

Occasional Paper Series-1

Inheritance of Girls in Islamic Law

A Comprehensive Analysis

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Bangladesh Institute of Islamic Thought (BIIT)

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Publisher

Bangladesh Institute of Islamic Thought (BIIT)

House # 04, Road # 02, Sector # 09, Uttara Model Town, Dhaka-1230

Phone : 02-58954256, 02-58957509

E-mail : biit_org@yahoo.com, publicationbiit@gmail.com

Website : www.iitbd.org

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First Published

May : 2016

Jaistha : 1423

Shaban : 1437

Price : BDT 50, US \$ 10

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written by Mawlana Sayyid Zillur Rahman. Translated by Dr. Noor Mohammad Osmani. Edited by Shah Abdul Hannan. Published by Bangladesh Institute of Islamic Thought (BIIT), House # 04, Road # 02, Sector # 09, Uttara Model Town, Dhaka-1230, Phone: 02-58954256, 02-58957509, E-mail: biit_org@yahoo.com, publicationbiit@gmail.com, www.iitbd.org. Price: BDT 50.00, US \$ 10.

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Law of Inheritance: Mawla, Mawali versus ‘Asabah

In Islamic inheritance law, there are two kinds of heirs. One whose shares of inheritance are precisely mentioned in *shari’ah*, they are called as *Ashabul Furud* [people with specified shares], such as husband, wife, mother and grandmother etc. The second is the one whose shares are not precisely mentioned, but they will inherit the total estate in the absence of *Ashabul Furud*, and the remaining balance in their presence. They are called as ‘*Mawla*’ (some scholars named them as ‘*Asabah*’), such as son-daughter, grandson-granddaughter, father-grandfather, brother-sister etc. We prefer to call them as ‘*Mawla*’. The prime reason for this selection and preference is that Allah (SWT) called them as ‘*Mawali*’ in the Qur’an, which is the plural of ‘*Mawla*’. The term ‘*Mawla*’ is a comprehensive word, which may include all heirs whose shares of inheritance are not precisely mentioned in the Qur’an. Moreover, it is much better to use the Qur’anic term, as it comes with the blessings from the Qur’an. The other prime reason to select this term is that we prefer to include women including the daughters as well in this unspecified shares of inheritance. We believe that the girls are also ‘*mawla*’.

On the contrary, ‘*Asabah*’ is a less inclusive word, which though includes female relatives and other ‘*Mawlas*’, it does not include the people who are not related to the deceased. That is why we have to use the term ‘*Mawla*’ to indicate ‘freed-slave’ and his ‘Liberator-master’. Even the proponents of the term ‘*Asabah*’ resort to the term ‘*Mawla al-‘Utaqa*’ to mean ‘the liberators of the slaves’, and use the term ‘*Mawla al-Muwalat*’ to mean ‘Friends by treaty or agreement’. This was the reason that the prominent author of the book ‘*Durr al-Mukhtar*’ writes in explanation of the ‘*Mawla*’:

المراد بالمولى ما يعمّ المعتق والعصبة

The word ‘*Mawla*’ includes both ‘liberator of the slaves’ and ‘*Asabah*’.¹

Moreover, ‘*Asabah*’ was defined with some definitions that we could not agree with. For, we find that those definitions are in conflict with the Qur’anic *ayat*. For the benefit of the readers, we explain both the terms in greater details.

Mawla and Mawali

‘*Mawali*’ is the plural of the word ‘*Mawla*’. ‘*Mawla*’ refers to child, son, uncle, cousin, nephew, son-in-law, guardian, relative, owner, leader, helper, liberator of the slaves, freed slaves, friends and neighbors tied with friendship agreement etc.

Allah (SWT) says in the Qur’an:

كَ بِأَنَّ اللَّهَ مَوْلَى الَّذِينَ آمَنُوا وَأَنَّ الْكَافِرِينَ لَا مَوْلَى لَهُمْ (محمد: 11)

That is because Allah is the supporter of those who believe. As for the disbelievers, there is no supporter for them (Qur’an, 47: 11).

Also says in the Qur’an:

اعْتَصِمُوا بِاللَّهِ هُوَ مَوْلَاكُمْ فَنِعْمَ الْمَوْلَى وَنِعْمَ النَّصِيرُ (: 78)

And hold fast to Allah. He is your protector; and excellent is the protector, and excellent is the helper (Qur’an, 22: 78).

The term ‘*Mawali*’ has been mentioned in the Qur’an as follows:

¹ *Ad-Durr al-Mukhtar*, Fasln Fi ‘Asabat, vol. 6, p. 776; *Radd al-Muhtar fi sharhi Durr al-Mukhtar*, Fasln fil ‘Asabat, vol. 29, p. 411; *Al-Lubab fi Sharhil Kitab*, Babur Radd, vol. 1, p. 423.

وَأَبِي خِفْتُ الْمَوَالِيَ مِنْ وَرَائِي وَكَانَتِ امْرَأَتِي عَاقِرًا فَهَبْ لِي مِنْ لَدُنْكَ
وَلِيًّا - رَبَّنِي وَيَرِثُ مِنْ آلِ يَعْقُوبَ وَاجْعَلْهُ رَبِّ رَضِيًّا (مريم: 5-6)

And indeed, I fear the successors after me, and my wife has been barren, so give me from Yourself an heir. Who will inherit me and inherit from the family of Yakub. And make him, my Lord, pleasing [to You] (Qur'an, 19: 5-6).

In another place, Allah (SWT) mentions:

لِلرِّجَالِ نَصِيبٌ مِمَّا كَسَبُوا وَلِلنِّسَاءِ نَصِيبٌ مِمَّا كَسَبْنَ وَاسْأَلُوا اللَّهَ مِنْ
لِهِ إِنَّ اللَّهَ كَانَ بِكُلِّ شَيْءٍ عَلِيمًا (32)
(33-32 :) .

For men is a share of what they have earned, and for women is a share of what they have earned. And ask Allah of his bounty. Indeed Allah is ever, of all things, Knowing. And for all, We have made heirs to what is left by parents and relatives (Qur'an, 4: 32-33).

If we look into these *ayat*, we notice that the term 'Mawali' has been used in the issues related to inheritance. This proves that 'Mawali' is a term related to 'inheritance' and its use for both male and female shows that both of them will inherit from the balance of inheritance after its distribution to those assigned in *Shari'ah*. That is why Imam Baghawi, a famous interpreter of the Qur'an, writes in the commentary of the *ayah*:

قوله تعالى () :
جعلنا موالى أي عصبية يعطون م

The *ayah* means, for all males and females, we have made 'mawali' i.e. 'Asabah' or blood relations, who

would be given their due shares from the inheritance of the parents and the relatives.²

Jalaluddin Suyuti (R.A.) provided the same explanation, whereas Ibn Jarir Tabari (R.A.) explained further and says:

فتأويل الكلام ولكم أيها الناس جعلنا عصبية يرثون به ما ترك والداه
وأقرباؤه من ميراثهم.

The meaning of the statement is, for all of you O people! we made 'Asabah' or heirs to inherit what is left by their parents and relatives.³

The prominent *Mufasssir* Fakhrudin al-Razi (R.A.) in his famous *Tafsir 'At-Tafsir al-Kabir'* quoted a *hadith* of the Prophet (peace be upon him) by which he acknowledged that the meaning of 'Mawali' is 'Asabah' or 'Heirs for the remnants of inheritance'. The Prophet (peace be upon him) is reported to have said:

أَبِي هُرَيْرَةَ رَضِيَ اللَّهُ عَنْهُ، قَالَ: أَل رَسُولُ اللَّهِ ﷺ: «
بِالمُؤْمِنِينَ مِنْ أَنْفُسِهِمْ، فَمَنْ مَاتَ وَتَرَكَ مَالًا فَمَالُهُ لِمَوَالِي الْعَصْبَةِ، وَمَنْ
تَرَكَ كَلًّا أَوْ ضَيَاعًا فَأَنَا وَلِيُّهُ، فَلَادَعَى لَهُ»

Narrated Abu Hurairah (R.A.) that the Prophet of Allah (peace be upon him) said: I am more closer to the believers than their own. If some of you die leaving behind wealth, that goes to his 'Mawali al-'Asabah' i.e. heirs that inherit the whole/part of the inheritance. If someone leaves debt or poverty-ridden family, it is my responsibility. You should call me to take its charge.⁴

² *Tafsir al-Baghawi*, 2/205.

³ *Tafsir al-Tabari*, 8/272.

⁴ *Sahih al-Bukhari*, 6745, Kitab al-Fara'id (85), Bab Ibnay 'Amm. *Bayhaqi al-Kubra*, 12150, Bab al-'Asabah.

