

LAW OF INHERITANCE IN ISLAM

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The law of inheritance is called '*Ilmil-farâyied, or Ilmil-mirâth*' – (علم الفرائض; in Arabic, "the science of obligations of inheritance ")¹.

The Holy Qur'an contains three verses which give specific details of inheritance and shares, in addition to few verses dealing with testamentary power. It has also been reported in *Hadith* that Holy Prophet (pbuh) allotted great importance to the laws of inheritance and ordered his followers to learn and teach them. Muslim jurists used these verses as a starting point to expound the laws of inheritance even further using Hadith, as well as methods of juristic reasoning, like *Qiyas*. In later periods, large volumes of work have been written on the subject.

The verses in the Holy Quran upon which the law of inheritance is founded begin at the 11th verse of Chapter 4 of the Holy Quran. They are rendered as follows: -

"With regard to your children, God commands you to give the male the portion of two females, and if they be females more than two, then they shall have two-thirds of that which their father hath left: but if she be an only daughter, she shall have the half; and the father and mother of the deceased shall each of them have a sixth part of what he hath left, if he has a child; but if he has no child, and his parents be his heirs, then his mother shall have the third; and if he has brethren, his mother shall have the sixth, after paying the bequests he shall have bequeathed and his debts. As to your fathers or your children, ye know not which of them is the most advantageous to you. This is the law of God. Verily God is

¹ Schacht, Joseph (1991). "Mīrāth". *Encyclopaedia of Islam* 7 (2nd ed.). Brill Academic Publishers. pp. 106–113

Knowing and Wise.”

“Half of what your wives leave shall be yours if they have no issue; but if they have issue, then a fourth of what they have shall be yours, after paying the bequests and debts.”

“And your wives shall have a fourth part of what ye leave if ye have no issue, but if ye have issue, then they shall have an eighth part of what ye leave, after paying the bequests and debts, if any.”

“If a man or woman makes a distant relation their heir, and he or she has a brother or a sister each of these two shall have a sixth : but if there are more than this, then shall they be sharers in a third after payment of the bequests and debts.” “Without loss to anyone. This is the ordinance of God, and God is Knowing and Gracious.”

The amalgamation of old agnatic customs and Islamic law led to a number of problems and controversies that Muslim jurists have solved in different ways. Through the use of deductive reasoning (*Qiyas*), Muslim jurists added three additional heirs: the paternal grandfather, maternal grandmother, and agnatic granddaughter. These heirs, if entitled to inherit, are given their fixed shares and the remaining estate is inherited by the residuaries (*Aṣaba*). In some cases, they have also upheld the rule of men having twice the share of women in circumstances not readily mentioned in the Qur'an, and tried to deal with complex cases in a variety of different contexts. This led to some minor differences between jurisprudence schools of the Sunni *maddhabs*. Also, the laws of inheritance for Twelver Shia, despite being based on the same principles, differ in a number of features due to the rejection of certain accounts of *Hadith* and based on their understanding of certain events in early Islam. On the other hand, the system of inheritance of the *Kharajite Ibadis* and *Zaidis* closely resemble that of the Sunni system. In modern Muslim countries, usually a mixture of different schools of jurisprudence (including Shia) is in effect, in addition to a number of important reforms to the traditional system. The main achievements of such modern systems was the codification of inheritance laws.

Details of General Law of Inheritance

The foregoing general rules of inheritance are detailed as the following based upon *Qur'an, Hadith and Fiqh*.

When a Muslim dies there are four duties which need to be performed. They are:

1. Pay funeral and burial expenses.
2. Paying debts of the deceased.
3. Determine the value / will of the deceased (which can only be a maximum of one third of the property).
4. Distribute the remainder of estate and property to the relatives of the deceased according to Shariah Law.

Therefore, it is necessary to determine the relatives of the deceased who are entitled to inherit, and their shares.

These laws take greater prominence in Islam because of the restriction placed on the testator (a person who makes a will). Islamic law places two restrictions on the testator:

1. To whom he or she can bequeath his or her wealth.
2. The amount that he or she can bequeath (which must not exceed one third of the overall wealth).

The payment of legacies as far as one-third of the residue. The remaining two-thirds with so much of the one-third as is not absorbed by legacies are the patrimony of the heirs. A Muslim is, therefore, disabled from disposing of more than one-third of his property by will.

The clear residue of the state descends to the heirs; and among these the first are persons for whom the law has provided certain specific shares or portions and who are thence denominated the sharers or *Za-wul-farûd* in Arabic.

In most cases, there must be a residue after the shares have been satisfied; and this passes to another class of persons who, under that circumstance, are termed residuaries or *'asaba* in Arabic. It can seldom happen that the deceased should have no individual connected with him who would fall under these two classes; but to guard against this possible contingency, the law had provided another class of persons who, by reason of their remote position with respect to the inheritance, have been denominated "distant kindred" *Zawul Arhâm* in Arabic.

GIFTS AND DONATIONS

During his lifetime a Moslem has absolute power over his property. He may dispose of it in whatever way he likes. But such dispositions, in order to be valid and effective, are required to have operation given to them during the lifetime of the owner. If a gift be made, the subject of the gift must be made over to the donee during the lifetime of the donor; he must, in fact, divest himself of all proprietary rights in it and place the donee in possession. To make the operation of the gift dependent upon the donor's death would invalidate the donations. So also in the case of endowments for charitable or religious purposes. A disposition in favour of a charity, in order to be valid, should be accompanied by the complete divestment of all proprietary right. As regards testamentary dispositions, the power is limited to one-third of the property, provided that it is not in favour of one who is entitled to share in the inheritance. For example, the proprietor may devise by will one-third of his property to a stranger; should the device, however, relate to more than one-third, or should it be in favour of a legal heir, it would be invalid.

POINTS OF CONTACT

A Moslem upon his death may leave behind him a numerous body of relations. In the absence of certain determinate rules, it would be extremely difficult to distinguish between the inheriting and the non-inheriting relations. In order to

obviate this difficulty and to render it easy to distinguish between the two classes, it is the general rule and one capable of universal application, that when a deceased Moslem leaves behind him two relations, one of whom is connected with him through the other, the former shall not succeed while the intermediate person is alive. For example, if a person on his death leaves behind him a son son's son, this latter will not succeed to his grandfather's estate while his father is alive.

