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STATUS OF WOMEN INHERITORS IN ISLAM: INSTITUTIONAL HURDLES IN PUNJAB, PAKISTAN

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ABSTRACT

Inheritance laws plays a key role in the distribution and transference of intergeneration wealth across the globe. In Pakistan, laws related to inheritance are regulated through Shariah. In Shariah Law status of women inheritors is well defined, which along with the constitution of Pakistan assures women's autonomy over their inherited resources. However, the denial of women's inheritance rights is pervasive in Punjab. To control the incidents of denial, the Government of Pakistan criminalized the act in 2011. The present study aims to explore women's inheritance rights in Islam as well as the challenges and hurdles women usually come across during the course of inheritance claims. The study is set in two districts of Punjab, Bahawalpur and Rawalpindi. Thirty women, fifteen from each district, were recruited as study participants through purposive sampling technique. Data was collected through in-depth interviews and thematically analysed later. Study results revealed that misinterpretation of divine directives along with customs and culture mediate denial and surrender. Even though inheritance is transferred to women more often following the 2011 amendment, most women cannot access or control that inheritance. Similarly, discrepancies within UC, NADRA and LRMIS's setup alongside tedious judicial processes further exacerbate the situation. It is suggested that a deconstruction of cultural narratives, creation of transparency within the digital record systems, and sensitization of police officers, revenue department staff and judges can improve the situation. Most importantly, religion can play a vital role in securing women's inheritance rights.



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Key words: women, inheritance rights, Punjab, institutional mechanism, hurdles, Islam.

1. Introduction:

Pakistan is an Ideological State that was established in the name of Islam.¹ The declared state religion of Pakistan is Islam.² Hence, the role of Shariah or Muhammadan Law is pivotal in the constitution and regulation of laws and legal framework of Pakistan. It is clearly stated in the constitution of Pakistan (1973) that any law in violation of Islamic teachings shall be considered null and void. However, minorities have been catered under their specific laws. This particular study intended to explore laws pertaining to Muslim women's inheritance and the institutional challenges they face in exercising their inheritance rights, so a clear understanding of Shariah Law and its sources is necessary in framing this conversation. Before exploring women's status as inheritors in Islam, it is necessary to understand that Islamic law and its genesis.

Islamic scholars and theorist have suggested four basic sources of Shariah. They further divide these sources into two groups of primary and secondary. The four basic sources of Shariah Law are Quran, Hadith and Sunna (the tradition of Holy Prophet), Ijma (Consensus) and Qiyas (analogical or deductive reasoning). All these sources have laid the fundamental foundations of Islamic Shariah Law.³ The first two sources, Quran and Sunna, are considered primary sources while Ijma and Qiyas are considered secondary sources.⁴ In most of Muslim countries, Shariah Law provides the legal framework for legislation. The same goes for Pakistan.

Islam acknowledges a woman's autonomy and recognizes her legal status as an inheritor; the first part of this research paper, which is based on extensive desk review, seeks to explicate Islamic injunctions in this regard. The second part of the paper, then, looks at the contrasting situation in Pakistan and brings in findings from the field to assess the institutional hurdles women face during the course of their inheritance claims. This sheds light on how law in practice functions quite differently, owing to a country's socio-cultural make-up.

Although Pakistan is an Islamic state, the status of women inheritors is deplorable and indeed quite questionable; in many cases they face outright denial of their rightful inheritance shares or are alternatively forced to surrender their shares in the favour of male agnatic heirs.⁵ Existing literature also highlights the fact that when women decide to confront the prevalent norms and opt to claim their inheritance rights, they usually encounter numerous hurdles during the process.⁶ Consequently, women's ownership of productive resources through inheritance claims remains rare across Punjab.⁷ In order to make a successful claim, they need iron nerves to break the hegemony of culture and custom.⁸ Patriarchal social fabric of Punjab is

centered on cultural practices like dowry⁹, marriage patterns (cousin marriage, exchange marriage and marriage with Quran etc.)¹⁰ and emotional attachment with brothers, which are used as pretexts to disinherit women¹¹. To curb such practices, the Government of Pakistan criminalized the act of forcibly disinheriting women and ordered direct transference of shares on the names of legal heirs through 2011's criminal law amendment.¹² Similarly, the decision of women's surrender of inheritance shares was also made to be liable to be upheld by a competent court. Despite the Government's legal steps, not much has changed and women still encounter numerous difficulties in gaining access to and control over their rightful properties.