'Asabah

'*Asabah*' is written in Arabic as 'أَسَابَهُ', which is derived from 'أَسَبَهُ'. In Arabic, 'أَسَبَهُ' means, group, association, strong powerful band etc. The Qur'an does not quote '*Asabah*' as exact term. But it quotes 'أُسْبَاتُونَ' ('*Usbatun*') in three places in the Qur'an. Allah (swt) says:

إِذْ قَالُوا لِيُوسُفُ وَأَخُوهُ أَحَبُّ إِلَيْنَا مِمَّا وَ
ضَلَّلَ مُبِينٍ (يوسف: 8)

When they said, Yusuf and his brother are more beloved to our father than we, while we are a clan. Indeed, our father is in clear error (Qur'an, 12: 8).

In another place, Allah (SWT) said:

الْوَالِدِينَ الَّذِينَ أَكَلَهُ الذَّنْبُ وَتَحَنُّنُ عُصْبَةٍ إِنَّا إِذَا لَخَّاسِرُونَ (يوسف: 14)

They said, If a wolf should eat him while we are a [strong] clan, indeed, we would then be losers (Qur'an, 12: 14).

In Surah Nur, Allah (SWT) said:

إِنَّ الَّذِينَ جَاءُوا بِالْإِفْكِ عُصْبَةٌ مِّنْكُمْ لَا تَحْسَبُوهُ شَرًّا لَّكُم بَلْ هُوَ خَيْرٌ لَّكُمْ
(12 :)

Indeed, those who came with falsehood are a group among you. Do not think it bad for you; rather it is good for you (Qur'an, 24: 12).

The word '*Usbatun*' (أُسْبَاتُونَ) refers to 'some strong men'. And the word '*Al-'Asab*' (أَسَابَهُ) means to get others support to be strong. This might be the reason that the 'plants' that grow on the support of other plants are named as '*al-'Asb*' (أَسَابَهُ). '*Al-'Asab*' is defined as:

“ ب منتشرة في الجسم كله، وبها تكون الحركة والحس ”

'Veins that spread throughout the body, by which one can move and feel sensations'.⁵

'*Al-'Asab*' is a plural word. Its singular form is '*Al-'Asabah*' (أَسَابَهُ).

Definition of '*Asabah*' in '*Ilmul Fara'id*

According to some scholars of '*Ilmul Fara'id*' (Science of inheritance law) '*Asabah*' refers to those relatives who own the remnants of inheritance after its distribution to those with specified shares. Some of their definitions are cited below:

Shaykh Abu Muhammad Al-Muqaddasi (R.A.) says:

وهم كل ذكر يدلى بنفسه أو بذكر آخر

('Asabah) are the males who are related to the deceased directly or through another male relative.⁶

Shaykh Ibrahim bin Ali Ash-Shirazi says:

العصبة كل ذكر ليس بينه وبين الميت أنثى

Asabah are the male relatives, of whom there is no female intervention between them and the deceased.⁷

Shaykh Muhammad bin Ahmad Maiyyarah says:

الوارث بالتعصيب إن انفرد أخذ جميع المال، وإن كان مع ذوي فرض أخذ ما فضل عنهم.

⁵ *Al-Munjid*, 531.

⁶ *Al-'Umdah*, Bab al-'Asabah, vol. 1, p. 313.

⁷ *Al-Muhadhdhab*, vo. 2, p. 29.

If the ‘*Asabah* heirs are the sole inheritors, they will inherit the total wealth; but if they are combined with others with specified shares (*Ashabul Furud*); they will get the total balance after giving away the shares of *ashabul furud*.⁸

Shaykh Abdullah bin Ahmad Qudamah al-Mughni says:

العصبة هو الوارث بغير تقدير، وإذا كان معه ذو فرض، أخذ ما فضل عنه، قلّ أو كثر، وإن انفرد أخذ الكلّ، وإن استغرقت الفروض المال

Asabah is the heir whose share of inheritance is not specified in *shari’ah*. If he is with other heirs whose shares are assigned in the *shari’ah* (*Ashabul Furud*); he will get the balance, less or more. If he is alone, he will inherit the whole property. If the specified share recipients cover the whole asset, he gets nothing.⁹

Kinds of ‘*Asabah*

These scholars of ‘*Ilmul Fara’id* divide ‘*Asabah* into three kinds.

1. ‘*Asabah binafsihi*: (‘*Asabah* on his own)
2. ‘*Asabah bighayrihi*: (‘*Asabah* due to another person)
3. ‘*Asabah ma’a ghayrihi*: (‘*Asabah* with another person).

1. ‘*Asabah binafsihi* (‘*Asabah* on his own)

This has been defined as follows:

أما العصبة بنفسه فكل ذكر لا تدخل في نسبته إلى الميت أنثى.

⁸ *Sharh Maiyyarah*, 4/125.

⁹ *Al-Mughni*, 7/7.

‘*Asabah bi nafsihi* (‘*Asabah* on his own) is the one who is related to the deceased directly without the intervention of any female relatives.¹⁰

For example, son, grandson or great grandson (son’s lineage), father, grandfather or great grandfather, uncle, male cousin (from uncle), grand uncle or their male child etc.

The Prophet (peace be upon him) is reported to have said:

ن ابن عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا، عَنِ النَّبِيِّ ﷺ :
بِأَهْلِهَا، فَمَا بَقِيَ فَهُوَ لِأَوْلَى رَجُلٍ ذَكَرَ»

Ibn ‘Abbas (R.A.) narrated, the Prophet (peace be upon him) has said: “Distribute the property of the deceased to the rightful owners. Whatever remains, give it to the closest male relative.¹¹

In another report it mentions (according to scholars)

إقسموا المال بين أهل الفرائض على كتاب الله، فما فضل، فلذي عصبية

Distribute the wealth of the deceased to the rightful heirs based on the Divine Law; whatever remains, it is for the male ‘*asabah*.¹²

2. ‘*Asabah bighayrihi* (‘*Asabah* due to another person)

‘*Asabah bighayrihi* [‘*asabah* due to another person] refers to such women, for whom half or two-thirds of the wealth is reserved. They are not considered ‘*Asabah* on their own; but

¹⁰ *Shirazi*, Kanpur press, Lucknow, p. 42.

¹¹ *Bukhari*, Bab Mirath al-Awlad min Abih, no. 6351; *Muslim*, Bab Alhiqu al-Fara’id bi Ahliha, no. 4226; *Tirmidhi*, babun fi Mirath al-‘*Asabah*, no. 2098.

¹² *Al-Bahrur-Ra’iq*, 8/367.

due to the presence of their brothers, who are ‘*asabah* themselves, their sisters also will be considered ‘*asabah*. For example, daughters and sisters. They get half or two-thirds of inheritance in the absence of their brothers in the same level. If the brothers were present, the sisters would become ‘*Asabah* besides their brothers and get their shares in the balance of wealth. This does not mean that all sisters in all levels would be considered ‘*Asabah* heirs in the presence of their brothers. If there is no share (of inheritance) allocated for a sister, she will get nothing in the inheritance of the deceased. Even if their brothers were present, still they get nothing in the inheritance.

Ibn Qudamah writes:

وسائر العصبات ليس أخواتهم من أهل الميراث، فإنهن لسن بذوات
فرض، ولا يرثن منفردات، فلا يرثن مع إخوتهن شيئا.

And the sisters of the male ‘*Asabah* relatives would not be considered for inheritance. For, they have no specified shares of inheritance. They do not inherit alone; nor would they inherit together with their brothers.¹³

Granddaughters (from son) also do not have any specified shares in inheritance. But generally, they were considered ‘*Asabah* in this category of ‘*Asabah bighayrihi*. Sayyiduna Abdullah bin Mas’ud differed to this ruling. He only considers grandson (from son) as ‘*asabah*; and does not consider granddaughter as ‘*asabah bighayrihi* due to the presence of her brother/s.

It has been reported that:

عن إبراهيم في رجل ترك ابنتيه وبني ابنه رجالا ونساء، فلا بنتيه
الثلاثان، وما بقي فللذكور دون الإناث، وكان عبد الله لا يزيد الأخوات

والبنات على الثلثين، وكان عليّ وزيد يشركون فيما بينهم، فما بقي
ر مثل حظ الأنثيين .

