DISCRIMINATION IN REALIZING WOMEN’S INHERITANCE AND PROPERTY RIGHTS IN PAKISTAN;

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Abstract

Pakistani women has been granted with number of rights. Rights are not denied to women but they generally do not get what they are entitled to. Right of Inheritance is one of them. It is the main vehicle in Pakistan that gives women the right to property and falls within the realm of personal laws. Her right to inheritance is one of the available sources of wealth of women to get hold over economic resources.

“Women have been guaranteed complete control over what they earn and possess: And their Lord hath heard them (and He say eth): Lo! I suffer not the work of any worker, male or female, to be lost. Ye proceed one from another.”

My Paper will be a work on the subject of female inheritance in Pakistan, a sensitive issue of vital importance always. Being a woman, she is not denied rights but as many other injustices go unnoticed in our society, she is usually refused the right to claim her own property as a common practice in society. Subject to strong social customs, girl child and woman face continuous social, economic and legal discrimination in Pakistan like many other societies in the world

The present and ongoing violation of the inheritance rights of women has attracted the attention of international community which responded to the issue in the form of international convention, treaties and actions. Incorporation of the international law into domestic legislation to bring improvement in women’s status is still a problem where the custom, complications in legal system and procedural problems are the major

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2 The Qur'an 3:285
obstacles in realization of her this right. Few reforms have been introduced to protect the property rights of women, however, much is required to be done in the form of social, political and legislative reforms. Social customs, customary law, religious law and common law are the four layers of jurisprudence which must be taken into consideration during the legal education. What is needed, without delay, is to adopt appropriate legislation and other measures.

**Introduction**

Pakistan is an Islamic republic with 98% Muslim population. Islam gives rights of inheritance to all inheritors either male or female. The Constitution of Pakistan (1973) also provides protection to this right of females. However, the International Property Rights Index (IPRI) 2008 ranked Pakistan 93rd out of 115 in property rights protection and 86th in gender equality. According to the report of National Commission on Status of Women published in 2006, only 3% of the women in Pakistan get inherited properties / lands. The ratio of deprivation of her due right of inheritance and property is as following:

> “Overall ratio is 38.1%. However, it is maximum in Punjab (85%) followed by NWFP/FATA (75%), Gilgit (FANA) (50%), Baluchistan (12%) and Sindh (07%).”

Despite the defined share by Quran, women, as a marginalized class in Pakistani society, seldom get their share of property. The de facto and de jure lacunae, customary practices, lack of awareness, customary and defective laws and lacunae in the implementation are the main causes that result in deprivation of women of their share in inheritance. Custom is the major impediment for women in getting inheritance. Women in our society are groomed as sub-human creature, mostly submissive to male relations.

Another hurdle in this respect is the lacunae in judicial and monitoring system. The inheritance right of women, as practiced in Pakistani courts, is much controversial from several aspects. According to the report of

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3 Constitution of Pakistan 1973 Art 24
National Commission on the Status of Women (NCSW), a recommendatory body constituted under Ordinance No. XXIV of 2000 to review all policies, laws, rules and regulations affecting the status and rights of women in Pakistan, the ratio of female respondents facing challenges in getting their right to inheritance is more than 45.23%.

“Most common challenges in this context include customary practices (50.66%), followed by complications in legal system (38.16%) and then procedural problems (28.8%).”

Islamic View Point of Women Rights of Inheritance and its interpretation

The pre-Islamic practice of female infanticide is a horrible example, the existence of which is testified by Quran:

“When news is brought to one of them of the (birth of a female (child), his face darkens, and he is filled with inward grief! With shame does he hide himself from his people because of the bad news he has had! Shall he retain it, or bury it in the dust? Ah! What an evil (choice) they decide on.”

Considered as an inferior creature, woman was dominated by males, her father, brother or close male relatives when she was a virgin and her husband when she got married. Before Islam, unrestricted polygamy was a common practice. Quran restricted the number of wives to four.

