

Analyzing the Legal Framework Regarding Women's Right to Inheritance with Special Reference to the Role of Superior Courts of Pakistan

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Abstract

The Constitution of Pakistan 1973 emphasis on protection of family, women and children. Theoretical claims are audacious yet the State must ensure implementation of rights of women. There are fields of practical life where women have not only been denied of their rights, but are quietened by virtue of *malafide* customary misleading assertions prevailing in the society. The motivation of this study is to investigate the causes of deprivation of a woman from her fundamental right to inherit property from her ancestor as prescribed under the law. Legal system of the State has poor record of implementation of law and judgments passed in favour of the said underprivileged community. There are discrepancies in judgements passed by the superior courts. In a certain case, the court enforces the inheritance rights of women, in another case, it declines to enforce the same. This study adopts the doctrinal research approach to investigate the complexities surrounding women's right to inheritance, analyzing the role of superior courts of Pakistan in this respect.



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1. Introduction and Background

The Law of inheritance in Pakistan prescribes certain provisions about distribution of estate of the deceased. The systematic procedure of distribution depends upon certain facts which vary in each case having regard of personal law of each one whether the deceased person was Muslim, Hindu, Christian, etc. The principles of Islamic law govern the inheritance rights of Muslims. The right of Muslim women to inherit from estate has been acknowledged by the said principles. However, the practical realization of this right is fraught with challenges, inter alia due to discrepancies in judicial interpretations by superior courts. This inconsistency not only undermines the right of women to inherit property but perpetuates gender inequality too. Before discussing the state of inheritance rights of women, it is necessary to have a look on status of women and their privileges in Pakistan. Where the Constitution assures fundamental rights for all the citizens, at the same time, women community in particular has been facing serious scarcity of legal and social rights in rural and remote areas of the State. Discrimination on the basis of sex (Ali, Ali et al. 2022) honor killings (Shahid, Awan and Rana 2024), rapes (Aziz, Rafique et al. 2024), abductions (Ahmad, Mustafa and Arsalan 2023), forced marriages (Banchio, Sisodiya et al. 2024), etc. are harsh realities of the Pakistani society and are being committed since long, regardless of religion, caste and creed. Pakistan, unfortunately, has been ranked the 6th most unsafe country for women (Rauf 2020). Despite the prohibitory laws, child marriages are in practice in Pakistan (Hussain and Afzal 2013). Women are victims of the crime of honor killing (کارو کاری). Parliament passed the law against killing woman for the sake of honour, i.e., The Criminal Law (Amendment) Act of 2004 which declared “honour killing” as an offence and was made part of the Criminal Law U/S 299(ee) of PPC but the number of these killings was not decreased especially in rural regions where such types of offences are not even reported (Hadi 2020) and remain unpunished (Bakht and Alizai 2023). Human Rights Commission of Pakistan confirms that 470 or more incidents of “honour killings” were recorded in the year 2021. However, human right’s activists guess that more than one thousand women are murdered under the pretext of “honour” annually (Anees 2022). The law itself has been used as a tool to forgive the killers (Singh and Bhandari 2021) as the legal heirs are allowed to forgive in such cases. The conventional approach of large section of the Pakistani society has confined and reduced the social living pattern of female community from societal functions to domestic working enclave (Afzal, Manzoor et al. 2024; Bilal, Ullah et al. 2024). Lack of democratic affiliation of State for women has strengthened the use of obsolete maxims

backed inter alia by customary support, i.e., عورت کا گھر چولہا چوکہ ہے which means that a woman belongs to the kitchen (Suja-ud-Din 2018), عورت کی عزت پتنگ کی ڈور which means that a woman's honor is like string of a kite (Illyas 2022), عورت کی عقل گھٹنوں میں ہوتی ہے which means that a woman's wisdom lies in her heels (Brown 1901), عورت سے مشورہ لینا بیکار which means that seeking advice from a woman is useless (Olsson and Kerstn 2016), عورت کی فطرت میکے سے تمھاری which means that by nature a woman is unfaithful (Bose 2010), اٹھنا چاہیے which means that you are being sent as a bride form your parent's house, your funeral should be done from your in-laws (Ashtar 2021), etc. This state of facts and pressure has produced uncertainty in the minds of women for exercising their rights and privileges. Their traditional domestic role has made them dependent on male members of the family for scope, extent and availability of their rights as understood generally. This phenomenon has also seriously affected financial, proprietary and inheritance rights of Pakistani women. The life of an unmarried woman is by and large supposed to remain under the control and influence of her paternal family and thereafter family of in-laws respectively. This social behavior has accordingly produced certain implications in the life of women population. Joint-family system is in place in larger parts of urban as well as rural areas. Conventionally, immovable properties are supposed to be family property. Transmutation of inherited property of woman is speciously understood to pass to another family instead of woman inheriting her share. This irrational supposition has restricted fair transfer of inheritance property to women as compare to men of the same family. This gender based biased distinction within the family is a root cause of the subject topic. This malevolent behavior has to be treated by extraordinary statutory measures under the patronage of judiciary as well as executive in proportion with nature of deep-rooted social injustice.

