia, Pakistan, Bangladesh and some other Muslim countries in respect of the doctrine of representation in inheritance law by enhancing the list of sharers considering humane condition.²⁰⁵ So if the religion of Islam is for human being or for humanity, it can certainly extend its scope to the development of women sect by reinterpretation and which can keep pace with the changing condition and can also increase their position in the society. Inheritance is certainly an issue of feeling empowered, a feeling of self worth. To have an equal right to inheritance means that women have the right of citizenship of being treated as a human being in her own right. Isn't that which half the Muslim population should have as its birthright? Revision of practices (not divine injunctions) is needed. It is not the revelatory *Qur'an* and the *Sunnah* that need any editing or revision. What need to be re-examined are fallible human interpretations and practices.²⁰⁶ Diverse usage and practice in Muslim countries often reflect cultural influences (local or foreign), more so than the letter or spirit of the *Shariah*. It's a matter of great happiness that there is an emerging trend for the betterment of our understanding of gender equity, based on the *Qur'an* and *Sunnah*, not on alien and imported un-Islamic or non-Islamic values and not on the basis of the existing oppressive and unjust *status quo* in many parts of the Muslim world.²⁰⁷ And it is not beyond the reach that the Muslim world will come forward to live under the changing circumstances

203. *Middle East Policy*, Volume VI, No. 1, June 1998.

204. Op. cit., Fernea, Elizabeth Warnock..

205. Pearl, David and Menski, Werner, *Muslim Family Law*, Brite Books, Lahore, 1998, pp. 8-17, 19-59.

206. Op. cit., Badawi.

207. Ibid.

with liberal attitude in mind and profound wisdom in *Shariah* keeping in view the fact from an Islamic perspective, the roles of men and women are complementary and cooperative to each other rather than competitive and discriminatory.²⁰⁸

5. Conclusion

It is therefore clear from the above discussion that Islam does give all basic human rights to all though there are some violations in some places and some groups have misunderstanding²⁰⁹ and these rights are formulated in the *Qur'an* fourteen hundred years before. Western secularism and the liberal tradition, believe that their worldview, ideas, culture and civilization are the best for humanity. Francis Fukuyama in his book 'The End of Time' puts forth the theory that human development in terms of its ideas has concluded with this final period of liberal secular thought and nothing more will come to humanity. However in his book he adds that that the only part of the world, which has not adopted this secular human view, is the Islamic world and proposes that there will be a conflict in terms of this ideology in the Islamic world.²¹⁰ This view really happens to be true. Western writers thinking themselves to be superior, without going through in Islamic law in details and relying very often on some distorted information, try to judge Islamic legal system and arrive at a biased decision leading to conflicts between the west and the orientalist. John Strawson rightly comments: 'A critique which is based on superiority and political power, rather than on scientific inquiry, must be flawed.'²¹¹ As Islam came to show light in *Jahilyya*, it has left no stone unturned for the cause of human being. If it keeps in mind the justice and equality for all irrespective of sex, race or nationality etc., it is not possible for Islam to discriminate women in any respect, let alone inheritance.

208. Ibid.

209. Hannan, Shah A., *Social Laws of Islam: Does Islam provide for Human Rights?* available in <http://www.witness-pioneer.org/vil/09/12/2003>.

210. Al-Timimi, Shaikh Ali, *Islam - Elevation of Women's Status*, available in <http://www.witness-pioneer.org/vil/09/12/2003>.

211. Strawson, John, *Encountering Islamic Law*, available in <http://www.uel.ac.uk/faculties/socsci/law/jsrps.html> or <http://www.witness-pioneer.org/vil/09/12/2003>.