Ibrahim reported that if a man died leaving behind two daughters, and a few grandsons and granddaughters from his son; his two daughters will get two-thirds, and the balance will go to grandsons and not to granddaughters. Sayyiduna ‘Abdullah bin Mas’ud (R.A.) does not allocate more than two-thirds for sisters and daughters. Sayyiduna ‘Ali bin Abi Talib and Zayd bin Thabit used to share granddaughters as well besides grandsons on the principle of “One male is equal to two females.”¹⁴

3. *Asabah ma’a ghayrihi* (‘*Asabah with another person*)

‘*Asabah ma’a ghayrih* refers to such women who themselves are not ‘*asabah*, but due to the presence of other female ‘*asabah* heirs, they are also considered ‘*asabah* and get the balance of wealth. For example, sister, who is not considered ‘*asabah due* to her gender; but due to her presence with the daughters, who are specified shareholders (*ashabul furud*) in the inheritance, the sister becomes ‘*asabah*. That is why if the sister exists with daughter/s, the scholars who supported this opinion say that the sister, due to being ‘*asabah*, will inherit the balance after giving away the due shares of the daughters. Their proofs are mentioned below:

A) *Hadith* of ‘Abdullah bin Mas’ud (R.A.)

عن أبي قيس : سَمِعْتُ هُرَيْرَ بْنَ شَرْحَبِيلَ، قَالَ:

:

¹³ *Al-Mughni*, 7/16. *Shirazi*, 46.

¹⁴ *Ibn Abi Shaybah*, 31743, Bab Fi Rajulin Taraka Ibnatayhi wa Bani Ibnih.

مَسْعُودٍ، فَسَيِّئَابِعُنِي، فَسُئِلَ ابْنُ مَسْعُودٍ، وَأُخْبِرَ بِقَوْلِ أَبِي مُوسَى فَقَالَ:
 ضَلَلْتُ إِذَا وَمَا أَنَا مِنَ الْمُهْتَدِينَ، أَقْضِي فِيهَا بِمَا قَضَى النَّبِيُّ ﷺ: »
 التَّصْفُ، وَلاِبْنَةِ ابْنِ السُّدُسِ تَكْمِلَةَ التُّلْتَيْنِ، وَمَا بَقِيَ فَلِلْأُخْتِ» فَأَتَيْنَا أَبَا
 : لا تَسْأَلُونِي مَا دَامَ هَذَا الْحَبْرُ
 فِيكُمْ (صحيح البخاري).

Sayyiduna Abu Musa al-Ash'ari (R.A.) was asked about the inheritance of a person who died leaving behind a daughter, a granddaughter from son, and a sister. He replied: Daughter will get half, and the sister gets half. You may go and ask Ibn Mas'ud (R.A.). I hope he will agree with me. Sayyiduna Ibn Mas'ud was asked and he was informed about the response of Sayyiduna Abu Musa. He then replied: “(If I say the same thing), I will get lost and will not be guided to the right path. I will give you the same decision given by the Prophet (peace be upon him) [in similar instances]: The daughter will get half; granddaughter will get sixth to complete two-thirds, and the balance will be given to the sister.” We returned to Abu Musa (R.A.) and told him about the decision of Ibn Mas'ud, then he said: “Do not ask me anything so long as this great scholar (Ibn Mas'ud) lives with you.¹⁵”

B) Another report from Prophet (peace be upon him)

The proponents of this opinion present another report from the Prophet as follows:

¹⁵ *Sahih al-Bukhari*, 6355, Kitabul Fara'id, Bab Mirath Ibnati Ibn ma'a ibnatin; *Tirmidhi*, 2093, Kitab al-Fara'id, Bab Mirath Ibnatil Ibn ma'a ibnatis sulb; *Abu Da'wud*, 2892, Bab ma ja'a fi mirath as-sulb.

Consider your sisters as 'Asabah with your daughters.¹⁶

Critical Analysis of the above View on 'Asabah

In the outset of our analysis, let's delve into the word 'Asabah () and explain its meaning. Generally, the word means, his own kinsmen or people that he supports blindly regardless of being just or unjust. Because, 'Al-Ta'assub' () means, عدم قبول الحق عند ظهور الدليل بناء على ميل إلى جانب 'not accepting the truth which is proven with sound proofs due to blind support to a particular group or people'. Its active word from the same root is, , which means,

الذي يعين قومه على الظلم ويغضب لعصبيته ويحامي عنهم.

'He who supports injustices of his tribesmen, gets angry in their support, and defends them at any cost.'¹⁷

In the *hadith* of the Prophet (peace be upon him), 'Asabiyyah was mentioned as follows:

: قلت يا رسول الله، ما العصبية؟ قال: أن تعين

Sayyiduna Wathilah bin Asqa' narrates, I asked the Prophet (peace be upon him) saying “O Prophet of Allah! What is 'Asabiyyah?” The Prophet (peace be

¹⁶ *Shirazi*, 31, (Kanpur press, Lucknow); *Al-Bahr al-Ra'iq*, 8/566; *Tabyinul Haqa'iq*, Bab al-Khul'I, 6/236; *Majma'ul Anhur fi Sharhi Multaqa al-Abhur*, 4/506; *Al-Mawsu'at al-Fiqhiyyah al-Kuwaitiyyah*, Ahwal al-Ab, 3/40; *Fiqhus Sunnah*, 3/619.

¹⁷ *Al-Munjid*, 531.

upon him) replied: “It is to support your own tribe on injustice.¹⁸”

Therefore, it is clear that ‘*Asabah* refers to ‘blind supporters from the same tribe’. In Jahily age, this irrational and unjust support for the tribes was intense. History tells us that the clashes and wars continued among the tribes due to this ‘*asabiyyah* for many years and centuries.

Hence it is clear that ‘*Asabah* refers to: Jahily power and strength, tribalism, nepotism, warmonger, and those who support every unjust and cruel acts of own tribesmen. Islam brought about the message of peace and justice to the world. It stood against all cruel acts and unjust support of tribes [=‘*Asabiyyah*] in Jahily society of pre-Islamic Arabia. This was the reason that we opted to use the term ‘*Mawla*’ instead of ‘*Asabah*’. The Prophet Muhammad (PBUH) initially acknowledged the inheritance rights of ‘*Asabah* heirs and said that the inheritance of the deceased should only be given to the ‘*Asabah* heirs. The Prophet (peace be upon him) is reported to have said:

عن عمر بن الخطاب رضي الله عنه قال: سَوَّلَ اللهُ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ يَقُولُ: «مَا أَحْرَزَ الْوَلَدُ أَوْ الْوَالِدُ، فَهُوَ لِعَصْبَتِهِ مَ»

Sayyidun ‘Umar bin Khattab narrated, I heard the Prophet (peace be upon him) saying: “Whatever son and his father accumulates from wealth (and dies), it goes to his heirs.¹⁹”

¹⁸ *Sunan Abu Da’wud*, 5121, Babun fi ‘Asabiyyah; *Bayhaqi Kubra*, 20865, Babu Shahadati Ahlil ‘Asabiyyah; *Al-Mu’jamul Kabir li at-Tabarani*, 197, Min Ismihi Wathilah.

¹⁹ *Abu Da’wud*, 2919, Babun fi al-Wala’; *Ibn Majah*, 2732, Babun fi Mirathil wala; *Musnad Ahmad*, 183, 1/314; *Musannaf Ibn Abi Shaybah*, 32171, Fi Imra’atin A’taqat Mamlukan.

This hadith shows that it was only the ‘*Asabah* who could be the legal heirs of the deceased, and no one else could claim anything as such. This rule continued till the revelation of the *ayat* on inheritance law. The Prophet’s approach towards ‘*Asabah* started getting tougher soon after. He even termed ‘*Asabiyyah* [blind support for tribesmen] as un-Islamic and unjust. It has been reported that:

جُبَيْرُ بْنُ مُطْعِمٍ، أَنَّ رَسُولَ اللَّهِ ﷺ، قَالَ: «لَيْسَ مِنَّا مَنْ دَعَا إِلَى عَصَبِيَّةٍ، وَلَيْسَ مِنَّا مَنْ قَاتَلَ عَلَى عَصَبِيَّةٍ، وَلَيْسَ مِنَّا مَنْ مَاتَ عَلَى عَصَبِيَّةٍ» ()

Sayyiduna Jubayr bin Mut’im (R.A.) narrates, the Prophet (peace be upon him) is reported to have said: “He who invites towards ‘*Asabiyyah* [=tribalism], he is not from me; he who fights for ‘*Asabiyyah*, he is not from me; and he who dies on ‘*Asabiyyah*, he is not from me.²⁰”

Hence, it is a proven fact that ‘*Asabah*, ‘*Asabiyyah* etc. were the terms of pre-Islamic Arabia, which were changed in Islam. Islam established the value of ‘brotherhood’ to replace tribalism.