Again if a person dies leaving behind him a brother's son and a brother's grandson and his own daughter's son, the brother's son, being a male agnate and nearer to the deceased than the brother's grandson, takes the inheritance in preference to the others. The law of inheritance is a science acknowledged even by Muslim doctors to be an exceedingly difficult object of study. Although it is not easy to follow it out in all its intricacies, a carefully drawn table on the Sunni law of inheritance is given hereinafter: -

A. – LEGAL HEIRS AND SHARERS

1. Father

As mere sharer, when there is a son or a son's son, how low so ever, he takes $1/6$. As mere residuary, when no successor but himself, he takes the whole: or with a sharer, not a child or son's child, how low so ever, he takes what is left by such sharer. As sharer and residuary, as when there are daughters and son's daughter but no son or son's son, he, as sharer, takes $1/6$; daughter takes $1/2$, or two or more daughters $2/3$; son's daughter $1/6$; and father the remainder.

2. True Grandfather

Father's father, his father and so forth, into whose line of relationship to the deceased no mother enters, is excluded by father and excludes brothers and sisters; he comes into father's place when no father; but does not, like father, reduce mother's share to $1/3$ of residue, nor entirely exclude paternal grandmother.

3. Half Brothers by Same Mother

They take, in the absence of children or son's descendants and father and true grandfather one $1/6$, two or more between them $1/3$, being those who benefit by the "return".

4. Daughters

When there are no sons, daughters take on $1/2$ two or more $2/3$ between them; with sons they become residuaries and take each half a son's share, being in this case of those who benefit by the "return".

5. Son's Daughters

They take as daughters when there is no child; take nothing when there is a son or more daughters than one; take $1/6$ when only one daughters; they are made residuaries of male cousin, how low so ever.

6. Mother

The mother takes $1/6$ when there is a child or son's child, how low so ever, or two

more brothers or sisters of whole or half-blood; she takes $\frac{1}{3}$ when none of these: when husband or wife and both parents, she takes $\frac{1}{3}$ of the remainder after deducing their shares, the residue going to father: if no father but grandfather, she takes $\frac{1}{3}$ of the whole.

7. True Grandmother

Father's or mother's mother, how high so ever; when no mother, she takes $\frac{1}{6}$ if more than one, $\frac{1}{6}$ between them. Paternal grandmother is excluded by both father and mother; maternal grandmother by mother only.

8. Full Sisters

These take as daughters when no children, son's children how low so ever, father, true grandfather or full brother; with full brother, they take half share of male; when daughters or son's daughters, how low so ever, but neither sons, nor brothers, the full sisters take as residuaries what remains after daughter or son's daughter has had her share.

9. Half Sisters by Same Father

They take as full sisters, when there are none; with one full sister they take $\frac{1}{6}$; when two full sisters, they take nothing, unless they have a brother who make them residuaries and then they take half a male's share.

10. Half Sisters by Mother only

When there are no children or son's children, how low so ever, or father or true grandfather, they take one $\frac{1}{6}$; two or more $\frac{1}{3}$ between them.

11. Husband

If no child or son's child, how low so ever, he takes $\frac{1}{2}$; otherwise $\frac{1}{4}$.

12. Wife

If no child or son's child how low so ever, she takes $\frac{1}{4}$; if otherwise, $\frac{1}{8}$. Several widows share equally.

Corollary

All brothers and sisters are excluded by son, son's son, how low so ever, father or true grandfather. Half brothers and sisters on father's side are excluded by these and also by full brother. Half brothers and sisters on mother's side are excluded by any child or son's child, by father and true grandfather.

B. – RESIDUARIES

I – Residuaries in their own right, being males into whose line of relationship to the deceased no female enters : -

(a) Descendants: -

1. Son.
2. Son's son.
3. Son's son's son.

4. Son of No. 3.
- (4 a) Son of No. 4.
- (4 b) And so on how low so ever.
- (b) Ascendants: -
5. Father.
6. Father's father.
7. Father of No. 6.
8. Father of No. 7.
- (8 a) Father of No. 8.
- (8 b) And so on how high so ever.
- (a) Collaterals: -
9. Full.
10. Half-brother by father.
11. Son of No. 9.
12. Son of No. 10.
- (11 a) Son of No. 11.
- (11 a) Son of No. 12.
- (11 b) Son of No. 11 e.
- (12 b) Son of No. 12 a.
- and so on how low so ever.
13. Full paternal uncle by father.
14. Half maternal uncle by father.
15. Son of No. 13.
16. Son of No. 14.
- (15 a) Son of No. 15.
- (16 a) Son of No. 16.
17. Father's full paternal uncle by father's side.
18. Father's half paternal uncle by father's side.
19. Son of No. 17.
20. Son of No. 18.
- (19 a) Son of No. 19.
- (20 a) Son of No. 20.
21. Grandfather's full paternal uncle by father's side.
22. Grandfather's half paternal uncle by father's side.
23. Son of No. 21.
24. Son of No. 22.
- (19 a) Son of No. 23.
- (20 a) Son of No. 24.
- and so on, how low so ever.

Notes: -

- (a) a nearer residuary in the above table is preferred to and excludes a more remote residuary.
- (b) Where several residuaries are in the same degree, they take per capita not per stripes, i.e. they share equally. The whole blood is preferred to and excludes the half-blood at each stage.

II – Residuaries in another's right, being certain females, who are made residuaries by males parallel to them; but who, in the absence of such males, are only entitled to legal shares. These female residuaries take each half as much as

the parallel male who makes them residuaries. The following four persons are made residuaries: -

- (a) Daughters made residuary by son.
- (b) Son's daughter made residuary by full brother.
- (c) Full sister made residuary by full brother.
- (d) Half-sister by father made residuary by her brother.