The major forms of marriage existed in pre-Islamic Arab society denied her right of inheritance. The right to inherit was passed simply to mature male relative. With no previous rights of succession and prevalence of primogeniture laws and patrilineal inheritance, the Qur'an gives rights of inheritance to wives, daughters, sisters, mothers and grandmothers of the deceased.

The Islamic theory of Inheritance has been summarized in the following verses of Al-Nisaa, the fourth chapter.

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5 ibid 82
6 The Qur'an (n 4) 16:58-59
“Allah enjoins you about [the share of inheritance of] your children: A male’s share shall equal that of two females.”

Next verse of the same Surah says that:

“You shall get half of what your wives leave, if they die childless. But if they do have children, your share shall then be a quarter of what they leave after carrying out any will made by the deceased or payment of any debt owed by her. And they (your wives) shall have a quarter of what you leave, if you die childless. But in case you have children, they shall then get one-eighth of what you leave, after carrying out any will made by you or payment of any debt owed by you (the deceased). And if

7 ibid 4:11
a man or a woman is made an heir on account of his [or her] kalalah relationship [with the deceased] and he [or she] has one brother or sister, the brother and sister shall each receive a sixth and if they be more than two, they shall then share in one-third, after carrying out any will that had been made by the deceased or payment of any debt owed by him -- without harming anyone. This is a command from Allah and Allah is all-knowing, most forbearing."

Another verse of the same Surah mentions;

"They ask you. Say: Allah enjoins you about your kalalah heirs that if a man dies childless and he has only a sister, she shall inherit half of what he leaves; and if she dies childless, then her brother shall be her heir; and if there are two sisters, they shall inherit two-thirds of what he [or she] leaves. If there are many brothers and sisters, the share of each male should be that of two females. Allah makes [His commands] clear to you, so that you do not err. Allah has knowledge of all things."

The assessment of the low status of women in pre-Islam times when compared with their present position - exhibits the extent of the reforms which the Holy Quran introduced. The superior position of women in Islam can be affirmed by comparing it with other contemporary legal systems. Majority of the legal scholars and experts believe that Islamic law of inheritance "protects women's rights better than the Hindu law based on

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8 ibid 4:12
9 ibid 4:176
male coparcenary."  

Bhartia Janata Party (BJP), a conservative and fundamentalist Hindu political party, have even acknowledged that “the Hindu law of succession (which is based on the prior and archaic British law) does not grant rights to women and hence while enforcing a uniform code, the concept of Hindu joint family property may have to be abolished.”

Similarly, under British Legal System, marriage constituted a kind of legal death whereas wife could not possess separate property after marriage. Husband could not only use her property but even could alienate it without her consent. A married woman who was legally separated from her husband became entitled to the right to hold separate property in 1870. Till the year 1935, a married woman was not given the right to enter into a contract either with her husband or with a third party.

The Islamic viewpoint of inheritance right of women is obvious from the verse 11 of chapter 4 which says that as regards the inheritance of Muslim children, the male share/portion is equal to that of two females.

This verse arise a false view existing in West, that Islam gives a female half a share in the inheritance to that of a male. There is an inconsistency with this argument. Islam confirms the equal (parents of deceased, siblings in case of absence of parents/children and maternal sisters/brothers) rather more (1/8th of wife is sometimes more than what her sons gets) share of the women in comparison to male relatives. The confusion is beautifully answered by Quran which says that with no discrimination, male and females are created from the same soul.

“All human beings, male and female, were created from the same nafs and [gave you] a place of dwelling and of storage. We have detailed the signs for a people who understand.”

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11 ibid
12 ibid
13 The Quran (n 4) 6:98
The same is reiterated at several places in the Quran i.e 4:11, 7:189 in the Holy Quran. However men are assigned with the responsibility to maintain their female relatives.

“Men are the protectors and maintainers of women.”

This Verse shows that men is assigned with the duty to maintain their female relatives and are provided with the means for protection of females in form of his double share although female in Islam bears no such responsibility to maintain and support her family. Islam lays this responsibility solely on males. At the same time, The Qur’an and the Prophet repeatedly mention slaves and women, insisting Muslims to treat them well. (Al Qur’an 49:13, 24:33, 8:70.)