The inheritance of Muslim woman of Indo-Pakistan, generally and traditionally (as inspired by Hindu Law), has been considered similar to usufructuary rights over immovable property (Acharya 2023), which means that in actual practice the said right has been confined to the right to using and taking the associated benefits of land like grazing, collecting fodder and firewood in her life time. Accessing water sources to irrigate lands and livestock are also customary rights which are available to her. Such rights were established due to long practice of time. In the rural regions of Sindh, Punjab and Khyber Pakhtunkhwa, woman's dowry is taken as a compensation in respect of her right of inheritance (Khan 2024). In order to revolve inheritance of woman around the family, there is practice of giving up property rights by the women (Malik 2023) to keep up the good relations with the male members of the family (Kousar & Yasmeen 2023), and where women choose to remain unmarried (Mehdi 2024), or

get married within the family (Rehman & Farooq 2024), i.e., cousin marriages (Kamal, Khan & Numan 2015) or marrying of the widow with her brother-in-law (Mohyuddin 2018), or married to Quran (Rubab, Malik & Bakht 2023). This practice is prevalent to retain the property within the male members of the family. Likewise, exchange marriages known as watta satta where one set of siblings (e.g., brother and sister) is married to another similar set with a mutual understanding that no family will claim inheritance) are also conducted to prevent transfer of property (Kousar & Yasmeen 2023).

Similarly, widows cannot get their right of inheritance if they are remarried to a person out of family of deceased husband. In some areas, in the absence of any equal males, a few tribes allow their women to inherit but the property resides under the control of other male members. Moreover, if the name of a woman is entered in the record, a transaction of gift is executed in favor of the male members of the family. In this way, even if the name of a women is recorded in the record, at the time of succession, instead of women, the male members inherit the property. In some areas of Khyber Pakhtunkhwa, in the presence of a male descendant, a woman does not inherit immovable property.

In the province of Punjab, women may inherit property but without having actual and physical control for the purpose of making decision relating to property. Immovable assets are hardly given to women except where families are prosperous. Dowry is used as a pretext to recompense against inheritance of property which is not as valuable as property itself. In certain cases, the daughters may get a portion in property after the share of mother is deducted. There are more than one options devised to materialize preference of property, may it require disassociation or even to disown female progenies. When property seems slipping out of actual possession, there is no regard for blood relation and property becomes more important than the sisters, daughters and even mothers. Misuse of female relationship is in practice on the same motivation. The mode of benami transactions, transfer of property to female relatives, to defeat State accountability and avoid taxes, is in practice (Rubab 2021).

There is another major issue relating to revenue department practically defeating transfer of inheritance rights of woman. The revenue department plays an instrumental role in making, maintaining and updating the record of rights as required under the law from time to time. Unfortunately, as observed in the judgments of superior court more than half of the problems are generated by the record keeping department solely for the reason of either failure (Tribune 2022), negligence (Atta Muhammad v. Mst. Munir Sultan 2021) or for money minting policy (Dawn 2021) deeply rooted in the fabrics of revenue officials for corruption (Ghulam Qasim v. Mst. Razia Begum 2021). These officials often engage in malpractices such as forging

documents, misplacing records, or deliberately providing incorrect information, all of which severely hinder women's ability to claim their rightful inheritance. Revenue staff has to do nothing but to take benefit of official position and leaving the female sharers to go to the court for rectification. Thus, the systemic corruption within the revenue department is a significant barrier to justice. Studies have shown that revenue officials frequently exploit their positions of power to demand illegal payments, which disproportionately affects women who may already be marginalized in terms of socio-economic status and access to legal resources (Khan, 2019). This pervasive corruption not only perpetuates gender inequality but also undermines public trust in the legal and administrative systems (Ali & Sadiq, 2021).

The judiciary has repeatedly called for reforms within the revenue department to address these issues (Tribune 2022). However, the implementation of such reforms has been slow, largely due to entrenched interests and a lack of political will (Zafar, 2022). Until these systemic issues are addressed, women in Pakistan will continue to face significant obstacles in exercising their inheritance rights.

2. Observations of Different Surveys

Right of inheritance of Pakistani women have evolved significantly over time, influenced by cultural, religious and legal factors. Understanding this context requires examining traditional practices, Islamic laws, and legislative changes that have shaped women's inheritance rights.

Before the advent of Islam, women in the Arabian Peninsula had limited rights, including those related to inheritance. Inheritance practices were primarily patriarchal, favouring male relatives and excluding women from inheriting significant property (Faradilla 2024).

With the beginning of Islam, inheritance laws underwent a profound transformation. The Quran and hadith provided specific guidelines ensuring that women receive a defined share of inheritance. These guidelines aim to establish a fair and just distribution of assets among heirs while recognizing the roles of different family members.

In pre-colonial times, customary practices regarding inheritance varied widely across different regions and communities. Patriarchal norms often dominated, resulting in limited or no inheritance rights for women. In many cultures, women were mostly deprived from the estate, because it was traditionally transferred down within the male lineage only.

Throughout the colonial period, the British establishment enacted and enforced laws which were not in conformity with Islamic injunctions (Toulson 2010), which lead to a two-fold legal structure. After independence, the Pakistan inherited the same complex legal system, that continued to evolve with the passage of time. Despite legislative steps to get inheritance laws

align with Islamic injunctions, customary norms and colonial legacies remained in practice, complicating the realization of women's rights of inheritance.