III – Residuaries in their own right, being males into whose line of relationship to the deceased no female enters: -

IV – Residuaries with another, being certain females who become residuaries with other females. These are: -

- (a) Full sisters with daughters or daughter's sons.
- (b) Half-sisters with father.

Notes: -

When there are several residuaries of different or classes, e.g. residuaries in their own right and residuaries with another, propinquity to deceased gives a preference, so that the residuary with another, when nearer to the deceased than the residuary in himself, is the first.

If there be residuaries and no sharers, the residuaries take all the property.

If there be sharers and no residuaries, the sharers take all the property by the doctrine of the "return." Seven persons are entitled to the "return." 1st. mother; 2nd, grandmother; 3rd, daughter; 4th, son's daughter; 5th, full sister; 6th, half-sister by father; 7th, half brother or sister by mother.

A posthumous child inherits. There is no presumption as to commorients, who are supposed to die at the same time unless there be proof otherwise.

If there be neither sharers nor residuaries, the property will go to the following class (distant kindred):

C. – DISTANT KINDRED

(ALL Relatives who are neither Sharers nor Residuaries)

CLASS 1.

Descendants: Children of daughters and son's daughters:

- 1. Daughter's son.
- 2. Daughter's daughter.
- 3. Son of No. 1.
- 4. Daughters of No. 1.
- 5. Son of No. 2.
- 6. Daughters of No. 2 and so how low so ever, and whether male or female.
- 7. Son's Daughter's son.

8. Son's Daughter's daughter.
9. Son of No. 7.
10. Daughters of No. 7.
11. Son of No. 8.
12. Daughters of No. 8, and so on how low so ever and whether male or female.

Notes: -

(a) Distant kindred of Class 1 take according to proximity of degree; but when equal in this respect, those who claim through an heir, i.e. sharer or residuary, have a preference over those who claim through one who is not an heir.

(b) When the sexes of their ancestors differ, distribution is made having regard to such difference of sex, e.g. daughter of daughter's son gets a portion double that of son of daughter's daughter, and when the claimants are equal in degree but different in sex, males take twice as much as females.

CLASS 2.

Ascendants: False grandfathers and false grandmothers.

13. Maternal grandfather.
14. Father of No. 13, father of No. 14 and so on as high so ever (i.e. all false grandfathers).
15. Maternal grandfather's mother.
16. Mother of No. 15 and so on how high so ever (i.e. all false grandmothers).

Notes:

Rules (a) and (b), applicable to Class 1, apply also to Class 2.

Furthermore, when the sides of relation differ, the claimant by the paternal sides gets twice as much as the claimant by the maternal.

CLASS 3.

Parents Descendants:

17. Full brother's daughter and her descendants.
18. Full sister's son.
19. Full sister's daughters and their descendants, how low so ever.
20. Daughter of half-brother by father, and her descendants.
21. Son of half-sister of father.
22. Daughter of half-sister by father, and her descendants, how low so ever.
23. Son of half-brother by mother.
24. Daughter of half-brother by mother, and her descendants, how low so ever.
25. Son of half-sister by mother.
26. Daughter of half-sister by mother, and their descendants, how low so ever.

Note: -

Rules (a) and (b), applicable to Class 1, apply also to Class 3. Furthermore, when

two claimants are equal in respect of proximity, one who claims through a residuary is preferred to one who cannot so claim.

CLASS 4.

Descendants of the two grandfathers and the two grandmothers.

27. Full paternal aunt and her descendants, male or female, and how low soever.

28. Half paternal aunt and her descendants, male or female, how low soever.

29. Father's half-brother by mother and his descendants, male or female, how low so ever.

30. Father's half-sister by mother and her descendants, male or female, how low so ever.

Note: -

The sides of relations being equal, uncles and aunts of the whole blood are preferred to those of the half, and those connected by the same father only, whether males or females, are preferred to those connected by the same mother only. Where sides of relation differ, the claimant by paternal relation gets twice as much as the claimant by maternal relation. Where sides and strength of relation are equal, the male gets twice as much as the female.

General Rule. – Each of these classes as above mentioned excludes the next following class.

Note: -

In cases where there are no sharers, residuaries, or distant kindred to claim inheritance, the whole property of the deceased shall be gone over to the Public Treasury, i.e. The State. ²

RULES OF INCLUSION AND EXCLUSION

In Islamic law, only relatives with a legitimate blood relationship to the deceased are entitled to inherit. Thus, illegitimate children and adopted children have no shares in inheritance. In general, a full brother will exclude a consanguine brother, but not uterine brother. In case where a deceased man leaves a pregnant woman, the unborn child's share will be reserved. Also a woman during the time of waiting (*'idda*) after divorce is considered as a wife of the deceased for purposes of inheritance.

There are even further rules of exclusion and inclusion of different relatives. The only "practical situations" which may cause disqualification are differences of religion and homicide. But schools of Islamic jurisprudence differed whether a Muslim can inherit from a non-Muslim or not. All the jurists agree that intentional or unjustifiable killing would exclude a person from inheritance.

WOMEN AND INHERITANCE

² "Al-Sirajiyah" by Sirajud-din Mohammad, based on the Traditions of the Prophet on the subject, as collected by Zaid ibn Thabit, one of the earliest companions.

In Islam, women are entitled the right of inheritance³. In general circumstances, though not all, Islam allots women half the share of inheritance available to men who have the same degree of relation to the decedent. For example, where the decedent has both male and female children, a son's share is double that of a daughter's. Additionally, the sister of a childless man inherits half of his property upon his death, while a brother of a childless woman inherits all of her property. However, this principle is not universally applicable, and there are other circumstances where women might receive equal shares to men. For example, the share of the mother and father of a childless decedent. Also the share of a uterine brother is equal to the share of a uterine sister, as do the shares of their descendants.

There are some who say women are entitled to equal inheritance in Islam.

