

# Comparison of wife inheritance in Sunni and Shiite jurisprudence

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**ABSTRACT:** The purpose of this research is the review of inheritance of women in Imamate and Sunni jurisprudence. This research comprises of four sections: the first section of the study is the general overview of the research which is the definition, explanation and subject matter of the research, review of literature, main and secondary research questions, research methodology, key words (inheritance, jurisprudence, wife, Imamate and Sunni). This research try to answer these questions: conditions of wife inheritance, the properties which wife can get inheritance, difference between wives. Based on research hypothesis, in Islam women like men have the right of inheritance. But it depends on terms of inheritance and the type of property. In this research, referring to the books and literature, after a general overview, as outlined.

Bases on the evidence of wife inheritance have been studies. In next section, conditions of wife inheritance and its obstacle with different topics such as: the existence of clot wed couples, keeping the relationship till death, permanent marriage, wife inheritance, non-prohibition of the wife from inheritance which is essential to inherit has also been investigated. Later we discussed the different views and opinion regarding the issue of wife inheritance and her exclusion from inheriting to some property of the husband, which coordinates from Imamate jurisprudence. Each of the heirs entitles inheritance has a share of the properties. The Quran and the verses which determine the inheritance of wife from her husband estates like expression of people inheritance and state that the wife has a portion also the right to have her share from the husband assets and properties. Quran and in the same statements says: The Sunni jurist with regard to this verses argues that the wife has the right to have share of husband assets. Majority of Shiite jurists excludes wife inheriting some properties such as land, buildings. Sheikh Tooi in his books says: wife has no share from building and lands instead the bricks and woods values to be estimated and wife share is to be paid to her. Majority of the jurist objected this statement and argued that "the wife inherits the entire property. Our reason is the narratives of Imamate consensus. " Seyed Morteza in his book Entesar quoted that deprivation of wife from the some assets especially land is only in Imamate.

**Keywords:** Inheritance, jurisprudence, wife, Imamate and Sunni.

## INTRODUCTION

Sunni and Shiite laws of inheritance are different in their foundational structure as well as detailed implications, though the both are inspired from the Quran 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 Shiite law of inheritance does not Have such an advantage.

The paper aims to present in a simplified manner the salient features of Shiite 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 Shiite law, it compares them with corresponding features of Sunni law.

The paper illustrates how these features are instrumental in conferring different shapes to legal heirs in Shiite 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. It is familiar in scholarship on Islam that the most striking difference between Sunni and Shiite legal systems is their distinct laws of inheritance. 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.

Before the advent of Islamic, societies around the world determined status of a family and its' members by the amount of property owned. Because ancient societies were fundamentally status-based and tribal, children were heavily dependent on the wealth of their parents in order to survive. Property included livestock, shelter, farmland, crops, land, jewelry, clothes, weapons, slaves and sometimes women. Those of the lowest status owned nothing and were either free peasants or slaves. Women were considered to hold no status whatsoever which made them non-existent in the question of inheritance unless another man inherited them as property.

As a result, discriminatory customs such as withholding from a wife, a daughter or a sister's right to their portion of the family estate socialized misogyny and sexism into the fabric of society. Ancient and medieval scriptures claim evidence to this fact by alienating women from the family tree and justifying their eternal state of poverty.

Being at the mercy of male family members meant that a woman's status did not stand for itself—it was interpolated into a man's prestige. There were a wide variety of inheritance systems that were practiced. Primogeniture, also known as agnatic or patrilineal primogeniture is the practice of passing down all of a family's estate in the hands of the eldest son. Ancient Persia, India, Greece and Rome practiced agnatic primogeniture. The opposite of agnatic primogeniture was ultimo geniture where the youngest surviving (male) relative (brother, nephew, uncle, etc) inherited. Tlaxcala and Mesoamerica practiced ultimogeniture.<sup>2</sup> Not all societies were patriarchal though, matrilineal primogeniture was (and still is) practiced among the tribes of south India, parts of Latin America and sub-Saharan Africa.

However matriarchal societies turned patriarchy upside down by means of reverse sexism which was still an injustice. In the overall scheme of history, women have been treated like minors. A daughter's son could inherit from her family whereas she would be passed over in favor of distant male relatives; and as for the son's son, it was custom to inherit from grandfathers and great-grandfathers<sup>4</sup>. Sequentially wealth remained in the hands of a few at the expense of majority. Islamic law of inheritance was the first to sanction equity and restore justice to women.

### ***A Determined Share: A Fraction?***

Upon first glance the Qur'anic text revealed does not seem to decree fairness or repair woman's status quo. Especially when Qur'an says blatantly that the share of males is twice of that to the female—seems that Islam made little progress in regards to women's share in inheritance!

Upon closer investigation one finds the reasoning. The two to one ratio is because a woman is entitled to mahr (Arabic: dower), and maintenance from the man she marries and is free from defense of the community. This is because the husband's responsibilities in a marriage are far more than a woman's especially in regards to financial matters.

Therefore a woman's inheritance in Islam being half of a male is recompensed elsewhere; this is known as the law of recompense.<sup>24</sup> The texts of the Qur'an are plain in regards to women receiving their share. "To (benefit) every one, God has appointed shares and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion."<sup>25</sup> This is revolutionary considering Hindu and Zoroastrian law did not recognize woman as a capable, independent individual or even part of the family since she did not inherit from her father or husband.

