



INHERITANCE OF A DAUGHTER: AN ANALYSIS BASED ON ISLAM AND LAWS PREVALENT IN PAKISTAN

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Abstract

Islam is one of the first religions of the human history to emphasize Women rights of inheritance. With the more development, research and codification of laws under Muslim schools, there arise several deviations in contemporary theories, practices and state laws being in force. Under qualitative legal research methodology, this paper tends to examine concept of daughter's share of paternal inheritance; firstly, under the theoretical dimensions with contrasts in contemporary Muslim Jurisprudence and secondly, under the prevalent legal paradigms in Pakistan. This paper also aims at testing the relevant state laws in force, exploring the problems and suggesting pragmatic solutions and recommendations for fair implementation and execution of Woman inheritance in Pakistan.

Introduction:

Islam has contributed an eminent share in the development of rights of inheritance. In pre-Islamic Arabs, there were two practices prevalent. One was in urban areas based on



codes from Mesopotamia (Ur-Nammu's Code, Laws of Eshnunna, and Code of Hammurabi, etc.) under the discretion of authorities. Second was the one prevalent in *Badu* Arabs according to rural and tribal norms (Ali, 2012). These practices were aimed at concentration of estate within a restricted community, therefore denying women, specifically the daughters, their share of inherited estate on mere grounds of preventing the transfer to others of the same or different community.

Concept of Daughter's Inheritance from the Holy Quran

Islam had transformed the preexisting notions of inheritance altogether. As one of the several tools of social cohesion, Islam ensures the right of inheritance for everyone, thus not concentrating it to a certain society. The Islamic system of Inheritance revolves around a wider family circle with a well-defined distribution scheme of shares. The differences of shares are justified by duties each person must perform or the relations they had to the deceased (Bello, 2015).

The jurisprudential grounds for general distribution scheme have been derived directly from the Holy Quran (4:11). The share of daughters as per the Holy Quran have been specified under certain conditions. Daughters usually receive one-half of a son's share. But if one has only daughters, their shares are equivalent to two-thirds of estate, distributed amongst themselves. When legal heir is only one daughter, she receives one-half of the total estate. All of these shares are contingent upon the remains after payment of funeral costs, debts and liabilities.

Form simple pre-Islamic customary notions to a well-defined distribution scheme, the improvements brought about by Islam in the law of inheritance are clearly evident. But Islamic law of Inheritance for daughters is not as simple. There arise several other conceptions and difficulties in practices followed by different Islamic schools. Conditions pertaining disparities between the Shia and Sunni schools as to the ways these shares might be distributed amongst sons and daughters have been discussed in the succeeding section.

Differences in Shia and Sunni Jurisprudences

Inheritance is determined in accordance with the personal law of the parties (Shah Muhammad v Roshanai, 1980). Henceforth, it is necessary to explore the differences between two schools as to the concepts and ways estate should be divided in the favor of daughters. These differences exist in the division of categories of heirs, equal and male dominated heirship status, share of heirs of deceased daughters and solutions to differences



of supposed and actual shares. These impressions have been examined in detail in paragraphs hereunder (Cheema, 2012).

Sunni school exponents three categories of heirs. i.e., (i)sharers (ii)residuaries and (iii)distant kindred, placing daughters in sharers (if they have brother in residuaries), while the deceased daughter's descendants amongst distant kindred. So, a Sunni daughter is the primary recipient of inheritable estate, but the legal heirs of a deceased Sunni daughter may not be. Shia law classifies only two categories of heirs as (i)sharers and (ii)residuaries, treating daughters and all their descendants as primary recipients of inherited estate irrespective of circumstantial stipulations.

The categorization implies that Sunni law treats sons and daughters as primary recipients but the heirs of a demised daughter are considered tertiary recipients in the line of inheritance. Also, it implies a distinction between inheritance of male and female lines of descendants. But under Shia school, sons and daughters both are treated as primary recipients irrespective of the lines of descendants. Thus, Shia law provides the daughters and their descendants better prospect towards their right of inheritance.

