

## Chapter Twenty Shia Law of Inheritance<sup>1</sup>

According to the *Shia* law, there are only two groups of heirs:

- (1) Heirs by consanguinity (blood relations); and
  - (2) Heirs by marriage (husband and wife).
- (3) Heirs by consanguinity are further divided into three classes:

Class I.—(i) Parents;

(ii) Children and other lineal descendants h.l.s

Class II.—(i) Grandparents h.h.s (true and false).

(ii) Brothers and sisters and their descendants h.l.s.

Class III.—(i) Paternal, and

(ii) Maternal uncles and aunts of the deceased, and of his parents and grandparents h.h.s. and their descendants h.l.s.

The Class I excludes Class II, and Class II excludes Class III. But the heirs of each class, whether they are of sub-class (i) or (ii), inherit together, the nearer in degree excluding more remote.

(2) **Heirs by marriage**—Under no circumstances the husband or wife may be excluded. They inherit together with the nearest consanguine heirs.

**Sharers and residuaries in *Shia* law.**—*Shia*'s divide heirs into two classes, namely sharers and residuaries; there is no class corresponding to the "distant kindred" of *Sunni* law.

The division of heirs into the above two classes is for the purposes of determining the shares of individual heirs.

There are nine sharers who take specific shares as shown in the table below. The descendants (h.l.s) of sharers are also sharers.

<sup>1</sup> Taken from Syed Khalid Rashid's, *Muslim Law*.



Those heirs who are not included in the class of sharers are all residuaries. The descendants (h.l.s) of residuaries are also residuaries.

Table of Sharers (*Shia Law*)<sup>2</sup>

Shares	Normal share		Conditions under which the share is inherited	Share as varied by special circumstances
	of one	of two or more collectively		
1. Husband	$\frac{1}{4}$	..	When there is a lineal descendant.	$\frac{1}{2}$ when no such descendant.
2. Wife	$\frac{1}{8}$	$\frac{1}{8}$	When there is a lineal descendant.	$\frac{1}{4}$ when no such descendant.
3. Father	$\frac{1}{6}$	..	When there is a lineal descendant	(If there be no lineal descendant the father inherits as a residuary.)
4. Mother	$\frac{1}{6}$	..	(a) When there is a lineal descendant; or (b) When there are two or more full or consanguine brothers, or one such brother and two such sisters, or four such sister, or four such sisters, with the father	$\frac{1}{3}$ in other cases.
5. Daughter	$\frac{1}{2}$	$\frac{2}{3}$	When no son.	(With the son she takes as a residuary).
6. Uterine brother	$\frac{1}{6}$	$\frac{2}{3}$	When no parent, or lineal descendant	..
7. or sister	$\frac{1}{3}$	$\frac{1}{3}$	..	..
8. Full sister	$\frac{1}{2}$	$\frac{2}{3}$	When no parent, or lineal descendant, or full brother, or father.	(The full sister takes as a residuary with the full brother and also with the father's father)
9. Consanguine sister	$\frac{1}{2}$	$\frac{2}{3}$	When no parent, or lineal descendant, or full brother or sister, or consanguine brother or father's father.	(The consanguine sister takes as a residuary with the consanguine brother and also with the father's father.)

**Note:**—The descendants h.l.s of sharers are also sharers.

<sup>2</sup> D.F Mulla, *Principles of Mahomedan Law*, P. 84.

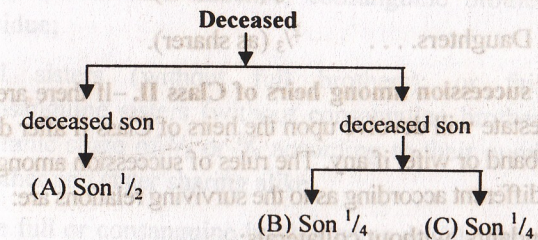
### Principles of distribution of property.—

- (i) If the deceased leaves only one heir, the whole of property goes to him.  
 (ii) If the deceased leaves more than one heir, then the first step is to assign shares to the heirs belonging to sharer class.

The following two rules are applied in order to determine the heirs and their shares:—

(a) **The nearer in degree excludes more remote.**—(For example. *A* dies leaving a son *B* and a grandson *C* from a predeceased son. Here *B* will exclude *C*.

(b) **Stirpital succession.**—Succession among descendants in each of the three classes of heirs (i.e. the three classes of heirs by consanguinity) is *per stripes*, and not *per capita*. Thus, for example, if *A* dies leaving behind three grandsons, of whom one is from one pre-deceased son, and two are from another pre-deceased son—



then *A* will get a share equal to that of what his father, if alive, would have got, i.e.  $\frac{1}{2}$ ; while *B* and *C* will equally share the portion which their father would have inherited if live (i.e.  $\frac{1}{2}$ ).