2. Methods and Materials:

The first objective of the study was to assess the status of women inheritors in Islam. To fulfil this objective, insights were taken through Quran and Hadith. For the empirical part of the study, two districts of Punjab, Bahawalpur and Rawalpindi, were selected as study sites. The rationale behind site selection was guided by existing literature.¹³ A study regarding women inheritance¹⁴ conducted by Punjab Commission on the Status of Women (PCSW) highlighted both regions as being on the extreme ends of the spectrum; Rawalpindi was marked for comparatively good practices in the Punjab while Bahawalpur was highlighted as a most hostile region for women claimants of inheritance. As the study aimed to explore the institutional hurdles faced by women during the course of inheritance claims, pure qualitative methods were employed. Thirty women were recruited as study participants¹⁵, fifteen from each district. Participants were recruited through purposive sampling.¹⁶ All recruitments were done through ethical procedures and were centered on ensuring the wellbeing of study participants. Proper disclosure about the study was shared at the time of consent taking.¹⁷ All participants were allotted fictitious names for privacy and security purposes. Data was collected through in-depth interviews and interview recordings were subject to the participant consent. Data was categorized and analyzed thematically.¹⁸ These themes are discussed in the findings that follow.

3. Desk Review:

The study was twofold in nature. Its first part is based on extensive desk review in order to define the status of women inheritors in Islam. For this purpose two primary sources of sharia law, Quran and Hadith, were consulted.

3.1 Islamic Conception of Inheritance

Inheritance and its distribution has been an eminent topic in Islamic Jurisprudence. Inheritance related knowledge was not only declared as a form of knowledge, its learning was greatly emphasized as well. According to a hadith, it is stated by Hazrat Muhammad (P.B.U.H)

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O Abu Hurairah. Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation.¹⁹

Inheritance and devolution of ancestral property is comprehensively dealt in Quran. Distribution of inheritance is emphasized at various points in the Book; failure to do so is often related to evil and condemned as a sin. According to Islamic law of inheritance, there is no distinction between movable and immovable property, or between familial and self-acquired property. For claiming inheritance, the only requirement is kinship with the deceased person. In Islam, the right of an heir either apparent or presumptive comes into existence for the first time on the death of ancestor.²⁰ It is evident from Quranic teachings that inheritance is not a birth right, which is contrary to the common perception in Pakistan.

In Quran, there are different models of inheritance in which every person's shares are described in their relation to the deceased. Arguably prescribed shares of inheritance in Quran are equity based shares rather than being based on equality. The shares of property as determined by Quran cannot be altered. Moreover, ancestors and those belonging to the residuary class (not direct descendants) can also qualify as heirs. Matters of inheritance have been thoroughly dealt in different chapters of Quran, namely *Al-Baqrah*, *Al-Maidah* and *An-Nisa*. It is clearly stated: It is prescribed for you, when death approacheth one of you, if he leaves wealth that he bequeath unto parents and near relatives in kindness. (This is) a duty for all those who ward off (evil).²¹

The following verse not only reiterates the point made by the previous one, but it also highlights the significance of immediate and just distribution of a deceased's property. It is evident that a person cannot be denied their rightful share in any scenario.

O ye who believe! Let there be witnesses between you when death draweth nigh unto one of you, at the time of bequest - two witnesses, just men from among you, or two others from another tribe, in case ye are campaigning in the land and the calamity of death befall you. Ye shall empanel them both after the prayer, and, if ye doubt, they shall be made to swear by Allah (saying): We will not take a bribe, even though it were (on behalf of) a near kinsman nor will we hide the testimony of Allah, for then indeed we should be of the sinful.²²

3.2 Status of women inheritors in Islam: Reflections from Quran and Hadith

In seventh century Arabia, Islam emerged as a reformist religion, as it recognized female inheritance rights at a time when it was not the norm and women themselves were often inherited, passed on, etc. as property.²³ It is stated in the Quran:

O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen).²⁴

It also assured to women that their property, either received through inheritance, self-acquired or through personal earnings before or after marriage, are exclusively their own, and their male guardians don't have any claim over those resources.

Islam was the first divine religion to legislate for women's inheritance rights. The commandment came at a time when women did not enjoy any such rights in the Arab society. In fact, in Arab society, women were inherited and passed on in a manner similar to material wealth. Islam negated this treatment of women as objects that could be purchased, inherited, etc. In this context, the following verse was revealed to the prophet:

O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen), nor (that) ye should put constraint upon them that ye may take away a part of that which ye have given them, unless they be guilty of flagrant lewdness. But consort with them in kindness, for if ye hate them it may happen that ye hate a thing wherein Allah hath placed much good.²⁵

The elevation of the status of women from objects that could be passed on, to individuals who could independently possess property, was an alien concept for many. Given this patriarchal context of that time, women's legal share in inheritance was emphasized elsewhere too. In An Nisa, Allah says:

Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much - a legal share.²⁶

This verse was revealed to the Prophet at the time when Aus Ibn Thabit's widow enquired about Islamic injunctions regarding female inheritance, as her husband's family had not given her and daughters a share from Ibn Thabit's wealth. This had left her family without sufficient means of sustenance. At that time, the Prophet (P.B.U.H) asked her to wait for Allah's order, and after the revelation, she and her daughters received their due share from her deceased husband's wealth .