There are greater chances for estate not being consumed totally in Shia inheritance due to more substance of sharers over residuaries. In case inheritable estate of a Shia is not consumed, the left-out estate is subject to the application of Doctrine of Decrease (*Rad*). According to this doctrine, where the calculated shares remain lesser than supposed number of shares, the residual shares are allotted to the primary recipients. Thus, the chances for entitlement to an additional residual property are greater for daughters in Shia jurisprudence than in Sunni law. For, Sunni school reduces the possibility of application of this doctrine as sharers, residuaries and distant kindred already exhaust the shares to a greater extent. This is another reason why heirs of a deceased daughter may be given more proclivity in Shia school.

But as far as the application of Doctrine of Increase (*Aul*) is concerned, Sunni jurisprudence facilitates more inheritance rights to daughters. The doctrine emphasizes that, where the calculated number of shares exceed the supposed number of shares, the share of every sharer; either son or daughter, is reduced in equal proportions. Hence, sons and daughters are treated with equal magnitude of significance by Sunni law as far as application of *Aul* is concerned. On the other hand, Shia jurists avert the application of *Aul* and adopt an approach more preferential for sons. When the calculated number of shares exceeds the supposed number of shares, Shia school reduces the shares of only the daughters and sisters, keeping the share of sons preferably intact. This is where Sunni



jurisprudence protects the right of daughter's paternal inheritance more efficaciously than Shia law.

Shia and Sunni principles of inheritance personify different approaches towards how a daughter's paternal inheritance should be secured. But both the approaches have been derived from Quranic verses. Ergo, there are some contrasts between these schools, but correspondence is greater. Moreover, when subjected to court interpretation, courts are more concerned with an efficient execution of Muslim Law of Inheritance strictly in accordance with the beliefs of the parties. Whether a person follows Shia or Sunni pattern of inheritance becomes immaterial, as the substantive crux for both the patterns always remains the same; which is the protection of daughter's right to property.

International Law on Daughter's Property Rights

In the present international legal order, the substance to women rights is an increasingly emerging trend. There exist several international legislations for protection of women rights including daughters' right to inheritance and Pakistan is signatory to a number of these significant international treaties. The significance of Daughter's right to inheritance in Pakistan can be traced through International Covenant on Economic, Social and Cultural Rights (ICESCR), signed by Pakistan in 1976 and ratified in 2008. Article 3 extends equal protection of law for men and women including the cases concerning property rights of women. Furthermore, International Covenant on Civil and Political Rights, signed and ratified by Pakistan, in its Article 3 envisions protection of all rights of men and women set out by the Covenant on equal footing, which also implies the right to property and the rights auxiliary to it. Being a signatory to Beijing Declaration and Platform for Action of UN, adopted at the Fourth World Conference on Women in 1995, Pakistan realizes the critical spheres identified by the parties and aims at realization of women rights at governmental level, particularly in the crucial spheres. This Platform for Action considered deprivation of inheritance a reason for poverty amongst the women, which not only puts the State of Pakistan under an onus of provision of property rights to daughters, but extends the burden to governmental corridors as well.

Pakistan is a ratifier of Convention Against Elimination of All Forms of Discrimination Against Women (CEDAW) since 1996. Article 16(h) of the Convention extends property rights to both men and women and Article 15 sets the States under a legal obligation to adhere to their compliance to the Convention treating men and women equally before law, including the matters concerning right to property, its administration, succession and inheritance. However, Pakistan made a reservation to Arbitration clause enshrined in Para 1 of Article 29 of the Convention.



Thus, all of these international legal commitments make it obligatory for Pakistan as per the international law to formulate and execute an effective domestic legal system for securing the protection of a woman's property rights in Pakistan.

