

Socially Abhorrent but Legally Acceptable: A Study of Alleged Conversions of Sunnis and Shias in Cases of Inheritance in Pakistan

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Abstract

There are two main sectarian divisions among Muslims living in Pakistan; these are Sunni and Shia schools of thought. It is socially abhorred within these sects that a person belonging to them converts to another. This seems to be the reason that conversions from one sect to another are not found often in Pakistani society. If this social phenomenon of non-conversion is compared with the cases of inheritance contested in and decided by the apex judiciary of Pakistan we would be surprised by the fact that there are numerous stories of alleged conversions from Sunnism to Shiaism and vice versa. Analyzing the cases of inheritance decided by the apex judiciary of Pakistan, the paper explores the reasons of such conversions or assertions thereof. The analysis suggests that these conversions are mostly alleged and contested by the parties to such cases to enrich themselves financially or deprive the other party from any financial benefits which would have accrued had the propositus proved to be belonged to the other sect. The paper also brings to light how this space of maneuvering has been facilitated by different interpretations of law of inheritance by Sunni and Shia schools of thought.

Key Words: Sunni Law; Shia Law; Inheritance; Pakistani Courts.

Introduction

Muslims population of the world is divided into different sects and these sectarian divisions date back to the early centuries of Islam. There are two main sectarian denominations in Pakistan, i.e. Sunnis and Shias (Khan 2007: 10-21). These divisions are then further sub-divided into different sub-sects; for instance, there are three famous subdivisions within the Sunni Muslims of Pakistan known as Brelavi, Daobandi and Wahabi. The same phenomenon of further sub-divisions is also there in the Shia Muslims (Purohit 2007: 90). As far as numerical strength is concerned, the Sunnis are in majority in Pakistan, while the Shia population constitutes a visible and effective religious minority among Muslims of Pakistan. Their mutual relationship is generally marked by religious accommodation for each other though there are numerous examples witnessing the religious rift among these sects which occasionally turns into violence.

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Both these religious sects think that they are pursuing the most authentic version of Islam and what is followed by the other side if that is not wrong at least that is relatively unauthentic path. Perhaps this perception is the reason that there are very few instances of conversion of a Sunni to Shiaism and the same is equally true with respect to conversion of a Shia to Sunnism. Thus, the sentiments prevailing among the same sect as to authenticity of their own sect and relative unauthenticity of the other along with social cohesion among the same sect debar any one belonging to that sect to jump to another. This paper has illustrated this phenomenon in a general manner that it is socially abhorrent to convert from the one sect to another.

Despite the social abhorrence attached to the conversions from one sect to another, there are numerous cases of inheritance decided by the apex judiciary of Pakistan where the parties have not shown any hesitation to claim that their propositus was a Shia/Sunni. An analysis of these cases demonstrates that what is abhorred socially that is not difficult to be accepted legally. An acute reader is forced to raise a question why there are contestations on the sectarian affiliation of a deceased Muslim. If it is proved that the propositus was Sunni or Shia, then who would be benefited and to what extent on the basis of such assertions. These are some important issues which this paper intends to analyze. The paper brings forth those factors which lure the Muslims to legally claim that their propositus belonged to the different sect.

The paper is divided into two main sections in addition to this introduction and a conclusion. The first section will explain briefly the differences between Sunni and Shia laws of inheritance as these differences entice the parties to allege conversions of their propositus from one sect to another. The second section will analyze the cases of inheritance to explain how the differences between Sunni and Shia laws of inheritance are maneuvered by some unscrupulous litigants to enrich themselves financially and deprive others from their legitimate shares. The second section is lengthy as compared to the first as the latter enumerates the differences between the Sunni and Shia laws in brief, while the former delves into analysis of the cases of inheritance.

