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Reviewing the Interpretation of the Inheritance Law with Special Reference to *Kalala*

Dr. Begum Asma Siddiqua^{*}

Introduction

A source of significant controversy both inside and outside the Muslim community is the Islamic law of inheritance with regard to women. Islam revolutionized women's inheritance rights by clearly stating in the Quran that women have the right to inherit for themselves, and thus it changed the status of women in an unprecedented manner. The controversy at present centers around the share that is to be inherited by her, that is, equal share. There are many women based NGOs in Bangladesh and progressive civil society that have made demands for equal shares of women in inheritance. And there are a number of orientalist who have projected in their writings that Islam has been unjust to women. However, most of the Muslim women of Bangladesh do not regard these issues to be important. They are interested in re-examining the proper application of the laws of inheritance as they stand. Muslim women want a more just understanding of and adherence to Islamic principles. They appear to believe that existing laws and practices are not conducive to a happy home or a just society specially in the rise of nuclear family. Consequently, many Muslims, male and female, are struggling today with the following questions: How can they introduce just share into the Islamic law of inheritance, protecting the cause of Islam while at the same time how can they benefit by recognition of the legitimate rights of women without inadvertently destroying their highly valued familial ties.

There are various verses in the Quran the interpretation of which may need re examination and reviewing. The area of discussion is both complicated and controversial. The present article will concentrate only on a single area of Sunni inheritance which affect the right of inheritance of women., specially the daughter. It will try to review the interpretation of the verse on *kalala* in the Quran to understand and show the implications it has on individual cases. The article will rely mainly on basic and traditional Islamic sources to show that problematic jurisprudence was often the result of a misunderstanding or misapplication of the Qur'anic text resulting from cultural distortions or patriarchal bias. In pursuing rights for women within an Islamic

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discourse a different jurisprudence may evolve which will be conducive to the society at large.

A discourse on share

The Qur'an in Sura Nisa contains an explicit system for the distribution of a decedent's properties among the family members. The Qur'an specifies certain fractional shares of the estate for certain heirs of the decedent, which include both male and female relatives. They are known as Quranic heirs. The Shi'a school declares that these specified persons are to be the only heirs of the decedent's intestate estate. The majority Sunni view, however, is that this new framework is to be superimposed upon the framework that already existed in pre-Islamic Arabia. The pre Islamic framework was based on a patrilineal system that excluded females. Under the Sunni approach, any amount that is not distributed to the specified persons according to the Qur'anic formulae will pass to the male agnatic relatives as *asaba* or residuary heirs. The Quranic heirs and the *asaba* take under the rule that "one nearer in degree to the decedent excludes the one more remote in degree." If there are no surviving blood relatives among the Quranic heirs or the decedent's *asabas*, all other blood relatives, known as distant kindred, are allowed to take. In this case, because a husband or wife is not considered a blood relative, the husband or wife, if surviving, will take his or her prescribed maximum share and the distant kindred will take the rest.¹

In the Sunni school, the Quranic heirs are: the decedent's husband; wife; siblings of the decedent; the decedent's mother, father and daughter; Agnatic grandfather, grandmother and agnatic granddaughter of the decedent are added to the list of Quranic heirs by analogy of the jurists. Each of these heirs has a prescribed share of the estate. An exclusionary rule remains active within the prescribed share of each of these heirs.²

Each of the Quranic heirs takes his or her prescribed fractional interest as an undivided interest in each asset of the estate. Some of these heirs—the father, daughter, agnatic grandfather, agnatic granddaughter, and sisters—may be converted into residuary heirs or *asaba* by the survival or absence of another relative. For example, a daughter is entitled to one-half of the estate if there is no son, but she shares in the residue as a residuary if the decedent is survived by a son. When the rules pertaining to Quranic heirs and residuary heirs are combined, five heirs emerge as primary heirs who are

¹ Syed Khalid Rashid, *Muslim Law*, Lucknow, Eastern Book Company, 4th ed. 2004, p. 357

² *Ibid.*, p. 353

never excluded from succession by any other relative of the decedent. These are the decedent's father, mother, son, daughter, and the surviving spouse.³