Legal Framework in Pakistan

The laws for a woman's paternal inheritance in Pakistan are enacted via combined legal effect of statutory, non-statutory, customary and religious sources. The legal framework for inheritance provisions for a daughter dates back to British India. Since then, Shariah law of the parties is considered the key determinant for application of Muslim law of inheritance. Yet, there were a series of contrasting state and customary laws as well as court decisions to rely upon for a clear determination of daughter's inheritance. To overcome these conflicting areas, *Muslim Personal Law (Shariat) Application Act 1937* was the first document enacted in British India. It aimed for the protection of woman's inheritance, abolishing the possibility of double-relief under customary and Shariah laws, thus deciding the cases based on legal, Islamic and customary practices simultaneously. As first enactment, this statute carries a historical significance more than a legal one. Legal significance of this Act is to the extent of endorsing the right of 'special property of females'. *Muslim Personal Law (Shariat) Application Act 1937* is currently known by the name it assumed after it was repealed in 1962 under Ayub regime, i.e., *West Pakistan Muslim Personal Law (Shariat) Application Act 1962*. This act also includes provisions for entitlement of Women to agricultural estate.

Another enactment was introduced during the Presidency of General Ayub was *Muslim Family Law Ordinance 1961*. Section 4 of this act provided right of succession to heirs of a deceased son or daughter on equal footing. The legal heirs of a deceased daughter could claim inheritance of their maternal grandfathers. This provision was welcomed with a rage amongst citizens as it was considered ultra vires to the teachings of Hanfi rite followed by the majority of population. Resultantly, in *Farishta v Federation of Pakistan*, vires of Section 4 were challenged and it was declared repugnant to Islamic injunctions by Shariat Bench of Peshawar Highcourt. The Court ruled to have the jurisdiction over matters of 'Muslim Personal Law' as per Article 203-B of the Constitution of Pakistan. The ground of repugnancy was overturned later by the Shariat Bench of Supreme Court in *Federation of Pakistan v Farishta*, whereby the Supreme Court considered the courts lacking jurisdiction to in cases involving statutory Muslim laws and left them to the scrutiny of Council of Islamic Ideology. Federal Shariat Court in *Allah Rakha v Federation of Pakistan* of 2000 assumed powers for cases pertaining Muslim Personal Law (based on Supreme Court's *Kaniz Fatima v Wali Muhammad* of 1993) and considered Section 4 repugnant to Islamic injunctions again. This decision was challenged



before Shariat Bench of Supreme Court. Meanwhile in *Fazeelat Jan v Sikandar* the Supreme Court had suspended the verdict of repugnancy until the appeal gets disposed. As the appeal against *Allah Rakha v Federation of Pakistan* still lies pending before the Shariat Bench of Supreme Court, the operation of Section 4 stands intact down to the present day. Hence, the heirs of a deceased daughter stand entitled to the deceased grandfather's estate in Pakistan. A recent judgement, *Hassan Aziz v Meraj-ud-Din* of 2021 considered the Section 4 of Muslim Family Laws Ordinance to be an exception to Islamic Law of Inheritance.

Constitutions only enclose direct legal provisions on areas of substantive importance. Nonetheless, they are the epicenters of every legal regime prevalent in a state, thus they stretch the legal force and validity to every legal enactment, provision, right, obligation and duty with implicit collective understanding of the Constitution. Likewise, the *Constitution of Islamic Republic of Pakistan 1973* does not contain any direct provision for protection of woman's paternal inheritance. But several articles read together imply the right of daughter's inheritance. Article 23 gives every citizen the right to hold, acquire and dispose of any property in Pakistan. No person can be deprived of any property except in accordance with law, as enunciated in Article 24. Furthermore, Article 25 ensures equality before law and emphasizes principle of non-discrimination on the basis of gender. Therefore, collective reading of all the forementioned Articles suggests lawfully holding, acquiring and disposing properties by *all* citizens of Pakistan, deterring unlawful deprivation and extending the equal application of these provisions to all the citizens, thence impliedly incorporating the inheritance right of all the women citizens of the state including the daughters.

Post partition record of court decisions on the subject matter of this paper have not been too consistent, yet the courts have played a deliberate constructive role for development of inheritance law for daughters. In 1990, Supreme Court held that the fact that male members of a family often deprive the females of their entitlement to inheritance, and so violate shariah and law, cannot be undermined. (*Ghulam Ali v Mst. Ghulam Sarwar Naqvi*, 1990).

