

## **Women's Inheritance Rights in the West Pakistan Muslim Personal Law, Shariat Act 1962: An Analysis of Practices**

### ***Abstract***

*This study aims to explore the socio-cultural and legal practices that create barriers for women in Pakistan in acquiring their rightful inheritance. Using qualitative research design, nine women and five lawyers were interviewed, and a thematic analysis of the collected data was done. The findings of this research reveal that patriarchal beliefs exist both within the institutional and domestic spheres. The study concludes that despite having inheritance and succession rights declared in the Muslim Family Law Ordinance 1961 and the West Pakistan Muslim Personal Law, Shariat Act 1962 and legal jurisdictions of both laws being practiced in the courts, women are not getting their inheritance rights as directed by Islam. This study therefore recommends creating awareness among people and strengthening the legal system to promote women's inheritance.*

**Keywords:** *Inheritance Rights, Muslim Personal Law, Cultural Practices*

### **INTRODUCTION**

Gender inequality in inheritance distribution is a critical issue in South Asia (Das, 2016). Women often struggle to acquire their inheritance rights because of the discriminatory practices embedded within cultures, traditions and beliefs that prevail within the Pakistani society (Das, 2016). In Pakistan, religion and personal laws provide substantial inheritance rights to women, however in practice many women face several constraints in their attempts to exercise these rights (Ahmed, Bibi & Mahmood, 2012) since inheritance in Pakistan is traditionally gained through a patrilineal system (Roy, 2015).

While social structures may discriminate against certain segments of the population, it is upon the state institutions to ensure the protection of the rights of every individual through implementation of laws (Naz, Sheikh, Khan & Saeed, 2015). Despite the fact that state institutions in Pakistan exist to assist women in acquiring inheritance rights, when it comes to litigation processes, women tend to face numerous constraints in fighting for this right (Butt & Asad, 2016). Pakistan is an Islamic republic; as such, the laws that govern inheritance

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#### **Javeria Khan**

Department of Public Administration, FJWU

#### **Dr. Asma Khalid**

Assistant Professor, Department of Sociology, Allama Iqbal Open University, Islamabad

Email: asma.khalid@aiou.edu.pk

#### **Dr. Adeela Rehman**

Assistant Professor, Department of Sociology, FJWU

Email: adeela.rehman@fjwu.edu.pk

rights of women were made in the light of the Islamic Commandments. Notable laws like the Muslim Family Law Ordinance 1961 and The West Pakistan Muslim Personal Law 1962 embody the rights of women to inherit, own and dispose off property including agricultural land. This paper aims to explore the inheritance laws in Pakistan that protect women's inheritance rights. What are the practices related to inheritance laws in legal settings in Pakistani patriarchal society? This study also presents an in-depth understanding of the underlying cultural practices that deprive women of their inheritance in the social setting. How can the current prevailing situation of women's inheritance be improved to enhance women's status in Pakistan?

This study is significant in the following ways:

- 1) It adds to the existing literature on women's inheritance rights while highlighting its importance in the legal and religious context.
- 2) It explores the challenges and obstacles for women in acquiring inheritance in legal and social contexts.
- 3) It provides recommendations based on women's experiences and narratives to improve the current legal practices in relation to inheritance.

## **LITERATURE REVIEW**

### **Conceptualizing Inheritance**

Inheritance is broadly defined as the passing of titles, debts, and wealth upon the death of a person to their successors (Ezeilo, 2020). In legal context, it is the derivation of property, wealth or assets that are received by bequest under the law of inheritance (Black, 2011). Rao (2005) investigates that inheritance holds utmost importance in most rural areas not just for economic reasons but also for symbolic reasons like hierarchy, identity, and status in the social context. Mubarak et al., (2020) investigate that not having the right to inherit property or assets leads to dependency vulnerable to poverty. Kola (2018) revealed that women's access to resources can act as a tool for poverty reduction.

### **Cultural Practices Related to Women's Inheritance in Pakistan**

Culture is one of the most influential forces that shape the attitudes of people. It divides people into different classes and forms the social fabric of a society. Customary norms are not a part of any legal contract for example, the social practice of "honor killing" of women in the provinces of Khyber Pakhtunkhwa (KPK) and Baluchistan was influenced by tribal cultures. In the remaining two provinces of Punjab and Sindh, the practice of dowry has been in vogue in rich families as in Indian Punjab since the late 19th and early 20th centuries. Fatima (2020) highlights the infamous practice of Haq-Bakhshish in rural Sindh. In this traditional custom, women are married to the Quran (the holy book of Muslims) and are then destined to a life of servitude and subordination.

