REVIEWING THE VIEWS

Daughter's share in the succession

Look forward to a humanistic interpretation of law

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I shall begin with a clarification of my earlier essay which has been published on 30 June in this page. The essay has got severe criticism, albeit much praise, especially from Dr. Shahjahan Mondol and Dr. Reba Mondol of the Islamic University, Kushtia. I must welcome their criticism that has been articulated pointedly.

To the reader, my essay had two parts. In the first part I tried to explain Law Commission's proposal which has advocated for increasing daughter's share in the succession in absence of son. In the second part, in addition, I offered a proposition that the principle 'male will get double of female' may have special application; therefore requires reinterpretation.

Alas! I am very much disappointed, as I was earlier, that our distinguished academics did not get the fundamental message and spirit of the Law Commission's proposal as well as my essay; very sadly they come up with the same old arguments this time again in their jointly written essay which has been published on 7 July in this page.

I have got two impressions. Firstly, they cannot understand the report of the Law Commission on the increasing daughter's share properly, due to some reasons unknown. Secondly, they have avoided the arguments of my essay tacitly of which I expected a constructive discussion from them.

Of course, I must thank Tanzim Alam for his insightful reading and constructive discussion on the issue. I would humbly request every one not to come up with a conclusion in a discussion (the habit of giving decision in a discussion develops among us perhaps due to our one-way education system). Nor did I provide it in my essay. I have expressed my intuition only and have asked for a new interpretation.

Simply, avoiding a discussion on the ubiquitous ground that religious law is 'sensitive' is similar to religious orthodoxy; will lead no where than an orthodox society. This is indeed a very old colonial notion to block the progressive interpretation of Islamic law.

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Law Commission's Proposal

Again, I fell obliged to explain the law commission's standing clearly. It is simple and very easy to understand if one tries to do so with a good intention.

For layman, in section 4 of the Muslim Family Laws Ordinance (MFLO), 1961 a change has been brought on Islamic succession law. According to this section a son or a daughter, whose father has been deceased, will get the share (father's share) in the grandfather's property as representative of their father (our distinguished academics could not understand this simple language which has been written as 'representative of the pre-deceased father' in the report).

We all know that the general practice of distribution of property is that son will get double of the daughter and in absence of son the daughter (if one daughter) will get half of her father's property. But when a daughter is singly representing the deceased father (under section 4 of MFLO) she is getting full property of the father (as representative of the father).

Here lies the ground of the Law commission's proposal. In this proposal a fundamental question has been raised by the Law Commission that if daughter gets whole property, in absence of son, in a representative way why does not she do so in the normal circumstance (when inheritance opens and there is no son)? Then it has tabled a proposal to increase daughter's share in the general circumstance in absence of son. According to the proposal the daughter will get the whole property of her father as a son does, if one; of course in absence of son.

The fundamental concern of our distinguished Professors is regarding the Full Sister (FS) of the deceased (that is fufu in Bengali of the daughter). I simply could not understand why they did not get the point that according to Law Commission's proposal the whole property will go to daughter. The report fathered by the Law Commission has no where mentioned that daughter will exclude the Full Brother (FB) only if the proposal turns into law, as our distinguished Professors demanded. The commission mentioned 'uncle' in its report merely as an example of collaterals of the deceased.

Author's confession

However, I must thank Dr. Mondol and Ms. Mondol for correcting me. But their intention transcends the objective of the essay. They tried to avoid my point by discovering few mistakes merely clerical.

Okay. If we take another example where a praepositus is survived by one daughter, wife and one brother the principle 'male will get double of female' will not work.

After giving ½ and 1/8 to daughter and wife respectively brother will get 3/8 as residuary; which is not double than the daughter (more than double of the wife). Therefore, I would like to reiterate my proposition again that the principle might have special application; or may have no application at all.