**Rules of succession among heirs of Class I.**— The persons who are first entitled to succeed to the estate of a deceased *Shia* Muslim are the heirs of Class I *along with* the husband or wife, if present. Among the heirs of Class I, nearer in degree will exclude more remote.

In case the heirs of Class I include grandchildren of pre-deceased children, then—

— the children of each son take the portion which their father, if living would have taken.



—the children of each daughter take the portion which their mother, if living, would have taken.

(The same rule applies for remoter lineal descendants).

#### Illustrations

(a) Husband . . .	$\frac{1}{2}$ (as sharer).
Mother . . . . .	$\frac{1}{3}$ (as sharer).
Father . . . . .	$\frac{1}{6}$ (as sharer).
(b) Wife . . . . .	$\frac{1}{4}$ (as sharer).
Mother . . . . .	$\frac{1}{3}$ (as sharer).
Father . . . . .	$\frac{5}{12}$ (as residuary).
(c) Father . . . . .	$\frac{1}{6}$ (as sharer, because there are daughters).
Mother . . . . .	$\frac{1}{6}$ (as sharer).
2 Daughters. . . . .	$\frac{2}{3}$ (as sharer).

**Rules of succession among heirs of Class II.**—If there are no heirs of Class I, the estate will devolve upon the heirs of Class II after deducting the share of husband or wife, if any. The rules of succession among the heirs of Class II are different according as to the surviving relations are:

- (1) Ascendants, without collaterals;
- (2) Collaterals, without ascendants;
- (3) Both ascendants and collaterals;

**1. Ascendants, with collaterals.**—After assigning the share of the husband and wife, divide the residue according to the following rules:

- (i) Assign  $\frac{1}{3}$  of the *estate* to the maternal side, and the residue to the paternal side.
- (ii) *Maternal side.*—The maternal grandparents take their portion, the  $\frac{1}{3}$ , and divide it between themselves, male and female sharing *equally*.
- (iii) *Paternal side.*—Then take the paternal side; the residue is to be divided according to the rule double share to the male.

#### Illustrations

Father's father . . . . .	$\frac{2}{3}$ of $\frac{2}{3} = \frac{4}{9} = \frac{8}{18}$ .
Father's mother ( $\frac{2}{3}$ ) . . . . .	$\frac{1}{3}$ of $\frac{2}{3} = \frac{2}{9} = \frac{4}{18}$ .
Mother's father . . . . .	$\frac{1}{2}$ of $\frac{1}{3} = \frac{1}{6} = \frac{3}{18}$ .
Mother's father ( $\frac{1}{3}$ ) . . . . .	$\frac{6}{18}$ .

**2. Collateral, without ascendants.**—(a) Assign the share of husband and wife, if any;

(b) Divide the residue according to these rules:

- (i) Brothers and sisters of the full blood exclude consanguine brothers and sisters:
- (ii) uterine brothers and sisters are not excluded by full or consanguine brothers and sisters; they take  $\frac{1}{6}$  or  $\frac{1}{3}$  according to their number;
- (iii) full, and in their absence, consanguine brothers take the residue;
- (iv) full sisters (without full brothers); or failing them, consanguine sisters (without consanguine brothers) take the Quranic share of  $\frac{1}{2}$  or  $\frac{2}{3}$  according to their number equally, brother and sister sharing alike.
- (v) The full or consanguine brother takes double the share of the sister, the uterine brothers and sisters take equally, brother and sister sharing equally.

#### Illustrations

- (1) One full brother (or in his absence, consanguine brother), there being no other claimant, takes the whole estate.
- (2) Two such brothers divide the estate equally.
- (3) Two full sisters and one full brother. Estate divided into four shares—FB, =  $\frac{1}{2}$ , FS =  $\frac{1}{4}$  each.
- (4) One single sister, full or consanguine,  $\frac{1}{2}$  as Quranic heir,  $\frac{1}{2}$  by return.



**Descendants of brothers and sisters only.**— If there are no brothers or sisters or ancestors, assign the share of husband or wife and divide the residue as follows:

- (i) The principle of *stirpital succession* must be followed. The share of a full or consanguine brother is allotted to his descendants, and is divided according to the rule of double share to the male.
- (ii) The share of each uterine brother or sister must be allotted to his or her descendants, and is divided so that male and female share alike.
- (iii) If there are no children of brothers or sisters, remote descendants take according to the above principles.

#### Illustrations

- (1) Husband =  $\frac{1}{2}$ , Quranic heir.
- (2) Uterine brother's daughter =  $\frac{1}{6}$ , Quranic share of her father.
- (3) Full brother's daughter =  $\frac{1}{3}$ , residual portion of the father.
- (4) Consanguine brother's son = Excluded by full brother's daughter.