### **Women's Inheritance Rights in Islam**

Islam allows women to inherit familial property. The entitled shares in inheritance are instructed in the Holy Quran and other evidence is also found through the Sunnah of the Holy Prophet (PBUH). It is stated in the Quran, "*From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or*

*large, determinate share.*" (Surah Al-Nissah, 4:7). This verse establishes the fact that division of shares shall be among both males and females as commanded by Islam. Furthermore, male and female offspring of the deceased are the first rightful inheritors while the rest have secondary status. Another verse from Surah Al-Nissah states the shares as, "*Allah (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females. If only daughters, two or more, their share is two-thirds of the inheritance. If only one, her share is a half. For parents, a sixth share of the inheritance to each if the deceased left children. If no children and the parents are the (only) heirs, the mother has a third. These are settled portions ordained by Allah, and Allah is All Knowing, All Wise.*" (Surah Al-Nissah, 4:11). From the above verse, it is clear that a daughter is entitled to  $\frac{1}{2}$  of her parent's inheritance and  $\frac{2}{3}$  in the case of more than one sister. As a mother she receives  $\frac{1}{6}$ th and a wife she gets  $\frac{1}{4}$ th if she has children and  $\frac{1}{8}$ th if she has no children. In the Quran, Allah has given a severe warning in Surah Al Nissah (4:14). The Holy Prophet warned against the grabbing of inheritance through deceit. It is stated, 'whosoever usurps anything of other's illegally without his permission, on the Day of Judgment, would be thrust into the seventh layer of the earth' (Mostafa, 2019). Hence under the Islamic Law a rightful heir cannot be disinherited.

### **The West Pakistan Muslim Personal Law (Shariat) Application Act 1962**

The West Pakistan Muslim Personal Law, Shariat Act 1962 holds significance when it comes to inheritance of immovable property by women. It grants full access and control regarding ownership, acquisition, and disposal of property. The law explains divisions according to the Muslim Family Law Ordinance 1961. Regardless of any custom or usage, this law applies to all cases related to succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dowry adoption, guardianship, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, in cases where the parties are Muslims (Haque, Solihin, Ahmed & Jani, 2020).

### **The Muslim Family Law Ordinance 1961**

Over the years, the laws of inheritance have gone through amendments. Presently, The Muslim Family Law Ordinance 1961 prescribes how inheritance shares are to be distributed among the legal heirs. The aim behind this law was to eliminate wrong cultural practices and ensure rightful provision of inheritance rights to women in accordance with Islamic injunction (Rubab, 2019). One of the clauses in this ordinance talks about the succession rights of grandchildren. It states that if an adult son or daughter dies before the opening of the succession, their children will have the right to inherit a share, equal to the one their parents would have received if they were alive.

### **Theoretical Framework**

The theory that reflects the issue of women's inheritance is the Social Relations Approach (SRA) given by Naila Kabeer (1994). This approach proposes institutional analysis of gender disparity and sees gender relations as a part of social relations. The SRA identifies family, market, community, and state to be the four key institutions that are defined by their rules, resources, people, activities, and power. In order to deal with gender inequalities, it stresses upon the transformation of social structures, processes and relations that put women in

disadvantaged positions, rather than their integration into development. Kabeer (1994) states that institutions are entities through which rules, regulations and laws are executed. These laws may be unwritten or written. To understand the role of institutions in building social relations, of which gender relations are an integral part, it is best to analyze the implementation and execution of laws in shaping social relations.

## RESEARCH METHODOLOGY

In this research a qualitative approach having semi-structured interviews, field notes, and field memos has been used. The data is mainly derived from in-depth interactions with the informants through snowball sampling. The study was done in the city of Rawalpindi over a duration of five months in the year 2020 – the pandemic year. To carry out this research, semi-structured interviews were conducted with two different groups. One was with lawyers who deal with cases of inheritance. The other group was women who were seeking help and justice through court about their inheritance from their respective families. For this study, nine women were interviewed as key informants. All the informants identified as Muslims and belonged to the Rawalpindi and the Mianwali district - a rural area in Punjab. For the data analysis purpose, interviews, detailed notes, and audio tapes were transcribed. Line by line coding of the interviews was done to generate themes (Charmaz, 2008). The following section briefly highlights respondents' profiles.