3. Legal Framework governing Women's Inheritance Rights

A) Legislative Instruments:

The key legislative instruments women's right to property include:

- The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962
- The Family Laws Ordinance, 1961
- The Enforcement of Women's Property Rights Act, 2020
- The Punjab Enforcement of Women's Property Rights Act, 2021

These laws aim *inter alia* to codify Islamic inheritance principles but often face challenges in implementation and interpretation.

The Muslim Family Laws Ordinance of 1961 (MFLO) is a key piece of legislation aimed to reform and regulate family affairs. It was enacted to resolve different issues relating to marriage, divorce, maintenance, inheritance, etc. This piece of legislation sought to streamline family laws in the light of Islamic injunctions. Though the main focus of this law was on marriage and divorce, it includes sufficient provisions for women's rights of inheritance too. While the said Ordinance does not mainly address inheritance matters, it includes provisions which influence women's rights of inheritance by offering legal safeguards for women. Its significant aspects include:

- The MFLO provides for compulsory registration of marriages, that results in creation of legal documentation which helps in resolving disputes relating to inheritance. Proper evidence of marital status is important for women to enforce their inheritance rights as mothers and wives.
- The MFLO limits polygamy by demanding a husband to get approval from the Arbitration Council before he marries any other woman. This provision of law helps in protecting the inheritance rights of first wife and her children, guaranteeing that they could receive their just share from the husband's estate.
- The MFLO compels husbands to maintain their wives. This leads to financial stability which helps wives to claim their rights of inheritance as they are less likely to be forced to relinquish their rights due to financial dependency.

Thus, it may be said that MFLO plays an important role by indirectly supporting women's rights of inheritance. By addressing the issues of marriage registration, maintenance,

polygamy, etc. the MFLO provides a more advantageous legal atmosphere for women. Nevertheless, challenges regarding implementation, awareness and socio-cultural hurdles exist. Addressing these matters via targeted strategies and necessary support is indispensable to ensure that women are capable of realizing their rights of inheritance and enjoy gender equality in family as well as inheritance matters.

Another key legislative instrument is known as the West Pakistan Muslim Personal Law (Shariat) Application Act of 1962, which was also passed to apply Muslim personal law to Muhammadans living in Pakistan. This statute marked a noteworthy shift from the preceding legal structure, that included customs laws (which were inconsistent with Islamic principles). The main purpose was to make sure that personal matters like marriage, inheritance, divorce, etc. were supposed to be administered by the principles of the Shariah law.

The Act requires the implementation of Shariah principles towards all the personal matters of Muslim community, which *inter alia* includes inheritance, that is administered by the Quranic principles, declaring the share of both female and male heirs. The Act, by enforcing Shariah principles, aims to guard women's rights of inheritance as set out by Islamic injunctions, that are frequently more advantageous in comparison with several customary practices. Agricultural land was also included by this legislation, that gave women the right to inherit any type of property, according to the fixed declared shares based on their kinship with the deceased.

Prior to the passing of the Act, many areas in Pakistan followed customary practices which significantly disadvantaged women, for example, customs like "*Haq Bhakshish*" (to relinquish the right of inheritance) and "*Sawara*" (offering girls in marriage to settle clashes) were in practice. The Act aimed to eliminate these practices by warranting that Sharia law would supersede customary practices, thereby strengthening women's legal rights. The enforcement of the Act, sometimes, is found inconsistent with customs and patriarchal practices. Legal battles may be prolonged and expensive, discouraging women to pursue their rights.

The West Pakistan Muslim Personal Law (Sharia) Application Act of 1962 thus signifies an important step to protect women's rights of inheritance by applying Shariah principles and eradicating customary practices of discriminatory nature. Nevertheless, challenges in execution such as socio-cultural barriers (i.e., lack of awareness, economic dependency, resistance from male family members, etc.) continue to obstruct the true realization of such rights. Addressing these issues through legal reforms, awareness movements and support mechanisms is necessary for empowering women and ensuring justice and equality in matters of inheritance.

The next legislation was the enactment of the Prevention of Anti-Women Practices Act (2011)

which intended to correct the errors causing problems for women regarding inheritance rights. This Act planned to eradicate the unfortunate norms which had disregarded women by denying their property and inheritance rights. By creating a bridge between legal rights and their protection, the Act offered certain procedures to stop violating the inheritance rights of women. Several provisions of this Act have criminalized intimidating practices like denying women their rightful share in inheritance by coercion, deceit, or manipulation. The Act introduces penalizes like imprisonment or/and fines for violations. The Act aims to create a robust deterrent against such practices. Furthermore, the Act has been aligned with constitutional guarantees (i.e., equality and non-discrimination) and reaffirms the State's pledge to fulfill its obligations under international conventions, like the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Though the Act marks a significant advancement towards the legislative structure, its implementation remains a challenge. Barriers like lack of awareness among women, procedural delays in the courts, and social pressures interrupts the full realization of the rights provided by the Act.

Despite the above mentioned challenges, the said Act plays an important role in Pakistan's journey regarding gender justice, by emphasizing the State's goal to protect women's rights of inheritance and tries to ensure their rightful place in the legal as well as social framework.

Another landmark was the Punjab Partition of Immovable Property Act (2012) which was passed to address the long awaiting issue of women co-owners who were denied their legal shares in the joint property. Pakistani women (particularly in the province of Punjab) have been facing challenges in exercise of their rights of inheritance due to social, cultural and procedural hurdles. In different cases, joint properties were divided/sold without the consent or knowledge of female co-owners.