The definition of ‘*Asabah* by its proponents though includes the First category of ‘*Asabah* [i.e. independent ‘*asabah* without female intervention, e.g. son, grandson, father, grandfather etc.]; it does not include the second and the third categories of ‘*Asabah*. For, the second and the third categories are women. Their definition categorically mentions:

‘*Asabah* are the male relatives of the deceased, who are either directly related to the deceased, or through another male relatives.’ Based on this definition, no women could be

²⁰ *Abu Da’wud*, 5123, Babun fil ‘Asabiyyah; *Sharhussunnah li al-Baghawi*, 6/340.

regarded as ‘*Asabah*. Secondly, if the women were regarded ‘*Asabah* through their male relatives of equal level; so why are not the aunts [father’s sisters] and nieces [daughters of brother] considered ‘*Asabah* through uncles and nephews? If the question was raised that their shares were not precisely confirmed, which is why they cannot be considered ‘*Asabah*! Similarly, it should be noted that their male counterparts, i.e. uncles and nephews also do not have certain shares of inheritance, even it was also not mentioned anywhere that they would receive any uncertain shares of inheritance! Then why should they be considered ‘*Asabah*? Moreover, there are no certain shares of inheritance for grandsons (originating from sons), so, why should they be considered as ‘*Asabah*? Thirdly, the daughter who herself is not considered as ‘*asabah*; how could she grant another woman i.e. sister the same right!?

One important theory of ‘*Asabah* is that the male children of any woman would not even be granted the right of ‘*asabah* for their own mother upon her death. For it was only the male relatives of her father’s family who will have the right of ‘*asabah* for her, not her own children, male or females. Ibn Rushd, the author of ‘*Bidayat al-Mujtahid..*’ says:

ليس من عصبته “Sons of a woman are not considered as ‘*Asabah* for her.” Hence, they [her children] do not deserve to be the ‘*Mawla al-‘Utaqa*’ [Friend of freed-slave] for a freed-slave. Rather, it would be her male relatives in her father’s residence, such as father, brother, uncle or cousin etc.²¹

If we deeply analyze their evidences, we could see that the first *hadith* [tradition] that they presented was a *Mujmal* [brief, unclear] *hadith*, which was not clearly explained. The Prophet (peace be upon him) did not say any ambiguous statement without explaining it. Allah (SWT) says:

يُدِيرُ الْأَمْرَ يُفَصِّلُ الْآيَاتِ لَعَلَّكُمْ بِلِقَاءِ رَبِّكُمْ تُوقِنُونَ (2 :)

²¹ *Bidayah al-Mujtahid wa Nihayat al-Muqtasid*, 2/365.

He arranges [each] matter; He details the signs that you may, of the meeting with your Lord, be certain (Qur’an, 13: 2).

The true explanation of the *hadith* is that the Prophet (peace be upon him) indicated male children of the deceased through the *hadith*, as the Prophet (peace be upon him) said, ‘the closest male heir will get the balance of inheritance’. Who else than her sons would be more suitable to be the closest male relatives of the woman? It certainly is not her father or brother, as they are not the closest relative to the woman. The Qur’an specified the shares of father in her inheritance. He gets 1/6th of inheritance in the presence of children, and gets the whole balance in their absence. In this respect, her brother deserves the whole balance in the absence of children or her father. The Qur’an did not specify the shares of male children, except that it says, “A male child is equal to two female children.” It was later explained by the Prophet (peace be upon him). It is not sound to take this *hadith* as a criterion to establish and confirm the theory of ‘*asabah*. Moreover, the above *hadith* is a ‘solitary *hadith*’ [*khobar-e-wahid*], which was termed by Imam Tahawi as ‘*Mudtarib*’ [shaky, unsound] *hadith* due to its extremely weak *sanad*. The other *hadith* which was quoted by them did not clearly indicate its origin or source. We could not trace this ‘*hadith*’ in any prominent *hadith* volumes. It was not sure if the Prophet (peace be upon him) truly said something like this. Though it was claimed in some books like ‘*Al-Bahrur Ra’iq*’ and others that ‘*it was in the hadith of the Prophet (peace be upon him)*’; but we could not trace this *hadith* in any prominent *hadith* volumes. The most interesting issue is that, *Al-Bahrur Ra’iq* mentions in its volume 8 page 367 in the footnote that, ‘the *hadith* was related by Bukhari, Kitabul Fara’id, chapters 5, 7, 9 and 15; Muslim, Kitabul Fara’id, Hadith no. 2 and 3; Darimi in its chapter 28. But the strange thing is that we could not trace it in any of

those volumes and chapters. What we found is that, , means, ‘the balance will be given to the closest male relative’. There is no such mention as, , ‘it is for the male ‘*asabah*’. This is a clear example of distortion of the *hadith* of the Prophet (peace be upon him). The Prophet (peace be upon him) said, . But they transformed it to . May Allah (SWT) protect us from the distortion of the Qur’an and *hadith* of the Prophet (peace be upon him).

It was mentioned by the scholars regarding ‘*Asabah bi-ghayrihi*’: وسائر العصبات ليس أخواتهم من أهل الميراث: “that the sisters in the same level of remaining ‘*asabah* are not considered as heirs.” This is similar to the statements of pre-Islamic Arabia. For, in those days, the girls were not considered heirs. Such a statement is in a direct conflict with the Qur’anic *ayah*. Allah (SWT) says:

لِلذَكَرِ مِثْلَ حَظِّ الْأُنثِيَيْنِ (176 :

If there are both brothers and sisters, the male will have the share of two females (Qur’an, 4: 176).

Zayd bin Thabit (R.A.) stood against such an opinion and said:

عَنْ زَيْدِ بْنِ ثَابِتٍ رَضِيَ اللَّهُ عَنْهُ، أَنَّهُ قَالَ فِيهَا: “هَذَا مِنْ قَضَاءِ أَهْلِ الْجَاهِلِيَّةِ: يَرِثُ الرَّجَالُ دُونَ النِّسَاءِ”

Such an opinion belonged to Jahiliyyah, when they used to consider the males alone as heirs, and not the females.²²

Therefore, it is clear that un-islamic and Jahily thoughts got its way into Islam through ‘*Asabah* theory. The companions of the Prophet (peace be upon him) did not agree to such a theory.

²² *Ibn Abi Shaybah*, 31727, Rajulun Maata wa Taraka Ukhtayhi; *Darimi*, 2892, Babul Ikhwati wa al-Akhwati wa al-Awlad; *Al-Istidhkar*, 5/336; *Al-Muhalla*, 9/270.

In the discussion of ‘*Asabah ma’a ghayrihi*, the second *hadith* quoted was not directly related to the Prophet (peace be upon him). It was a mere opinion of ‘Abdullah bin Mas’ud (R. A.). He just claimed that the Prophet (peace be upon him) issued such a decree during his life. He did not clarify when exactly the Prophet gave such a decision, before or after revelation of the Qur’anic *ayah* on inheritance. It is beyond imagination that the Prophet would give a decision which conflicts with the Qur’anic *ayah*. Another *hadith* also asserts that the brother or sister gets nothing of inheritance in the presence of daughter. The report says:

عَنْ عَامِرِ بْنِ سَعْدِ بْنِ أَبِي وَقَاصٍ، عَنْ أَبِيهِ، قَالَ: فَأَسْتَفَيْتُ مِنْهُ عَلَى الْمَوْتِ، فَأَتَانِي النَّبِيُّ ﷺ يَعُودُنِي، فَقُلْتُ: يَا رَسُولَ اللَّهِ، إِنَّ لِي مَالًا كَثِيرًا، وَلَيْسَ يَرِثُنِي إِلَّا ابْنَتِي، أَفَأَتَصَدَّقُ بِثُلُثِي مَالِي؟ قَالَ: « : : : : » : «الثُّلُثُ كَبِيرٌ، إِنَّكَ إِنْ تَرَكَتَ وَلَدَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَتْرُكَهُمْ عَالَةً يَتَّكَ (صحيح البخاري)

Amir bin Sa’ad narrates from his father Sa’ad bin Abi Waqqas who said: “I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, “O Allah’s Apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?” He said, “No.” I said, “Half of it?” He said, “No.” I said, “One-third of it?” He said, “You may do so; though one-third is also to a much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help.²³

²³ *Bukhari*, 6352, Babu Mirathil Banat; *Muslim*, 4296, Babul Wasiyyati bi ath-thuluth; *Abu Da’wud*, 2866, Babu Ma Ja’a fi ma la Yajuz; *Ibn Majah*, 2708, Babul Wasiyyati bi ath-thuluth; *Tirmidhi*, 2116, Al-

It should be noted that when Sayyiduna Sa'ad bin Abi Waqqas (R.A.) said this to the Prophet (peace be upon him), his siblings, nephews and other relatives were still living. If these so called *'asabahs* were considered to be his heirs in the presence of his daughter, the Prophet (peace be upon him) would have told him: "Why (do you want to donate everything) while your siblings, nephews and other relatives are in life?" For, these people were belonged to Quraysh and close relatives of the Prophet as well. Now, we shall investigate who amongst his relatives were in life during that time.