The Shi'a heirs appear in three classes: class I: Parents and lineal descendants; class II: Ascendants and siblings and siblings' issue; and class III: Uncles and aunts and their descendants. The heirs share the estate with the surviving spouse. Some of these heirs—specifically, the father, mother, daughter, daughter's descendants, sisters and their descendants, and brothers by the same mother and their descendants—are given shares in prescribed amounts. The rest of the heirs are residuary. If there are survivors in class I, they share the estate to the exclusion of those in class II and III, and survivors in class II preempt the survivors of class III. Within each class, the closer relatives exclude the more distant ones. Within the categories, there is little or no distinction between males and females. Also, the survival of an agnatic descendant or ascendant has no affect on the prescribed share of a Quranic heir. Thus, the Shi'a system may result in a greater amount being inherited by female relatives. For example, if a decedent is survived by a grandfather (father's father), his wife and his daughter, the Sunni system would divide the estate as follows: three-eighths to the grandfather, one-eighth to the wife, and one-half to the daughter. Under the Shi'a system, the wife and daughter, as the closer relatives, would share the estate equally to the exclusion of the grandfather.⁴

In both Sunni and Shia system, a female is restricted to one-half of what her male counterpart will take. A son's share will be twice than that of a daughter. A brother's share will be twice than that of a sister. The traditional theory provides that this is not gender discrimination per se, but rather a tangible recognition of the more substantial male responsibility of supporting the female members of the family.⁵

The question in Islamic inheritance law of whether a male always inherits a share that is twice that of a female of equal class presents an interesting case in which male interpreters of the Qur'an may have been willing to stretch even the words of the Qur'an itself to favor their gender. The Qur'anic verse states that "[t]he male shall have the equal of the portion of two females" Yet a literal reading of the separate verse that specifies heirs' fractional shares is not consistent in some cases with the

³ NJ Coulson, *Succession in the Muslim Family*, Cambridge, The University Press, 1971 pp. 40-43

⁴ Asaf AA Fyzee, *Outlines of Muhammadan Law*, Calcutta, Oxford University Press, 1949 pp. 381-398

⁵ Op cit., Syed Khalid Rashid, p. 343

double share requirement. For example, if a decedent is survived by his wife and parents, the wife should receive one-fourth of his estate, the mother one-third and the father the remaining five-twelfths. Worrying that the father does not receive double of what the mother receives, the legal scholars determined that the mother was not to receive one-third of the estate but rather one-third of what remains in the estate after the wife receives her share. Under this interpretation, then, the wife would take one-fourth, the mother would take one-fourth also, that is, one-third of the remaining three-fourths, and the father would take the remaining one-half of the estate, thus securing his double portion.⁶

The provision for double shares for males is often pointed to as a source for the proposition that Islamic law generally favors men over women.⁷ It should be noted, however, that the present Sunni distribution system may at times result in situations in which female family members who are not of the same rank may end up with equal or greater shares of decedent's estate. For example, if a wife dies survived by her husband, her daughter and her brother, the estate will be distributed as follows: one-fourth to the husband, one-half to the daughter, one-fourth to her brother. Thus, the spouse and male relative of the wife each receive half of the amount allocated to the daughter. However, had the Quranic words been followed literally the daughter would have received the total estate less the husband's share.⁸

In agreement with this article the position of the child and sibling in the law of inheritance calls for attention. The son is a residuary and primary heir as there is no prescribed share allotted for him in the Quran. The daughter is a Quranic and primary heir with a prescribed share of the estate. The amount of the Qur'anic share of a daughter depends upon whether the deceased parent is survived by sons or other daughters. If the decedent is survived by sons as well as one or more daughters, the daughters and sons share the residue of the estate but each daughter takes one-half of a son's share. If there is no son and the decedent is survived by only one daughter, she takes one-half of the estate. If there are no sons but more than one daughter, the

⁶ Op cit., NJ Coulson, p. 45

⁷ UAB Razia Akter Banu, 'Practice of Women's Inheritance Rights in Bangladesh' in *Fowsia dialogue series on Women's Security and Religion in Bangladesh: Islam Hinduism, Christianity and Buddhism*, Dhaka, Forum on Women in Security and International Affairs (FOWSIA), 2004, p. 14

⁸ Sura Nisa 4:176, *The Meaning of the Glorious Quran, Text Translation and Commentary*, Volume 1, Translated by Abdullah Yusuf Ali, Egypt, Dar al-Kitab Allubnani, 1934

surviving daughters share two-thirds of the estate equally among themselves. Under the Islamic system, the daughter is always guaranteed a portion of her parent's estate. The survival of a son will not preempt her, but it will reduce her prescribed share. The survival of a son's descendant will not even reduce the daughter's share.⁹