In my second example, however, I deliberately mentioned mother's share as 1/6 of the property. I had two objectives in my mind; to call for ijtihad on the one hand and to introduce humanistic interpretation on the other. I would request the distinguished academics to go back to the original verse again. In the verse 11 of sura Nisa (4:11) '..and if he have bretheren, then to his mother appertaineth the sixth..' brought me about to mention mother's share as 1/6. (Muhammad Marmaduke Pickthall.2006. The Glorious Quran. Goodwords Book, India.; see also Kimber 1998:305).

The distinguished academics have mentioned many authorities and I would simply say that humanitarian interpretation, as I told in my earlier essay, requires one to go back to the original sources and interpret it. There is a host of contemporary writings where the credibility of many earlier authors, i.e., Coulson, Fyzee has been challenged. Moreover, they have been accused of miss-judging historical development of Islamic Usul al- Fiqh.

The distinguished academics have also said that in presence of Father the Full Brother will be excluded as there is a principle that nearer blood will exclude the remote one. May I ask a simple question that who is nearer in this case to the praepositus, i.e., Father or Brother? How will we determine that a brother is remote than father? After all brothers were the same foetus of the mother, they shared the same blood of the mother, same flesh of the mother!

The principle that brother will be excluded by father is the old tribal principle which lowers the uterine relation. The principle of blood relation, i.e. asabiya, had been applied to undermine mostly the status of female. Therefore, who is nearer, i.e., Father or Brother is a question of fact which requires an interpretation from gendered perspective.

Humanistic hermeneutics of Islamic law

As I told earlier that humanistic interpretation requires one to go back to the original sources of law and interpret it considering the situation in hand. Kimber (1998) has argued that the words used in verse 4:11 'male will get double of female' is not a rule; simply used as an example.

al-Tabari has discovered a problem that the verse 4:11 mentions the share of more than two daughters and a single daughter in absence of son; it does not mention the share of two daughters in absence of son (mentioned in Kimber 1998:306).

Kimber (1998:306) tries to answer the query of al-Tarabi by saying that in this case the actual situation is that the praepositus is survived by children where one son and several daughters are taking the share. The two daughters share the ½ of the residue in presence of son, continues Kimber, more than two daughters share 2/3 against still in presence of same son and a single daughter will share ½ of the residue property. All these daughters share the residue property in presence of a son.

Kimber (1998:307) further argues that daughters as children are residuary by their own rights. Since the verse does not mention, argues Kimber, what will happen in the case of a single daughter or son as residue; the impression is that either alone should take the whole.

For the very good reasons I call for new reading of the verse with taking into account several factors, i.e., tribal principle of inheritance, ignorance of uterine relation and so on to solve the issue. Do we have any good reasons to believe that the intention of the Quran is to deprive a daughter from getting the whole property of her father as the son does if single?

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FOR YOUR INFORMATION

Service rules, job security and professional development in our private universities

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PRIVATIZATION of education in tertiary level has created ample of job prospects in Bangladesh, although due to absence of service rules, job security and professional development in these institutions are in messy disorder. As per the Private University Act (PUA), 2010 all of these institutions are obliged to form service rules but unfortunately most of them are yet to comply with this while a few have formulated such rules based on the directions and dictation of the founders.

According to section 16(3) of the PUA, 2010 every university is required to make its own service rules and regulations and to get approved by the University Grants Commission (UGC). Syndicate of every private university is empowered as per section 37 and subject to other Orders and Policies of the UGC Ministry of Education (MoE) and to frame rules and policies regarding education, research, administrative, financial and other functions and to approve by the Chancellor. Similarly, each university is to fix a salary structure for teachers and staffs and to inform UGC under section 43 and UGC even can provide advice in this regard if such advice is sought.

It is alleged that most university authorities increase tuition fees within a short notice but they while planning to raise salaries for teachers and employees are spending one year to two years. It sounds odd but truth is that private university high ups including Vice Chancellor (VC), Pro Vice Chancellor (Pro VC), Treasurer and Registrar are holding meeting after meeting with the members of the board of trustees for increment, promotion and raising of salary of teachers and staffs but these meetings are ended with heavy food and sometimes taking of sizeable amount of money as a token of conveyances by the board of trustees. In many universities due increment and promotion of teachers and staffs are kept withheld for years. The authorities very often defer the date of promotion for employees, terminate them without prior notice in violation of section 46(3) resulting punishable offences. The punishment for such offences is either of five years of imprisonment or fine up to one million taka or both as per section 49. The victims are also eligible to get compensation from the serving universities, if their accusations are proved.