'Amir, a brother of Sa'ad bin Abi Waqqas was reported to be living then. It is reported that:

وهو عامر بن أبي وقاص، واسم أبي وقاص مالك، أسلم بعد عشرة رجال، وهو من مهاجرة الحبشة، ولم يهاجر إليها أخوه سعد.

He is 'Amir bin Abi Waqqas, and Abi Waqqas' name was Malik. He ('Amir) accepted Islam after the first Ten people. He was among the immigrants of Abyssinia, where his brother Sa'ad did not migrate.²⁴

'Amir died in Syria during the Caliphate of Sayyiduna 'Umar bin Khattab (R.A.). Baladhuri says:

: هاجر عامر الهجرة الثانية إلى الحبشة، وقدم مع جعفر،

Baladhuri says: 'Amir took part in the Second migration to Abyssinia, and returned (to Madinah) with Ja'far bin Abi Talib. He died in Syria in the Caliphate of 'Umar.²⁵

Wasiyyatu bi ath-thuluth; *Nasa'i*, 3632, 6/553; *Musnad Ahmad*, 1440, 3/50; *Muwatta Malik*, 2824, Al-Wasiyyatu fi ath-thuluth.

²⁴ *Usdul Ghabah*, 1/565.

²⁵ *Al-Isabah fi Tam'izi As-Sahabah*, 3/598.

It was also reported that Sa'ad bin Abi Waqqas (R.A.) had another sister, namely 'Atiqah. Ibn Hajar narrates in his book *Al-Isabah*:

: ن رسول الله صلى الله عليه وآله وسلم لما دخل مكة في ثمان نسوة ومعهم ابناي، فقلت: هذان ابناي، وابنا خالتك، فأخذ أحدهما عمرو بن عتبة بن نوفل أصغرهما فوضعه في حجره

'Atiqah bint Abi Waqqas, the sister of Sa'ad, said: On the Day of Victory of Makkah, I came to the Prophet together with Eight women. I had my two sons with me. I told the Prophet (peace be upon him): They are two sons of your paternal uncle, and your two maternal cousins. The Prophet then got 'Amr bin 'Utbah bin Nawfal sit on his lap as he was younger of the two.²⁶

The history tells us that Sayyiduna Sa'ad (R.A.) had another sister as well, namely, Sakinah. It was reported that:

عَنْ أُمِّ الْحَكَمِ سَكِينَةَ بِنْتِ أَبِي وَقَاصٍ رَضِيَ اللَّهُ عَنْهَا أَنَّهَا قَالَتْ: سَأَلْتُ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ دُكْرَ الْجِهَادِ، فَقَالَتْ: يَا رَسُولَ اللَّهِ، فَمَا جِهَادُنَا؟ فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: "جِهَادُكُنَّ الْحَجُّ"

Ummul Hakam Sakinah bint Abi Waqqas narrated, she said: Once the Prophet (peace be upon him) encouraged in his discussion about Jihad. I asked him: "O the Prophet of Allah! Which is our [women's] Jihad?" The Prophet (peace be upon him) replied: "Your Jihad is Hajj."²⁷

²⁶ *Al-Isabah*, 5/68.

²⁷ *Akhbaru Makkah li al-Fakehi*, 755, 2/345; *Ma'rifatus Sahabah*, 7066, 23/270; *Al-Isabah fi Tamyizis Sahabah*, 11298, 7/702; *Usdul Ghabah*, 1/1365.

The history also tells us that Sayyiduna Sa’ad (R.A.) had two nephews as well. It is reported that:

نَافِعُ بْنُ عَبْتَةَ بْنِ أَبِي وَقَاصٍ الزُّهْرِيُّ، وَهُوَ ابْنُ أَخِي سَعْدِ بْنِ أَبِي وَقَاصٍ، وَهُوَ أَخُو هَاشِمِ الْمِرْقَالِ، لَهُ صَحْبَةٌ، وَأَبُوهُ عَبْتَةُ هُوَ الَّذِي كَسَرَ أَعْيَةَ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ يَوْمَ أُحُدٍ، وَمَاتَ عَبْتَةُ كَافِرًا قَبْلَ فَتْحِ مَكَّةَ، وَأَوْصَى إِلَى أَخِيهِ سَعْدٍ، ثُمَّ أَسْلَمَ نَافِعٌ يَوْمَ فَتْحِ مَكَّةَ.

“Nafi’ bin ‘Utbah bin Abi Waqqas Zuhri was nephew of Sa’ad bin Abi Waqqas (R.A.), and brother of Hashim al-Mirqal, the companion of the Prophet. His father, ‘Utbah, was the man who smashed the Four teeth of the Prophet (peace be upon him) on the tragic Day of Uhud. ‘Utbah died Kafir before Fath Makkah [8 AH]. He nominated Sa’ad bin Abi Waqqas as guardian [of his children after his death]. Nafi’ bin ‘Utbah reverted to Islam on the Day of Fath Makkah.”²⁸

In another report it says:

حدثنا محمد بن عمر قال: وأما هاشم الأعرور فإنه ابن عنتيبة بن أبي وقاص أسلم يوم فقتت عينه يوم اليرموك وهو بن أخي سعد بن أبي وقاص شهد صفين مع علي بن أبي طالب رضي الله تعالى عنه وكان يومئذ على الرجال.

Muhammad bin ‘Umar narrated: Hashim al-A’war [one-eyed] was the son of ‘Utbah bin Abi Waqqas. He reverted to Islam on the Day of Fath Makkah [8AH]. He was one-eyed, who lost one eye on the Day of Yarmuk Battle. He was nephew of Sayyiduna Sa’ad bin Abi Waqqas. He joined the Battle of Siffin in support of Sayyiduna ‘Ali bin Abi Talib and martyred. He was in charge of the Army on Foot.²⁹

²⁸ *Usdul Ghabah*, 1/1058.

²⁹ *Al-Mustadrak ‘ala as-Sahihayn*, 5693, 3/447.

According to another report ‘Abdur Rahman bin ‘Awf also was his relative cousin. It is reported that:

فِيمَنْ شَهِدَ بَدْرًا مَعَ رَسُولِ اللَّهِ ﷺ مِنْ بَنِي زُهْرَةَ :
عَبْدُ الرَّحْمَنِ بْنُ عَوْفِ بْنِ عَبِيدِ عَوْفِ بْنِ الْحَارِثِ بْنِ زُهْرَةَ ،
بُنُّ أَبِي وَقَاصِ بْنِ وَهَيْبِ بْنِ عَبِيدِ مَنَافِ بْنِ زُهْرَةَ

Urwah narrated: Those who participated in the Battle of Badr from the clan of Bani Zuhra bin Kilab bin Murrah were: ‘Abdur Rahman bin ‘Awf bin ‘Abd Awf bin Harith bin Zuhrah; and Sa’ad bin Abi Waqqas bin Ohayb bin ‘Abd Manaf bin Zuhrah.³⁰

It shows that Abdur Rahman bin ‘Awf was cousin of Sa’ad bin Abi Waqqas, as Sa’ad’s second great-grandfather [grandfather’s grandfather] was Zuhra; and ‘Abdur Rahman bin ‘Awf’s second great-grandfather was also Zuhra. If ‘Asabah had any rights in inheritance, ‘Abdur Rahman bin ‘Awf should receive inheritance from him based on ‘Asabah. Sa’ad bin Abi Waqqas (R.A.) would not have said: *وليس يرثني إلا* [=that no one but my only daughter will inherit me]. Even if he said, the Prophet (peace be upon him) would have definitely corrected him, but none of them has said anything as such.

Therefore, it has been proved that there is no clear proof in *shari’ah* to consider the male relatives as ‘Asabah and to consider brothers and sisters as heirs in the presence of daughter. This theory was produced by human imagination. They have created it. Zaid bin Thabit, the prominent sahabi [companion] of the Prophet (peace be upon him) considers it as a Jahily concept. It has not been revealed by Allah (SWT). It has no sound basis in the Qur’an and Sunnah.

³⁰ *As-Sunan al-Kubra li al-Bayhaqi*, 13470, Bab I’ta’ al-Fay’i ‘ala ad-Diwan.

