INHERITANCE UNDER SHIA LAW: PRINCIPLES AND ITS ANALYSIS

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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. The paper aims to analyse the general principles of Shia law of inheritance. While explaining the principles 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. The paper also examines the distribution of property among the Shias. The paper also tries to analyse the different doctrines and rules related to the distribution of the property.

Keywords: Shia Law, Islamic Law, Inheritance, Property, Heirs

Introduction

The Islamic law of inheritance, like rest of the Islamic personal law is a combination of the pre-Islamic customs and the rules introduced by the Prophet. According to Fyzee "The law consists of two distinct elements: the customs of ancient Arabia and the rules lay down by the Quran and the founder of Islam".[1]

The Quran gives specific shares to certain individuals on humane considerations while the pre-Islamic customary law deals with the residue left and distributes among the agnatic heir and failing them to the uterine heirs. The customary law alone can explain the reason why different classes of rights are given to the various relations, and why some who might be supposed to be equally entitled to similar rights are debarred from them.[2]

Comparison of Sunni and Shia interpretation of Quran

The greater part of Mohammedan Law of Inheritance is founded upon the Quran. It did not sweep away the existing laws of succession, but made a great number of amendments based on few common principles.[3] These amendments have been differently interpreted by the Sunnis and Shias.

The Sunni to some extent allows the principles of the pre-Islamic custom to stand and they add or alter those rules in the specific manner mentioned in the Quran and by the Prophet.

The Shias deduce certain principle which they consider to underlie the amendments mentioned in the Quran and fuse these principles with the principles of the pre-existing customary law, thus bringing up a completely altered set of rules.

Shia Law

Classification of heirs

Shia law divides the heirs on two grounds:-

1. **Heirs by consanguinity (Nasab), that is blood relationship**

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[1] A.A.A. Fyzee: Outlines of Mohammedan Law (1964) p.381
[2] Murtaza Hussain Khan v. Mohammad Ali Khan, I.L.R. 33 All 532
[3] Aqil Ahmed: Mohammedan Law (2013) p. 366

Heirs by consanguinity are divided into three classes and each class is sub-divided into two sections.

i) Class I

    (a) Parents

    (b) Children and other lineal descendants how low so ever.

ii) Class II

    (a) Grandparents (true or false) how high so ever.

    (b) Brothers and sisters and their descendants how low so ever.

iii) Class III

    (a) Paternal and

    (b) Maternal uncles and aunts of the deceased, and of his parents and grandparents how high so ever, and their descendants how low so ever.

Class I excludes Class II and Class II excludes Class III. But the heirs of different sections within a class inherit together and do not exclude each other. However, the nearer degree in each section excludes the more remote in that section.

2. Heir by special cause (Sabab), which is heir by marriage (husband and wife).

The heirs by special cause may be divided into two kinds:

i) Heir by marriage (Zoujiyat), that is husband and wife

ii) Heir by special relationship (Wala).

The heirs by special (legal) relationship are not recognised in India. However originally they were such persons who acquired the right of inheritance by virtue of spiritual headship, or delicts committed by the deceased or emancipation.

Order of Succession

The heirs will inherit the heritable property of a person in the following order:-

1) Among the heirs by consanguinity the first group excludes the second and the second excludes the third. That is to say in the presence of an heir of the first group, the heirs of the second or third group will not be entitled to share an so on.

2) As we have noticed each of the groups is divided into two sections. Now among these two sections of the heirs of each group, the claimants succeed together, that is, if there are heirs of both the sections, they will succeed together.

3) In each section there can be various heirs, e.g. in section (ii) of Group I, there can be a son and son's son. The question arises as two who will then inherit. The rule in this regard is that the nearer in degree in each section will exclude the more remote in that section.

4) The decision is *per stripes* i.e. in each of these three groups of heirs by consanguinity, the descendants get *per stripes* or according to the branch.

5) The husband or wife is never excluded from the inheritance, but inherit together with the nearest heir by consanguinity.

Allotment of shares

After determining the people who are entitled to succeed to the property of the deceased in accordance with the rules the next problem that comes up for a solution is allotment of shares, i.e. which heir will get what amount of shares.

For the purpose of determining the shares, the heirs are divided into two classes, viz. Sharers and Residuaries. There is no class of distant kindred under Shia Law.

Residuaries

The heirs who are not Sharers are, Residuaries, they are not entitled to any fixed share in the property. They get the residue (what is left). The descendants how low so ever of Residuaries are also Residuaries.[4]

There are total of nine sharers under Shia Law. Of these sharers, four inherit sometimes as Sharers and sometimes as residuaries. These are:

1) Father
2) Daughter
3) Full Sister
4) Consanguine Sister

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[4] Aqil Ahmed: Mohammedan Law (2013) p. 412

The descendants of a person, who, if living, would have taken as a Sharer, succeed as Sharers. The descendants of a person, who, if living, would have taken as Residuary, succeed as Residuaries.