Differences between Sunni and Shia Laws of Inheritance

According to Coulson (1977: 108) the most striking difference between Sunnis and Shias is found in their laws of inheritance (as cited in Carroll 1985: 85). These distinctly structured laws of inheritance provide a space of maneuvering for greedy people to assert that their propositus belonged to the sect which would prove beneficial to their monetary interests. There are many differences between Shia and Sunni laws of inheritance which are well known in the academia, e.g. Shia law does not have a category of legal heirs known as distant kindred in Sunni law, Shia law does not apply aul in the manner it is applied by Sunni law and limited role of residuaries in Shia law (Ali 2004; Carroll 1985; Fyzee 2009; Mulla 1995; Verma 1962). Let us briefly reproduce those differences in the concise format which have bearing on shares of legal heirs so that we may appreciate while analyzing the cases of inheritance in the next section how far these differences are relevant for the alleged conversions.

Let us now reproduce those Firstly, in absence of any male child (how low so ever) and father (how high so ever), the residue of an estate will go to brother as a residuary under Sunni law even if there is female child or her children; while, in Shia law, the deceased's daughter or her children exclude the brother.

Secondly, if there is no male child (how low so ever), father (how high so ever), and brother of a deceased, the residue of an estate will devolve on collaterals as residuaries even if there is deceased's daughter or her children in Sunni law; but in Shia law the daughter or her children will exclude collaterals from having anything and consume the entire estate as sharers and under principle of return/radd.

Thirdly, in Shia law in absence of deceased's children (male and female) and father, deceased's sister will exclude collaterals and she will be entitled to an entire estate as sharer and under principle of return/radd; while, in Sunni law, collaterals are entitled to the residue of an estate once the sister has been given her prescribed share.

Fourthly, a widow is not entitled to immovable property of her deceased husband in Shia law; hence all other legal heirs including deceased's brothers and collaterals are likely to benefit from this rule. In Sunni, there is no distinction between movable and immovable property of a deceased and consequently a widow is entitled to all kinds of properties proportionately.

The above points of distinctions between Shia and Sunni laws of inheritance make at least one thing clear that the latter law is more favorable to residuaries particularly brothers and collaterals, while the former in the same situations favor female relatives of a deceased like daughters and their children. Actually the difference at this point revolves around the third category of legal heirs recognized in Sunni law, i.e. distant kindred. Shia law does recognize this category and most of the legal heirs who are placed in this category by Sunni law, they are regarded as Sharers; for instance, daughter's children. There is another characteristic distinction between the two systems that the role of residuaries has been restricted in Shia law as compared to Sunni law. For example, in Sunni law residuaries (brothers and collaterals) inherit the residue of an estate in presence of daughter or her children, while they are not entitled to anything in Shia law in this situation.

The analysis of the cases in the next section will demonstrate that which ever legal system is more favorable to any party in a particular situation generally that faith is attributed to the propositus. For instance, Sunni law safeguards the interest of brothers and collaterals more generously than Shia law that is why they assert that the propositus was Sunni except in one situation when there is a contest between deceased's widow and brothers/collaterals. Because in the latter situation, if it is proved that the propositus was Shia then the widow would not have anything from the deceased's immovable property. Let us now move on to the analysis of these interesting situations in the decided cases of inheritance.

Analysis of the cases of inheritance

This section analyzes some cases of inheritance decided by the superior courts of Pakistan to illustrate how some parties to such cases employ the differences between Sunni and Shia laws of inheritance for the purpose of benefitting themselves financially. The manner of

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analysis adopted here is to briefly explain the facts of each case including the parties, their dispute as to the alleged conversion of propositus and its implication on their expected shares.