**3. Ancestors plus collaterals.**— If the deceased leaves grandparents in addition to brothers and sisters or their descendants, first, assign the share of the husband or wife, if any, and then divide the residue in the following manner:

- (i) A Paternal grandfather counts as a full or consanguine brother; and a paternal grandmother as a full or consanguine sister.
- (ii) A maternal grandfather counts as a uterine brother; and a maternal grandmother as uterine sister.

On failure of the grandparents, remoter ascendants inherit on the same principles; and on the failure of brothers and sisters, their descendants take *per stripes* and inherit on similar principles.

#### Illustrations

- (1) Paternal grandfather =  $\frac{2}{3}$   
(=Full brother)
- Full sister =  $\frac{1}{3}$

(2) Uterine brother

Maternal grandmother } =  $\frac{1}{3}$  Quranic share, each take  $\frac{1}{6}$ .

(=Uterine sister)

2 Full sister =  $\frac{2}{3}$  Quranic share.

(3) Mother's father (=UB)  $\frac{1}{6} = \frac{3}{18}$

}  $\frac{1}{3}$  as Quranic share

Mother's mother (=US)  $\frac{1}{6} = \frac{3}{18}$

**Rules of succession among heirs Class III.**— If there are no heirs of the first or second class, the estate (minus the share of the husband or wife, if any) devolves upon the heirs of the third class in the order given below:

- (1) Paternal and maternal uncles and aunts of the deceased;
- (2) Their descendants h.l.s, the nearer in degree excluding the more remote;
- (3) Paternal and maternal uncles and aunts of the parents;
- (4) Their descendants h.l.s, the nearer in degree excluding the more remote;
- (5) Paternal and maternal uncles and aunts of the grandparents;
- (6) Their descendants h.l.s., the nearer in degree excluding the more remote;
- (7) 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.

**Exception.**—If the only claimants be the son of a full paternal uncle and a consanguine paternal uncle, the former, though he belongs to group (2), excludes the latter who is nearer and belongs to group (1).

**Principles of distribution.**—The most important rules are—

- (i) to assign  $\frac{2}{3}$  among paternal uncles and aunts, as if they were brothers and sister, that is—



- (ii) to divide the paternal  $\frac{2}{3}$  among the uterine uncles and aunts, male and female taking in equal proportions;
  - (a) to divide the paternal  $\frac{2}{3}$  or  $\frac{1}{6}$  among the uterine uncles and aunts, male and female taking in equal proportions;
  - (b) to assign the remainder ( $\frac{2}{3}$  or  $\frac{5}{6}$ ) among the full paternal uncles and aunts; or failing them to the consanguine paternal uncles and aunts. In both these cases, the distribution is according to the double share to the male;
- (iii) to divide the maternal  $\frac{1}{3}$  among the maternal uncles and aunts in the following manner—
  - (a) assign to the uterine uncles and aunts  $\frac{1}{3}$  of the maternal portion, if there be more than two, or  $\frac{1}{6}$  if there be only one; and
  - (b) divide the remainder ( $\frac{2}{3}$  of the maternal portion) among full maternal uncles and aunts, and failing them, among the consanguine maternal uncles and aunts.

In case (iii), (a) and (b), males and females take equally.

- (iv) If there be no uncle or aunt on the maternal side, the paternal side takes the whole of the estate; and similarly, where there are no claimants of the paternal side, the maternal side takes the inheritance exclusively.

**Illustrations**

- $\frac{2}{3}$  { Full paternal uncle—  $\frac{5}{6} \times \frac{2}{3} = \frac{5}{9}$
- { Consanguine paternal uncle—excluded by full paternal uncle.
- Uterine paternal uncle—  $\frac{1}{6} \times \frac{2}{3} = \frac{1}{9}$
- $\frac{1}{3}$  { Full maternal uncle—  $\frac{5}{6} \times \frac{1}{3} = \frac{5}{18}$
- { Consanguine maternal uncle—excluded by full paternal uncle.
- Uterine maternal uncle—  $\frac{1}{6} \times \frac{1}{3} = \frac{1}{18}$ .

**Doctrine of "return" in Shia law.**—If there is a residue left after satisfying the claims of sharers, and there are no blood relations in the

class to which the sharers (Quranic heirs) belong, the residue reverts to the sharers proportionately. (This rule is subject to three exceptions).

**Illustrations**

- (a) Sister . . .  $\frac{1}{6}$  increased to  $\frac{1}{4}$ .
- Consanguine sister . . .  $\frac{1}{2} = \frac{3}{6}$  increased to  $\frac{3}{4}$ .
- (b) Mother . . .  $\frac{1}{6}$  increased to  $\frac{1}{4}$ .
- Daughter . . . .  $\frac{1}{2} = \frac{3}{6}$  increased to  $\frac{3}{4}$ .
- Brother . . . . (excluded, as being an heir of the second class).