How the distribution of property is affected

If a Muslim at the time of his death left only heir the whole property would go to that heir except a wife. The rationale behind this exception is that a wife is not entitled to the surplus by return, even if there be no other heir. If she is the sole heir, she takes ¼ and the surplus passes to the Imam, now the Government of India. As there is no machinery to take charge of the Imam's share, the surplus should pass to the wife.[5]

If there are two or more heirs, left by the deceased, the first step is to give the share to the husband or wife. The second step is to see which of the surviving relations are entitled to succeed. The property, after giving the share of the husband or wife, is divided among the other claimants, according to the rules of distribution applicable to three classes of heirs by consanguinity. It should be noted here that husband or wife is always entitled to succeed with the other claimants. The shares of the husband or wife are ¼ and 1/8 when there is a lineal descendants, when there is no lineal descendants, their shares is ½ and ¼.

Rule of representation

This rule requires interpretation, because it has more than one meaning as follows:

1) Determination of heirs, what persons are entitled to inherit from the deceased (First meaning).
2) Determination of the quantum of share, what he is entitled to inherit.[6] (Second meaning).

So far as the determination of heirs is concerned, the Rule of Exclusion applies, that is, the nearer in degree excludes the more remote. Both Sunnis and Shias do not recognise the principle of representation as qualifying the rule of exclusion. For example if A, a Muslim dies leaving him surviving son D and grandson by a pre-deceased son B, the grandson are excluded

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[5] Abdul Hamid Khan v. Peare Mirza AIR 1935 Oudh 78.
[6] Aga Sheralle v. Bai Kulsum (1908) 32 Bom. 504.

from inheritance by their uncle C. The grandson does not take in their father's place though he (B) would have been an heir, had he survived his father A.

If in the above example both sons B and C are pre-deceased the deceased A who died leaving three grandson D, E and F by B and two grandsons G and H by C, then all the grandsons are heirs. The principle of representation is to be applied for deciding to quantity of the share that is for ascertaining the share of each grandson.

According to the principle of representation, the sons of B will get ½ (1/3 each grandson) and the sons of C will get ½ (1/4 each grandson).

Under the Sunni Law, the rule of representation is not applied in calculating the grandson's share. Under the Sunni Law, in the above example, each grandson would take the same share that is 1/5, because the division of shares among grandsons would be per capita and not per stripes.

The Shia Law accepts the principles of representation for the limited purpose of deciding the quantity of the share of each heir as different from the purpose of deciding the heirs. According to the rule of representation, the children of a deceased son, if they are heirs, take the portion which he (deceased son) if living would have taken and in that sense represent the daughter, if they are heirs, they take the portion which would have taken and in that sense represents the son. In the same way, the children of a deceased daughter represent the daughter, if they are heirs; they take the portion, which the daughter if living would have taken. This principle in the same limited sense is applicable to the children of a deceased brother, sister or aunt.

Similar is the principle applicable to great grandparents who take the portion which the grandparents, if living, would have taken.

Succession among the heirs of the same class

Succession among descendants in each of the three classes of heirs by consanguinity is per stripes and not per capita.

Example: - A Shia Muslim dies having two grandsons D and E by a predeceased son B and a grandson F by another predeceased son C. The succession in this example is per stripes among the descendants of two sons, B and C of A. Each son notionally takes ½ B's share ½ will go to his two sons, D and E they will get 1/4, and C's share ½ passes to his son F. This division in

other words, is according to the stocks, and not according to the claimants. Here in this example, under the Sunni law all grandsons D, E and F takes per capita that is each grandson takes 1/3, without reference to the shares which their respective father, if living, would have taken. But under the Shia Law B's two sons represent B and stand in his place and C's son represents C and stands in his place. There is no such representation under the Sunni Law.

The Rule of succession among descendants

The rule is that the descendants of a person, who if living, would have taken as Sharer, succeed as Sharers. In the same way, the descendants of a person, who if living, would have taken as a Residuary succeed as Residuaries.

Example: - A Shia Muslim dies leaving a full brother's daughter and uterine brother's son. Uterine brother, had he survived, would have taken as a Sharer, his Quranic share 1/6. In the same way, the full brother, had he survived would have taken 5/66 as a residuary. Here the uterine brother's sons, being the descendant of a sharer, will success as sharer and representing his father takes his father's share 1/6. The full brother's daughter, being the descendants of a Residuary, will succeed also as a Residuary and representing her father, takes her father's share 5/6. Under the Sunni Law, both a full brother's daughter and uterine brother's son are distant kindred of the third class.

Distribution among heirs of the first class

The heirs of the first class are entitled to succeed to the property of a deceased Shia Muslim along with the husband or wife, if any. First the share is allotted to the spouse (husband or wife as the case may be) and then to the rest of the heirs.