Maternity leave in many universities are three to four month regardless of government instruction for six month. In many universities there are leave rules but in most cases leave cannot be demanded as a matter of right rather as a matter of grace. A few universities are providing provident fund, earned leave and gratuity facilities except pension for teachers and staffs while majority of them are running without these provisions paving the way for job insecurity.

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Most of the universities are heavily dependent on lecturers instead of senior teachers for saving large amount of money. Some are introducing North American concept of publish or perish mechanism for promotion reminding the teachers of involvement in three functions viz. research, services and teaching. Teachers are also categorized as teachers by choice and teachers by default. These concepts seem sweet but do not work optimal because teachers and staffs are overburdened with heavy work load. Academic activities including class hours of the teachers are being monitored by the authority in some private universities. In most universities machines for electronic punching or thumb expression have been set up for ensuring office hours for teachers and staffs ranging from for 36 hours to 40 hours per week. Undeniably in most cases VCs, Pro VCs, Treasurers, and Registrars are very loyal to the chairman or members of the board of trustees because they are responsible to them for their activities in line with the sections 31, 32, 33 and 34 respectively of this Act. In most cases they refer most decisions to the director or board of trustees for final approval whether it is promotion or yearly increment issue. In reality, these high ups are lacking power as most of them are of retired servicemen and passing their leisure time. They are also less interested to raise any issue of increment, promotion and enhancement of salary to the board of trustees fearing discharge or dismissal from the services.

It is alleged that UGC and the MoE off and on send caution to the university authorities the consequences for not having permanent campus but seldom enquire into students' teachers' ratio, stocks of books in library, laboratory facility for science students, class room environment and service rules for the teachers and staffs. Some universities offer appointment letter to the selected teachers just before one or two days of the commencement of class without faculty orientation, training and workshop for professional development. The power imbalance between academic high ups and members of the broad of trustees is a great concern for the professional development of the teachers and employees. The new PUA, 2010 is enacted with a big expectation so that education cannot be treated as a commodity whereas in practice the purpose is ignored. Basically the PUA supports the interest of the owners who are the investors for the universities.

Most university authorities welcome departure of senior faculties and arrival of lecturers as because they can save money by giving more courses to the lecturers with less amount of remuneration. Taking private university job as a service or career goal except few institutions is unrealistic. For the beginners the job here is lucrative but after few years it seems bitter observing the attitudes of the job providers and their loyal agents. Teachers are being evaluated by the students in every semester and in case of poor evaluation reports, jobs are not regularized and promotions are denied. But no reward is offered for the teachers with excellent evaluation reports. Since there is no provision for retirement of teachers and administrators in private universities, the old fellows are sticking to private university services even without bothering to sacrifice their dignity and personality worsening the job environment and service security for the young and mid level teachers and staffs. Even most of the universities are devoid of having human resources departments and so these teachers and employees are facing whimsical discretion of the owners and their representatives in their promotion and professional development.

The government is on the final stage to form a national, autonomous and independent accreditation council for supervising and monitoring the standard of private universities following section 38. The upcoming accreditation council and UGC must look into these matters on an urgent basis for the betterment of private university, a rapidly developing sector in our country with more than 2,20,000 students along with nearly 20,000 employees in 54 private universities. Government has recently approved another eight new private universities. The incumbent UGC chairman was affiliated with a private university for a long time as a resource person and consequently he knows more insights of such universities in Bangladesh. Notably, prior to the PUA, 2010 the concept of private university in Bangladesh started operating in early 1993 after the enactment of the PUA, 1992 along with its amendment in 1998.

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