Criminal Law (Third Amendment) Act, 2011 was another step towards advancement of Inheritance laws in Pakistan. This act provided the addition of Section 498A to Pakistan Penal Code, hence making the deprivation of inheritance to any woman unlawful, followed by a punishment for such an offence from five to ten years of imprisonment or a fine of one million rupees or even both. By penalizing the offence under criminal law, this amendment further deterred the discriminatory behavior of male members towards inheritance of females.



Sometimes, there are properties jointly owned by one or more owners, some of whom might be daughters in cases where the properties are inheritable. In such cases, daughters might be kept devoid of their shares by partitioning the properties without their consent. *The Punjab Partition of Immovable Property Act 2012* was crafted for such properties. This act facilitated the daughters claiming fathers' estate by endorsing that any property with two or more co-owners should not be partitioned without knowledge of each of the co-owners. Hence, the consent of a daughter was deemed mandatory after introduction of this act.

The recent years have been rather more consistent than the previous ones in development of law of inheritance for daughters in Pakistan. Courts had realized the importance of principle of *Stare decisis* in interpreting the already enacted legislations instead of relying upon new legislations by parliament. The Apex court has considered the right of inheritance as a fundamental part of Muslim Personal Law and emphasized that courts had been playing their role to actively protect it (*Shabla v Ms. Jahan Afroz Khilat*, 2020). The principle of *Ghulam Ali v Ghulam Sarwar* of 1990 was later solidified in *Abid Baig v Zahid Sabir* in 2020. More emphasis was laid on it by *Atta Mohammad v Mst. Munir Sultan* of 2020, where the procedural policies and roles of Revenue department were also criticized. In a recent development over the daughter's succession rights, a Peshawar Highcourt judgement was overturned by Supreme Court stating that "a woman's inheritance cannot be claimed after her death" (Daily Dawn, 2021).

All of the forementioned substantive laws intend to protection of a daughter's right to paternal inheritance. Yet, the procedural embodiment of a substance of law is mandatory for its proper execution and manifestation. The next segment of the paper examines the procedural framework a woman or anyone claiming paternal inheritance in her name may follow.

Procedural Framework

Property rights of inheritance are only available to a daughter after the death of her father. *The Punjab Land Revenue Act 1967* describes the regulations for transfer of property acquired through purchase, gift, mortgage, inheritance, etc. (Khan, H.H., Khan, A., Zahir, H., 2020). These exercises are made mostly in the rural areas of Pakistan. Firstly, the death certificate is claimed and confirmation of death from Secretary Union Council is obtained on the basis of CNIC and proof of death of deceased. Secondly, the daughter claiming has to go to Patwar Khana and submit: (a) proof of possession of deceased (khata/fard number or tax documentation, etc.). (b) death certificate. (c) succession certificate duly issued by NADRA in accordance with the provisions of the



relevant provincial or federal Letters of Administration and Succession Act. (d) application signed by one legal heir for initiating succession. (e) affidavit on stamp paper to state the number of legal heirs. (f) family registration certificate duly issued by NADRA. The Revenue Officer, Patwari, then matches his computerized records with diary to verify the application. In case the manual and computerized records do not match, Patwari can exercise his discretion in verifying.

Once Patwari verifies the records, sanctioning of inheritance mutation is marked and sent to Naib Tehsildar to check the ownership status of deceased to property. At this stage, *The Punjab Land Revenue (Amendment) Act 2012*, an amendment to *Punjab Land Revenue Rules, 1968* comes in to effect. This amendment makes a Revenue officer bound to serve notice to all the joint owners proximately after the sanctioning of registration is duly recorded in records. The forementioned amendment of 2012 also made the presence of two legal witnesses mandatory at this stage; preferably Lambardars or members of the local government. But in most cases, they are Lambardars and the Pattidars. This step affirms the validity and correctness of mutation of inheritance so made by Patwari.