The brother and sister of the decedent also take their share on the same principle as son and daughter. Since brothers and sisters are secondary heirs they are supposed to come into picture only in the absence of sons and daughters. However, the present Sunni law system allows them to enter the ground even when the decedent is survived by daughter/s. The Shia law of inheritance has restricted their movement in class II for which they are never allowed to share along with a daughter/s. All the primary heirs in Shia law of inheritance are placed in class I thus ensuring their absolute right to inherit in accordance with the Quranic verse of *kalala*. The present article does not aim to challenge the rule of *tasib*, that is, 2:1 share of siblings or collaterals.¹⁰ But it proposes that it will be more equitable to recognise the right of the daughters provided by the Quran in preference to collaterals of the deceased. In this context the *kalala* verse need to be discussed.

***Kalala* verse in the Quran and Hadith**

The relevant portion of the two verses relating to *kalala* appears thus,

“.....If the man or woman whose inheritance is in question, has left neither ascendants nor descendants (*kalala*), but has left a brother or a sister, each one of the two gets a sixth; but if more than two they share in a third;.....” (4:12)

and

“.....Say: Allah directs (thus) about those who leave no descendants or ascendants (*kalala*) as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance, if (such a deceased was) a woman, who left no child, her brother takes her inheritance: If there are two sisters, they shall have two thirds of the inheritance (between them): if there are brothers and sisters, (they share) the male having twice the share in the female.” (4:176)¹¹

⁹ Ibid., Sura Nisa 4:11

¹⁰ Islam advocates for equity and not equality and the author fully agrees with it.

¹¹ Abdullah Yusuf Ali, *The Meaning of the Glorious Quran, Text Translation and Commentary*, Volume 1, Egypt, Dar al-Kitab Allubnani, 1934; *Kalala* in italics is emphasised by the author

In both the verses the word that appears is *kalala* which has been translated by the translators as **descendants and ascendants**. This word was not defined authoritatively in the life time of the Prophet (sm).¹² This was one of the three terms which Umar (R) wished that the Prophet (sm) had defined them in his lifetime, the other two being *Khilafat* and *Riba*. Qatadah Salim ibn Abul Zaid and Mizan ibn Abu Talha reported that Umar (R) said that: I did not refer to the Prophet (sm) more repeatedly than in case of the problem of *kalala*, and he never showed more annoyance to me than in regard to this problem, so much so that he struck my chest with his fingers and said: 'Umar, does the verse revealed in summer season, at the end of Sura al-Nisa' not suffice you?' Umar (R) in his deathbed said that : I have made no mention of *kalala*. It shows that the meaning of *kalala* was not clear to him although he was an expert on Arabic language.¹³

The precise meaning of the Quranic term *kalala* creates some doubt. It is a derivative of the root Arabic term with the three consonants k.l.l., one meaning of which is 'to surround'. *Iklil*, another derivative of the same root, is the term for a crown or a type of headwear which sits around the head rather than on top of it. *Kalala*, therefore, refers to those relatives who form the lateral branches of the decedents family tree, standing on either his paternal or maternal side, as opposed to those relatives who stand directly above or below him in the perpendicular branches of ascendants and descendants. However, some scholars maintain the term describes the relatives themselves and means all relatives other than ascendants or descendants, while others think that it describes the decedent, meaning a person who has no surviving ascendants or descendants.¹⁴

On the accepted definition, we are concerned with the inheritance of a person who has left no descendant or ascendant, but only collaterals, with or without a widow or widower. If there is a widow or widower surviving, she or he takes the share as already prescribed.¹⁵

¹² Abu Bakr Ahmad ibn Ali ar-Razi al-Jassas al-Hanafi, *Ahkamul Quran*, (Bangla version translated by Mawlana Abdur Rahim) Vol. 2, Islamic Foundation Bangladesh, Dhaka, 1988, pp. 460

¹³ Ibid., pp 460-1; Allama Abu Jafar Muhammad Ibn Jarir Tabari, *Tafsir-e- Tabari Sharif*, Bangla version, Dhaka, Islamic Foundation Bangladesh, 2000, pp. 207-14

