

**EXPOUNDING THE ITHNA ASHARI LAW OF INTESTATE
SUCCESSION**

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Abstract

The article discusses the Islamic laws of intestate succession, and offers a brief descriptive analysis. The focus is laid upon one of the two subsets of the Islamic religion, the Shia faith, which refer to these set of legislations and norms as the 'IthnaAshari Laws'. The article also offers perspective through a comparison and differentiation of the laws with the Sunni counterpart which are referred to as the 'Hanafi Laws', to try and deduce the nature of progression and diversion within the Islamic religious commandments. Conclusively, the shortcomings and positive features of the IthnaAshari laws have been critically examined and congregated.

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The differences in the succession laws of Shia and Sunni schools of thought arise due to the interpretation and implication of Quranic provision and their incorporation in the already existing system. The Quranic verses did not abrogate the pre-existing customs and usages, which went on to provide the basic framework for the laying down of the laws of inheritance. The Quran merely provided their amendments and variations by adding to and modifying the prevalent rules of that time period.

The Sunnis kept the old framework of customs intact, and just superimposed the Quranic principles on that old set-up, whilst the Shias on the other hand, unified the old rules and the newly laid down rules to devise their own unique system of statutes. This revision of the prevalent laws within the Arabian customs and usages, in light of the freshly laid down principles led to the promulgation of an extensively different scheme, with regards to the originally propounded scheme by the Sunnis.

In Shia succession laws, the priority is placed upon the proximity to the deceased. Thus, males and females are situated on an even pedestal, and no relative is excluded purely on the basis of sex, or because they're related to the deceased through a female link (even though male may take twice as much as a female, male and female of equal blood and degree together). Contrarily, the Sunni law has an intrinsic bias for the male agnatic heir. Thus, Cognates and agnates are placed on an equal footing. Meaning males and females who are linked to the deceased in equal blood or degree inherit together, although female shares continue to be half those of males.

Hence it can be said that The Shia system has far more positive implications for women's inheritance. Thus, distribution according to Shia and Sunni principles of inheritance frequently leads to dramatically different results.

Additionally, emphasis is placed on the nuclear family and direct descendants. So, a child of a child and so on, will always be given preference over all other blood relatives (except the parents). Also, the sons do not have a right by birth in the father's property. Exclusive ownership, with full powers of alienation is an essential feature of property ownership in Islamic law.

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The IthnaAshari laws of succession, being the Shia faith's doctrine, decrees the division of all eligible legal heirs within three categories, with the final distribution, allotment and prioritization subsequently being determined by these categories. In order to further understand and grasp the Shia system of inheritance with clarity, the appropriate appreciation of these categories is virtually necessitated. These categories have been illustrated in the chart below:

Class I	a. parents b. children, descendants of children h.l.s.
Class II	a. grandparents, ascendants of grandparents h.h.s. b. collaterals (i.e., brother and/or sister; germane, consanguine, and/or uterine), descendants of collaterals h.l.s.
Class III	paternal/maternal uncles and aunts; their issue h.l.s.; paternal/maternal great uncles and aunts; their issue h.l.s.; etc.

Spouses are not mentioned in this list, but the rule decrees that they simultaneously inherit along with any relative in any class. They thus form an independent category, which is only affected by presence or absence of the deceased's children. In scenarios where the deceased is survived by progenies, the partner (husband/wife) is allotted $1/4^{\text{th}}$ or $1/8^{\text{th}}$ share as inheritance from the estate, respectively. In cases where the deceased is not survived by progenies, the existing partner is allotted a fixed $1/2$ (husband) or $1/4^{\text{th}}$ (wife) share respectively. Thus, the allotment is also affected by the existence of children and the gender of the surviving partner, with the husband always received double the share when compared to what a wife would have received in a similar situation.

Another point of difference in the Shia system and Sunni system is the recognition of the class of "distant kindred" as being a valid category of legal heirs in consideration of inheritance allotments. The Sunni law recognises it separately, whilst the Shia law incorporates the members falling in this class within its existing three categories, thus balancing out the apparent internal discrepancy.