In *Ghulam Shabbir v. Mst. Bakhat Khatoon* (2009) Fateh Muhammad died leaving behind two widows Mst. Bakhat Khatoon and Mst. Sultana Bibi and other relatives including collaterals. After the death of Fateh Muhammad, his immovable properties were transferred on the basis that he was a Shia Muslim and a mutation was attested to this effect. This mutation deprived the deceased's widows. Thus, one of them, Mst. Bakhat Khatoon challenged the said mutation before the revenue authorities and claimed that the deceased was a Sunni Muslim; hence she was entitled to share in his immovable properties. Her plea was accepted by the revenue authorities and an order was passed affirming her share in the immovable properties. The collaterals (appellants in the present case) filed a civil suit to set aside the order passed by the revenue authorities and the litigation was paddled up to the level of the Supreme Court. The collaterals presented evidence in the court that the deceased was a Shia Muslim and his funeral ceremonies were performed on the rites observed by Shia community. The other widow of the deceased, Mst. Sultana Bibi, also supported the contentions of the appellants. On the other hand, there were many reliable pieces of evidence adduced in the court to prove that the deceased was a Sunni Muslim. For instance, there was an official record of his payment of *ushar*, his many close relatives including his brother, sister and widows were Sunni Muslims, and his funeral prayer was led by a Sunni prayer leader. The court concluded relying on the initial presumption that all Muslims living in Pakistan are presumed to be Sunni unless contrary is proved and in this case the collaterals could not set aside this presumption on the basis of reliable evidence. Hence, the deceased was rightly declared by the revenue authorities to be Sunni and his widow was entitled to share in his immovable properties. In this case, had the deceased been proved to be a Shia Muslim, his widow would have been excluded from inheriting his immovable properties and that was the main reason for the contention of the collaterals that the deceased was a Shia. They got attested a mutation to this effect and contended the same unambiguously in the judicial proceedings despite the fact that the most of them were themselves Sunni Muslims.

In *Mst. Qamar Sultan v. Mst. Bibi Sufiadan* (2010), Fateh Khan died issueless leaving behind his mother Mst. Anwar Sultan, his sister Mst. Qamar Sultan and a collateral Mumraiz Khan. After the death of Fateh Khan, a mutation was sanctioned regarding his properties that he was a Shia. Consequently, the estate of the deceased was distributed entirely in favor of his mother and sister, and the collateral was excluded as per Shia law. Thereupon, the collateral initiated a suit to contend that the deceased was a Sunni Muslim and he was entitled to 1/6 share in the deceased's estate. Both parties adduced evidence and presented witnesses in the court to prove their contentions. According to the court, there was not much difference between reliability of the evidence adduced by the parties except that the evidence adduced by the mother in the court as to sect of his son (the deceased) was motivated to financially benefit her daughter (deceased's sister) and to exclude her rival, that is deceased's collateral. Taking into account the financial interest of the mother to enrich her daughter, the court refused to rely on this piece of evidence and the deceased was

declared to be Sunni; hence, the collateral was entitled to his share in the estate. The mother in this case did not hesitate to contend that his son was Shia, though he was not, as this would have earned the entire estate to her daughter. This decision of the Lahore High Court was challenged in the Supreme Court which is reported by the same title *Mst. Qamar Sultan v. Mst. Bibi Sufiadan* (2012), wherein the latter court upheld the former's decision on the same ground.

In *Mst. Latifa Bibi v. Muhammad Bashir* (2006) Imam Bakhsh died issueless leaving behind his widow, a real sister and collaterals. The deceased's immovable properties were transferred to his sister considering him as a Shia. The mutation attested to this effect was challenged by the collaterals as they were deprived from having any share in the deceased's estate. They contended that the deceased was a Sunni Muslim and presented number of witnesses in the court to prove their contention. The family of the deceased was Sunni and the population of his birth place was also predominantly Sunni. The deceased served as a Patwari (revenue official) for twenty five years in a village which was inhabited by Shia Muslims. During the course of attestation of mutation before the revenue authorities, the widow of the deceased made a categorical statement that the deceased was a Shia by faith and he used to participate in religious ceremonies of Shias. This statement was relied upon by the court to reach the conclusion that the deceased was a Shia and the collaterals were not entitled to anything in his estate. The plea advanced by the collaterals in this case was perpetuated by the realization that if the deceased were declared to be Shia, they would not have any thing in his estate and there was one way to get something in his estate and that was to prove him as a Sunni and at least get the residue of the estate as residuaries.