¹⁴ Ibid, pp. 463-4; op cit., NJ Coulson, p. 65 fn 1

¹⁵ Abdullah Yusuf Ali, 4:12 fn520

There are much scope to rethink and discuss on the reconstruction of the interpretation of the two verses pertaining to *kalala*. But this article will only focus on the term *kalala* and its impact on inheritance right of daughter/s and leaves it for another occasion to discuss on the reconstruction of the interpretation of the two verses. Various opinions and understandings of the scholars have come to accept that *kalala* relatives are collateral relatives and they come into picture in the absence of the descendants and ascendants of the decedent.¹⁶ In Sunni system of inheritance the collaterals do not have any claim in the share of the property in the presence of the father, the ascendant and/or the son, the descendant of the deceased. But they do claim in the presence of the mother, the ascendant and/or the daughter, the descendant. However, collaterals do compete with the grandfather, the ascendant in all the Sunni schools except the Hanafi school of thought. And the grandmother is already relegated to a minimum share in all school of thought. It therefore appears that ascendants means the immediate ascendants. Regarding descendants, the traditional Sunni system gives total emphasis on the sons. In contrast to a son how low so ever a daughter up to one generation only is a descendant of the decedent.¹⁷ An agnatic grand daughter, who is not originally a Quranic heir, has been introduced by analogy of the jurists as descendant of the decedent which has raised more questions than solutions for those who want to see equity in the inheritance system.¹⁸

The mother's portion as already stated is either one third or one sixth being restricted to the latter portion in the presence of either a child or agnatic grandchild or brothers of the decedent. The traditional rule formulated from the Quran that all collaterals are excluded from succession in the presence of the father was designed to benefit the collaterals indirectly through the greater share of the inheritance that it gives to the father, upon whom the collaterals, as his issue, may be dependent for maintenance and from whom they will ultimately inherit. With a literal construction of the Quran this

¹⁶ Op cit., Abu Bakr Ahmad ibn Ali ar-Razi al-Jassas al-Hanafi, pp. 457-8

¹⁷ For details see, Dr. Muhammad Faiz-ud-din, *A Text Book on Islamic Law*, Shams Publications, Dhaka, Chapters Eighteen, Nineteen and Twenty; DF Mulla, *Mahomedan Law* (Bangla version), Khoshroz Kitab Mohol, Dhaka, 1995, chapter 7; Nurul Momen, *Muslim Ain* (Bangla version), Bangla Academy, Dhaka, 1994, chapter 18; M Habibur Rahman, *Muslim Ain* (Bangla version) Vol.1, Iqra Printing Press, Rajshahi, 1989, chapter 5; BR Verma, *Mohamedan Law*, 6th ed., Law Publishers, Allahabad, 1978, 1986, Part-III; Dr. Tanzil-Ur-Rahman, *A Code of Muslim Personal Law*, Vol. II, Hamdard Academy, Karachi, 1978, chapter XXXIII; Tahir Mahmood, *The Muslim Law of India*, 3rd ed., Butterworths, New Delhi, 1980, pp.196-218

¹⁸ Sura Nisa, 4: 11, 12, 176

rule could be extended for the mother also because ultimately the brothers and sisters would inherit totally from the mother and they should not have been allowed to enter into the scene of succession while she is alive. This could be done by returning the rest of the property by way of *radd* to the mother. Even restriction of mother's share by one sixth by two brothers or sisters of any category demands a full discussion.¹⁹

The daughter's share is in the absence of a son one half and two or more daughters collectively share equally two thirds of the property. The son is an *asaba* or residuary heir and he shares the residue of the estate after satisfying the primary heirs to their minimum portion. The daughters partake the nature of *asaba* in the presence of the son and share by rule of *tasib*, that is, half portion to that of a son. Similar to the son and in accordance with the literal words of the Quran, the daughter could enjoy the same position as that of the son with regard to the collaterals. Had that been so then brothers and sisters would only claim in the absence of both son and daughter. It is worth mentioning that the traditional Sunni system allows the daughter to exclude a uterine brother and sister but not a full or consanguine brother or sister.²⁰ If a rule can extend to uterines there is no reason why that cannot be extended to full and consanguines.