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The following concepts are considered to clarify and understand the basic differences between Sunni and Shia laws of succession:

- **Male Agnatic Heirs:** As explained above, the Shia law gives no preference to agnates just because of their sex, while the Sunni law gives Male Agnates a favour over females.

The Quran only assigns specific portions to Male Heirs, including the husband, uterine but not agnatic brother and father (who is an agnate). And as sons and agnatic brothers also need a means for them to be able to take the shares, they take the shares after the people specified in the Quran have taken theirs, which is why they are termed as 'residuary heirs.'

- **Female Agnatic Heirs:** Again, In the Shia system no special privileges are given to female agnates and just like males, the female agnates are integrated into the class system based on their proximity to the deceased.
- **Agnatic Co-sharers:** In the Sunni Hanafi law, agnatic co-sharers are solely defined under situations where a female Quranic heir is converted into a co-sharer by a male agnatic heir. But in the context of Ithna-Ashari laws, this becomes an example of inappropriate terminology, as its clearly stated that no person is entitled to a share purely based off their gender.

In Shia Law, only the daughter, a consanguine or germane sister may become so called agnatic co-sharers, but since sons and agnatic brothers are referred to as 'residuary heirs', the female counterparts become the residuary co-sharers instead.

So, the bottom line is that in Shia laws, the sex of any intervening relative is completely irrelevant when determining share. But the male descendants always take double the apportion of their female counterparts, with the values varying based on the respective fixed shares of the descendants.

- **Quranic Heirs:** The heirs mentioned in the Quran and their specified fractions are the key to the distribution of the Shia deceased. The Shias rejected three heirs which the Sunnis recognize – which are the true grandfather, true grandmother and son's daughter.

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- Doctrine of Radd: It refers to a situation where after the division of shares, the total allotted shares are arithmetically less than equity, and there is no eligible residuary left to inherit the residue. In this scenario, the residue share of the estate returns back to the very same list of sharers, once again in the exact same proportion as they were eligible of in their originally allotted shares. Thus, the estate gets equitably exhausted, all whilst the notion of equal proportion is maintained.

In the Islamic laws, it is very much possible that the Quranic heirs don't exhaust the whole estate, but because there are no agnatic heirs available to claim any residue remaining after the Quranic heirs, the problem of undersubscription arises more frequently in Shia than in Sunni succession. In Sunni law an exhaustive list of the residuary reduces the occurrences of application of Radd.

- Doctrine of Aul: Situational variances may lead to cases wherein the arithmetic sum of all the functional shares (which are being allotted to the respective heirs of the deceased) turns out to be more/less than equity. Like for instance, when the entirety of the shares exceed unity, the shares of each eligible sharer are shrunken, by way of devising a common denominator and increasing it, all in order to subsequently equate it to the final sum of all the numerators, so that the shares get allotted and divided proportionally.

Shia jurists don't accept that shares of all Quranic heirs are liable for reduction. So instead, they divide the sharers into those whose share is susceptible to reduction (like daughter and sisters) and those whose share is not (like parents and spouse).

- De facto and De jure exclusion: In Sunni law, there are two distinctions upon which the right to participate in Inheritance may be founded- the Quranic reforms and Pre-Islamic rules, while in Shia Law, no such dual basis of heirship exists.

Hence, it is possible in Sunni cases for a person entitled to get inheritance through his agnatic relationship, to get excluded from it "de facto" because there isn't anything left, whereas Shia heirs can only be excluded "de jure"; because if a potential heir is excluded, he or she is

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excluded legally due to the presence of a superior heir.

This ordinance concerning orphaned grandchildren was applicable in Pakistan and Bangladesh. It essentially guaranteed the share of grandparents' estate to the children of the predeceased child of the propositus. So, the estate would have passed to their parents instead, if they would've been alive at the time of the grandparent's death.