The Act was designed to rectify the said violations by introducing strict procedural safeguards to ensure merit and transparency in the division of immovable property. One of its provisions directed that no partition or transaction involving joint property could be carried out without notice of all co-owners including women. This process was planned to guard female co-owners by ensuring their involvement and consent in transactions affecting their share.

In addition, the Act provided methods to stop deceitful practices, like manipulating property records or excluding women from partition proceedings. It required that partition proceedings must adhere to clear lawful standards. It sought to create an equitable system to resolve disputes relating to joint property.

The Act not only reinforced women's rights of inheritance but was also aligned with broader legal principles of justice and equality. It emphasized the government's pledge to address

systemic barriers faced by women and ensured that their legal rights were protected against exploitation.

Nevertheless, the success of the Act depends mainly on its enforcement. Challenges continue to hinder the realization of its objects. Despite the said hurdles, the Act may be said a key step in empowering women and protecting their property rights.

Another legislative step was the passing of the Punjab Land Revenue (Amendment) Act, 2012 which was intended to resolve the issues surrounding the division of inheritance, especially to protect the rights of women co-owners. The Act was supposed to complement the Punjab Partition of Immovable Property Act of 2012, providing a strong framework to protect rights of co-owners, to ensure transparency in transactions eradicating practices which sidelined women from inheritance rights.

A key provision of the Act states that Revenue Officers must notify all the owners of joint property once a mutation about inheritance is approved. This notification cum obligation is an important advancement, because it disregarded the practice of transactions proceeding without awareness/consent of co-owners, particularly women, who were often unaware of such transactions. The Act, by mandating official notifications, has ensured that female co-owners must be informed about their legal rights and any alterations affecting their shares in the property.

Furthermore, this Act removed the earlier arduous requirement to submit a private partition scheme to initiate the process of notification. It has simplified the process and make the system accessible to the co-owners (including women), The said process has reduced delays and any manipulations, to ensure a fair distribution of joint property and inheritance.

The Act strengthened the accountability of Revenue Staff, to make them directly answerable for observing to prescribed procedures. This obligation intended to restrain deceitful practices, like bypassing/excluding co-owners from property decisions, that had disadvantaged females in property matters since long (Khaleel, Ahmed and Shah 2023).

Nevertheless, success of the said legislation rests on its effective enforcement. Challenges like lack of knowledge about these laws, resistance in eliminating customary discriminatory practices, and procedural inadequacies in the revenue branch, do not allow the full realization of the Act's objectives. However, the Act may be regarded as an essential step towards securing gender equality and ensuring that all co-owners, including women, could exercise their rights of inheritance fairly and without unjustified interference.

Another noteworthy piece of legislation is the Enforcement of Women's Property Rights Act of 2020 that was passed to address the persistent issues regarding women's property and

inheritance rights. This Act aims to ensure that women receive their lawful share in the property and inheritance as provided by the law, addressing the challenges posed by customary norms and procedural gaps that have deprived women of their lawful inheritance. The Act consists of several important provisions which protect and enforce women's property and inheritance rights. The case of *Ayesha v. Ghulam Nabi* (2021) is an example of practical application of the said Act. Ayesha was deprived of her inheritance rights by her male relatives. The court, in accordance with the Act, eased the restoration of her rights, and a precedent was set for the true enforcement of women's property rights. The case of *Fatima v. Ali Khan* (2022) is another example that involved deceitful transfer of her inherited property. The Act provides an expedited legal process which ensures that this type of cases must be resolved quickly. Ultimately Fatima got possession of her property. This case highlights the efficacy of the Act provide timely justice. In short, the said Act of 2020 has proved as a significant improvement in protecting and enforcing women's inheritance rights.

B) Institutional Network to protect Women Rights:

Enforcement of property rights of women (including inheritance), requires a collaborative setup of government institutions, judiciary, NGOs and international bodies, so that these institutions could work together to enforce the laws, provide help and promote women rights in accordance with Pakistani and Islamic laws.

The Ministry of Human Rights performs a vital role in devising strategies and to implement laws relating to human rights, including women's rights of inheritance. It takes notice of wrongs done throughout the country. Its significant functions are, thus, policy-making, legislative drafting, monitoring human rights violations and conducting awareness movements in collaboration with relevant institutions.

The National Rural Support Program (1991) gives financial and technical facilities to the weak communities, including women from rural areas, to enhance their income and become less dependent on their male counterparts.

The National Commission on the Status of Women is a statutory body of autonomous nature (established in 2000) to assist the government regarding policies/laws that affect women property rights. Its main job is to review laws, do research, advocate for gender equality, and recommend legal reforms. A similar arrangement has also been setup at provincial level.

The National Policy for Women's Development and Empowerment (2002) acknowledges the women's underprivileged status in the society and aims to empower women without any distinction of caste, creed, or religion. The main goals of the Policy are to eliminate inequalities,

defend women's rights and eradicate wrong customary practices.

The Ministry for Women Development is the executing agency for the National Policy for Women's Development and Empowerment. The Ministry has undertaken a major reform program in all provinces through the Gender Reform and Action Plan (GRAP) 2005. This program aims at mainstreaming gender in the provincial departments. Its objectives are to ensure that all the public sector operations in the provinces promote gender equity and reduce gender inequality to seek transformation of the provincial government into an organization that practices and promotes gender equality to ensure that all the provincial civil servants understand gender issues to make adequate representation of women as decision makers in the provincial government.