So Qur’an gives exhaustive explanations of what should happen in terms of inheritance under Islamic law. Women can inherit both moveable and immovable property. Though Islamic law is very clear about women’s property rights, what we lack is a culturally acceptable mechanism to implement the law to assure the Quranic share of women in Property. Parveen Shaukat Ali mentions in her book that

“In their opinion this is against the basic rules of justice to give women half of the males share. It may, however, be pointed out that a woman is in no way a loser in this bargain.

She gets her part of property from three different sources, i.e. father, husband and son, and this makes her share almost equal to [that of the] man.”

The objection to this argument is made by Shaheen Sardar Ali who states that “men too inherit from other sources i.e mother, wife and daughter.” However, she agrees that this minimum share does not

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13 ibid 4:34
disqualify her of an enhanced share or a share equal to or more than that of a male. She further supports her view by adding that

- one can gift his/her entire wealth to a woman to the exclusion of all expectant male heirs.
- In the form of dower in a marriage contract, there is no maximum limit to what may be given to her as dower.\(^\text{17}\)

To protect her right of property in the form of dower, Quran utters that

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\text{فَقَنْطَرَ أَنْلاَ تَأْخُذُوا وَأَمْهَةُ نَسْخِيَّةٌ أَنْأَخُذُونَهُ بِهِنَا وَإِنْمَا}
\]

But if you want to replace one wife with another and you have given one of them a great amount [in gifts], do not take [back] from it anything. Would you take it in injustice and manifest sin?\(^\text{18}\)

So it is obvious that a wife should not be forced to remit the dower or any other gifts made to her by husband.

Another approach about the Islamic share of women in inheritance has been touched by Dr. Muhammad Fathi Osman. He allows ‘ijtihad’ in respect of female share of inheritance. His view, however, has been criticized on the ground that ‘ijtihad’ is not allowed in matters which are explicitly mentioned and defined in the Holy Quran. However Dr. Muhammad Fathi Osman defend his point by adding that “the matter of inheritance falls under the category of civil transaction, which can be altered in view of the changing circumstances.”\(^\text{19}\) To support his argument with ahadit, he talks about the case of a grandmother whose share has not been defined by Holy Quran. With no prescribed share in Quran, grandmother has “nevertheless been allowed 1/6\(^\text{th}\) share in inheritance.\(^\text{20}\) Another Ahadit, attributed to Al-Aswad b. Yazid (RD), has been quoted which says that the Holy Prophet (BPOH) directed to give ½ share to sisters instead of 1/6th, as provided in the Holy Quran.\(^\text{21}\)

The above view was supported in the case of Mst. Halima by Justice (R) Shaiq Usamani who held

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\(^{17}\) ibid 131

\(^{18}\) The Quran (n 4) 4:20

\(^{19}\) National Commission on Status of Women (n 6) 22

\(^{20}\) ibid

\(^{21}\) Sunan Abu Dawud ‘Kitab-ul-Farid’ Hadith # 2887
“...though the law of inheritance in Islam is exceedingly strict and the shares of male and female children are well-defined. The inequality between the shares of male and female children in Islamic law of inheritance, as it is being practiced in an essentially male dominated society of ours, is by no means a declaration of a female’s inferiority in status and thereby lending sanction to the practice as depriving of females of their right of inheritance. Indeed the provisions regarding a female child being entitled to half the share of the male child is being subjected to wrong interpretations by attributing immutability to it and is being perpetuated only because of male chauvinistic attitudes in society. Islam by giving half a share to females only lays down the lowest limit and not the highest. It is, however, possible for an Islamic state, through exercise of ijtihad, to increase the female’s share.”