This faced controversial reactions as it was considered quite destructively different to classical Islamic injunctions, and the decision was reversed. The issue however is still a topic for debate. The article 44 of India's Constitution directs the State to 'endeavour to secure' a uniform civil code over the diverse systems of personal law. Islamic scholars find this commitment provocative, as it would virtually imply infringement upon the personal laws which are held in such high regard by the whole community as being divinely obtained and preserved over centuries. The significance and underlying complications of this legislation will be discussed in the next and final stretch of this presentation.

Critical Analysis

Iranian researcher and author Mohammad Saedi holds that the Islamic laws of inheritance were actually pioneers, and a step towards gender justice, because ancient societies were fundamentally patriarchal in nature, which in turn meant that all women held no status or prestige at all, and were virtually ignored during inheritance discussions. This long prevalent phenomenon of women's personal status being submerged and interpolated within their male counterparts' status was thus gradually tackled by the Islamic laws, by the way of guaranteeing them a fixed share in the property: a sanction of equity.

The Islamic scheme of inheritance encloses three unique features, which are markedly different from the Hindu laws of inheritance:

1. The Qur'an propounds some fixed and specific shares to certain individuals with no gendered filtration
2. The estate's residue goes to the agnatic heirs and failing them, to the existing uterine heirs

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3. All sorts of donations or bequests from the estate are strictly subject to a $1/3^{\text{rd}}$ cut off limit, which means that only a maximum amount of $1/3^{\text{rd}}$ from the estate can be willed/donated away by the owner to a stranger

In the Islamic succession laws, the eligible women attain an absolute right in the inherited property, (whether it be as a daughter, sister or mother) with complete and full powers of alienation. Thus, a woman is sanctioned to retain her eccentric individuality and identity, even post her marriage. Her relationships are demarcated and ascertained only in explicit terms of her own self, and thus, not with regards to her husband or parents, which is quite unlike the Hindu laws.

Thus, a Muslim man can absolutely not divest his wife or daughter of their legitimate share in the estate either by way of establishing a Hindu undivided family (HUF) or by a will which may specifically deprive such eligible women of their fair share in the property. This is widely appreciated and viewed as a positive feature which is unique to the Muslim laws.

A noticeable recurring theme in the article must have been the repetition of the notion that females always receive half of the share as their male counterpart. This puts in question the above-mentioned notion of gender justice provided by the Islamic laws. Well, Islamic scholars have tried to answer this via religious contentions, like the one propounded below:

“The gendered discrepancy in allotment of shares, or the two to one ratio is in place and applicably standing simply because a woman is sanctioned to receive “mahr” (which is Arabic for dower), and maintenance from her husband. Thus, she is said to be free from defence of the community. The reason behind this, is that the husband’s obligations and responsibilities in a Muslim marriage made out to be quite proportionately being more than a what a wife’s responsibilities are, especially in regards to financial matters. Therefore, a woman’s inheritance shares in Islam being arithmetically half of that of a male is being remunerated elsewhere; this is known as the law of recompense. The texts and revelations of the holy Qur’an are thus plain in regards to all eligible women legally and rightfully receiving their shares.”

Furthermore, the IthnaAshari laws are indispensable in Islamic faith because, a Muslim is not permitted to bequeath more than one-third of his estate without the consent of his heirs. Thus, even if he decides to make a will, exactly two-third of the property would be divided by the

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rules of intestate succession, and in cases where he does not make a will as such, the entire property would be allotted to the heirs by the very same rules of intestate succession. This therefore guarantees uniformity in application and interpretation.

This is also the chief reason why the suggestions of a uniform civil code are so offensive to the Islamic community. The laws are central to Islamic jurisprudence and are a symbol of community lineage and preservation of customs.

Works Cited

- Carroll, Lucy. "The IthnaAshari Law of Intestate Succession: An Introduction to Shia Law Applicable in South Asia." *Modern Asian Studies*, vol. 19, no. 1, 1985, pp. 85–124. *JSTOR*, www.jstor.org/stable/312322. Accessed 15 May 2021.