Various Ombudsperson Offices have been established to address grievances including women's property rights. Their key functions are investigating complaints, providing legal remedies, and ensuring the enforcement of human rights.

The Civil Courts handle civil cases, including property and inheritance disputes. They have been passing judgments on inheritance cases by implementation of statutory and Islamic laws.

The United Nations Women Pakistan is a UN entity which is devoted to work for gender equality and women empowerment. Its main obligations are to support policy development, provide technical assistance and enforce plans to protect women's rights of inheritance.

The implementation of women's rights of inheritance, thus, involves a collective approach, reinforced by a setup of government institutions, judiciary, NGOs, Academic bodies and international institutions, who work in partnership to provide security and support services, work for policy changes and promote awareness about women's rights of inheritance.

c) Customary Laws and Practices:

Pakistani customs/practice deeply rooted in cultural and historical contexts significantly affect property matters. The statutory as well as Islamic principles which guarantee inheritance rights of women, are superseded by these customs, which leads to discrimination and deprivation of lawful rights. The following discussion explores different norms and practices which affect inheritance, highlighting their influence on women's rights.

- **Patriarchal Norms and Male Dominance**

Patriarchal norms are deeply rooted in Pakistan, which dictate that men are the principal heirs and trustees of family property. This mindset is the most important barrier towards the realization of women's inheritance rights. Many families consider the eldest son as the real

legal heir, who inherit the maximum family property. This practice (which is known as the principle of primogeniture) is contrary to Islamic law of inheritance, which has fixed the shares of all the heirs regardless of gender. Women are pressurized to surrender their inheritance in favour of male legal heirs in the name of family unity.

- **Customary Practices and Local Traditions**

Certain customary standards/norms exist in different territories of Pakistan, which significantly impact inheritance and property rights. These norms are found in contradiction with Islamic law and statutory laws of Pakistan, which male heirs are given priority over female heirs. In some areas, women are pressurized to relinquish their rights of inheritance (it is a practice known as *Hake Bakshish*). This waiver is often treated as an act of family loyalty. In rural side, the acts such as *Swara* and *Vani* are in practice by giving girls in marriage to settle disputes/debts. These customary practices not only infringe women rights, but also result in transfer of property control to the males.

- **Joint Family System**

The joint family system also influences inheritance rights. Usually, the property is considered communal, and individual shares are not clearly defined. Male heads (called Elders) of the family, control the property. Women's rights of inheritance are frequently ignored or denied to maintain family cohesion and control by the elder's consent. Women belonging to joint families depend economically on their male relatives, which makes it difficult for them to claim their rights of inheritance by risking family support and shelter.

- **Marital and Dowry Practices**

Marital and dowry (a certain number of goods, i.e., furniture, clothes, crockery, etc. given to bride by her family at the time of marriage) practices also affect women's rights of inheritance. Dowry is mostly considered like alternative to inheritance, which leads to exclude women from the estate. The families may argue that the dowry compensates for the women's share in the estate, and thereby justify the exclusion of daughter/sister from inheritance. In certain cases, marriage agreements contain clauses which may affect a woman's rights of inheritance, either positively by safeguarding her rights or negatively by confining them.

- **Economic and Social Pressures**

Economic/social pressures also play an important role to influence inheritance transactions. Women have to face enormous pressure to waive their rights of inheritance. That section of women which is financially dependent on their male counterparts may be influenced to give up their inheritance to ensure continued financial support. Women who assert their inheritance rights may face social ostracization, or be labeled as greedy or disloyal to the family.

- **Resistance from Male Relatives**

Male section of the society very often resists women's attempts to get their inheritance. They take it as a threat to their control over the family property. This resistance may take several forms, i.e., emotional manipulation, outright threats, violence, etc. Women may suffer from intimidation from male family members if they do not give up their rights. This may include legal manipulation to cause delay or deny inheritance rights. Instances of deception like forging documents or misleading legal claims are very common.

- **Role of Customary Jirgas and Panchayats**

The local councils (i.e., customary *Jirgas* and *Panchayats*) of many rural areas, play a very important role to resolve inheritance disputes. They often uphold traditions and customs over the statutory as well as Islamic laws. These male dominated *Jirgas/Panchayats* tend to support male successors in disputes regarding inheritance. The decisions of these councils reflect patriarchal prejudices and neglect women's rights.

- **Different Ethnic Groups and their Inheritance Practices**

The sundry ethnic landscape of Pakistan also supports numerous inheritance practices. Various ethnic groups follow different practices which determine the inheritance issues. Within the *Pashtun* community, customary codes like *Pashtunwali* prefer male heirs over women in respect of inheritance claims. Women are kept dependent on their male family members. In Baluchistan and Sindh, parallel customary practices prevail, where the estate is inherited by male relations because rights of women are subordinated to customs.

The impact of such traditions on women's rights of inheritance is profound, usually excluding women from property ownership and financial empowerment. This continuation of gender bias is at odds with both Pakistani laws and Islamic principles, which are committed to ensure fair and judicious distribution of estate among all the heirs including women.