According to an incident narrated by Sa'ad bin Abbi Waqqas, Prophet Muhammad (P.B.U.H) advised Sa'ad bin Khaula, who was on his deathbed, to distribute his property amongst his wife and daughter rather than leaving it for charity. The main priority here being leaving one's family well settled. The exact incident is narrated as follows:

"I was stricken by an ailment that led me to the verge of death. The Prophet came to pay me a visit. I said, "O Allah's Apostle! I have much property and no heir except my single daughter. Shall I give

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two-thirds of my property in charity?" He said, "No." I said, "Half of it?" He said, "No." I said, "One-third of it?" He said, "You may do so) though one-third is also to a much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help. And whatever you spend (for Allah's sake) you will be rewarded for it, even for a morsel of food which you may put in the mouth of your wife." I said, "O Allah's Apostle! Will I remain behind and fail to complete my emigration?" The Prophet said, "If you are left behind after me, whatever good deeds you will do for Allah's sake, that will upgrade you and raise you high. May be you will have long life so that some people may benefit by you and others (the enemies) be harmed by you." But Allah's Apostle felt sorry for Sa'd bin Khaula as he died in Mecca (Sufyan, a sub-narrator said that Sa'd bin Khaula was a man from the tribe of Bani 'Amir bin Lu'ai).²⁷

The aforementioned incident highlights the importance of giving women their due share of inheritance in Islam. It further sheds light on the fact the Islam discourages depriving anyone from their rightful share of inheritance, even if it is for something as noble as charity. The following verse further sheds light on a daughter's share and provides additional guidance on clearing away liabilities of the deceased:

If they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been.²⁸

The aforementioned Quranic verses and Hadiths reflect Islam's clear injunctions regarding women's inheritance. However, data collected from the field revealed entirely different practices to be prevalent in Pakistan.

4. Study Findings and Discussion on the Basis of Field Data:

The field data collected through women's interviews highlighted that although 2011's Criminal Amendment enforced direct transference of inheritance shares on the names of rightful heirs, the process itself was not efficient as many institutions were involved in completion of this directive. Inefficiency of the state institutions along with stringent bureaucratic procedures made it difficult for women to pursue successful inheritance claims. It is also pertinent to note that many women cannot even qualify to start these procedures due to low birth registration²⁹ and unavailability of the other citizenship documents³⁰ required for successful inheritance claims.

4.1. Institutions involved in claiming inheritance

The following institutions are involved in the process of claiming inheritance:

1. Union Council (UC): first place of interaction, deceased's death certificate, claimant's birth registration and marriage registration documents can be accessed from the relevant union council
2. NADRA (National Database and Registration Authority): provides family tree required for the identification of rightful heirs
3. Revenue Department: in case of landed property, revenue department is central to devolution of assets; *patwari* and *tehseeldar* play a vital role in the verification of inheritors and transference of property on their names as well as correct allocation of shares
4. LRMIS (Land Record Management Information System): after the digitization of land records, transfer records are further updated here to make the whole process transparent
5. Police: in case of forceful deprivation from inheritance, police is contacted by the victims for lodging an FIR (First information Report)
6. Court: after initial investigation by the police, the case is forward to courts for formal litigation; in the first instance, veracity of the criminal offence is established through a criminal court, which is followed by a civil suit for transference of assets.

4.2. Institutional Hurdles

The study's results suggested that it was very hard for women to break a strict cultural code defined by hegemonic religious and cultural forces. It is rightly contested by many feminist scholars that patriarchy gains sustenance from religion and culture. To break the hegemony of custom and culture, Government of Pakistan introduced an amendment in 2011. The Criminal Law Amendment at national level was followed by a provincial amendment in Punjab in 2012. Subsequent years saw computerization (LRMIS) of the land records to expedite direct transfer of inheritance. PCSW was set up, among other things, to oversee cases of denial. Simultaneously, the right of inheritance featured prominently in all women empowerment packages. Changes were introduced in the Revenue Act (1967) to minimize the role of *patwaris*, who were found to be colluding with male family members. Statistics reflect that the situation is changing for the better. However, an in-depth appraisal of the issue shows that women rarely gain access to, and control over the inherited land. Property is often transferred to women to evade taxes or to simply avoid the scrutiny of law enforcement agencies. This discrepancy is evidenced in a recent study by PCSW; according to which, Mianwali witnessed the second largest number of property transfers to women. The contradiction is inescapable as Mianwali is notorious for women rights violations and the limited

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role of women in public sphere. All these gaps identified by extensive literature review were taken into account during field work.