In *Muhammad Nawaz Shah v. Amir Hussain Shah* (1989) a dispute was raised as to the sect of Baqir Hussain Shah who was murdered in 1940 leaving behind number of relatives including his mother and collaterals. After his death, his estate was devolved upon his mother as a life estate according to the customary law applicable at that time. Afterwards, the mother alienated the estate in favor of some close relatives depriving the collaterals who are appellants in this petition. The collaterals/appellants contended that the deceased was a Sunni; hence they were entitled to the estate left by the deceased after termination of life estates under the Pakistan Muslim Personal (Shariat Application) Act 1962. Their entire case was erected on the plea that the deceased was a Sunni as this was the only way to earn them the residue of the deceased's estate once the mother would take her prescribed share. But if the deceased were to be declared a Shia then they would not have anything out of the deceased's estate as the right of mother is preferred over collaterals in Shia law of inheritance. The collaterals/appellants were successful in the trial court but the first appellate court reversed the decision; hence this second appeal was filed by them. The court after perusing the record and giving patient hearing to the arguments of the parties came to the conclusion that the deceased was murdered when he was of tender age and his father was a Shia Muslim. According to Islamic law anyone can change his or her faith after attaining majority and when the deceased was a minor at the time of his death, so he must be presumed to follow his father's sect. Following this line of argument, the court decided that the deceased was a Shia; hence the collaterals could not have any thing in this case in preference to the deceased's mother.

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In *Mst. Aisha Bibi v. Muhammad Malik* (2003) a person named Sukur died in 1941 and left behind his widow, two daughters and collaterals. After his death, his estate was devolved upon his widow as a life estate which was terminated under the Pakistan Muslim Personal (Shariat Application) Act 1962. Thereafter, a mutation was sanctioned in favor of his widow to the extent of 1/8 and his daughters of 7/8 assuming the deceased as a Shia Muslim. Thereupon, a suit was initiated by the collaterals (respondents in this petition) asserting that the deceased was a Sunni and they were also entitled to the estate as residuaries after giving away the shares of the sharers, i.e. the widow and the daughters (appellants in this petition). The trial court did not accede to the collaterals' plea as to the deceased's faith, while the first appellate court decided in their favor; hence the widow and the daughters filed this petition as a second appeal. The collaterals presented the evidence to the fact that the deceased belonged to the village which is inhabited by Sunni Muslims and the deceased was one among them. They argued that the evidence of the widow and the daughters should not be relied upon as the same was motivated to have the entire estate of the deceased and to deprive them from having their legitimate share as residuaries. The court observed that any person can change his/her faith at any time during his/her life and the most cogent evidence to this fact could not have been other than that which has been adduced by his family members. Thus, the plea of the collaterals was not accepted by the court as to the sectarian affiliation of the deceased and the widow and the daughters of the deceased were declared to be entitled to the entire estate to the exclusion of the collaterals.

In *Shahzado Shah v. M. Sardaro* (2004) a dispute arose between childless widow and deceased's brother regarding the inheritance of immovable property of the deceased. After the death of propositus, a mutation of the land was sanctioned assuming that the deceased was a Sunni Muslim. This mutation was not challenged by the brother. As deceased's brother was in possession of the disputed land on the plea that his deceased brother was a Shia, the widow was forced to go to the court for the purpose of partition of the land. The widow was of the view that her deceased husband was a Sunni and hence she was entitled to share in his land. The mutation was not objected to during the process of attestation in a public gathering as to the faith of the deceased. Another convincing piece of evidence in favor of the widow was an entry in the pension register regarding the faith of the deceased on which basis the widow had been drawing a regular pension. Taking into account the oral and documentary evidence substantiating the widow's stance and lack of any potent evidence presented by the brother, the court held that the deceased was a Sunni Muslim and the widow was entitled to share in his land as per Sunni law of inheritance. As Shia law does not grant any share to a widow in deceased's immovable properties while Sunni law does; this difference in Shia and Sunni laws made the brother to claim that his deceased brother was a Shia though he was not. Thus, the motive behind this assertion was primarily to gain some financial benefit.