There is a hadith which relates to the case of an *asaba* sharing with daughters. It is as follows:

The wife of Sa'd b. al-Rabi' came to the Prophet (sm) with her two daughters and said: "O Prophet, these are the daughters of Sa'd b. al-Rabi". their father died a martyr's death beside you in the battle. But their uncle has taken Sa'd's estate and they cannot marry unless they have property." After this the verse of inheritance was revealed and the Prophet sent for the uncle and said to him: "Give the two daughters of Sa'd two-thirds of the estate, give their mother one-eighth and keep the remainder yourself."²¹

There is no similar hadith for a mother. This hadith however, have never been claimed by any authority as mandatory. Except for this hadith there is nowhere any other direction which requires a daughter to share with an *asaba*. Tunisia, a Muslim country has introduced *radd* in such cases and elevated the position of a daughter to that of a

¹⁹ As this article aims to discuss *kalala* further discussion on any other issue is left for another occasion

²⁰ Op cit., NJ Coulson, p. 55

²¹ NJ Coulson, p. 29 referring to *al-Mughni* of Ibn Qudama, VI, 166

son excluding the collaterals.²² It means that in Tunisia a daughter, after satisfying the portion of the primary heirs, retains the rest of the property. My suggestion is, the Muslim jurists can reexamine the interpretation of the said Quranic verse. Because a literal interpretation of the Quran would allow a daughter to share like a son after satisfying the primary heirs.

Solution in Jurisprudence

The first primary source of Islamic law is the Quran or revelation. Opinion of the Prophet (sm) embodied in the form of ratiocination, and delivered from time to time on questions that happened to be raised before him is the second primary source corroborative to Islamic law.

As far as the verses of *kalala* are concerned those exists in the Quran in simple words. When plain words are used in the Quran, the intention of the Lawgiver is to be gathered from the words themselves and is not a matter of further inquiry. The meaning of a word in a passage or sentence may be disclosed. When it is disclosed the word is said to be apparent or manifest of meaning; if it is still further disclosed by means of context, it is regarded as clear or explicit.; if it is clear that there is no room for exposition and does not admit of limitation it is regarded as explained and unequivocal; and it is still made clear so that the possibility of repeal is precluded, it is said to be settled or unalterably fixed.²³ The controversy that centres round the word *kalala* is whether it refers to the person himself who has left no ascendants or descendants or to the collaterals. In whatever way the word *kalala* is construed it is clear by means of context that collaterals will be able to inherit only in the absence of the ascendants and descendants. As regards the hadith, the Prophet (sm) was not only the transmitter of the Quran but he also interpreted it. The Quran says: "And We have revealed to you the exhortation (the Quran) in order that you may explain to men what has been revealed to them" (26:46) The sayings of the Prophet (sm) is a supplement to the Quran and placed second to it. They not only throw a light on its meaning, but themselves form the basis on which the principle of law and doctrine may be

²² Supplement of 1959 to *The Law of Personal Status*, 1956 in Tunisia

²³ Abdur Rahim, *The Principles of Muhammadan Jurisprudence*, All Pakistan Legal Decisions, Lahore, 1968, pp. 69, 97-98

established.²⁴ Moreover, rules of law based on the Quran and the Sunnah of the Prophet (sm) never conflict with reason.²⁵

The principles of law is made applicable through *ahkam shari* or technique of law. It relates to practical propositions of the *Shariah* concerned with the ceremonial part of the religion and other worldly matters. In jurisprudential terminology, the *Ahkam* or *Sharia* values are of different kinds. All human act may be grouped in five different categories which shade of into one another from the imperative or *Fard* to the indifferent or *Mubah*. And even all sayings, deed and approval of the Prophet (sm) in relation to human act can also be grouped into different categories, ranging from directory to indifferent.²⁶ In addition to the fact that the *kalala* verse is very explicit and clear in its terms, and since there are many verses dedicated to the orphans, for example, Sura 4 :2, 3, 6, 10, 36, 127, Sura 2:177, 215 etc. on one hand and Sura 33:35 establishing gender equality on the other hand this particular hadith could be considered as *Mubah* within the *Shariah* values, that is, the commission is unrewardable but whose omission is not punished. In these circumstances the author of this article proposes that the Muslims jurists or *faqih*s can re examine interpretation of the *kalala* verse literally to establish *Huquq al-Ibad* or rights of the people within *Sharia*. With time a society is continuously changing giving rise to new conditions and circumstances. To avoid or keeping away from discussion or solution only makes things stagnant. A regular discourse on *Sharia* legal and juristic scholarship and judgments will allow to deduce *Sharia* values compatible with the rights of the people with demand of time.