**Exception I: Spouse.**—Neither the husband nor the wife is entitled to the 'return', if there is any other heir.

**Illustrations**

- Husband . . . .  $\frac{1}{4}$ .
- Father . . . .  $\frac{1}{6}$  increased to  $\frac{1}{4}$  of  $\frac{3}{4} = \frac{3}{16}$
- Daughter . . . .  $\frac{1}{2} = \frac{3}{6}$  increased to  $\frac{3}{4}$  of  $\frac{3}{4} = \frac{9}{16}$ .

**Exception II: Mother.**—If the deceased leaves his mother, father and one daughter, and also—

- (i) two or more full or consanguine brothers; or
- (ii) one such brother and two such sisters, or
- (iii) four such sisters.

the brothers and sister, though themselves excluded from inheritance as being heirs of Class II, prevent the mother from participating in the return, and the surplus reverts to the father and the daughter proportionately to their respective shares.

**Illustrations**

- Mother . . . .  $\frac{1}{6}$ .
- Father . . . .  $\frac{1}{6}$  increased to  $\frac{1}{4}$  of  $\frac{5}{6} = \frac{5}{24}$
- Daughter . . . .  $\frac{1}{2} = \frac{3}{6}$  increased to  $\frac{3}{4}$  of  $\frac{5}{6} = \frac{15}{24}$ .
- 2 Full brothers . . . . (excluded).



**Exception III: Uterine brother and sister.**—Where uterine brothers and sisters survive with full sisters, the uterine brothers and sisters do not participate in Return. (This rule does not apply to consanguine sisters).

#### Illustrations

- (a) Uterine brother. . . .  $\frac{1}{6}$   
 Full sister . . . .  $\frac{1}{2}$  (as sharer) +  $\frac{1}{3}$  (by Return) =  $\frac{5}{6}$ .
- (b) Wife . . . .  $\frac{1}{4}$  =  $\frac{3}{12}$ .  
 Uterine sister . . . .  $\frac{1}{6}$  =  $\frac{2}{12}$ .  
 Full sister . . . . (by Return) =  $\frac{7}{12}$ .

**Doctrine of Increase in Shia law.**—Shia law does not recognize Hanafi doctrine of Increase (*Aul*). Shia law says that if the sum total of the shares exceeds unity, the fraction in excess of the unity is deducted invariably from the share of—

- (i) the daughter or daughters;  
 (ii) the full or consanguine sister or sisters.

#### Illustrations

- (a) Daughter . . . .  $\frac{1}{2}$  =  $\frac{6}{12}$  reduced to  $(\frac{6}{12} - \frac{1}{12}) = \frac{5}{12}$ .  
 Father . . . .  $\frac{1}{6}$  =  $\frac{2}{12}$ .  
 Husband . . . .  $\frac{1}{4}$  =  $\frac{3}{12}$ .  
 Mother . . . .  $\frac{1}{6}$  =  $\frac{2}{12}$ .  
 Total . . . .  $\frac{13}{12}$   $\frac{12}{12}$
- (b) Full sister . . . .  $\frac{1}{2}$  reduced to  $(\frac{1}{2} - \frac{1}{6}) = \frac{1}{3}$ .  
 Husband . . . .  $\frac{1}{2}$   
 Uterine brother . . . .  $\frac{1}{6}$

## PART TWO

# STATUTORY FAMILY LAWS

## Chapter Twenty One

### Statutory Laws Relating to Muslim Law

In Indo-Pak-Bangladesh sub-continent several statutes were passed regarding Muslim marriage and Related matters. The important statutes concerning it are (1) The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929), (2) The Dissolution of Muslim Marriages Act, 1939 (Act No. VIII of 1939), (3) The Muslim Family Laws Ordinance, 1961 (Ordinance No. VIII of 1961) and (4) The Muslim Marriages and Divorces (Registration) Act, 1974 (Act No. III of 1974). In these statutes mutual rights and duties of the husband and the wife have been clearly stated, and the jurisdictions of the courts, in case of disputes, have been specified in order to facilitate quick and speedy disposal of the suits relating to marriage, dower, divorce, maintenance etc.

It is to be noted that all the laws in the form of statutes, ordinance etc. enforced in Pakistan have been adopted in Bangladesh by 'Laws Continuance and Enforcement Order, 1971'. It is to be further noted that the insertion of the word 'Bangladesh' in place of Pakistan, East Pakistan etc. was made by P.O. No. 48 of 1972.