In case of non-Muslim female relatives, the question arise whether a non-Muslim female can inherit from her male relatives or a Muslim can inherit from an infidel relative or not. Different scholars are of different opinion. It is narrated by Usama bin Zaid (RD) that Prophet Muhammad (BPOH) said “a Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.” So the common view prevailing today, based on Ahadit and not on Quranic injunction, is that neither a Muslim can inherit from a non-Muslim nor a non-Muslim can inherit from a Muslim.”

Nevertheless, it is to quote Justice Khalil-ur-Rehman (religious scholar, retired Judge of Federal Shari’at Court) who excludes a non-Muslim wife of this ambit. He says that only a non-Muslim wife can inherit from her Muslim husband but no other non-Muslim relations can inherit. In support of his view, he adds that “Hazrat Naila (RD), who was the wife of Hazrat Usman (RD) and was a Christian, exercised her right of Qisas, which is the exclusive right of the legal heirs.”

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22 Mst. Halima vs. Muhammad Alam & others 1999 Monthly Law Digest 2934  
23 Sahih Al Bukhari ‘Darul-Ishaat’ Hadith # 6764  
24 National Commission on the Status of Women (n 6) 34
Common Practices Affecting Property and Inheritance Rights of Women

Detailed rules for inheritance are laid down by Holy Quran, however, customary laws of a country have a strong influence on the rights of women originally granted to them by Quran.

Supreme Court of Pakistan had also declared that, the “Inheritance under Muslim Personal Law takes place automatically and each legal heir is entitled to get his respective share irrespective of any claim or demand therefore.”

Many Pakistani women receive no share of their inheritance at all. Most of them are forced by members of their own families to turn their inheritance over to their brothers. A serious problem in this regard does not lie with Islam (as generally perceived) but the existing cultures and norms prevailing in our society. Few of them are briefed as under

- Lack of education and empowerment of women along with no or very low decision-making power is the common practice prevailing in our society. Women are not considered independent beings to exercise separate property rights. The general perception about women in Pakistan is that woman should not own or manage her family property due to her lack of skills and social mobility.
- In Pakistan, like other South Asian countries, dowry is used as compensation to a woman for family property that she does not inherit. In rare cases where she gets immovable property as dowry, she does not enjoy the exclusive control of her property which actually constitutes the transfer of property from father/brother to her husband.
- Women’s ‘Marriage to the Quran’ (haq bakhshi) is a commonly known practice devised to deny their right to inheritance although it is disapproved by Islam. Constitution of Pakistan also requires that no laws can be in contradiction to the injunctions of Islam. Under this customary rule, the life of the women is dedicated to the recital and service of the Holy}

25 Ghluam Ali v Mst. Ghulam Sarwar Naqvi PLD 1990 SC 1
Quran with the pledge of never marrying a human being. According to the report of Human Rights Commission of Pakistan, “there are currently over 5,000 women in Sindh married to the Holy Qur'an.”

A report titled "Married to the Quran" in the Friday Times of Pakistan reveals that

“a large number of feudals in Sindh had married their daughters to the Quran. The ceremony took place after the girl of the family was asked to take a bath, after which a Quran was put before her as the men folk apologized to her for the ritual which would condemn the girl never to get married but to read the Quran every day. In Sindh, MPA Shabbir Shah’s sister, ex-minister Murad Shah’s sister and two daughters, three daughters of Mir Awwal Shah of Matiari, daughters and sisters of Sardar Dadan and Nur Khan of the Lund tribe, nieces of Sardar Ghulam of Mahar tribe, and the daughters of the Pir of Bharchundi Sharif, were all married to the Quran to prevent their share of the land going to them and thus avoid redistribution of land.”

The women married to Quran are assumed of ‘holy nature’ above worldly needs and desires.

- Another form of marriage, usually practiced in Balochistan and some areas of KPK, is walver which involves the payment of price of the bride which is a deliberate attempt to give woman or her children no share in inheritance.
- Jahaiz (dowery) is also substituted to her share in property or sometimes a life-time share in her inherited property only.