Sometimes women get double the share then that of men, for example if there are only parents and husband, husband will receive half, father gets 1/6 and mother gets 2/6. This is according to Ibne Abbas's interpretation of verses 11, 12 of *Sura Al Nisa*. Also the Qur'an does not discriminate between men and women in cases of *Kalalah*⁴⁵ relation. *Kalalah* describes a person who leaves behind neither parents nor children; it also means all the relatives of a deceased except his parents and children, and it also denotes the relationships which are not through [the deceased's] parents or children. Islamic scholars hold that the original reason for these difference is the responsibilities allotted to spouses. A husband in Islam must use his inheritance to support his family while a wife has no support obligations. Additionally, Arab society traditionally practiced the custom of bride price or dower rather than dowry; i.e., the man paid a gift to his wife or her family upon marriage, rather than the opposite, placing a financial burden on men where none existed on women. This custom was continued but changed materially by Islam. The divine injunction stipulated that the dowry (*Mahr*) is due to the wife only not her family. It can also be deferred thereby reducing the burden if the husband is unable to afford the requested dowry at the time of the marriage. The wife can defer it till a stipulated date or it can become a debt on the estate when

³ "From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large,-a determinate share." *Sura 4:7*

⁴ "If a man or a woman is made an heir on account of his [or her] *kalalah* relationship [with the deceased] and he [or she] has one brother or sister, then the brother or sister shall receive a sixth, and if they be more than this, then they shall be sharers in one-third, after payment of any legacies bequeathed and any [outstanding] debts – without harming anyone. This is a command from God, and God is Gracious and All-Knowing." Qur'an,^[Quran 4:12]

⁵ "People ask your pronouncement. Say: God enjoins you about your *kalalah* heirs that if a man dies childless and he has only a sister, then she shall inherit half of what he leaves and if a sister dies childless, then her brother shall be her heir; and if there are two sisters, then they shall inherit two-thirds of what he [or she] leaves. If there are many brothers and sisters, then the share of each male shall be that of two females. God expounds unto you that you err not and God has knowledge of all things." Qur'an,^[Quran 4:176]

the husband dies and give their dowries willingly to women (as an obligation), but if they, of their own accord, remit a portion of the dowry, you may enjoy it with pleasure⁶.

THE ROLE OF ISLAMIC INHERITANCE IN THE DEVELOPMENT OF ISLAMIC MATHEMATICS

The Islamic law of inheritance served as an impetus behind the development of algebra (derived from the Arabic *al-jabr*) by Muhammad ibn Mūsā al-Khwārizmī and other medieval Islamic mathematicians. Al-Khwārizmī's *Hisab al-jabr w'al-muqabala*, the foundational text of algebra, devoted its third and longest chapter to solving problems related to Islamic inheritance using algebra. He formulated the rules of inheritance as linear equations, hence his knowledge of quadratic equations was not required.⁷ Al-Hassār, a mathematician from the Maghreb (North Africa) specializing in Islamic inheritance jurisprudence during the 12th century, developed the modern symbolic mathematical notation for fractions, where the numerator and denominator are separated by a horizontal bar. The "dust ciphers he used are also nearly identical to the digits used in the current Western Arabic numerals. These same digits and fractional notation appear soon after in the work of Fibonacci in the 13th century.^{8,9,10} In the 15th century, Abū al-Hasan ibn Alī al-Qalasādī, a specialist in Islamic inheritance jurisprudence, used a mathematical notation for algebra which took "the first steps toward the introduction of algebraic symbolism." He represented mathematical symbols using characters from the Arabic alphabet.¹¹

⁶ Surah An Nisa verse 5

⁷ Gandz, Solomon (1938). "The Algebra of Inheritance: A Rehabilitation of Al-Khuwarizmi". *Osiris (University of Chicago Press)* **5**: 319–91

⁸ Høyrup, J. (2009). Hesitating progress-the slow development toward algebraic symbolization in abacus-and related manuscripts, c. 1300 to c. 1550: Contribution to the conference "Philosophical Aspects of Symbolic Reasoning in Early Modern Science and Mathematics", Ghent, 27–29 August 2009. Preprints. Berlin: Max Planck Institute for the History of Science. Fibonacci uses ibn al-Yāsamin's fraction notations to the full in the *Liber abbaci* [ed. Boncompagni 1857], writing composite fractions from right to left and mixed numbers with the fraction to the left – all in agreement with Arabic customs. Further, he often illustrates non-algebraic calculations in rectangular marginal frames suggesting a lawha.

⁹ Fibonacci, Leonardo; Barnabas Hughes (2008). *Fibonacci's De practica geometrie*. Springer. p. 12. At this point it would be well to make a few remarks about Fibonacci's fractions. The first thing to note is the format, $1/2\ 4$, which means four and a half. The format is unique to Andalusia and the Maghrib and reflects the Arabic method of writing from right to left, something Fibonacci most probably learned as a student in a Moslem school in Bougie.

¹⁰ Livio, Mario (2003). *The Golden Ratio*. New York: Broadway. p. 96.

¹¹ O'Connor, John J.; Robertson, Edmund F., "Abu'l Hasan ibn Ali al Qalasadi", MacTutor History of Mathematics archive, University of St Andrews.

DIFFERENCE BETWEEN SHIA AND SUNNI LAWS OF INHERITANCE

The most striking difference between Sunni and Shia legal systems is their distinct laws of inheritance¹². These differences are so deep rooted that it is near impossible to bridge them. It does not mean that there is no space which is characterized by similarity. At least there are quite a few spaces where these different legal traditions rely on the same types of shares and suggest the same sort of solutions to practical problems.

CLASSES OF LEGAL HEIRS

Shia law divides legal heirs into three basic classes¹³. These classes thereafter determine distribution of an estate among legal heirs and how to give preference to one legal heir over another. Appropriate appreciation of these classes helps one to understand Shia law of inheritance as details of the system in one manner or another are linked to it. These classes are the following:

CLASS 1:

- (i) Parents, and
- (ii) Children (male and female). The children also include their descendants how low so ever irrespective of the fact whether they are descendants of male or female children.

CLASS 2:

- (i) Grandparents (true or false) how high so ever, and
- (ii) Brothers and sisters (full, consanguine, and uterine) and their descendants how low so ever irrespective of their gender.

