

## **Refutation, Relinquishment and Inheritance: Exploring Women's Inheritance Rights in Pakistan**

**Beenish Ijaz Butt**

Lecturer  
Department of Social Work  
University of Sargodha, Pakistan

**Amir Zada Asad**

Professor  
Department of Social Work  
University of Peshawar, Pakistan

### **Abstract**

*This paper aims at exploring women's inheritance rights in Pakistan where women with no access to inheritance rights, is a customary practice in the country. The data for this study was collected through qualitative means i.e. loosely structured interview protocol with 14 gender and law experts was used as an instrument and data was analyzed through the thematic analysis technique. The data revealed that the constitution of Pakistan and Islamic Law allows a woman to get her property, but in practice, it is hard to see the constitutional and legal provisions materialized. Women themselves relinquish their property right to save their social relations in the native family. Further, if they wish to get their property, complicated legal system becomes a hurdle in their way to get their due share in the property. Government policies and governance are not facilitating in providing women inheritance rights. Materialization of law into practice is recommended.*

**Keywords:** Women inheritance, property refutation, property relinquishment, gender inequality, customary social system

### **I. Introduction**

Inheritance is defined as the money or property derived from one's parents or ancestor (Pearshall, 1995). When defined at legal grounds, it is the property received from an ancestor under the law of inheritance or a property (moveable or immovable) that a person receives by bequest or devises (Black, 2011). The laws of inheritance are features of a developed nation and explain how they reward inheritance right to both genders. Rights to land and property for women are extensively considered as essential to ensure active and viable empowerment. Rights to land and property include the right to own, use, access, control, transfer, exclude, inherit and otherwise make decisions about land and related resources (Gomez, et al, 2012). Secure rights to land are rights that are clearly defined, long-standing, implemented, transferable, and legally and socially legitimate.

Universally, there is an apparent link between gender disparity and the denial of women rights to land and property. This failure ensconces gender disparity by supporting

women's dependence on men, and precludes under developed countries from finding an equitable pathway to development. Women's land and property rights are fundamental to development (UN-HABITAT, 2005), but on the actual grounds these rights are often not shared equally between men and women in different parts of the world. The impediments which disallow women from effectively enjoying these rights equally with men are multifarious, and at times particular times are polygonal. This discrimination stems from insufficient legal system and execution of laws, biased social norms, attitudes, and policy implementation at the national and local levels which results in extensive incongruities in practice between development consequences for men and women.

As United Nations Food and Agriculture Organization (2010) mentions,  
*“Gender inequalities in land rights are pervasive. Not only do women have less access to land than men, they are often also restricted to so-called secondary land rights, meaning that they hold these rights through male family members. Women thus risk losing entitlements in case of divorce, widowhood or their husband's migration. Evidence also shows that women's land parcels are generally of smaller size and lower quality than men's.”*

In various countries, the outcome of gender prejudiced statutory laws, customary law, and social norms and values are that a woman is not capable to use, possess, regulate, own, rent, or inherit property without consensus of male members of the family. This issue is gaining much attention since the last decades as it relates directly to the women economic resources and empowerment. It provides women a prolonged economic sanctuary. In many countries of the world, men get a share in the property of the ancestors and women are kept out of it. Moreover, widows are denied of their property and they are shelter less after the death of their husband (FAO, 2008).

In different countries of the world, women have the legal right to own and inherit property, but customs and governing social practices disallow these privileges and even discourage its demand. It includes India, Pakistan, Nigeria, Morocco, Brazil, Syria and many others (Human Rights Watch, 2002). In the South Asian countries where women status is deprived of basic rights and freedom, women are often denied their right to inherit the property regarding customary practices; Pakistan is one of them. Here, the persistence intra-household inequality relates to oppressed women status to and access to control over productive assets, including money and assets like property.

Inheritance law under Pakistani government is governed by a number of laws as it inherited Muslim Personal Law, 1937 at the time of sub-continent partition, apportioning a different status to women. The principle under the said law in both Hanafi and Shia law is that women receive the half share of a male sharer (National Commission on Status of Women, 2005). Muslim Family Laws Ordinance, 1961 also addresses the inheritance rights. Further, The Constitution of Pakistan, 1973 under article 23 avows as, *“Every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan.”* It also certifies rights to property and ordains that all laws should be in conformity with the Holy Quran and Sunnah of the Holy Prophet Mohammad (PBUH). Internationally, Pakistan is a signatory of CEDAW, which ensures *“The Elimination of Discrimination to property and equality of citizen as fundamental rights”*. But the

presence of legislation does not ensure the provision of property for Pakistani women. On the actual grounds they have to face the refutation of their property rights.

A study conducted by Awaz Foundation Pakistan (2010) on Denial of women Rights of Inheritance in Southern Punjab reports that 70% of women do not demand their right of inheritance, 78% females were of the opinion that majority of the women in communities are illiterate, while 100 percent were of the view that women property rights and its management are not accepted by the society.

Women are refused to get their property share in different parts of the country. Since 1950s, it is a local law among the people of Dir, right bank area of river Swat and Bajaur Agency, that they completely refuse to give property share to their women, widows and their minor daughters (Asad, 2007).

Women have no right to get property in Baluchistan in the presence of male members of the family. Here incidents of women's murder are observed, when their female relatives go to a court of law to demand their share in inheritance or refuse to surrender their right to inheritance (LEAD, n.d). Most of the women in Southern Punjab, interior Sindh, Baluchistan and KPK are not married due to the division of the parental properties and promote the culture of Vanni, Karo Kari, WattaSatta Marriage and Marriage to Quran (Awaz, 2010).