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27 Uzma, Mazhar, ‘ Married to the Quran’ The Friday Times Pakistan (Islamabad 2003)
Traditionally common tribal and family ownership of land is highly valued, confining inheritance to the male members of the family only. “Tribes have both inter and intra familial networks of matrimonial relationships, they do not allow the transfer of their property to one another by denying the women’s rights to inheritance.”

Women usually withdraw from their share in property to win the love and affection of her family particularly brothers (the only way to maintain cordial relations with their brothers). Her voluntary withdrawal is commonly valued to strengthen the honor of the family. It is taken as a dishonor to paternal family if she claims her share of inheritance. Otherwise she would be ostracized by family. Therefore, women seldom appear in formal courts against their family if their inheritance rights are violated.

- It is also condemned if husband demands share of his wife’s property.
- In some cases, a female is given her share in inheritance, however, the possession and control on property is denied. She may get life time share in produce but no other property rights.

“Women, in our society, generally accept and agree to the practice of not getting their share in inheritance. It has been reported that "overall ratio is 50.6%, but highest in Baluchistan (100%) followed by Punjab (97%), NWFP/FATA (55%), Gilgit (FANA) (50%), while negligible in Sindh."%.”

Many of the offensive laws and customs in Pakistan are, unfortunately, "justified in the name of Islam or have been introduced as Islamic laws when clearly they are retrograde customs and traditions, or ill-informed interpretations that bear no relation to the divine design. This distinction has to be clarified once and for all. Ambiguity allows obscurantist elements to re-open debate on settled fundamental principles, and gives rise to insecurity among women within and to an extremely adverse image abroad”

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28 National Commission on the Status of Women (n  6) 61
29 National Commission on the Status of Women (n  6) xii
Legal Provision and Their Translation into Practice

Pakistanis are predominantly Hanafi Muslims with other groups like Ithna ‘Ashari, Shafi‘i, Isma‘ili and non-Muslim minorities, including Qadiani. Years after it gained independence from Britain, Pakistan’s present laws and policies are still deeply rooted in its historical background. After independence in 1947, Pakistan shared its legal history with India. Pakistan succeeded to adopt, from the parent state, different acts in the area of personal law i-e “Muslim Personal Law (Shari‘at) Application Act 1937” and “Muslim Family Laws Ordinance 1961” after Ayub Khan assumed the office of President of Pakistan. With recommendations of the Commission, established by Government of Pakistan in 1955 to review the marriage and family laws of the country in order to ensure “women’s proper place in society in accordance with the fundamentals of Islam”, the Muslim Family Laws Ordinance was promulgated in 1961.

Pakistan passed the Muslim Personal Law of Shariat in 1948.1962. This Act “recognized a woman's right to inherit all forms of property, consistent with local interpretations of women's rights in Islam but not consistent with common, local practices.” The equality provision of the Constitution explicitly disallows any discrimination on the basis of sex. It has its roots in the saying of Prophet Muhammad who said:

“All people are equal, as equal as the tooth of a comb. There is no claim of merit of an Arab over a non-Arab or of a white over a black person: only God-fearing people merit a preference with God. Thus men and women are equal.”

In addition to constitutional guarantee, through an amendment to the PPC, deprivation of any women of her inheritance through deceitful/illegal means is stated as an offence, punishable with

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30 Weiss, A. M., Interpreting Islam, Modernity and Women’s Rights in Pakistan (St. Martin’s Press LLC 2014) pg 21
32 Constitution of Pakistan (n 5) Art 25
33 Hajrat-ul-Wida ,the last address of the Prophet(BPOH) on the occasion of last pilgrimage
imprisonment for up to 10 years or with minimum 5 years as well as fine for up to 1 million rupees. Similarly to compel and facilitate the marriage of women with Holy Quran is illegal which is punishable with imprisonment for up to 7 years and fine of five hundred thousand rupees.

But the problem still persist because this law comes into action only when invoked by the aggrieved person which rarely benefit the women as an aggrieved party with seldom access to courts of law. However, the solution to this problem has been suggested as under

“The civil courts be empowered to act suo-moto or on an application of aggrieved party in taking cognizance of the claims of female right to inheritance and decide such disputes through ADR or by regular trial and issue a decree in a short period of 3 months.”