CLASS 3:

- (i) Paternal uncles and aunts,
- (ii) Maternal uncles and aunts, and
- (iii) Their children how low so ever irrespective of their gender.

¹² Coulson, N.J. *Succession in the Muslim Family* (Cambridge University Press, London 1971), p. 108.

Verma, B. R. *Mohammedan Law in India and Pakistan* (Law Book Co., Allahabad 1962) pp. 289-393.

Purohit, N. *The Principles of Mohammedan Law* (2nd Edition) (Orient Publishing Company, New Delhi 1998) pp. 432-541.

Ameer Ali *Commentaries on Mahomedan Law* (Revised by S. H. A. Raza) (Hind Publishing House, Allahabad 2004) pp. 985-1124.

Fyzee, A. A. A. *Outlines of Muhammadan Law* (Edited by Tahir Mahmood) (Oxford University Press, New Delhi 2009) pp. 304-369.

Mulla, D. F. *Principles of Mahomedan Law* (Edited by Dr. M. A. Mannan) (P. L. D. Publishers, Lahore 1995) pp.65-180.

¹³ Mulla, *Principles of Mahomedan Law*, p.152-153. Fyzee, *Outlines of Muhammadan Law*, p. 354-362. See also Khan, H. *The Islamic Law of Inheritance*, pp.124-139.

Once the heirs are divided into the above classes, there are two basic rules which need to be understood¹⁴.

Firstly, as long as an heir (or more than one) is present from the class 1, no one will be entitled to inheritance from the class 2: similarly, if there is an heir (or more than one) from the class 2, no one will have anything from the class 3. These classes lay down a basic framework in which an estate of a Shia deceased is distributed except that deceased's spouse is dealt with differently. We will take up this matter in the next section.

Secondly, within the same class there is no difference between male and female heirs except to the extent that a male heir will have double share than that of a female heir. For instance, descendants of a Sunni deceased's daughter are excluded from inheritance as per Sunni law as they are regarded as distant kindred whose right to inheritance will only be entertained in absence of the sharers and the residuaries¹⁵, while his son's descendants will be entitled to his estate as they are regarded as the sharer or the residuary. Shia law does not differentiate between descendants of son and daughter and they are placed in the same class¹⁶. When one descendant from the class is entitled, the other would also have his/her share. Similar to descendants of son and daughter, Sunni law divides descendants of brothers and sisters into the residuaries and distant kindred respectively, while Shia law does not prefer males over females in these situations nor place their descendants in different classes.

An easy way to appreciate this divergence is to comprehend an important difference between Sunni and Shia laws. According to Sunni law, legal heirs are divided into three classes, i.e. the sharers, the residuaries and the distant kindred; while Shia law recognizes only two classes, i.e. the sharers and the residuaries. There is no concept of distant kindred in Shia law¹⁷. Most of those who are regarded as distant kindred in Sunni law relate to a deceased from his female descendants (e.g. daughter's children, son's daughter's children) or other female relatives (e.g. mother's father, mother's brother and sister, sister's children etc.)¹⁸. As Shia law places these females and their ascendants and descendants in above mentioned classes along with their male counterparts, there remains no need to have another class of legal heirs like the distant kindred in Shia scheme of inheritance.

¹⁴ Carroll, L. *The Ithna Ashari Law of Intestate Succession*, pp.86-89.

¹⁵ Al-Sabooni, M. A. *Al-Muwarith fi al-Shariah al-Islamia fi Zuo al-Kitab ws Sunnah*, p.37-38.

¹⁶ Carroll, *The Ithna Ashari Law of Intestate Succession*, p.87.

¹⁷ Ajjola, A. D. *Introduction to Islamic Law* (International Islamic Publishers, Karachi 1983) p.266.

¹⁸ Khan, *The Islamic Law of Inheritance*, p.97. *Shia and Sunni Laws of Inheritance: A Comparative Analysis* 81

Another aspect we take into account while discussing Sunni law was distinguishing paternal and maternal grandfathers into true and false grandfathers¹⁹.

As is apparent from the above classification, there is no such distinction in Shia law²⁰. Both paternal and maternal grandfathers are placed in the same class. Again this difference is an outcome of absence of the distant kindred in Shia scheme of inheritance. The significance extended to the residuaries in Sunni law is not visible as such in Shia law. Shia law has significantly reduced it by dividing the legal heirs into the above classes. For instance, brother (one or more than one) is regarded as a residuary in Sunni law in absence of deceased's son (including son's male descendants) and father. It means that if a Sunni person dies leaving behind a daughter and a brother, the daughter will have half as a sharer while the rest will be inherited by the brother as a residuary. If the same kind of situation arises with respect to a Shia person, the persons in the class 1 will exclude those who are located in the class 2. This implies that the daughter will have the first half as a sharer while another half will be given to her under the principle of *Radd/return*²¹.

The rule propounded by Sunni law that the nearest in degree will exclude those who are linked to a deceased by more remote relations²² is shared by Shia law of inheritance. But the implications of this rule are quite different in the both systems.

For instance, a true grandfather of remoter degree cannot be excluded by any grandmother of nearer degree in Sunni law. It means that the grandfather's father cannot be excluded by the grandmother who is located a degree nearer to the deceased. In Shia law, the grandmother excludes the grandfather's father. The reason for this difference is that Shia law does not differentiate between males and females in excluding the remoter relations: female relatives are as effective in this regard as male relatives are in Sunni law²³.

We will observe the same kind of difference in outcome if a deceased leaves behind a daughter and a grandson. In Sunni law, the daughter will have half of the estate while the rest will be inherited by the grandson as a residuary. The situation will be different in Shia law because of variant application of the rule the nearer in degree will exclude the remoter in degree. The daughter is located a degree nearer to the deceased as compared to the grandson. So, she will have the entire estate: the first half as a sharer while another half under the principle of *Radd/return*.

¹⁹ Al-Sabooni, *Al-Muwarith fi al-Shariah al-Islamia fi Zuo al-Kitab ws Sunnah*; Mulla, Principles of Mahomedan Law, p.90.