Once it is confirmed that deceased had perfect title to the property, Patwari makes *Shajrah* (family tree) based on his records, registers *inteqal* (change of ownership) and commences the transfer of the land to legal heirs as in affidavit provided. The estate up to this level is jointly owned by all those sharing. Additionally, physical verification by Tehsildar is done by visiting the site in the presence of the applicant legal heir, Pattidar land owner and lambardar. Then a newspaper advertisement is required to be given for *inteqal* and a time of 7 days is given to general public in order to entertain claims, if any. If there are no objections, applicant gets another verification from a court representative called *Qanungoh*. After all verifications so confirmed, Tehsildar receives all the verifications and process of separate transfer to each individual commences. Furthermore, under *The Punjab Land Revenue (Amendment) Act 2012*, the officer must give the schemes of private partition of an estate as agreed mutually between the joint owners, without any application and within thirty days. This is the point where the daughter may yield her share to brothers or hold her share of property as per her intent. She may file a suit for partition proceedings in case brothers do not allow her to claim possession or to sell an estate rightfully inherited by her.

However, Pakistan's social apparatus seldom permits women to pursue their cases in a court of law especially in the absence of male guardians. Realizing this cultural lacuna, a recent legislation was enforced in the Punjab Province as *The Punjab Enforcement of Women property Rights Act 2021*. This law permits a woman to file a complaint of unlawful deprivation of her property to an alternative forum of "the Ombudsperson" in



case no proceedings regarding her property are pending in a court, consequently, saving the daughters many inconveniences that could have arisen by going to courts.

It is conspicuous how different Islamic concepts, state laws and court decisions operate to provide women a protection of their inheritance rights. Yet, a mere presence of these laws and their execution in true spirit are practically two different things. Sometimes there arise numerous shortcomings, inefficiencies and irregularities of procedures due to various reasons, making the true implementation of substantive as well as procedural framework problematic.

Legal and Procedural Deficiencies

The legislature and courts, to a great extent, have introduced and interpreted the law of inheritance validly and effectively in the course of legal transition in Pakistan, but have proven inadequate to channelize the Revenue departments for an effectual policy implementation to cater the procedural anomalies acting as hurdles for proper execution of law, eventuating in failure of legal regime, regardless of how effective the laws or procedures may be.

Following loopholes were identified by the findings and research under this paper:

1. There is a lack of proper compilation and renewal of laws in Pakistan. The statutes being in force have a lot of overlap. A number of provisions of one statute are omitted by a second statute and while referring to the second statute one finds that its provisions have been omitted by a third statute and so on. This makes the laws of inheritance difficult for women as well as for practitioners in Pakistan due to subsequent complexities.
2. A court's object is settlement of disputes and interpreting the law simultaneously. Matters of inheritance are decided in accordance with the personal law of parties. But the statutes lack sufficient arrangements to incorporate all schools of thoughts. As a consequence, the courts intervene for clarifying interpretation of law which deviates the attention of courts from refining laws to the clarification of sectarian contrasts.
3. Civil Courts suffer immense work pressure so they fail to deliver in time. Resultantly, many litigants have to seek for summary proceedings in Revenue courts that act as courts of parallel jurisdiction. Unreasonable delay tactics by parties is another factor that leads to inconclusive cases in Civil Courts. Several claimants do not get their due share of estate in their life time (Hussain, 2021).
4. Patwaris possess all the clerical powers related to the matters of inheritance. They often misuse the authority by favoring one and not the others. For instance, Patwaris unlawfully collude with others heirs to leave out daughters in many cases. Where computerized



records do not match those on register, they often exploit their discretion. Moreover, it is due to collusive positions of Patwaris that most of the matters of property pending in Civil courts are of inheritance (Afzal, 2021).