The study results highlighted that only in rare cases were women able to cross cultural impediments and interact directly with the state institutions. In such cases, deficiencies of available legislative framework were a source of immense anxiety for them. Ambiguities in inheritance related legislation, lengthy legal procedures, offence lodging of an FIR in case of criminal offenses, burden to produce evidence, heavy lawyer's fee and unsupportive court system left the claimants helpless. Institutionalized patriarchy, slow justice system, poor data management in NADRA and LRMIS, absence of connectivity among state departments, inefficient computer software to recognize ownership in newly configured system in the Revenue Department, ever increasing judge to case ratio, cases of deception in legal fraternity, cases of corruption and nepotism in the state departments, poor data handling at union councils, and existence of land mafias, are all contributing to women's hardships in exercising their inheritance rights. A detailed account of legislative and institutional deficiencies has highlighted that if we seek to enable woman to cross such cultural barriers and institutional impediments we have to recognize women's autonomy as human beings. This requires removing legal provision of patriarchal practices like surrender when it comes to women's inheritance.

Study results also revealed that despite the enactment of the Criminal Law Amendment a decade ago, many officers at law enforcement agencies remain unaware of the legislation. Moreover, in cases where women sought to file FIRs, police officers were reluctant to lodge complaints and preferred private resolution. Institutionalized sexism and notions of honor are rife in courtrooms. Additionally, women face multiple issues at revenue offices, which are overcrowded and lack women and children friendly spaces. Incorrect family trees in NADRA's records weakened the cases petitioned by respondents. Essentially, it was found that though the government's efforts are well meaning, they tend to undermine the impact of unjust, and slow legal processes and a lack of female mobility on the ability of women to seek justice. These institutional lags are immense in and of themselves notwithstanding the private pain women bear in going against their families, something that has not been accounted for in this article.

5. Conclusions and Recommendations:

Pakistan is ranked 143 among 144 countries by the Global Gender Gap Report on economic participation and opportunities available for women.³¹ The situation is indeed grave and it is essential to realize that economic empowerment is intrinsically linked with inheritance. By assuring a woman's rightful share in their

inheritance, Pakistan can at some level overcome the crisis of low economic opportunities for its women. Attitudes of women towards attainment of their inheritance have been, among other factors, influenced greatly by their knowledge and level of awareness about inheritance rights. Hence, it has become imperative that citizenship education is not confined to subjects like civics and made a vital component of basic education at schools. Simultaneously, in Pakistan's situation where female literacy rate is quite low and female enrolment in schools remains an issue, it is important to devise informal ways of creating awareness about basic rights. Additionally, women also opt to surrender inheritance rights as a form of bargain with patriarchy. This occurs in cases where the state fails to provide protection to women. This requires strengthening state's institutional mechanism. Institutionalization of patriarchy among state institutions along with the delayed justice system are issues highlighted by this research and should be addressed on priority. At the same time, record-keeping should be improved and following digitalization of NADRA, all records pertaining to inheritance should be computerized. Collaborations within state departments need to be focused to make all the procedures hassle free for women across Punjab. Concurrently, female revenue officers should be employed to make the process more conducive for women. It was also noted that customary practices, strict cultural norms, issues of *purdah* and mobility of women posed serious challenges for women in claiming their inheritance right; then, making public spaces safer and accessible for women should be a key focus area. Extensive measures taken by the government have to a certain extent reduced the negative role of *patwaris* through the introduction of LRMIS, but the playing field is still unequal for women. Prohibition of dowry and strict implementation of the law alongside curbing other harmful cultural practices identified by the amendment in question will surely reduce the number of women deprived of their right of inheritance.

- Women friendly laws focusing on the ease of access (to courts) of all women and not just married ones, as is the case with 2011's criminal law amendment, should be made. Inheritance deprivation often occurs through forced marriages; however, reporting in such cases remains rare in Pakistan. Similarly, deceitful deprivation cannot account for cases in which women are unfairly persuaded to relinquish their shares.³² Most importantly, concerted efforts should be made to create awareness of these laws among the masses. The process of mass awareness can be made more effective by popularizing hadith on the importance of inheritance law, such as the one by Ibn e Majah³³ as well as those discussed earlier, through Friday sermons, government awareness campaigns, etc. Religion remains central to social discourse in Pakistan and hence, its utility in promoting gender equality

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needs to be recognized. This reorientation is pertinent in a time when religion is increasingly being used to reify patriarchal violence.

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