4. Judicial Interpretations and Rulings on Inheritance

Numerous landmark verdicts of superior courts in Pakistan have shaped the legal landscape regarding women's rights of inheritance addressing the ancient societal and legal obstacles. These judgements have not only construed existing laws to warrant obedience not only with constitutional guarantees but also with Islamic principles which demand justice in distributing the inheritance. For example, the decision in the case of Muhammad Bashir v. Ghulam Fatima (1982) is extremely praiseworthy. By upholding the women's right to inherit the estate, the Apex Court demonstrated a strong pledge to justice and equality. This judgement not only strengthens the women rights but also sets a significant example, protecting and enforcing women's inheritance rights throughout the country.

Likewise, the decision in the case of Ghulam Ali v. Mst. Ghulam Sarwar Naqvi (1990) which was again restated in Abid Baig v. Zahid Sabir (2020) is also commendable. By enforcing women's right of inheritance (and rejecting the customs that sought to deny their share), the Apex Court emphasized its pledge to uphold justice and gender equality. It was held that *"Inheritance ... takes place automatically and each legal heir is entitled to get his respective share irrespective of any claim or demand therefore."* The claim of adverse possession by the brothers was rejected and the court declared that it could not prevent sisters from receiving their share in the inheritance. It was also admitted that the male relatives (by violating the Shariah principles and the law of the land) often deprive their female relatives from their shares in the inheritance. This decision not only promoted the rights of a woman but also delivered a strong message about the judiciary's role to protect women's rights against discriminatory practices.

Fazal Hussain v. Safia Bibi (1998) is another example which meaningfully shaped debates on women's property rights. The Apex Court demonstrated a thoughtful commitment to justice by protecting the rights of a widow to inherit property, rejecting claims based on discriminatory interpretations of Islamic principles. The decision highlighted the principles of equity as enshrined in Islam, upholding women's entitlement to their share in the estate. It is a landmark judgement in protecting/promoting women's property rights, strengthening the role of judiciary to ensure gender equality. The case of Humaira Mehmood v. The State (1999) also underscored the implementation of Islamic laws over customary practices.

In the case of Khair Din v. Mst. Salaman (2002), the court held that no advantage could be derived by claiming inheritance rights against women on the basis of deceitful transactions.

In a later judgment in 2002, the Apex Court held that a deed of gift must validate the

disinheritance of a lawful heir (Barkat Ali v. Muhammad Ismail). In *Kulsoom Bibi v. Muhammad Arif* (2005) and *Ghulam Haider v. Ghulam Rasool* (2003) a similar principle was laid down that a donee demanding under a gift (to exclude an heir), is required to establish original contract of gift regardless of whether that contract is registered or not. The same principle was applied in the cases of *Islam-ud-Din v. Mst. Noor Jahan* (2016), *Khalida Azhar v. Viqar Rustan Bakhshi* (2018), *Atta Mohammad v. Mst. Munir Sultan* (2021) and *Mst. Parveen (Deceased) through LRs v. Muhammad Pervaiz* (2022). It was stated that “*On the death of a Muslim his/her property devolves upon his/her legal heirs. However, if any heir seeks to exclude the other legal heirs, by relying on a purported gift the beneficiary of such gift must prove it.*”

In the case of *Muhammad Nawaz v. Muhammad Riaz* (2008), the Lahore High Court affirmed the rights of Muslim daughters to inherit agricultural land from their deceased father despite arguments based on customary practices and patriarchal interpretations of Islamic Law. The ruling emphasized the importance of gender equality in inheritance, setting an example to uphold women’s property rights.

In the case of *Khalida Shamim Akhtar v. Ghulam Jaffar*, (2016), a question arose before the court about whether a childless widow could inherit from her deceased husband belonging to Shia School of thought. The said issue had not been decided by the judiciary, nor had any codified legislation been enacted in Pakistan regarding it. Respondents, the deceased's brothers, countered that a widow was not entitled to any inheritance under the Shiah sect. Due to lack of any legislative provisions, the court determined, in the interest of equity, justice, and good conscience, that a Muslim widow without children was entitled to one-fourth of her husband’s estate.

In the case of *Zohra Bibi v. Haji Sultan Mahmood* (2018), it was held that the principles of Islamic law assert that inheritance rights are established immediately upon a person's death. At that very moment, all legal heirs automatically become owners of their respective shares in the deceased’s estate. Processes such as sanctioning inheritance mutations, issuing succession certificates, or similar formalities are procedural mechanisms governed by procedural laws. Their purpose is mainly to maintain orderly records and address fiscal requirements.

In *Shabla v. Ms. Jahan Afroz Khilat* (2020), the court held that the right of inheritance, deeply rooted in Islamic law, must be protected with utmost care. Thus, the claimant or beneficiary bears a significant burden of proof to establish that a female heir willingly and consciously relinquished her inheritance. It must be demonstrated that this transfer was made voluntarily, with full awareness of its implications, and not under coercion, undue influence, or

unwarranted pressure from those in positions of advantage over her. This judgment also reiterated that limitation can never run against fraud in matters involving right of inheritance of a female. The same principle has already been declared in previous judgments, i.e., *Arshad Khan v. Resham Jan* (2005), *Rehmat Ullah v. Saleh Khan* (2007), *Mst. Gohar Khanum v. Mst. Jamila Jan* (2014), *Mahmood Khan v. Syed Khalid Hussain Shah* (2015), *Khan Muhammad through L.Rs v. Mst. Khatoon Bibi* (2017), *Fazal Ellahi deceased through legal heirs v. Mst. Zainab Bibi* (2019), etc.