5. There are several short comings in the computerized registration systems. If an authority keeps record of a certain transaction, the same authority should be responsible for proper registration of *inteqal*, which is unlikely to happen in Pakistan due to hegemony of Patwaris over the registration of *inteqal*. (Khan, H.H., Khan, A., Zahir, H.,2020).
6. Advertisements in newspapers are meant for making public announcements. People often make announcements in local newspapers rather than the renowned regional or national ones to escape the possibility of appearance of more sharers of inheritance (Afzal, 2021).
7. Revenue Officers are sometimes inaccessible by the general public who lacks influence and power. Also, it is the negligence of Patwaris that leads to insufficient documentation and incomplete evidence to support a woman's claim. There is a lack of legal conscience in public, which leads to procedural negligence by parties which could have been averted with easy access to offices and proper legal awareness. These are the reason why some women are less aware of matters of inheritance, consequentially leading to a negligent surrender of their inheritance (Afzal, 2021).
8. Social constraints are as important as legal constraints are. Women require the presence of either a legal professional or a male guardian due to legal and social constraints of our society. Sometimes, dowry is seen as an excuse for denial of inheritance to daughters. Transfer of land to women results in reduction in one family's estate and increase in another's. Also, men in most cases occupy the fertile land amongst the total inheritable estate leaving less valuable land for their sisters (Afzal, 2021).
9. Due to lack of in person verification by Revenue officers, fraudulent and discriminatory behavior of men sprouts. Many people bring random women in veil to offices claiming them to be their sisters who willingly have yielded their property to them, hence attaining the consent by fraud and denying the actual female heirs their right.

Suggestions and Recommendations

1. Renewal and compilation of all the scattered legislations in one statute with a legislative intent aimed particularly at protection of a woman's property rights and providing their due right to inheritance.
2. Scope in statutes for incorporation of all schools of thought so that courts can only focus on refining the laws rather than acting as the settler of sectarian disputes solely.
3. Increasing the number of judges, digitalization of court records and judgments, transparency and accountability of judges in Civil and Revenue Courts to reduce the court burden and to ensure speedy remedies might result in enhancing the efficacy of the system.



4. Lower the level, lesser is the liability. Officers of Revenue lower in hierarchy are often involved in abuses of power. Powers of senior officials of Revenue department to initiate inquiries against officers lower in the hierarchy should be properly exercised. The inquiring authority should be shifted from Revenue department to any other probing body and the inquiries be made interdepartmental inquiries. The performance of Revenue department should regularly be monitored and regulated directly by the probing body that reports the performance to the relevant federal and provincial Ministries.
5. Land Record Authorities in Pakistan are responsible to maintain computerized records of property. The manual process for registration of *inteqal* should be abolished and the Land Record Authorities should be given a charge to accomplish the process for registration of *inteqal* in the rural areas as well. Hence, they should be the ones to maintain dual records for cross-check on inheritance procedures.
6. Only a few newspapers, having a reader threshold above a certain limit, should be selected by the Federal or Provincial governments, in which the advertisements of *inteqal* must be given. All the smaller newspapers should be declared incompetent to publish any such advertisements.
7. Federal and provincial governments should play their roles in raising the public education on the matters of land revenue. In this way, inaccessibility to legal professionals would not lead to ignorance of law.
8. Keeping in view the social constraints for women to pursue their suits in courts of law, alternative forums should be empowered for daughters to claim their inherited properties with a greater ease. Moreover, Revenue officers should be made more accessible to the people irrespective of the social standings.
9. A woman's consent to yield her inheritance should be ascertained by Revenue officers properly. Female officers in Revenue department can be assigned duties for facial recognition of women in veils in accordance with the records of NADRA.

Conclusion:

The paper has defined, described and elaborated the paternal inheritance of daughters specified in Islam. There can be contrasts as to the sum of shares received by daughters, considering their personal beliefs. But all the schools aim at purveying the idea of a woman empowered in an Islamic society. Many prevalent substantive and procedural arrangements embedded in the law of Pakistan have also been observed. The manners of execution of these laws may be different, but the substantive crux has been kept in complete conformity with Islam, and the courts have remained operative to uphold this Islamic character in our legal system. However, the efficient implementation of those substantive principles can only be accomplished by overcoming all the procedural incongruities and bringing about



more systematic and simpler ways of claiming inheritance, so that no daughter in Pakistan is ever repudiated her fundamental right to property of her father's demesne.



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