Pakistan is an Islamic Republic. Islam was indeed the first religion to recognize the property rights of women. It can be rightly said that "Islam is not only a religion: it is one of the oldest and most well-developed legal systems in the world." and that “there is no part of the Islamic law which is more typical of both the spirit and letter of the Shari'a than is the Islamic law of inheritance.”

However, practice reveals that the legal system of Pakistan is inconsistent with what does Islam provides to protect women in all areas of traditional importance to them i-e divorce, marriage, and inheritance. In case of existing laws, a wide gap has been experienced between legislative provisions and practice where the two stand in mutual antagonism in some areas of Pakistan. Fata is one of the examples where the understanding and application of the codified law of Islam is often

35 Pakistan Penal Code 1860 § 498-A
36 Ibid § 498-C
superimposed by tribal norms, customary laws, unwritten codes and culture.

“Rigid tribal norms severely proscribe the roles of women and prevent them from having secure rights to property. Women are restricted in their mobility; have limited or no access to assets and resources; no influence in decision making, even regarding their own marriage; and are victims of gender-based violence. Women contribute a significant portion of the agricultural labor force through their involvement in a broad range of agricultural activities, but their contribution is not officially recognized”

Personal status of women and her marital rights, inheritance rights, ability to work remain hampered. Inheritance laws, like many other laws governing women rights, fall within the class of personal laws. In case of Pakistan, it is the Muslim Personal Law (Shariat) Application Act of 1962 (MPLA). Shaheen Sardar Ali rightly states that the existence of formal legislation is of little or no use in Pakistan where most of Pakistanis live and operate in the informal sector and that the enforceability of existing legislation is extremely poor.

In Pakistan, Statutory law related to property and land rights is outdated, fragmented, and incomplete. At national and provincial levels, more than two dozen laws in Pakistan administer a variety of land matters and further wide the room for discriminatory female inheritance practices.

“In Pakistan, the implementation of inheritance laws as to immoveable property is regulated under the West Pakistan

40 Rural Development Institute (RDI), A report for the World Justice Project

Women’s Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka’(2009) 14

Land Revenue Act, 1967 but due to the multiplicity of laws involved therein and lack of close coordination in relevant institutions and other concerned functionaries viz., the Revenue Department, Educational Institutions, Nikah Registrar, BHUs/RHCs, NADRA, etc., women’s right to inheritance is often easily evaded.”  

In the absence of any specific codified law, property rights of women are regularized by general and civil laws. Their rights in movable property are handled under Succession Act of 1925 whereas their rights in immovable property are regularized by Civil Procedure Code 1908 and Revenue Act of 1987 (revenue office, tehselidar/patwari). However the civil code governs property rights generally and when it comes to property rights of women, statute recognize customary law as is the case in war ridden less developed Afghanistan where the property rights are generally governed by the civil code of Afghanistan-mostly a codification of Hanafi school of Islamic law- but when it comes to women’s property rights, the statute recognizes customary law.

So the law is favorable to the property rights of males than to females. As a result, women in Pakistan face a number of social and economic constraints in comparison to men. Even if a woman is able to initiate litigation, the expensive, lengthy and cumbersome process of litigation is a great impediment in getting justice. Judges who are not trained in gender issues and the religious laws further deteriorate the situation.

Corruption in the judicial system of the Pakistan is another big cause for the malpractices against women in society. In Pakistani society, "women are usually bewildered by the laws and judicial systems and the depth of one's pockets carries more weight than the constitutional provisions."  