In *Pathana v. Allah Ditta* (2008), Ghulam Taqi died issueless leaving behind his widow Mst. Naseem Akhter and collaterals including Allah Ditta. Allah Ditta came before the court with multilayered contentions that the deceased was a Shia who made a will transferring his whole estate to him as he (respondent in the present case) had served him during his life. Both the trial court and the first appellate court accepted the case of Allah

Ditta and decreed as such. Hence, this civil revision filed in the High Court. The court after perusing the record and hearing to the arguments of the parties, came to the conclusion that it was not proved that the deceased was a Shia and unless one is not proved to be a Shia he will be treated as a Sunni. Moreover, the will attributed to the deceased has not been proved in the manner it ought to have been proved. The facts which are proved in the case are that the deceased left behind his widow and collaterals. Thus, the estate of the deceased would be divided among them; the widow will have 1/4 and the rest will be inherited by the collaterals including Allah Ditta as there is no child of the deceased. It is noteworthy that the contention of Allah Ditta regarding the deceased's faith, if proved, would have deprived the widow from having any thing from the immovable properties of the deceased. Moreover, his other contention pertaining to will in his favour if proved would have entitled him to the whole estate to the exclusion of all other collaterals. Thus, the entire gamut of arguments was engineered to enrich Allah Ditta financially.

In *Nooran Bibi v. Rajab Ali* (2007) Qalab Ali died and left behind a widow (petitioner) along with brothers and sisters (respondents). The parties disputed with respect to the immovable property/land of the deceased. After the death of the deceased, a mutation was sanctioned and the land was transferred treating him as a Sunni Muslim; whereupon the widow was granted 1/4 out of the deceased's estate and the rest was devolved upon the respondents. After a couple of years, one of the respondents challenged the mutation and asserted that the same was surreptitiously got attested as the deceased was not a Sunni, he was a Shia Muslim. The court of first instance did not accede to the plea of the respondents, while the first appellate court decided in their favor; hence the widow filed this petition in the High Court. It was argued on behalf of the widow that she was the star witness to ascertain whether her husband was a Shia or Sunni and no other evidence could match the credibility of her evidence in this regard. Taking into account the evidence of the widow and unconvincing nature of the respondents' evidence, the court decided that the deceased was a Sunni Muslim; hence his widow was entitled to share in the disputed land. It is pertinent to mention that the deceased was married to a Sunni wife (the widow) and his brothers and sisters were also married into Sunni families and they were well aware that their deceased brother was a Sunni even then they contended that he was a Shia. This mystery could not be resolved without linking it with the motivation to deprive the deceased's widow entirely from having any thing from his immovable properties.

In *Mst. Daulan v. Muhammad Hayat* (2002) Ghulam Hussain died leaving behind his widow and a nephew. After his death, his estate was mutated in favor of the nephew assuming him to be Shia by faith and the widow was not given any share in the immovable property. The widow agitated the matter before the revenue authorities contending that the deceased was a Sunni but her plea was not acceded to; so, she filed a civil suit to get her right established. It was adduced in evidence that the deceased was a follower of a Sunni spiritual leader and a resident of a village populated by Sunnis. The deceased was married twice during his life and both these marriages were solemnized as per Sunni rites. The witnesses appeared on behalf of the nephew said that the deceased was a Shia but they failed to establish when did he convert to Shia faith. The court concluded on the basis of the evidence in the case that the nephew was not successful in dispelling the initial presumption

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as to Sunni faith of the deceased with cogent evidence; hence the transfer of the entire estate in his favor was unjustified and the widow should have been given her prescribed share of 1/4. The case of the nephew was founded on the alleged conversion of his uncle from Sunni to Shia faith because this plea would have earned him the entire immovable estate to the exclusion of the widow if proved successful.