The third *hadith* that was referred to by the scholars of *‘Ilm al-Fara’id* [Science of Inheritance law], was not a *hadith* of the Prophet at all. It is a false and forged *hadith*. The Prophet (peace be upon him) never said such a statement. The strange thing is that such a false *hadith* has been used to establish a theory in *‘Ilmul Fara’id*. The author of *Fatwa e Shami* clearly asserted that it is not a *hadith*; rather a statement by the scholars of *Fara’id*. He says:

لِقَوْلِ الْفَرُضِيِّينَ اجْعَلُوا الْأَخَوَاتِ مَعَ الْبَنَاتِ عَصَبَةً جَعَلَهُ فِي السِّيَرَايَةِ
وَعَبْرَهَا حَدِيثًا قَالَ فِي سَكَبِ الْأَنْهَرِ: وَلَمْ أَقِفْ عَلَى مَنْ خَرَّجَهُ

“The statement of *Fara’id* scholars that [=consider sisters together with daughters as ‘*Asabah*’] has been mentioned as *hadith* by Siraji and some other writers. The author of ‘*Sakbul Anhur*’ says: I could not trace any *hadith* scholar who have mentioned this as a *hadith* of the Prophet.”³¹

Dr. Rafiq Younus, an Egyptian writer, in his *‘Ilmul Fara’id wa al-Mawarith’* writes that it was the statement of some *Fara’id* scholars, and not that of the Prophet (peace be upon him).

اجعلوا الأخوات مع البنات عصبية ليس دليلا شرعيا، بل هو من كلام
الفرضيين.

The statement “ [turn your sisters as ‘*asabah*’ together with your daughters] is not a proof of *shari’ah* [in the Qur’an or Sunnah]; rather it is the statement of the *Fara’id* scholars.”³²

The above discussion proves that ‘*Asabah binafsihi*’, ‘*Asabah bighayrihi*’ and ‘*Asabah ma’a ghayrihi*’ theories do not stand on

³¹ Hashiyatu Ibn ‘Abidin, 6/776; Raddul Muhtar, Fasln fi ‘Asabat, 29/412

³² ‘Ilmul Fara’id wa al-Mawarith, 43.

sound scrutiny. The ‘sister’ herself is ‘*mawla*’. She does not require others to get into *mawla*. The ‘daughter’ is also *mawla*. She does not need anyone’s help to get into ‘*mawla*’. This is the reason that Allah (SWT) declares:

إِنْ أَمْرٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ مَا تَرَكَ وَهُوَ يَرِثُهَا إِنْ
لَمْ يَكُنْ لَهَا وَلَدٌ () (176 :

“If a man dies, leaving no child but [only] a sister, she will have half of what he left. And he inherits from her if she [dies and] has no child” (Qur’an, 4: 176).

In the presence of the daughter, the brothers or sisters will get no inheritance. This has been declared in the *aayah*. The proponents of ‘*Asabah*’ presented a strange interpretation of the *aayah*. They said: “Since the daughter will not inherit the whole property of the parents; therefore, the brothers or sisters will also inherit together with the daughter. The meaning of ‘*walad*’ in the *aayah* is only the male child”. Strange claim indeed!! This word has been used 14 times in the Qur’an. In all these places it refers to ‘child’ in general. But only in *Surah Nisa*’ 4: 176, it means the male child, and not the females!!? What a biased and prejudiced interpretation of the Qur’an!! Let us delve deeper into the meaning of the word ‘*walad*’.

A Thorough Analysis of the Word ‘Walad’ []

وَالِدٌ refers to the delivery or birth of a child. If a child is born through the process of delivery, he/she is called as ‘*walad*’ []. The term ‘*walad*’ refers to child or baby, and the term ‘*al-walid*’ [] refers to the father of the child.

Allah (SWT) says in the Qur’an:

لِ هُوَ اللَّهُ أَحَدٌ (1) اللَّهُ الصَّمَدُ (2) لَمْ يَلِدْ وَلَمْ يُولَدْ (3) وَلَمْ يَكُنْ لَهُ كُفُوًا
() (4)

Say, He is Allah, [who is] One, Allah, the Eternal Refuge. He neither begets nor is born, Nor is there to Him any equivalent (Qur'an, 112: 1-4).

In another *aayah*, Allah (SWT) says:

إِنَّكَ إِنْ تَذَرَهُمْ يُضِلُّوا عِبَادَكَ وَلَا يَلِدُوا إِلَّا فَاجِرًا كَفَّارًا (: 27)

Indeed, if You leave them, they will mislead Your servants and not beget except [every] wrecked one and [confirmed] disbeliever (Qur'an, 71: 27).

Therefore, the word '*walad*' simply refers to 'child' be it a male or female. Even if the child happens to be hermaphrodite [both genders] or transgender [attracts to a different gender from the gender of birth] child, still he/she is included in the term '*walad*'. We need to add gender related words after this term to indicate its gender identity. To refer to male child, we say, ; for female child, ; and to indicate to transvestite or hermaphrodite, which has difficult identities, we say . Allah (SWT) used the word '*Awlaad*' to refer to male and female children. Allah (SWT) says:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ (: 11)

Allah instructs you concerning your children: for the male, what is equal to the share of two females (Qur'an, 4: 11).

In this *aayah*, Allah (SWT) mentioned the prescribed shares of children, and also explained the meaning of children that it refers to both male and female.

The Prophet (peace be upon him) also indicated girls by the term '*walad*' in his noble *hadith*. When Sayyiduna Sa'ad bin Abi Waqqas (R.A.) asked him saying: "I only have one girl. May I donate two-thirds in charities?" The Prophet (peace be upon him) said:

إِنَّكَ إِنْ تَرَكْتَ وَلَدَكَ أَغْنِيَاءَ خَيْرٌ مِنْ أَنْ تَتْرُكَهُمْ عَالَةً يَتَكَفَّفُونَ النَّاسَ.

It is much better to leave your child well-off than leaving them poor begging from others.³³

It is clear in the *hadith* that the word '*walad*' refers to the girl, as the companion of the Prophet made it clear to him that he only had a girl, and no boys. The Arabs also refer to both boys and girls by the term '*walad*'. In the famous *hadith* of Sayyiduna Aws bin Thabit that when he died leaving behind a wife and three daughters, his total property was captured by his two cousins, Suwayd and 'Arfajah, leaving absolutely nothing for his wife and three daughters; as in Jahiliyyah, they believe that the property is for the males who can ride horses and fight the enemies. Upon the question of the Prophet, Suwayd and 'Arfajah said:

يَا رَسُولَ اللَّهِ وَلَدُهَا لَا يَرْكَبُ فَرَسًا وَلَا يَحْمِلُ كَلًّا وَلَا يَنْكأُ عَدُوًّا.

O the messenger of Allah! Her [Aws wife's] child cannot ride horse, cannot carry load, and cannot fight the enemy.³⁴

In this *hadith* also, they used the word '*walad*' to refer to three girls of Aws.

Moreover, the scholars on the Qur'anic linguistics also believe that the term '*walad*' refers to 'child' or 'new-born' babies. Some examples are cited below:

1. 'Allamah Raghil Isfahani says:

³³ Bukhari, 6352, Babu Mirathil Banat; Muslim, 4296, Babul Wasiyyat bi ath-Thuluth; Abu Da'wud, 2866, Babu ma Ja'a fi ma la yajuzu; Ibn Majah, 2708, Babul Wasiyyati bi ath-Thuluth; Tirmidhi, 2116, Al-Wasiyyatu bi ath-Thuluth; Nasa'i, 3632, 6/553; Musnad Ahmad, 1440, 3/50; Muwatta Malik, 2824, Al-Wasiyyatu bi ath-Thuluth.

³⁴ Tafsir al-Baghawi, 4/149.

: . يقال للواحد والجمع والصغير والكبير.
 فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ [11 /] ، أُنْتَى يَكُونُ لَهُ وَلَدٌ [101 /]
 ويقال للمتبني ولَدًا، قال: [9 /]
 : الابن والابنة، والولدُ هُمُ الأهلُ [3 /]

Al-Walad' refers to 'new-born'. It is used for singular and plural, young and adult. Allah (SWT) says:
 أُنْتَى يَكُونُ لَهُ وَلَدٌ [“if he had no children”], [“How could he have a son”]. Adopted child was also said as 'walad. Allah (SWT) says: [“Or we may adopt him as a child”], [“And by the father and that which was born of him”]. Abul Hasan says: 'Al-Walad' refers to boy and girl. 'Walad' means family and children.³⁵

2. In his Tafsir 'Ruhul Bayan', Ismail Haqqi explained the word 'Al-walad' as follows:

والولد المولود ويقال للواحد والجمع والصغير والكبير والذكر والأنثى

Al-Walad' refers to 'newborn' baby. It refers to singular or plural, young or adult, male or female.³⁶

3. In Tafsir Ibn 'Abbas, it was mentioned that the term 'walad' refers to son and daughter. It says:

(وَهُوَ يَرِثُهَا) (إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ)

(And he inherits from her) if she dies (and has no child), male or female.³⁷

³⁵ Al-Mufradaat fi Gharif al-Qur'an, 548.