In 2022, the court in *Mst. Parveen (Deceased) through LRs v. Muhammad Pervaiz* observed: *“We are dismayed to observe the all too frequent practice in Pakistan of male heirs resorting to fraud and other tactics to deprive female heirs from their inheritance. While this deprivation causes suffering to those deprived, it also unnecessarily taxes the judicial system of the country, resulting in a needless waste of resources. Each and every day that a male heir deprives a female heir is also an abomination because it contravenes what has been ordained by Almighty Allah.”*

A recent decision given in *Dr. Asma Nighat Zaidi, etc. v. Syeda Safoora Begum, etc.*, (2024) has rightly emphasized that all movable and immovable properties owned and possessed by the deceased at the time of death, including any property that was due to the deceased but not received during their lifetime, is known as *tarka*. It is a settled law that the succession to a Muslim's estate under Muhammadan Law shall open immediately upon his/her death and rest of the proceedings are mere formalities. The legal heirs, as determined by Shariah, who are alive at the time of the deceased's death, are entitled to inherit the estate in accordance with their respective shares. This decision appropriately reinforces the immediate and automatic nature of inheritance under Islamic law, ensuring that the rights of heirs are recognized and protected without delay. The same view was also adopted in *Gulzar Ahmed deceased through LRs v. Rab Nawaz, etc.* (2024) and it further stated that no limitation runs in inheritance matters. The moment a Muslim closes his/her eyes, legal heirs become owners of their respective share which cannot be taken away mere based on an entry in the revenue record. Entry and sanctioning of inheritance mutation is mere a matter of updating the official record. However, as observed in *Mst. Grana v. Sahib Kamala Bibi* (2014), the law of limitation would be relevant when the conduct of the claimant demonstrates acquiescence and particularly when third party interest is created in the inherited property.

However, the consistency of such judgments remains an issue. The decision in *Eda Khan v. Mst. Ghanwar & Others* (2004), reflects a concerning lack of understanding and competency on the part of the judge regarding the prevalence of Islamic law over customs. The counsel for

the petitioner argued that customs, which supposedly denied women the right to inherit, should govern the case. Instead of unequivocally affirming the supremacy of Islamic principles of inheritance, which unequivocally grant women the right to inherit, the court's decision was contingent on the failure to prove the custom. This approach suggests a troubling deference to discriminatory customs that contradict Islamic law (which should be the governing legal framework). The court, though, allowed the daughter's right in inheritance, but the fact is that it should have categorically rejected the notion that any custom could override the clear mandates of Islamic inheritance law, thereby reinforcing women's rights without ambiguity.

In the cases of *Abdul Haq v. Mst. Surrya Begum* (2002), *Taj Muhammad Khan thr. L.Rs v. Mst. Munawar Jan* (2009) and *Muhammad Rustam v. Mst. Makhan Jan* (2013) the Apex court held that when inheritance mutation was never challenged by the deceased lady, who remained alive after the death of her father for considerable time, the legal heirs of such lady could not claim the inheritance being barred by the law of limitation. But in *Muhammad Ayub Khan v. Secretary, Board of Directors Hashim Khan Trust, Quetta* (2014) the court highlighted that the right of inheritance would remain unaffected by the passage of time. It established that women, as rightful heirs, automatically become co-owners and co-sharers of the property left by the deceased, regardless of who currently holds the possession. Later, the cases of *Hayat Khan v. Gul Rehman* (2021), *Mst. Sheedan Begum v. Muhammad Usman Khan* (2021) and *Mst. Rabia Gula v. Muhammad Janan* (2022) highlighted the importance of timeliness in challenging inheritance mutations. It implies that if a legal heir, potentially a woman, fails to contest her exclusion from inheritance for an extended period, her heirs may lack the legal standing to challenge the matter at a later stage as the mutation had been given effect in the revenue record. In the case of *Muhammad Aslam v. Federal Board of Revenue* (2022), the court held that a mutation of inheritance does not grant ownership but is merely for revenue purposes. The court emphasized that the right of inheritance takes effect immediately upon the death of the deceased, with the relevant date for tax assessment being the date of death, not the date of mutation. This decision safeguards the inheritance rights of legal heirs, ensuring they are not subjected to undue tax liabilities arising from delays in the mutation process.

The supreme court in *Saadat Khan v. Shahid-ur-Rehman* (2023), wherein the children of two deceased women, claimed a share in their maternal grandfather's estate who had transferred his property to his son without giving a share to either of his two daughters. Neither of his daughters had challenged the said transfer in their lifetime to claim their right in their father's estate. Though the civil court had ruled in their favor yet, high court nullified the judgement. The supreme court upheld the high court's decision, ruling that a woman's inheritance could

only be claimed in her lifetime and her children could not claim after her death. Contrarily, there are certain decisions of superior courts which have liberalized statutory dictum in proportion with hardships faced by women in society for protection of their right of inheritance. The said ruling of supreme court has agitated an important academic question that: -

- Since right of inheritance at the death of deceased instantly devolves upon sharers under the operation of law. Whether it necessitates further procedural implementation of mutation for its absolute validity?
- Secondly, whether inheritance being a civil proprietary right passed to women under the operation of law, if not claimed under compulsion or denied to woman, ceases to exist?

These propositions need resolution according to the law of the land and Islamic law for availability of woman's inheritance, victimized by social guardians upon whom women lot naturally depends.