*Table 1: Demographic details of women litigants for inheritance*

<i>S.No</i>	<i>Age</i>	<i>Education Level</i>	<i>Area (City/ Province)</i>	<i>Employment Status</i>	<i>Marital Status</i>	<i>Type of Inheritance (Movable/ Immovable)</i>	<i>Status if Inheritance (Successfully gained/Pending in court)</i>
1.	50	Primary Level	Rawalpindi /Punjab	Unemployed	Married	Immovable	Pending (Case still in Court)
2.	62	Graduation (LLB)	Rawalpindi /Punjab	Employed	Divorced	Both	Successfully Gained from (Decision given by Court)
3.	55	Un-educated	Mianwali/ Punjab	Unemployed	Widowed	Immovable	Pending (Case still in Court)
4.	46	College (BSc)	Rawalpindi / Punjab	Employed	Married	Both	Not Gained (Case withdrawn)
5.	43	Un-educated	Mianwali/ Punjab	Unemployed	Divorced	Immovable	Successfully Gained (Decision given by Court)
6.	56	Graduation (MBA)	Islamabad/ Punjab	Employed	Married	Both	Successfully Gained (Decision given by Court)
7.	66	Un-educated	Mianwali/ Punjab	Unemployed	Married	Immovable	Pending (Case still in Court)
8.	60	Primary Level	Mianwali/ Punjab	Unemployed	Widowed	Immovable	Not gained (Case withdrawn)
9.	57	Graduation (M.A)	Islamabad/ Capital Territory	Unemployed	Married	Both	Pending (Case still in Court)

The cases termed as successful, are those in which the litigants had received favored decisions declared by the courts. Similarly unsuccessful cases were withdrawn before the final decision by the court. In addition to this, pending cases are those that are still under process and have not yet reached a final decision by the courts.

**Lawyers**

Lawyers formed the second group of this study. A total of five lawyers were interviewed for this study. The purpose to get age and years of experience data is to reflect lawyers’ skill and expertise in dealing with the cases. The details are presented in table 2.

**Table 2: Demographic profile of lawyers**

<i>S.No</i>	<i>Age</i>	<i>Institution Attended (Name of Law School)</i>	<i>Area (City/Province)</i>	<i>Gender</i>	<i>Years of Experience</i>	<i>No. of Inheritance (Women) Cases dealt</i>	<i>Status of Cases (Successful/ Ongoing/ Unsuccessful)</i>
1.	37	Punjab Law College, Rawalpindi	Rawalpindi/ Punjab	Male	5	3	1 unsuccessful , Rest Ongoing
2.	71	Pakistan College of Law, Lahore	Rawalpindi/ Punjab	Male	23	9	2 Successful , 1 withdrawn, Rest Ongoing.
3.	65	Punjab Law College, Rawalpindi	Rawalpindi/ Punjab	Female	15	6	3 Successful, Rest ongoing
4.	45	International Islamic University, Islamabad	Rawalpindi/ Punjab	Male	7	2	Both Unsuccessful (withdrawn)
5.	29	International Islamic University, Islamic	Rawalpindi/ Punjab	Female	3	1	Ongoing

**RESULTS & DISCUSSION**

This section explains the themes regarding women inheritance rights. It gives an insight into the practices related to women’s inheritance in social and legal settings, and highlights the challenges faced by women.

**Women’s Perception about their Inheritance**

Throughout the study, statements given by the informants reflected a lack of trust in courts and legal institutes. A few of the respondents even stated that they were not entirely in favor of legal battles for ownership of their inheritance. In many cases women sacrifice their shares in inheritance out of the love and attachment that they have for their parents and brothers as per the expectations of the culture (Ahmad, Batool & Dziegielewski, 2016). To justify this, a popular sentence “Your father’s son is better than someone else’s” was repeatedly said to them. Our research findings go with the Social Relations Approach (SRA) in which Kabeer (1994) states that families are among the key institutions that produce and maintain gender inequalities.

The informants think that courts, legal institutions, and the society itself did not provide favorable surroundings for women to visit courts and can discredit them in the eyes of society. They stated: *“Courts and police stations are not the type of places for any respectable woman to visit, so why should one put in their honor and name in jeopardy and go to such places? Parents marry their daughters off in an honorable way and give them dowries which is enough for them.”*

Similarly, another woman stated the following view: *“I have always been taught that dowry is the share of a woman. My parents gave me furniture, gold, crockery, clothes, and everything I needed. I don’t want to create any difficulties for them by dragging them to court and ruining the family’s name among my relatives.”*

The stated opinions of the women are the reflections of their culture in which they live, educational backgrounds and life experiences. The definition of a respectable woman in Pakistani culture is believed to be a woman who stays loyal to her own family as well as that of her spouse even in times of violence and adversity (Butt & Asad, 2016).