³⁶ Tafsir Haqqi (Ruhul Bayan), 9/186.

³⁷ Tanwirul Miqyas fi Tafsir Ibn 'Abbas, 1/112.

4. In the prominent Arabic Dictionary, *Al-Mu'jamul Wasit*, it says:

(وَيُطْلَقُ عَلَى الذَّكَرِ وَالْأُنْثَى وَالْمَثْنَى وَالْجَمْعِ)
 وولدة والرهط.

'Al-Walad' means whoever and whatever was born. It refers to male, female, two, three or more. Its plural term is 'awlaad', 'waladah', and 'ar-Raht' [referring to all children and relatives].³⁸

The above discussion tells us that the word 'walad' refers to any newborn babies. Therefore, 'walad' will indicate any infant boy or girl, transvetite, transgender and so on.

In some *hadith* of the Prophet (peace be upon him), it can be seen that the Prophet (peace be upon him) gave half of the property to the daughter and the rest of the wealth to other heirs. Based on such a *hadith*, the proponents of 'asabah claim that since the Prophet gave to others as well, the sisters may be considered as 'Asabah ma'a ghayrihi' ['asabah with another person]. But such a *hadith* cannot establish the shares for brothers and sisters in the presence of children. For, the Prophet (peace be upon him) gave to the brothers and sisters in the early age of Islam in Madinah. Not only brothers and sisters, it was reported that the Prophet (peace be upon him) also gave to nephew, niece, liberating master and also liberated slave. When the Prophet (peace be upon him) granted these people shares of inheritance, the *aayah* 33 of *Surah Nisa'* was not yet revealed to confirm the status of 'mawla' to the women. Moreover, the divine command was revealed during the final Hajj of the Prophet that in the presence of children, the brothers and sisters will get nothing. It was reported in Bukhari and Muslim that:

³⁸ Al-Mu'jamul Waseet, 2/1056.

ن الْبَرَاءِ رَضِيَ اللَّهُ عَنْهُ، يَقُولُ: أَخْرَجَ آيَةَ نَزَلَتْ: { سَتَفْتُونَكَ فَلَا اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ } (176 :)

Sayyiduna Bara' (R.A.) narrated that the last *aayah* revealed on the Prophet was about *Kalalah*, as Allah says: { سَتَفْتُونَكَ فَلَا اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ } They request from you a [legal] ruling. Say, "Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]."³⁹

In another *hadith*, it is reported:

عَنْ ابْنِ سَبْرِينَ قَالَ: { فَتُؤْتِيكَ فَلَا اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ } (176 :) وَالنَّبِيُّ فِي مَسِيرٍ لَهُ وَإِلَى جَنَبِهِ حُدَيْفَةُ بْنُ الْيَمَانِ فَلَبَّغَهَا حُدَيْفٌ وَبَلَّغَهَا حُدَيْفَةُ عُمَرَ بْنِ الْخَطَّابِ وَهُوَ يَسِيرُ خَلْفَهُ. اسْتُخْلِفَ عُمَرُ سَأَلَ عَنْهَا حُدَيْفَةَ، وَرَجَا أَنْ يَكُونَ عِنْدَهُ تَفْسِيرُهَا فَقَالَ لَهُ حُدَيْفَةُ: اللَّهُ إِنَّكَ لِعَاجِزٌ إِنْ ظَنَنْتَ أَنْ إِمَارَتَكَ تَحْمِلُنِي أَنْ أُحَدِّثَكَ فِيهَا بِمَا لَمْ أُحَدِّثَكَ يَوْمَئِذٍ. لَمْ أَرِدْ هَذَا رَجَمَكَ اللَّهُ.

Muhammad ibn Sireen narrates that when the *aayah* of *Kalalah* [i.e. no descendants nor ascendants as heirs] { سَتَفْتُونَكَ فَلَا اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ } was revealed, the Prophet (peace be upon him) was in a journey. Sayyiduna Hudhaifah ibnul Yaman was next to him. The Prophet (peace be upon him) conveyed the *aayah* to Hudhaifah, who then conveyed it to Sayyiduna 'Umar (R.A.) who was just next to Hudhaifah. When 'Umar (R.A.) became Caliph, he asked Hudhaifah about its interpretation, hoping that Hudhaifah may know its real meaning. Sayyiduna Hudhaifah (R.A.) then responded to him: "If you [O Amirul

³⁹ Muslim, 4237, Babu Akhiru Ayatin 'Unzilati; Bukhari, 4377, Kitabut Tafsir.

Mu'mineen!]) think that your leadership would inspire me to tell you about the *aayah* something more than what I did on that day [when he received it directly from Prophet and conveyed to 'Umar], you are wrong. [i.e. I am not going to tell you anything more about it]. 'Umar (R.A.) replied: "I did not mean that. May Allah (SWT) shower His Mercy upon you."⁴⁰

It is a known fact that *hadith* should not be used to derive laws if the Qur'anic *aayat* were present. *Hadith* has to be interpreted in a way so as to conform with the Qur'an. In no way, the Qur'an can be abandoned in order to follow the Sunnah of the Prophet. Rather, *Hadith* can be sacrificed to act upon and follow the Qur'an. The same rule has to be applied in the case of 'Asabah as well.

Rights of Daughter in Inheritance

Daughter upholds and expands the lineage of the parents just like son. Allah (SWT) spread the lineage of the Prophet (peace be upon him) through his daughter [Fatimah R.A.]. Therefore, the closest and the most rightful heirs of the deceased are his/her children and grandchildren.

The daughter may have five situations as follows:

Firstly, if the daughter is the only child of the deceased, and exist no other heirs, then she will get the whole property.

Secondly, if she is the only child of the deceased, but exist some other heirs as well. They should be given their assigned shares, and then the daughter will get half of the balance of wealth.

Thirdly, if the deceased has more than one daughter, and exist no other heirs; then the daughters will get the whole

⁴⁰ Tafsir at-Tabari, 10874, 9/435.

property of the deceased equally, exactly in the same manner that a son gets the whole property of the deceased if no one else exists.

Fourthly, if the deceased has more than one daughter besides other heirs; the heirs will get their prescribed shares and the balance will be given away to the daughters.

Fifthly, if the deceased has a few children, male and female and no other heirs; then they will get the whole property based on the Qur'anic rule, *لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ*, "that a boy will get equal to two girls". In the presence of other heirs, they will get the total balance of wealth on the same Qur'anic principle after giving away the prescribed shares of other heirs.

We shall explain the situations where the deceased left only daughters and exist no other heirs.

Daughter: the Only Heir

Humankind accumulate wealth and get children in his life. But children are always much precious to him than the wealth. He does not hesitate to spend profusely for the welfare of the children. If the child was a son, he preserves his lineage through his son. In pre-Islamic days, the people did not desire girls. Therefore, the girls did not get any share of inheritance. Hence, he does not want to leave any wealth behind if he does not have a son. Islam changed this notion of man. The Prophet (peace be upon him) told Sa'ad bin Abi Waqqas in response to his query:

إِنَّكَ إِنْ تَرَكَتَ وَلَدَكَ أَعْيَاءَ خَيْرٌ مِنْ أَنْ تُتْرَكَهُمْ عَالَةً يَتَحَفَّوْنَ النَّاسَ.

"It is much better to leave your child well-off than leaving them begging from others."⁴¹

⁴¹ Bukhari, 6352, Babu Mirathil Banat; Muslim, 4296, Babul Wasiyyat bi ath-Thuluth; Abu Da'wud, 2866, Babu ma Ja'a fi ma la yajuzu; Ibn Majah, 2708, Babul Wasiyyati bi ath-Thuluth; Tirmidhi, 2116, Al-

Therefore, the righteous believers love to leave sufficient wealth for their offspring before their death. He strives to earn wealth in *halal* means till the last breadth of his life. The children were also raised in the financial care of their parents since their birth. The parents are responsible for their financial needs. If the parents die, Allah (SWT) allocated their wealth for their children so that they do not suffer from financial difficulties. The responsibility of raising children, boys or girls, lies on parents. That is why if the parents die, the children have the rights to get the inheritance of the parents. The children's future financial prosperity largely depends on the wealth received from their parents.