Pakistan needs the problem of judicial corruption to be solved by borrowing the successful system like one in Indonesia (largest Muslim populated country of the world)) that needs the judges to be trained to

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42 National Commission on the Status of Women (n 6)xi
not give in to societal pressures.\textsuperscript{44} Indonesia under its Religious Judicature Act of 1989 established that “the municipal and provincial Shari’a courts had jurisdiction over Muslim litigants in some civil matters such as marriage, inheritance, and charitable foundations specified in the act.”\textsuperscript{45}

Other procedural problems and settled principles like “res-judicata”, “estoppel” and “adverse possession”, in our justice system may not deprive a female applicant of her right to inheritance. In the case of Ghluam Ali v Mst. Ghulam Sarwar Naqvi, the Supreme Court of Pakistan rejected the legal claim of “adverse possession” by the brothers. Court declared that “such a claim cannot prevent sister from claiming her share in ancestral property.”\textsuperscript{46}

The act of grabbing one’s property must be criminalized in order to curb the insecurities attached to property and inheritance rights of women. In June 2005, the Islamic Ideology Council (IIC) drafted a new law, known as the Pakistan Penal Code (Amendment) Act, 2005. The proposed law suggested the abolition of the custom of marriage to Quran-designed to deprive her of her due property right and recommended life imprisonment for the perpetrators of this crime. The proposed amendment to Section 295-B of the Pakistan Penal Code is read as under:

“Defiling of and marriage with the Holy Quran; whosoever willfully defiles, damages or desecrates a copy of the Holy Qur’an or an extract there from or directly or indirectly allows the Holy Qur’an to be used for the purpose of its marriage with a female or fraudulently or dishonestly induces any person to swear on the Holy Qur’an never to marry anyone in her lifetime or knowingly uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.”

\textsuperscript{44} Daley (n 45)
\textsuperscript{46} Ghluam Ali v Mst. Ghulam Sarwar Naqvi (n 27)
Conclusion

Women are usually deprived of property rights in Pakistan despite the fact that law of limitation–usually a hurdle in getting one’s right–is not applied in inheritance cases.

The constitution of Pakistan, under its article 23, recognizes the property rights of all citizens including women and can be indulged in any lawful business. The laws which enhance the position of women need to be implemented. Article 25 of the constitution of Pakistan grants provision for affirmative measure to make special provision for the protection of women and children.

Although Pakistan does not have any specific policy with reference to women’s right to inheritance, the National Policy for Development and Empowerment of Women 2002, clearly mentions about the protection of rights of women. It provides that the women should be empowered in order to overcome all sorts of socio-economic disparities. The key measures of the policy include the elimination of all negative social practices against women. It is, therefore, required to adopt an exclusive policy on women’s right to inherit.

The need is to adopt such practices in society which encourage women to take initiative at her own to demand her right to inheritance. It should be combined with legal and institutional reforms. Revenue Department is the department of vital importance whenever the issues of inheritance arise. This department keeps the custody of the record of immovable property of people at tehsil and district levels. Patwari, Qanoongo and Tehsildar are needed to act according to the prevailing law in respect of transfer/mutation of the land. But unfortunately, the role and function of this department becomes critical when it comes to inheritance right of the easily deprived classes of women and minors.

To decide the shares of legal heirs, the personal appearance of all legal heirs of the inherited property is mandatory before the Tehsildar along with Numberdar of the area where property is situated and the owner of the neighboring landed property whose statements are taken as an ultimate evidence to decide and identify the legal heirs of the deceased. No documentary evidence is required and such lacunae in law and
procedure enables the officials of the revenue department and the male heirs to exploit women to get their share in inherited property.  

Functionaries of the Revenue Department in Balochistan, despite following the state laws, are engaged in practicing such customs which deprive women of her inheritance rights in property. Patwari and Tehsildar both, in Balochistan, demand a Sharia Fatwa issued by a imam of Mosque to determine the shares of the legal heirs in order to transfer the inherited property. The implementation of the Sharia Fatwa without questioning the legality of its contents is a common practice.