Furthermore when the Qur'an said to not inherit women against their will and to not treat them harshly, it was referring to a custom in Arabian society: when a man died, his relatives inherited his wife, they could marry her to her husband's kinsmen, or give her in marriage, if not, then they would be more entitled to dispose her, than her own relatives. Islamic law explicitly recognized a woman's right to choose, whether she married the second time or did not, whether she wanted to marry within her dead husband's family or not. There are select requirements, such as waiting for three to four months to ensure whether or not she is pregnant.

It is important to note that while Islamic laws concerning inheritance are not 'equal' in the modernist sense, they are proportionate. For instance if a woman were to receive half of the inheritance that would mean that her children would receive one-fourth each, after payments of debts and if a man died, his share is half of what his wife left behind.

The problem with inserting the modernist notion of equality in regards to inheritance is that at the time of marriage a man is required to provide *mahr*, wedding gift.

### ***Inheritance and the Family***

The family plays a major role in inheritance as close family members, notably the spouse and children of the deceased normally receive all or the bulk of the estate of the deceased.

Historical Links between the Law of Inheritance and Family Law Inheritance is closely linked to the family in several ways. As already mentioned most inheritance is by family members of a deceased person. Traditionally there have also been links between the law governing succession to property on death and family law and their administration. Both were originally branches of ecclesiastical law in England administered by ecclesiastical courts which were Part of the diocesan administration. This continued until 1857.

Both areas were derived from Roman Canon Law, and so were from 1875 to 1971 administered together with the only other area of English law so derived, maritime jurisdiction. Hence the curiously named Probate, Divorce and Admiralty division of the English High Court. Since 1971 they both uncontested.

Matters of inheritance and family matters been administered in the Family Division of that Court. When English law was imported to Australia in 1788 with the First Fleet and confirmed by the Australian Courts Act 1828, no ecclesiastical courts were established so the law in these areas fell to be administered by the ordinary courts. This was the Supreme Court and such subordinate Courts as existed from time to time in each Colony and later State until family law matters were transferred to The newly created federal Family Court in 1975.

### ***Basic Principles of the Law of Inheritance***

A fundamental aspect of the law in Australasian jurisdictions is that, in common with other former British Colonies, its law was inherited from England at the time of first settlement. This included the English common law and statute law. Such jurisdictions are accordingly termed common law jurisdictions.

### ***The Limits of Inheritance***

Any discussion of inheritance should recognise the large amount of property which nowadays changes hands otherwise than by way of inheritance. Much property, in particular the family home, is held by the spouses or partners as joint tenants, which means that the house passes automatically to the survivor if one dies. This is often the family's main asset.

The next most important asset is superannuation. If the owner dies while still in employment, the superannuation will normally pass to the person nominated by the deceased under the rules of the superannuation fund.

The same will often apply to the capital fund supporting an allocated pension arrangement. When superannuation has matured, often the family assets will have been split between the spouses at that time to minimize taxation of retirement income.

Where the family is wealthy, most assets will often be tied up in a family trust. This will almost invariably be a form of discretionary trust, with the family member as discretionary beneficiaries. Death of one of these does not involve any transfer of the property, which remains in the trust. The deceased simply is struck off the 'list' of discretionary beneficiaries.

### ***Inheritance of Spouses:***

As is apparent from the above three-fold classification of heirs in Shiite law, spouses are not placed in anyone of them.

The above referred classes are jointly known as heirs by consanguinity in Shiite law, while spouses are termed as heirs by affinity.

The heirs by consanguinity are also termed as heirs by Nasab, while the heirs by affinity are heirs by Sabab. 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.

There are a few differences between Sunni and Shiite laws regarding inheritance of spouses. Some Shiite 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. There is one important distinction between Shiite 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. 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 Shiite law.

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)

### ***Similarities in Shiite and Sunni Laws:***

Shiite and Sunni laws of inheritance are characterized by multilayered 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 Shiite 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 Shiite law recognizes nine sharers.

The agreed up on sharers are: husband, wife, father, mother, daughter, full sister, consanguine sister, uterine brother and uterine sister.

### ***Conclusion:***

The paper has explained Comparison of wife inheritance in Sunni and Shiite jurisprudence. It has been brought to forth that if some structural aspects of Shiite 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 Shiite 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 Shiite 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 Shiite law. Hence, they are eligible to inherit an estate either as a share or a residuary.

Moreover, Shiite 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. 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 Shiite and Sunni laws have different solutions to the same problems.

## **REFERENCES**

- Carroll L. 1985. The Ithna Ashari Law of Intestate Succession: An Introduction to Shiite Law Applicable in South Asia (Modern Asian Studies, Vol. 19, No. 1. 1985).
- Carroll L. 1983. The Hanafi Law of Intestate Succession: A Simplified Approach (Modern Asian Studies, Vol. 17, No. 4. 1983).
- Gage Matilda J. 1893. Woman, Church and State 1893: 140. Volume XII: The Imperial Crisis and Recovery (A.D. 193–324). Trans., Cambridge: University Press.
- Khan H. 2007. The Islamic Law of Inheritance: A Comparative Study of Recent Reforms in Muslim Countries (Oxford University Press).
- Khan H. The Islamic Law of Inheritance, pp.124-139.
- Khan. The Islamic Law of Inheritance, p.97
- Mulla. Principles of Mahomedan Law, p. 152-153.