²⁰ Carroll, *The Ithna Ashari Law of Intestate Succession*, p.88.

²¹ Khan, *The Islamic Law of Inheritance*, p.145-146.

²² *Al Sirajiyah* or *The Mahommedan Law of Inheritance as Translated by William Jones* (Edited by Almaric Rumsey) (Premier Book House, Lahore 1977) p.27.

²³ Carroll, *The Ithna Ashari Law of Intestate Succession*, p.88.

Shia law is similar with Sunni law to some extent and dissimilar to another extent with respect to distribution of an estate among brothers of different kinds, i.e. full, consanguine and uterine. Full brother excludes consanguine brother, but neither full nor consanguine brother exclude uterine brother. In Sunni law, full sister does not exclude consanguine brother except in a situation where the former is converted into *Ausbaat ma'a Ghayr* (the residuaries together with another)²⁴.

Shia law is different from Sunni law on this point as full sister excludes consanguine brother generally because the former's status is equivalent to her male counterpart in his absence.

Some schools of Sunni law do not award any share to deceased's brothers and sisters in presence of true grandfather owing to the reason that the former steps into the shoes of the father in case of his death²⁵.

According to Shia law, grandparents and brothers/sisters are all located in the same class; hence, none of them will be instrumental in excluding others²⁶.

As far as the class 3 of legal heirs in Shia law is concerned which includes paternal and maternal uncles and aunts and their descendants, there is no preference on the basis that someone is linked to a deceased from paternal or maternal side. As long as deceased's heirs are situated at the same degree of relationship, they will have share in inheritance irrespective of their gender and origin of their relationship to a deceased²⁷.

For instance, a person dies leaving behind one paternal uncle and another maternal uncle. The both will be entitled to inheritance and the paternal uncle will not have any preference over the maternal uncle, though their shares will not be the same. But if the same situation is solved according to Sunni law, the paternal uncle will inherit the entire estate as a residuary, while the maternal uncle will not have any share in the estate as he is regarded as distant kindred.

INHERITANCE OF SPOUSES

As is apparent from the above three-fold classification of heirs in Shia law, spouses are not placed in anyone of them. The above referred classes are jointly known as heirs by consanguinity in Shia law, while spouses are termed as heirs by affinity²⁸.

The heirs by consanguinity are also termed as heirs by *Nasab*, while the heirs by affinity are heirs by *Sabab*²⁹. Thus, husband and wife form an independent category similar to Sunni law which is only affected by presence or absence of deceased's children. If there are children of a deceased, husband or wife will

²⁴ Al-Sabooni, *Al-Muwarith fi al-Shariah al-Islamia fi Zuo al-Kitab ws Sunnah*, p.73-74.

²⁵ Ibid, p.97-98.

²⁶ Mulla, *Principles of Mahomedan Law*, p.168.

²⁷ Fyzee, *Outlines of Muhammadan Law*, p.361.

²⁸ Verma, *Mohammaden Law in India and Pakistan*, p.371.

²⁹ Saksana, K. P. *Muslim Law As Administered in India and Pakistan* (Eastern Book Company, Lucknow 1963) p.938. See also Ameer Ali *Commentaries on Mahommedan Law*, p.1088.

inherit 1/4 or 1/8 respectively. But if a deceased dies issueless, husband or wife will have 1/2 or ¼ respectively. If a deceased husband leaves behind more than one wife as legal heirs, they will share jointly in their prescribed share, i.e. 1/4 or 1/8³⁰.

There are a few differences between Sunni and Shia laws regarding inheritance of spouses. Some Shia schools recognise temporary marriage as a valid marriage.

According to these schools, only permanently married spouses are entitled to right of inheritance from each other³¹. There is one important distinction between Shia and Sunni laws regarding the inheritance of childless widow. In the former law, she is not entitled to land or immovable property though she has a right to her prescribed share from her deceased husband's movable assets³². On the other hand, Sunni law does not differentiate between immovable and movable properties of a deceased; hence, a childless widow is entitled to have her share from the both.

In Sunni law, spouses do not benefit under the principle of *Radd*/return in the first place, i.e. in presence of other sharers. The same is the rule under Shia law³³.

For instance, if a person dies leaving behind his wife and a daughter, the wife will inherit 1/8, and 7/8 will be given to the daughter (one half as a sharer and the rest under the *Radd*).

PRINCIPLE OF REPRESENTATION

Without getting into technicalities of what is meant by principle of representation, this section explains another fundamental difference between Shia and Sunni laws of inheritance as to how an estate should be distributed among heirs of a predeceased heir. There is no difference between the both laws that heirs of a predeceased heir will not inherit anything if other heirs of the deceased are alive³⁴. For instance, if a person dies leaving behind one son and two grandsons of a predeceased son, the son will get the whole estate and nothing will be given to the grandsons. Thus, the principle of representation has no relevance when there are other heirs alive from the same class who are also a degree nearer as compared to the descendants of predeceased heir. The classical law of these schools, which is being discussed in this section, is different from the law applicable in this regard in Pakistan under Sec. 4 of the Muslim Family Laws Ordinance, 1961³⁵.

³⁰ Ameer Ali Commentaries on Mahomedan Law, p.1112.

³¹ Ibid, p.1110.

³² Saksana, Muslim Law As Administered in India and Pakistan, p.947.

³³ Purohit, The Principles of Mohammedan Law, p.541.

³⁴ Mulla, Principles of Mahomedan Law, p.157.

³⁵ Rahman, T. Muslim Family Laws Ordinance: Islamic & Social Survey (Royal Book Company, Karachi 1997) p.307.

The occasion for application of representation arises when there are descendants of predeceased heir (one or more than one) without there being any direct descendent of the deceased alive. Shia and Sunni classical laws are in agreement on this point again, but they differ as to the manner of distribution of an estate among such heirs³⁶.

For instance, a person dies leaving behind three grandsons of two predeceased sons (two grandsons from one son and the third from another) without there being any other son or daughter alive. They will be entitled to inheritance.

Now the question arises as to the manner of distribution among such heirs.