That is the reason that Allah (SWT) did not specify the children's shares of inheritance and said:

وَصِيْبُكُمْ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ (11 :)

Allah instructs you concerning your children: for the male, what is equal to the share of two females (Qur'an, 4: 11).

If we look into the beginning part of the *ayah* we could see that it means all wealth are for the children. It did not say that all wealth should be given to male child alone. Rather a principle for the distribution of the wealth was prescribed, which is "a male child will get equal to two female child". It is clear from the 'context' of the speech [سياق كلام] that based on the rule "a male will get equal to two females" the children will get the whole wealth. If there is only one son, he will get the whole wealth. Likewise, if there is only one daughter, she will also get the whole wealth. Because there was no need of distribution of his wealth due to non-existence of any heirs. If there are more than one valid and qualified heirs, then only the

Wasiyyatu bi ath-Thuluth; Nasa'i, 3632, 6/553; Musnad Ahmad, 1440, 3/50; Muwatta Malik, 2824, Al-Wasiyyatu bi ath-Thuluth.

distribution is required. If a person dies leaving behind a non-Muslim son and a Muslim daughter, the daughter will get the total wealth alone. Son will get nothing due to being non-Muslim. The Prophet (peace be upon him) declared:

لَا يَرِثُ الْمُسْلِمُ الْكَافِرَ وَلَا الْكَافِرُ الْمُسْلِمَ

No Muslim will inherit from Kafir relative; and no Kafir shall inherit from any Muslim relative.⁴²

Likewise, if a person dies leaving behind a daughter and a brother, the daughter will get the total property, and the brother will get nothing. Because Allah (SWT) said:

وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ (176 :)

And he inherits from her if she [dies and] has no child (Qur'an, 4: 176).

In this *aayah*, it was made a precondition for the brother to inherit from sister that she does not have a child of her own. Allah (SWT) Himself explained about the children in the following:

وَصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ (11 :)

Allah instructs you concerning your children: for the male, what is equal to the share of two females (Qur'an, 4: 11).

In this *aayah*, Allah (SWT) referred to both boys and girls under the term 'awlaad' []. So, 'walad' or 'awlaad' refer to both boys and girls.

⁴² Muslim, 4225, Babu Yahya bin Yahya; Bukhari, 6383, Babu la yarithul Muslimu al-Kafir; Tirmidhi, 2711, Ibtalul Mirath bayna al-Muslim; Abu Da'wud, 2911, Babu Hal Yarithu al-Muslimu al-Kafir; Ibn Majah, 2729, Bab Mirath Ahlil Islam.

If the heir is the sole daughter, will she inherit the whole wealth or part of it, we see different opinions from among the companions of the Prophet (peace be upon him). The majority companions including Sayyiduna 'Umar, 'Ali, 'Uthman, 'Abdullah ibn Abbas and 'Abdullah ibn Mas'ud [may Allah (SWT) be pleased with all of them] say that if the daughter alone inherits the parents, she will get the total wealth. But according to Sayyiduna Zaid bin Thabit and some other scholars she will get half of the wealth. The rest half will be inherited by *Baitul Mal* [financial department] of Islamic state. If there was no Islamic state or *Baitul Mal*, they did not say anything about it.

What about More than one Daughter?

If there are more than one daughter, and exist no other heirs, the daughters will inherit the whole property of the deceased.

This is because Allah (SWT) has declared in the Qur'an:

لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ (11 :)

For the male, what is equal to the share of two females (Qur'an, 4: 11).

If we reflect on the *aayah* and reverse the order of the inheritance, we could infer that the two girls will get equal to what one boy will get of inheritance. Since the boy will own the whole estate of the deceased in the absence of other inheritors, the two girls also will get the same whole wealth in the absence of other heirs.

Allah (SWT) also says:

(33 :)

And for all, we have made heirs [mawla] to what is left by parents and relatives (Qur'an, 4: 33).

In this *aayah*, Allah (SWT) accorded the right of ‘*mawla*’ or ‘*asabah*’ to the women as well. Therefore, as ‘*Asabah*’, the women, two or more, will inherit the whole wealth of the deceased.

Some scholars who claim that the daughters are only considered as ‘*ashabul furud*’ [inheritors with specified shares], they also differ in the shares of inheritance for two daughters. They assert that if there is only one daughter, she gets half of the inheritance; if more than one, they will get two-thirds of the property. If the son exists besides daughters, they will get the balance of the inheritance based on the rule that ‘*one male is equal to two females*’. They presented the *aayah* 12 of Surah Nisa’ to establish their claim that more than one daughter will get two-thirds of the property. Allah (SWT) says:

فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ (11 :)

But if there are [only] daughters, two or more, for them is two thirds of one's estate (Qur'an, 4: 11).

But if we consider the viewpoint of Sayyiduna ‘Abdullah bin ‘Abbas (R.A.), who clearly stated that the daughters are considered as ‘*mawla*’. They will be considered ‘*mawla*’ if they are joined with their brothers of the same level; or they remain alone with no brothers with them. Based on this, they may claim whole estate or wealth. The following proofs may be presented to substantiate the claim:

1. Allah (SWT) declares in the Qur'an:

لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ (11 :)

For the male, what is equal to the share of two females (Qur'an, 4: 11).

We may infer from the part of the *aayah* that the two girls will get the equal share of one boy. So, if two girls cannot claim the whole estate, one boy also cannot claim the total estate. There is no room to claim that this rule is only applicable when there

is a mixture of boys and girls; or else, it will not be applied. For, the Qur'anic *aayah* did not put such a condition in the *aayah*.

2. Allah (SWT) also declared:

(33 :)

And for all, we have made heirs [mawla] to what is left by parents and relatives (Qur'an, 4: 33).

In this *aayah*, the ‘*mawla*’ here means ‘*asabah*’ as refelected in the tafsir of ‘Abdullah bin ‘Abbas, Qatadah, Mujahid, Ibn Zaid and also in the hadith of the Prophet (peace be upon him). If the women are considered ‘*asabah*’, they may claim the whole wealth with no problem.

3. The male ‘*asabah*’ will not be considered ‘*asabah*’ in the presence of the daughters. Then either they will be among ‘*ashabul furud*’ [those with specified shares] or will not get anything. Allah (SWT) declares:

وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ (11 :)

And for one's parents, to each one of them is a sixth of his estate if he left children (Qur'an, 4: 11).

This *aayah* tells us that in the presence of daughter, the father, the most strongest ‘*asabah*’, turns into ‘*ashabul furud*’, and gets one-sixth of the inheritance. He will not get anything more than that based on ‘*asabah*’. The second strongest ‘*asabah*’ after father is the ‘brother’. ‘Brother’ will not get any share based on ‘*asabah*’ in the presence of ‘daughter’. Because Allah (SWT) has clearly mentioned:

وَهُوَ يَرِثُهَا إِنْ لَمْ يَكُنْ لَهَا وَلَدٌ (176 :)

And he inherits from her if she [dies and] has no child (Qur'an, 4: 176).

This *ayah* shows that the brother will only inherit from the deceased if he/she does not have any child.

4. The *ayah* 176 of Surah Nisa' is considered the last revelation regarding '*ilmul Fara'id*'. Therefore, the ruling in this *ayah* gets priority over other rulings in case of conflicts among the *ahkam* [rulings]. Therefore, the *hadith* of Sayyiduna Sa'ad bin Rabi'ah and other *hadith* which state that the Prophet gave the daughters specified shares of inheritance and he gave the rest to the brothers, was nullified due to this *ayah* which was the last revelation on the issue. Any rulings that contradict with this should be rejected. Sayyiduna Bara' bin 'Aazib narrates:

رُ أَيَّة نَزَلَتْ: {سَتَفْتُونَكَ قُلَّ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ} (176 :

Bara' bin 'Aazib narrated that the last *ayah* revealed was on *Kalalah*, as Allah says: { سَتَفْتُونَكَ قُلَّ اللَّهُ يُفْتِيكُمْ فِي }
 { "They request from you a [legal] ruling. Say, Allah gives you a ruling concerning one having neither descendants nor ascendants [as heirs]."⁴³

It is to be noted here that Allah (SWT) has initially declared the daughters as *ashabul furud* [those with specified shares] alone; then it was declared that man and woman both were made '*mawla*'; and in the 10th year of *Hijrah*, it was declared that in the presence of children, boy or girl, no brother or sister of dead person will get inheritance.

⁴³ *Muslim*, 4237, Babu Akhiru Ayatin Unzilal; *Bukhari*, 4377, Kitabut Tafsir.