To curb such customary practices, the Punjab Limitation Custom Act 1920, The Punjab Custom (Power to Contest Act, 1920) and many others were abolished after the enactment of the West Pakistan Muslim Personal Law, Shariat Act 1962. The clauses within the Act exclusively state, “any decree, judgment or order of any Court affirming the right of any reversionary under custom or usage, to call in question such an alienation or directing delivery or possession of agricultural land on such basis shall be voided, in executable and of no legal effect to the extent it is contrary to the Muslim Personal Law (Shariat) Act (Mumtaz & Nowshirwani, 2013).” It is important for women to stand up for themselves to claim and demand what has been legally granted to them, but this further increases their vulnerability, and forgoing the challenge seems to be an easier option.

### **Access and Control over Inheritance**

During the interviews, we got an in-depth understanding that some of the women held titles to their inheritance property but were not able to make decisions over the use of it. The women participating in the interviews were asked about their freedom to make decisions about their inheritance and the responses varied. One of the informants replied as follows: *“Although in books and records, I might be the owner, but the benefits (like crops) were being used by my brothers. Because that agricultural land was not demarcated.”*

In a few cases women who own land, or a house or any other tangible asset, do not have the documents in their possession. During the interview, lawyers were asked about the necessary documentation required and they said: *“In order to provide evidence for one’s relationship with the deceased a “Wirasat Nama” or succession certificate is required which consists of all movable and immovable properties of the deceased as well as their legal heirs.”* Several other documents which prove the relation of the claimants with the deceased like NADRA record, pension books, insurance policies documents or revenue records etc might be needed”

Some women stated that the men who were in-charge of their homes give advice in property matters. One respondent in particular held the opinion that her son should deal with matters outside of her house. She stated: *"I think the man should be in charge of the house should deal with such things."* These narratives were from women belonging to rural areas, who had less education, however, a few instances also existed in Rawalpindi. This implies that ownership does not guarantee empowerment, rather it is necessary to have full access and control over the utility of the assets. In relation to this, SRA states that ending women's subordination goes beyond the redistribution of economic resources, in fact it involves redistributions of power. It can be stated that distribution of resources to women cannot ensure their will or decisions over it unless they have the power or the actual authority to use them. The West Pakistan Muslim Personal Law, Shariat Act 1962, grants this legitimate right to women as it has abolished all previous customary laws that deprive women from holding immovable property and enables them to own, sell and dispose off immovable property including agricultural land (see Khalid, Nyborg, & Khattak, 2015).

A study found that ownership and access of assets can increase women's bargaining power and decision making in their respective households (Schmidt, 2012). When the informants (women) of this study were asked regarding their opinions one of them stated the following: *"I believe it is very important for women to hold assets and property, because if, for instance, losses or ill-fortune befalls them, they need to have assets to support themselves rather than being at the mercy of other people."*

For two of the informants who were widowed, their inheritance property had served as a source of their livelihood. One stated: *"After the death of my husband, my in-laws refused to give me and my daughter anything from my husband's inheritance even though I tried to peacefully convince them for it. However, I got my share after a long battle in court. I sold some of the gained property and used it to renovate my house. While the rest of the money is used to pay for my daughter's education."*

In connection with this, researchers have also documented how women in the agricultural areas earn their livelihood through their land (Ahmad, Batool & Dziegielewski, 2016). It was found that despite participating in agricultural activities and generating production for them, a lot of women did not have titles to their land. Furthermore, it ensures their right to have full control and access to their owned properties, this applies to all sorts of immovable property including agricultural land. The SRA approach in this regard, states that to end women's subordination redistribution of power is necessary rather than redistribution of economic resources. Kabeer (1994) states that social relations determine rights, roles, responsibilities and claims over others. It can therefore be inferred that having titles or ownership of resources cannot guarantee control over them, unless one has the authority to decide about use of those resources and the production derived from them.

### **Challenges of Legal Procedures**

Seeking legal help is perceived as a difficult step by most women since it needs collection of records and constant updates, by women who lack mobility and access to courts. However, the results of this study reveal that women fighting legal battles were quite satisfied with the

assistance they received from the lawyers who handled their cases. Mainly a common cause behind the hesitation of some women that abstained from approaching the courts and legal assistance is the cost that comes with it. According to the informants, filing a case, hiring a lawyer, and going through lengthy court procedures was a shared concern. Also, in the case of rural areas, the informants held the perception that the spaces in the courts were not 'women-friendly', and this was the primary reason why many women do not seek legal help. According to an informant: *"I cannot go to court even if I wanted to, because for that I need finances and support. After the death of my husband, I have been living with my brothers and I depend upon them for my needs"*.