According to Sunni law, all grandsons will inherit from the estate of their grandparent as per capita: which implies that it will not be taken into account how many out of those grandsons have descended from a particular predeceased heir. So, each grandson will inherit 1/3 of the estate as if they are individually entitled to inheritance³⁷.

According to Shia law, the distribution is carried out per stripes (as per stocks): which implies that each son would have his individual share had he been alive which will be further divided to his legal heirs³⁸.

So, the descendants of predeceased sons are not regarded as individually qualified legal heirs; they merely represent their parents. They will only have what their parents would have inherited had they been alive. In the above example, two grandsons are linked to the deceased grandparent by the same father, so their share will be half than that of the third grandson as he is the only heir of his father whom he represents.

While explaining the principle of representation above, we have intentionally skipped two important issues to avoid any confusion. These are the following:

Firstly, the situation in Shia law will not be very different had there been in the above example two grandsons from the predeceased son and one grandson from the predeceased daughter as paternal and maternal grandchildren are entitled to inheritance³⁹.

In Sunni law the maternal grandson is regarded as distant kindred and is only entitled to inherit in absence of the sharers and the residuaries⁴⁰. So, he does not have anything in this case as there are the residuaries, i.e. the paternal grandsons, who are preferred over him. The only difference with respect to the inheritance of paternal and maternal grandchildren in Shia law is that the children of daughter take their shares from the share of their mother, while the paternal grandchildren represent their father, and consequently, inherit from his share. The distribution

³⁶ Mulla, Principles of Mahomedan Law, p.157.

³⁷ Ibid,p.158.

³⁸ Khan, The Islamic Law of Inheritance, p.129.

³⁹ Tyabji, F. B. A Hand Book on Muhammeden Law (All Pakistan Legal Decisions, Lahore 1974) p.272.

⁴⁰ Al-Sabooni, *Al-Muwarith fi al-Shariah al-Islamia fi Zuo al-Kitab ws Sunnah*,p.177.

among grandchildren of the same parent is carried out on the basis of double share for a male than that of a female heir.

Secondly, the principle of representation is also applicable to heirs of other categories in Shia law, e.g. descendants of collaterals (brothers and sisters), descendants of uncles and aunts on the basis of the same rules we have just elaborated regarding children of predeceased children of a propositus⁴¹.

RULE OF *RADD*/RETURN

When an entire estate of a Shia Muslim is not consumed by his/her heirs and something is left out of it, the rule of *Radd*/return is applied as is done in Sunni law.

The application of *Radd* is more frequent in Shia law because it accords less significance to *Ausbaat*/residuaries as compared to Sunni law⁴². In Sunni law an exhaustive list of the residuaries reduces the occurrences of application of *Radd*. Whenever there is residue of an estate of a deceased Sunni Muslim that will be given to any eligible residuary irrespective of the fact how remotely he is related to the deceased⁴³.

While such an exhaustive list is not available in Shia law and even those who are regarded as the residuaries they cannot operate beyond the sphere of their own basic class.

For example, deceased's paternal uncle is a residuary in Sunni law and he will be entitled to inheritance after the distribution of prescribed shares to the sharers. Suppose a person dies leaving behind a daughter and his paternal uncle. As per Sunni law, the daughter will have one half, while the rest will be inherited by his uncle. But if the deceased is a Shia Muslim, his daughter will take the entire estate the first half as a sharer and another half after applying the *Radd*. The reason for this sort of distribution is that the daughter belongs to the class 1 and the uncle is an heir located in the class 3. The uncle is only entitled to inheritance if there is no heir from the class 1 & 2.

Let us explain another example to appreciate how the role of *Ausbaat*/residuaries is restricted in Shia law to allow more space to the application of *Radd*. If a person dies leaving behind his father and a daughter. According to Sunni law, the daughter will get one half and the rest will be inherited by the father as a residuary. In Shia law, a father is not regarded as a residuary in presence of deceased's daughter as the both are placed in the same class. Thus, in the above example, the father and the daughter will first inherit as sharers and the residue will be shared by them under the *Radd* in accordance with their respective shares.

Father=1/6,
Daughter=1/2,
LCM=6,

⁴¹ Khan, *The Islamic Law of Inheritance*, p.129.

⁴² Carroll, *The Ithna Ashari Law of Intestate Succession*, p.93-94.

⁴³ Purohit, *The Principles of Mohammedan Law*, p.467.

Father=1/6,
Daughter=3/6,
After applying the *Radd*:
Father=1/4,
Daughter=3/4.

In Sunni law, spouses are not entitled to any benefit under *Radd* except in a case where there is no other relative of deceased alive including distant kindred⁴⁴. Shia law has added into this list two more persons: the one is mother and the other is uterine brother/sister. Under certain circumstances, they are only restricted to their prescribed share⁴⁵.

PRINCIPLE OF *AUL*/INCREASE

The principle of *Aul* is not recognized in Shia law of inheritance and Shia scholars have expounded rules to avoid its application⁴⁶. In Sunni law, whenever the calculated shares of heirs of a deceased are increased from the supposed shares of that estate, the supposed shares are increased to match the number of the calculated shares. In this manner, each sharer gets what is prescribed for him/her in the Quran in terms of numbers, though the actual amount/quantity of his/her share is reduced⁴⁷.

As it is not possible to avoid situations which attract the application of principle of *Aul*, Shia jurists have devised an innovative manner to resolve such situations. They have divided the sharers of a deceased into those whose share is susceptible to reduction and those whose share is not liable to reduction⁴⁸. They have placed daughters and sisters into the first category taking into account the fact that their prescribed shares (one half and two thirds) could be reduced in those situations where there is a male counterpart who converts them into residuaries. On the other hand, there are other sharers, e.g. parents, spouse and uterine sister, whose share is minimally prescribed in the Quran which could not be reduced from that minimal amount in any case⁴⁹. So, if there are heirs from both these categories and their calculated shares are increased from the supposed shares, the heirs of the second category will have their prescribed shares, while the heirs of the first category will bear the burden of avoidance of application of the principle of *Aul*. Let us explain this in an illustration. A female dies leaving behind her husband and two sisters. The husband's prescribed share in such a situation is 1/2, while

⁴⁴ Al-Sabooni, *Al-Muwarith fi al-Shariah al-Islamia fi Zuo al-Kitab ws Sunnah*, p.38.