In *Yaquub Hussain v. Hameeda Narjis* (2001) a person named Matloob Hussain died leaving behind his widow, a daughter (respondent in this petition) and a brother (appellant in this petition). At the time of his death the daughter was ten years of age. The brother got mutated the estate of the deceased according to Sunni law of inheritance on the plea that the deceased was a Sunni Muslim. The widow was awarded 1/8, the daughter 4/8 and the brother 3/8 (the residue of the estate). After attaining majority, the daughter filed a suit imploding her mother (the deceased's widow) as well as her paternal uncle (the deceased's brother) to contend that the brother should not get any share in the estate of his deceased father as the latter was a Shia. The trial court decided against the daughter, while the first appellate court reversed the decision of the trial court and held that the deceased was a Shia. Thereupon, the present petition was instituted by the brother. It was contended on behalf of the brother that every Muslim is presumed to be Sunni unless contrary is proved by reliable evidence and the same onus had not been discharged by the daughter. The widow did not appear in the witness box but responded in her written statement that her deceased husband was a Shia. The daughter produced evidence demonstrating that the funeral expenses of her father was borne by a registered society of Shia Muslims as the deceased was its member on the basis of his profession of Shia faith. The marriage of the deceased was performed according to Shia rites. Moreover, the deceased's funeral prayer was led by a Shia scholar. Taking into account the evidence -oral and documentary- adduced by the daughter, the court concluded that the deceased was a Shia and kept on professing the same faith throughout his life. The brother did not have a right to share the deceased's estate as a residuary in presence of the daughter who would exclude him on the principle of radd as applied in Shia law of inheritance. It is interesting to observe that the brother was well aware of the pieces of evidence produced by the daughter as to Sunni faith of the propositus even then he got mutated the estate on the basis of his being Sunni and the same plea was taken by him in the court. What was the motive behind all this except to get some share in the deceased's estate?

In *Ahmad Khan v. Sikandar* (1999) Ahmed died issueless and left behind his widow and a brother. A mutation was sanctioned in favor of the widow to the extent of 1/4 and the residue (3/4) to the brother presuming that the deceased was a Sunni. The brother was not satisfied with the mutation and filed a suit contesting that the deceased was a Shia to deprive the widow from the deceased's landed property. The brother relied on the death certificate of the deceased wherein it was stated at one place that the deceased was a Shia. It is pertinent to mention that the same certificate stated at another place that the religion of the deceased was Islam. The court responded to the brother's plea based on an entry in the death certificate that it was not safe to rely on such an entry as the same was meant to prove the factum of death only. Moreover, a witness who happened to be a Shia stated in the court that the deceased was a Sunni. After perusal of the evidence and the arguments of the

parties, the court concluded that the burden of proving anyone belonging to other faith than Sunni lied on the one who asserted it and in the present case the brother could not discharge this burden as it had to be discharged. Thus, the deceased was declared to be a Sunni and the widow was rightfully in possession of her prescribed share as per Sunni law of inheritance. The facts of the case brings it to light that the brother was motivated to deprive the widow from having any share in the landed properties of the deceased. This motive could not have been executed unless it was proved that the deceased was a Shia. Although the brother could not get his plan implemented through the court, but what is important to note that he alleged the conversion of his deceased brother just to have bit more piece of land.

Conclusion

The paper is constructed on the assumption that there are negligible examples of conversions of Sunnis to Shiaism and vice versa in Pakistani society. This phenomenon of non-conversion is strengthened by the internal social cohesion along with notion of authenticity developed by these sects. This phenomenon is turned upside down when analyzed in the cases of inheritance decided by the superior judiciary of Pakistan as there are plenty of examples of alleged conversions from Sunnism to Shiaism and vice versa. The differences between Sunni and Shia laws of inheritance have made available a fertile space for those who are interested to get some more share than their legitimate entitlement. The enticing impetus of this fertile space is magnanimous in terms of financial implications and more often than not these alleged conversions are perpetuated by this motive. The Sunnis have contested that their propositus was a Shia, and similarly, the Shias have pleaded that the deceased was a Sunni taking into account which sect would have earned them much share in inheritance. Without negating the possibility that there would be cases in which contentions of alleged conversions may not be made due to any financial greed but at least this aspect is not transpired in the cases analyzed above. The cases have illustrated that at least one of the parties to these litigations has been inspired to enrich itself financially or deprive the other from having its legitimate share.

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