Example:-

1) **When no lineal descendant is present**:-
   a) Husband will inherit ½ as sharer when there is no lineal descendant
   b) Mother will inherit 1/3 as sharer when there is no lineal descendant
   c) Father will inherit 1/6 as residuary as when there is no lineal descendant
2) **When lineal descendant is present:-**
   a) Father will inherit 1/6 as sharer when lineal descendant is present
   b) Mother will inherit 1/6 as sharer when lineal descendant is present

c) Son will inherit 2/3 as residuary

Distribution among heirs of the second class

Heir in the line of paternal side get double share with maternal relations. If there is only one grandparent in the maternal line, he or she would get 2/3. Similarly, if there is only grandparent in the maternal line, he or she would get 1/3.

a) Father's father would get 2/3 as sharer
b) Mother's mother would get 1/3 as sharer

Distribution among heirs of the Third class

First of all the surviving spouse is allotted his share and then the residue is divided among the following relations in order or property:

i. Paternal and maternal uncles and aunt of the deceased
ii. Their descendants h.l.s., the nearer excluding the remoter
iii. Paternal and maternal uncles and aunts of the parents on the descendants and,
iv. Their descendants; h.l.s, the nearer excluding the remoter
v. Paternal and maternal uncles and aunts of the grand-parents
vi. Their descendants how low so ever, the nearer excluding the remoter
vii. Remoter uncles and aunts and their descendants in like order.

Of the above groups each in turn must be exhausted before any member of the next group can succeed.

Doctrine of Increase (Aul)

The Shia law does not recognise the Doctrine of Increase. Under Shia Law if the total share of sharers exceeds the heritable property i.e., exceeds unity, the share of all the sharers is not proportionally reduced but it is always deducted from the sharers of the following two heirs:-

a) Daughter
b) Full or consanguine sister

Example: *A*, a Shia Mohammedan wife dies leaving (i) Husband and (ii) Two full sisters.

According to Shia Law

i.   The husband will get ½ as sharer as there is no lineal descendant of the deceased.

ii.   Full sister will get 2/3 as sharer when there is no lineal descendant, father or full brother

Since there are two sisters they will get 2/3 each which will turn out to be as 4/6 share of two full sister and thus husband will receive 3/6 share.

Total share (without reduction) = 7/6 i.e. more than unity (1)

In the above case, in order to make total sharer equal to unity, the share of the sisters will be reduced to ½ and the share of the husband will not be touched. Thus each sister will take ¼ .

Doctrine of Return (Rudd)

Under Sunni Law if there is a residue and there are no residuaries then the residue returns to the sharers. But such is not the case in Shia Law of Return. Under Shia Law the total absence of the residuaries as a class is not required, only if the residuaries in the class to which the sharers belong is absent, it will sufficient for the application of the Doctrine of Return.

Exception

There are certain exceptions to the Doctrine of Return which are as follows:-

i.   **Husband**: - The husband is not entitled to the 'Return' as long as there is any other heir of the deceased. If there is no other heir, the husband will take the whole estate by Return.

ii.   **Wife**:- Like the husband, the wife too is not entitled to a 'Return' of share as long as any other heir of the deceased exist. The old view was that if there was no other heir, the wife would not take the whole estate; she would take only her share ¼ and the surplus would escheat to the Government. But in Abdul Hamid Khan v. Peare Mirza [7], the Oudh Court followed the opinion of Ameer Ali,[8] and held that the rule now enforced is that the widow is entitles to take by return.

iii. **Mother**:- The mother is not entitle to share the 'Return' if the deceased dies leaving a father and a daughter and also any of the following;

      a. Two or more full or consanguine brothers

      b. One full consanguine brother, and two full consanguine sisters

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[7] (1935) 10 Luck 550.
[8] Ameer Ali: Mohammedan Law Vol. II 5th Ed. P.1254

c. Four full or consanguine sister

The brother and sisters are heirs of the second class. Though they are excluded from inheritance, prevent the mother from taking by Return, and the surplus reverts to the father and the daughter in proportion of their respective share. This is the only case in which the mother is excluded from the Return.

iv. **Uterine brothers and sisters**- Uterine brothers and sisters are not entitled to the 'Return' if they co-exist with full sisters and sisters divide the return in proportion of their sharers. The 'Return' in such cases goes to the full sister. This rule does not apply to consanguine sisters.

Conclusion

The paper has explained the basic features of Shia law of inheritance and compared them with the corresponding principles of Sunni law. But it is to be noticed that there is a difference between Sunni Law of Inheritance and Shia Law of Inheritance. For instance Shia law adopts the principle of consanguinity whereas Sunni law prefers agnates to cognates. Illegitimate child is not entitled to inherit property under Shia law whereas under Sunni Law illegitimate child is entitled to inherit property from mother. 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.