⁴⁵ Mulla, *Principles of Mahomedan Law*, p.177-178.

⁴⁶ Tyabji, *A Hand Book on Muhammeden Law*, p.251. Ameer Ali Commentaries on Mahommedan Law, p.1123.

⁴⁷ Fyzee, *Outlines of Muhammadan Law*, p.331.

⁴⁸ Ameer Ali Commentaries on Mahommedan Law, p.1123.

⁴⁹ Khan, *The Islamic Law of Inheritance*, p.146.

two sisters' $\frac{2}{3}$. If we solve this proposition, the husband will be entitled to $\frac{3}{6}$ and the sisters $\frac{4}{6}$. So, according to Sunni law, the *Aul* will be applied to make the husband's share $\frac{3}{7}$ and the sisters $\frac{4}{7}$. But Shia law resolves it differently by proposing that the husband should be given $\frac{3}{6}$ as his prescribed share is not susceptible to reduction, while the sisters will jointly inherit $\frac{3}{6}$ instead of $\frac{4}{6}$ as their share can be reduced to circumvent the application of *Aul*.

SIMILARITIES IN SHIA AND SUNNI LAWS

Shia and Sunni laws of inheritance are characterized by multi-layered differences as explained above. There are some similarities between them due to the fact that the both laws are derived from the same Quranic verses. Some of the similarities have already been pointed out in the preceding analysis while explaining the true import of distinctive features of Shia law. These laws are on the same page as to who are Quranic sharers, they agree on their prescribed shares and conditions under which their entitlement is regulated to a large extent. There are twelve sharers according to Sunni law out of which Shia law recognizes nine sharers⁵⁰. The agreed upon sharers are: husband, wife, father, mother, daughter, full sister, consanguine sister, uterine brother and uterine sister⁵¹.

These legal traditions differ with each other on three persons' status as sharers: son's daughter, true grandfather and true grandmother. According to Sunni law, they are included in Quranic sharers as they step into the shoes of daughter, father and mother respectively in their absence. According to Shia law, son's daughter may inherit when there is no son and daughter of the deceased alive, but she is not a Quranic sharer as regarded by Sunni law. Moreover, true grandparents are placed by Shia law in the class 2 along with false grandparents and their inheritance is dependent on absence of heirs of the class 1.

Taking into account the agreement on nine sharers by Sunni and Shia laws, one may expect that there will be situations in which both laws suggest the same sort of distribution of shares. Let us explain it by elaborating some examples.

a). A husband dies leaving behind a widow and a son. The widow will have her prescribed share of $\frac{1}{8}$, while the son will have the residue of the estate.

Wife/widow= $\frac{1}{8}$ as a sharer,

Son= $\frac{7}{8}$ as a residuary.

b). A wife dies leaving behind her husband and a full sister. The husband and the full sister will get half of the estate each as sharers in both Shia and Sunni laws.

Husband= $\frac{1}{2}$ as a sharer,

Full sister= $\frac{1}{2}$ as a sharer.

c). A person dies and leaves behind his wife and a full brother. His wife will get $\frac{1}{4}$ as a sharer, while the rest, i.e. $\frac{3}{4}$ will be inherited by the full brother as a residuary in both Shia and Sunni laws.

Wife= $\frac{1}{4}$ as a sharer,

⁵⁰ Ibid, p.78-87; 124-129.

⁵¹ Ibid, p.78-87; 124-129.

⁴⁴ Ibid, p.124.

Full brother= $\frac{3}{4}$ as a residuary.

d). A wife dies leaving behind her husband and one full brother and one full sister.

The husband will have one half of the estate and the rest will be divided between the full brother and the full sister in both Shia and Sunni laws. The full brother will get double than that of the full sister.

Husband= $\frac{1}{2}$ as a sharer,

Full brother & full sister= $\frac{1}{2}$ as residuaries,

The proposition will be solved from 6 supposed shares.

Husband= $\frac{3}{6}$,

Full brother= $\frac{2}{6}$,

Full sister= $\frac{1}{6}$.

CONCLUSION

The article has explained the basic features of Suni and Shia law of inheritance. Sunni and Shia laws of inheritance are different in their foundational structure as well as detailed implications, though the both are inspired from the Quranic verses of inheritance. While explaining the salient features of Shia law, it compares them with corresponding features of Sunni law. The article illustrates how these features are instrumental in conferring different shares to legal heirs in Shia and Sunni schemes of inheritance. There is also an elaboration of the space which is shared by the both legally different traditions of inheritance in Islam.

We have compared Shia law with the corresponding principles of Sunni law with a hope to engender proper appreciation of this area of law among the legal fraternity including students of law.

It has been brought to forth that if some structural aspects of Shia and Sunni laws are grasped, it would become relatively easy to master these systems. For instance, division of legal heirs into three classes according to Shia law does not have any comparable feature in Sunni law. As illustrated above, this difference has manifold implications in determination of shares of legal heirs. There is another noteworthy distinction that Shia law does not recognize distant kindred as another category of legal heirs as they are identified in Sunni law. Most of those who are classed as distant kindred in Sunni law, they are absorbed in the three basic classes of Shia law.

Hence, they are eligible to inherit an estate either as a sharer or a residuary.

Moreover, Shia law erects its foundational rules in such a manner to exclude any possibility of *Aul* to take place: whereas the same principle is frequently resorted to in Sunni law. As these schemes of inheritance in Islamic law are inspired from the Pakistan Journal of Islamic Research Vol 10, 2012 verses of the Quran, they are expected to be similar in certain respects. We observe that the both systems recognize same persons as the sharers and the residuary though they differ in calculation of their respective shares in numerous circumstances. It must be admitted after comparing the both systems that the space characterized by similarity is too small in comparison to the area where Shia and Sunni laws have different solutions to the same problem

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