The Supreme Court in a most recent judgement, titled as Tanvir Sarfraz Khan v. Federation of Pakistan (2025) has directed the brother to pay a fine of Rs. 3000000 to his sisters for filing a frivolous petition and attempting to deprive her from inheritance rights. The court observed that the wrong of depriving the female heirs from their inheritance rights, facilitated by some counsels by filing frivolous petitions, became in practice, which was alarming.

The Federal Shariat Court has declared all or any practices of depriving women from their inheritance rights as un-Islamic and also directed to initiate criminal proceedings U/S 498-A of the Pakistan Penal Code, against those who try to deprive women from such rights (Nation 2025).

In the light of above discussion, it may be said that some of the judgments of superior courts raise critical concerns as they effectively deprived female heirs and their descendants of their inheritance rights, thereby undermining the principles of justice and fairness enshrined in Islamic law and constitutional guarantees. These judgments dismissed the rights of legal heirs to challenge inheritance-related mutations simply because the deceased female did not contest the matter during her lifetime. Such reasoning is problematic for several perspectives:

- Ignoring systemic barriers faced by female heirs
- Violation of Shariah principles
- Undermining justice for the next generation
- Flawed reliance on revenue records
- Failure to ensure equitable remedies

It is very unfortunate that certain judgments set a troubling precedent that weakens protections for female heirs and perpetuates gender-based inequalities in inheritance matters. Instead of applying the rigid procedural bars, the courts could have adopted a justice-oriented approach to safeguard the women's inheritance rights in both letter and spirit. This would better be in accordance with the principles of justice, and the constitutional directive to eradicate gender discrimination.

5. Impact of discrepancies over judicial interpretations

Inconsistencies in interpreting principles of inheritance have caused substantial implications for women's inheritance rights. These discrepancies create uncertainty, prolong gender disparity, and limit women's access to their lawful property. This section of the study analysis the effect of such divergences on women's inheritance rights, highlighting the challenges and consequences that women face in their pursuit for justice.

- **Legal Uncertainty:**

Contradictory judicial interpretations may create uncertainty, making it hard for women to forecast the result of their inheritance claims. This vagueness can discourage women from asserting their due rights.

- **Reinforcement of Discriminatory Practices:**

The judgements which allow discriminatory customs over statutory laws and Islamic principles strengthen unfair norms, prolonging gender inequality and disheartening women from claiming their rights.

- **Financial and Emotional Burdens:**

Protracted legal disputes impose economic burdens on women, who may already be financially weak. The emotional toll of ongoing legal proceedings further degrades their plight, affecting their mental strength.

- **Quality of Judicial Precedents:**

Inconsistency in judicial interpretations by the higher courts may also affect the quality of judicial precedents. Uniformity in judicial interpretations can produce positive precedents, which strengthen legal safeguards for women and encourage more consistent application of statutory laws and Islamic principles relating to inheritance. These precedents can help challenge and gradually eliminate discriminatory practices.

In the light of above, it may be said that discrepancies in interpretations regarding laws relating to inheritance influence women's rights. These discrepancies cause uncertainty, strengthen

discriminatory customs, and impose economic and emotional problems on women. Consistent judicial interpretation in accordance with statutory laws and Islamic principles is required to address said challenges, to set positive judicial precedents, and to foster socio-cultural change to favour gender equality in matters of inheritance.

6. Recommendations

The scenario demands that the State should not only strengthen existing legal provisions but also enact further undefeatable measures for the protection of women's inheritance rights. This includes stricter penalties (for those who deprive women from their rightful inheritance) and mechanisms to expedite legal processes.

- Inheritance of women should in all conditions devolve in record of rights in her name with actual delivery of possession separating that from the rest of the family shares. The share should be categorized as non-transferable except with cognizance of special family court. The proceeds of the property keeping in view nature of property must periodically be delivered as per prescribed procedure.
- State patronage can rescue vulnerable inheritance of woman population of immovable property declaring as her indispensable and non-transferable birth right. State should enact special law for matters relating to materialization and disposition of inherited property to be processed by family courts. All alienation of property transacted in violation of law by any one shall have no legal effect. Any portion of property in possession of or in the name of other holder should be treated as usurpation.
- To address inconsistencies in judicial interpretations, policy recommendations include establishing clearer guidelines for judges and promoting uniformity in legal interpretations. Training programs for judges on gender-sensitive adjudication can also be beneficial.
- Public awareness campaigns and support mechanisms, such as legal aid services and helplines, can empower women to claim their inheritance rights. Community-based initiatives and collaboration with civil society organizations are essential for creating a supportive environment.

Conclusion:

Subsistence of human life is dependent upon human as well as material resources. Resources are inherited, generated, and maintained in a social set-up for dependents as ancestral reserve for sustenance of future life. Ancestral reserves are deemed common property to be inherited

under the law within the family members which flow side by side to ensure continuity of accumulated life. Inheritance is an important source for individual life of each member of family. In developing societies female community in general is not earning hand as compare to male. Inheritance of property is particularly critical resource for a woman in the event of something happening unexpected in her life. Women with property rights to land, in case of death or divorce or abandonment from a spouse are less likely to become economically vulnerable. As for legal system is concerned several laws and procedural instruments are in place for transfer of share to woman. Yet these steps must reduce the strength of customary and social prejudiced obstacles obstructing the operation of law in the society.

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