Quran says

“Allah doth command you to render back your Trusts to those to whom they are due”

In the light of above Quranic verse, constitutional guarantees, international commitments, the Pakistan’s government is under obligation to ensure the implementation of the laws of inheritance through appropriate measures. With deep-rooted customs and customary law, legal foundation can be an important and necessary first step. Legal aid and awareness amongst women must be the immediate action in this regard. However, due weight is still given to customs in our culture and not the law particularly in the matters related to female. In case of Eda Khan, the counsel for the petitioner raised the objection that “the parties were governed by customs and under such custom the female could not inherit, the Court held that: “When once the custom is not proved, the property would devolve in accordance with the normal principle of Islamic inheritance and thus, the daughter of Tagga would automatically become a co-sharer in the property.”

This judgment of the Supreme Court though granted the daughter her share in inheritance, however, “it was only in the absence of the proof of custom denying women’s right to inheritance.” This Conflict between

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47 NationalCommission on the Status of Women (n 6)75
48 The Quran (n 4) 4: 58
49 Eda Khan v. Mst. Ghanwar & others, 2004 SCMR 1524
formal legal and customary systems deprives woman of her share in inheritance. The need of the time is of more direct and bold decisions of the apex court of Pakistan. In the landmark case of Inayat Bibi v Ishaq Nazirullah, the Supreme Court of Pakistan decided that “contrary to the applicable customary law, Christian women could inherit property in the presence of male heirs.”

Other than landed property, some properties like benevolent fund, pension, compensation after accident/calamity are not made subject to inheritance and the female—already deprived—is not given her due share in all. Immediate legislation, like the one guiding the distribution of provident fund and royalty of books, is the utmost need of time. The bill titled “Khawateen Dushman Riwayat ka Intana” suggests amendment to Criminal Law. This bill is passed from National Assembly in Nov 2011, however, it has not yet become law. Under this bill, the malpractices against women, like Quran Marriage, will be a crime if share of women in inheritance is avoided which will constitute an un-bail able offence.

However, it needs long time and struggle to get rid or change these centuries-old traditions because Pakistan lacks in the area of direct legislation concerning women. In nutshell, measures are required not only show the aspirations of people but to bring practical change in form of legal reforms and protections because a property woman can better handle and manage the property matters of her husband but gives great support to her daughters in distribution of property and inheritance.

“Legal frameworks are the institutionalizing mechanisms which can convert claims into rights and make actions obligatory for survival, protection and development of its citizens.”

50 Inayat Bibi v Ishaq Nazirullah PLD 1992 SC 385
Bibliography

Primary Sources

Table of Cases
Eda Khan v. Mst. Ghanwar & others, 2004 SCMR 1524
Ghluam Ali v Mst. Ghulam Sarwar Naqvi PLD 1990 SC 1
Mst. Halima vs. Muhammad Alam & others 1999 Monthly Law Digest 934
Inayat Bibi v Ishaq Nazirullah PLD 1992 SC 385

Table of Legislation
Hajjat-ul-Wida , the last address of the Prophet (BPOH) on the occasion of last pilgrimage
Constitution of Pakistan 1973
Pakistan Penal Code 1860

Secondary Sources

Text Books
Hirschl R, The Political Economy of Constitutionalism in a Non-Secularist World, in
GINSBURG.T (ed.), In Comparative Constitutional Design (Cambridge University Press 2012)
Sahih Al Bukhari ‘Darul-Ishaat’ Hadith # 6764
Sunan Abu Dawud ‘Kitab-ul-Farid’ Hadith # 2887
Weiss AM., Interpreting Islam, Modernity and Women’s Rights in Pakistan (St. Martin’s Press LLC 2014)

Journal Articles
Agnes F. ‘Economic Rights of Women in Islamic Law’ (1996)31
Economic and Political Weekly
Anderson JND, ‘Recent Reforms in the Islamic Law of Inheritance’ The International and Comparative Law Quarterly (1965)14


Weiss AM ‘Islamic Influences on Socio legal Conditions of Pakistani Women’ Islam in South Asia (2004)84

Links/Newspapers Reports/Reports

Dr. Faqir Hussain, Enforcement of Protective Legislation for Women , Islamabad


Uzma, Mazhar, ‘ Married to the Quran’ The Friday Times Pakistan (Islamabad 2003)