This emphasizes the need for provision of assistance to report complaints regarding inheritance denial, in order to claim this right. In addition to this, cases are prosecuted in the courts strictly on the evidence produced before them. For this very reason, records and documents have to be collected in order to complete a file for a case and are needed to provide evidence regarding the case under proceedings. As stated by the informants, this becomes difficult due to the slow processes and negligent behaviors of the accountants (patwaries) working in the land record offices. Along with the court proceedings that continue for months, this also serves as a major hurdle. One of the informants said: *"I think it is very expensive, and the procedures are very tiring and lengthy. If you take my example, I had to gather the money from my father to file my case. In addition to this, the travelling and appearances before court were also quite exhausting."*

During the legal processes, difficulty in the collection of records and documents was also experienced by the informants. It is estimated that a poorly governed and lengthy justice system is a major hurdle after inheritance denial for most women which restricts them in accessing their inheritance and getting their rights. A key informant shared: *"I believe that the court and the lawyers who worked with me effectively guided and helped me throughout my case. However, I found the behavior of the record keeper very deceiving and non-cooperative. My case was prolonged because of patwaries as they only prioritized those who can pay them well even though it is their duty to attend to everyone who approaches them."* This means that successful execution of cases requires completion of evidence as per rule. It is important to mention here that even though the Pakistani laws grant women the right of inheritance, in practice, there are several variations. From the discussions, with women and lawyers, participating in this research - it is found that the mechanism in the legal system needs improvements.

### **Role of State Institutions**

Based on the results of the study, it was found that the working of the state institutions was a common concern among the women informants for this study. It was repeatedly stated by the women that the existing laws cannot be effective if the state institutions- responsible for the implementation - do not bring efficiency into their working. Based on their experience, a woman shared her opinion: *"I don't think it is the laws that are at fault. The laws clearly state who gets how much share of the inheritance, however it is the implementation of law that needs to be ensured."*



While interviewing lawyers for this study it was found that deprivation of inheritance was a criminal offense under Section 498-A of the Prevention of Anti Women Practices Criminal Amendment (2011). Therefore, in such cases, First Information Reports could be filed against the perpetrators. Usually, women are also concerned about their safety before taking such a step, therefore it is important that law enforcement agencies provide protection to them. When the lawyers were asked about the protection methods, they state the following: *“Under law, all the citizens enjoy such rights. If the circumstances show any such requirement, then protection may be provided. If a woman claims that she is not safe around her family, then protection in crisis centers is offered to them. If she claims abuse, a separate criminal act is filed against the accused.”*

To conclude, state institutions are responsible for the implementation of the existing laws. They are bound to provide protection to people and ensure rights for all. The informants raised concerns regarding working mechanisms within state institutions and emphasized upon the efficiency of the institutions. The SRA asserts that the state is an important institution of maintaining and producing gender inequality, further it states that institutions are dependent upon one another change in one sphere will impact the other.

Some of our informants also had experiences with government institutions working specifically for the welfare of women. It is pertinent to note here that notable organizations in Punjab and at the federal level, work for the welfare of women in Pakistan, and should offer more support for women with legal battles and other processes, particularly for those who have trouble with the finances. However, one of our informants said: *“I contacted the organization when I read on their website that they provide legal aid to assist women in getting their inheritance share. But when I contacted them, they said that such a facility was still being arranged as they had not been provided with the funds required for this.”*

Other than the courts and the police, these institutions should build their capacity to ensure provision of rights and implementation of state policies for women. If the state institutions provide protection to women and maintain check and balance with the implementation of laws and state policies, this will win them the trust of the public, and women will get protection in Pakistan.

## **CONCLUSION**

The study concludes that huge gender gaps exist in property and asset distribution in Pakistan. In societies where women are seen as the weaker sex and not capable enough to own property and assets, men usually have the upper hand. This practice is driven by the prejudice against women, unawareness of rights and laws or the intention of keeping the wealth within the family and not allowing it to go outside the family. Strengthening state institutions that are responsible for the implementation of law is crucially important, particularly in the rural areas where state institutions are unapproachable for local people. The clergy can also help in spreading awareness regarding inheritance, since this particular issue holds importance in the religious context. The results of this study confirmed that even in contemporary times, patriarchal beliefs and concepts persist within the communities.

## RECOMMENDATIONS

After analysis of data, it is recommended that:

1. Law enforcement agencies should ensure the implementation of existing laws.
2. Clerics in local communities should play a significant role in spreading awareness about Islamic injunctions regarding women's inheritance (Mostafa, 2019).
3. Recruitment of women staff in record offices to facilitate women litigants (Rubab, 2019).
4. Computerized System should be introduced in record offices to curb the negative role of patwaris and incorporate the computerized system of record keeping (Rubab, 2019).

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