Rethinking the social context

It is complained widely that the rights of the people today, specially the women, are mostly infringed by Islamic law of inheritance because the interpretation of the Quran in Sunni system was based on the pre Islamic law of inheritance.²⁷ It is like a super imposition on the previous system. This restricts the position of female as well as the male as both suffer in different capacities as father/mother, husband/wife, son/daughter

²⁴ Muhammad Hamidullah, *Introduction to Islam*, MWH London Publishers, London, 1979, p. 23

²⁵ Ahmad Hasan, *Analogical reasoning in Islamic Jurisprudence*, Adam Publishers and Distributors, Delhi, 1994, p. 163

²⁶ Anwar Ahmad Qadri, *Islamic Jurisprudence in the Modern World*, Taj Company, New Delhi, 1986 pp. 240-1

²⁷ Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law*, Kluwer Law International, Netherlands, 1999, pp. 72-3

and brother/sister. In fact, any inconsistency affects the family as a whole. In the rise of nuclear family and family planning problem questions in relation to the right of inheritance is often raised by suspected suffering groups of people. There are many couples who have only one or two daughters. They suspect that a good portion of the property may devolve on their brothers, sisters or uncles how far may be, upon their death. In Islam the right of inheritance is designed on a reciprocal basis of the right to maintenance of the orphan children on the brothers, sisters or uncles of the parents.²⁸ It is often seen in the modern context of nuclear family, job orientation and electronic decade that individualism has taken a form of self immolation. Many people have become intrinsic by nature. In Bangladesh, where earning money and accumulating wealth by general people is not an easy job, sharing the same with someone who had no contribution in its earning or will not have any contribution in future towards the children of such person, puts them in a perplexed condition. Sometimes some parents want to solve the problem by making gift of the property to the daughters to avoid collaterals getting into the family. But sometimes it entails grave situations. Nobody can predict his/her time of death and therefore one may fail to bestow his/her property in time. It is possible that more property is acquired after the delegation of the existing property which again remains unresolved. Again it also happens that in case of married daughters once property is gifted away the husbands of the daughters do not allow the daughters to take care of their old parents who have now become devoid of riches. Sometimes a person, who has toiled hard to earn money in his lifetime distributes it among his daughters to avoid collaterals to get into the family, suffers psychologically. It imbues in his mind a fear of death, or becomes aimless or becomes too much religious. He does not remain the normal self. Had the Islamic law of inheritance been interpreted in accordance with the literal meaning of the Quran, in particular the verse of *kalala* this would have allowed peace in the mind of so many parents who have only daughters and no son. The heirs could wait for the customary transfer of property on death of their parents and the decedents could also die in peace. It will be in need of the society at large that *faqih*s voice reinterpretation for the betterment of the society and family and leave aside the selective interpretations made by the *faqih*s of that time mingling Islamic teachings with that of tribal customs and traditions. Islam is actually a very progressive religion for women, was radically egalitarian for its time, and

²⁸ Op cit., NJ Coulson, p. 60 principle of reciprocity discussed in relation to grandmother

remains so in many matters of religious and social life. Muslim women, and also men seek to revive the equality bestowed on women in *kalala* verse by re reading the Quran in the present context and disentangling them from tribal practices.

Conclusion

It is an agreed fact that Islam has promoted in the early years women's dignity, social, economic and political rights which amounted to a great revolution. Giving a share of inheritance to women and recognizing their right to ownership was a major undertaking, because they were at that time considered as subject of inheritance. Whether she is a wife or mother, a sister or daughter, she receives a certain share of the deceased kin's property, a share which depends on her degree of relationship to the deceased and the number of heirs. In the case of inheritance, the question of quality and sameness is fully applicable. In principle, both man and woman are equally entitled to inherit the property of the deceased relations but the portions they get may vary. Islamic law has liberated women and at the same time confined them. The Quran and the life of the Prophet (sm) aims at liberating women but the interpretation as has come down to us reflects tribal customs. The imams, who devote their life to explaining the divine will, could have developed an egalitarian Islam based on Sura 33:35 which established gender equality. Spiritual equality, responsibility and accountability for both men and women is a well-developed theme of this verse. The author of this article argues that spiritual equality between men and women in the sight of Allah is not limited to purely spiritual, religious issues, but is the basis for equality in all temporal aspects of human endeavor and further in this regard seeks support for correct interpretation from the jurists of Islam.

There is a pressing need to re examine the issue of *kalala* in the light of the primary sources of Islam. It is very much accepted that men and women are different in creation, purposes and duties. They have their independent set of rights, some may be common, others may differ. It is therefore, proposed that where Quran allows gender equality it should be permitted. This ought to have been a simple, straight-forward, logical fact of life, yet it remains unsolved complicated issue for the *faqihs* to come forward to give their dictum.