

Shia and Sunni Laws of Inheritance: A Comparative Analysis

*Shahbaz Ahmad Cheema

Abstract

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. Owing to the fact that Sunnis are in majority in Pakistan, their law of inheritance is relatively well appreciated by lawyers and students of law, while Shia law of inheritance does not have such an advantage. The paper aims to present in a simplified manner the salient features of Shia law of inheritance so that the same may become comprehensible to anyone who is new to this field but interested to develop his skills further. The paper does not explain Sunni law of inheritance in detail and assumes that the reader would be conversant with it. While explaining the salient features of Shia law, it compares them with corresponding features of Sunni law. The paper 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.

Key Words: Inheritance; Shia Law; Sunni Law; Islamic Law.

1. Introduction:

It is familiar in scholarship on Islam that the most striking difference between Sunni and Shia legal systems is their distinct laws of inheritance.¹ 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. Taking into account their distinct structures, it is an uphill task to explain them within one scheme of elaboration. This appears to be the reason that the authors on the subject have dealt with the both systems of inheritance in different chapters rather than attempting to ponder upon them in the same chapter.²

*Assistant Professor, University Law College, University of the Punjab, Lahore.

Many Scholars have written on Shia and Sunni laws of inheritance, but they have either concentrated on the latter law or have not allocated appropriate space to elaboration of the former's principles and their comparison with the latter's law. For instance, one of the most renowned authors in the Muslim world on the subject Al-Sabooni in his book has restricted his analysis to Sunni law only.³ Pakistani lawyer of distinction has spared one chapter to discussion of Shia law of inheritance.⁴ Lucy Carroll wrote two articles one each on Shia law and Sunni law of inheritance.⁵ Though there are comparative insights in the above academic works, there is a need to present the comparative analysis holistically as well as in the simplest manner. The present paper is an attempt to present the subject in a comprehensible manner to the new entrants. Moreover, the paper will also prove fruitful to the advanced level of learners in the Islamic law of inheritance.

The paper elaborates the general principles of Shia law of inheritance. It does not detail Sunni law on the subject as its principles are relatively well understood as compared to its Shia counterparts. During the course of elaboration, it points out various implications accrued by the application of Sunni and Shia laws of inheritance to the same situation. It must be stated at the outset that the paper is introductory in nature, and consequently, it cannot be expected to explicate the fine details of Shia scheme of inheritance.

In addition to this introduction and a conclusion, the paper is divided into six sections. Each section will take up one feature of Shia law of inheritance and explain its implications along with comparative analysis of the corresponding feature of Sunni law. These features include classes of legal heirs, inheritance of spouses, principle of representation, rule of *Radd*/return, and principle of *Aull*/increase. The penultimate section will discuss how these differently structured systems of inheritance lead to the same sort of answers in certain situations.

2. Classes of Legal Heirs:

Shia law divides legal heirs into three basic classes.⁶ 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.

Once the heirs are divided into the above classes, there are two basic rules which need to be understood.⁷

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 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 residuaries,⁸ 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 class.⁹ 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 law.¹⁰ 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.).¹¹ 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.

Another aspect we take into account while discussing Sunni law was distinguishing paternal and maternal grandfathers into true and false grandfathers.¹² As is apparent from the above classification, there is no such distinction in Shia law.¹³ 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*.¹⁴

The rule propounded by Sunni law that the nearest in degree will exclude those who are linked to a deceased by more remote relations¹⁵ 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 law.¹⁶

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.

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).¹⁷ 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 death.¹⁸ According to Shia law, grandparents and brothers/sisters are all located in the same class; hence, none of them will be instrumental in excluding others.¹⁹

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 deceased.²⁰ 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.

3. 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 affinity.²¹ The heirs by consanguinity are also termed as heirs by *Nasab*, while the heirs by affinity are heirs by *Sabab*.²² 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 inherit 1/4 or 1/8 respectively. But if a deceased dies issueless, husband or wife will have 1/2 or 1/4 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 1/8.²³

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 other.²⁴ 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 assets.²⁵ 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 law.²⁶ 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*).

4. 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 alive.²⁷ 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, 1961.²⁸

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 heirs.²⁹ 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 inheritance.³⁰ 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 heirs.³¹ 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 inheritance.³² In Sunni law the maternal grandson is regarded as distant kindred and is only entitled to inherit in absence of the sharers and the residuaries.³³ 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

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 propositus.³⁴

5. 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 law.³⁵ 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 deceased.³⁶ 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= $\frac{1}{6}$,
Daughter= $\frac{1}{2}$,
LCM=6,
Father= $\frac{1}{6}$,
Daughter= $\frac{3}{6}$,
After applying the *Radd*:
Father= $\frac{1}{4}$,
Daughter= $\frac{3}{4}$.

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 kindred.³⁷ 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 share.³⁸ There is no need to go into detail of those circumstances as the paper is meant to be introductory.

6. 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 application.³⁹ 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 reduced.⁴⁰ 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 reduction.⁴¹ 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 case.⁴² 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 $\frac{1}{2}$, while 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*.

7. 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 sharers.⁴³ The agreed upon sharers are: husband, wife, father, mother, daughter, full sister, consanguine sister, uterine brother and uterine sister.⁴⁴

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,

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

8. Conclusion:

The paper has explained the basic features of Shia law of inheritance and compared them 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

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 problems.

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⁴³ *Ibid*, p.78-87; 124-129.

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