## **II. Methodology**

This article is based on a larger PhD study. This paper is based on descriptive qualitative research. The study interviews were guided by the use of a loosely structured interview protocol. By using the purposive sampling method, data was collected from previously identified sub-groups which included the respondents who were gender experts and law experts. A total sample of 14 respondents was collected. Experts were contacted personally at their workplace. The data collection procedure took two months to complete. Data was collected in the respondents' first language and was translated into English afterwards. With the permission of the respondents, interviews were audio recorded. All the audio recorded interviews were transcribed by the researcher and verbatim sheets were prepared and sent to the respondents for editing. The researcher analyzed the data by using the techniques of Thematic Analysis.

### **A. Customary Social System and Women Property Rights in Pakistan.**

The status of women property rights is not different than the other third world countries. It can be observed from three angles i.e. firstly women are refused to provide their right of inheritance, secondly if they have, their property is not managed by them and thirdly they relinquish their own right of inheritance.

#### ***Refutation of Women Inheritance Rights***

Under the Pakistani cultural values, women are refused to provide their inheritance right by the parental family and from the in-laws after her husband's death. In the experts view point;

*“Due to strong patriarchal patterns, a woman is not given her divine rights in the property here. It is supposed to hold all the property by*

*men who do not follow divine rules in Pakistan. Here male-controlled culture prevails which is considered to be capable of lineage since generations. Women are considered to be a burden and someone's other property i.e. they will have to move to the next home when they reach puberty. So, property is kept away from women as it will move with them, and will spend on the husband's home. In some rare cases, when women inherit property, it is occupied by the male family members (husband or son). Again it is handled by husband or son for the sake of their personal economic benefit”.*

Daughters are often denied their right to inheritance on the ground that they get dowry and gifts at the time of their marriage from the parental family. It's a cultural value that daughters are given dowries at the time of marriage. There is no limit of dowry price in Pakistani culture. It totally depends on the affordability of the bride's parents. It includes gold and diamond jewelry along with a complete range of house hold articles (from bedding to crockery). Further two functions are arranged by the families including heavy lunch or dinner for the whole clan which costs in lacs. Now it is customary that when parents afford their marriage expenses, they don't give them any share from the property. Neglecting the fact that, their share stands in lacs or millions.

Further, women have to face forced denial of their rights as a respondent responded that;

*Fathers do not register the birth of their daughters. Afterwards, brothers refuse in the court that she is not their paternal sister to deny her right to get property.*

The other forms of forced denial are “HaqBakhswai”, (the custom under which daughters give up their property right before marriage) and Marriage to Quran (NCSW, 2005). It is reported that there are presently over 5,000 women in Sindh who are forcefully married to the Holy Qur'an (HRCP, 2002). This custom is related to the division of parental property which promotes that inheritance should be for male members of the family.

The male head of the families are never in the favor in dividing their property. As a woman has a low status at family level and property is prestigious, so it is considered as an act of ignominy to share the property for the daughters and sisters. When sisters are given a property share at the eve of their marriage or after that, its transfer is considered as the transfer of property to the son-in-law. On customary grounds, fathers like to give their property to the sons and not to the son-in-laws. Further, property and wealth is considered as a sign of family honor in Pakistani culture; so for the sake of family honor it is not divided between the brothers and sisters rather it is transferred to the sons generation after generation. In addition to this, brothers also conceal their sisters' name in the registration of vital events. Keeping in view the all above discussed factors, women are denied to give a share in their property.

### **B. Manage of Property by Women**

It is commonly observed in Pakistan that, if women are provided property, it is not handled by them. Instead of women some male member of the family manages it and has full control over it. There is a wide difference between the fact that women “have property” and “hold property”. Experts are of the opinion that;

*“In rural as well as in the urban areas of Pakistan, women if acquire property, do not manage it. Instead, they have transferred power of attorney to her husband, son, brother, or uncles who manage it”.*

Women are not treated as equal citizen, rather they are recognized as vulnerable, illiterate, and needy, and poorly-prepared to manage property matters. Questioning upon women property management by themselves in Pakistan, experts opined that;

*“Women property is commonly handled by the male members of their family and she is only a signature holder or a thumb printer. On the first hand her property and her bank account (if opened in her name for some purpose) is not a sign of her independence. Secondly, when she does not hold the possession of the property, then why it is presumed that she cannot manage it”.*

The roots of such custom are found in colonialism as Mehdi (2002) opines that Islamic law allows women to inherit their moveable and immovable property, but under colonial laws she had no control over her property and often their entire claim to it. An expert opined,

*“Women in Pakistan are unwilling to demand share in their parental property. If they demand, it is usually due to the will of their husband. Being the demand of the male members of the society, property is majorly managed and handled by them”.*

Now even law permits women to handle their property, it is customary that management of the property is not in their hands. In the present days, the management of the property by women is still is not in practice. Pakistani culture has a sex segregated society so women are kept out of business and property matters. Strong patriarchal constructs disallows a woman to manage her property by herself. It is cogitated that it is the matter of men to handle and manage the property and women should be kept out of it.

### **C. Relinquishment of Women Inheritance Rights**

The custom observed here since centuries is the relinquishment of the women inheritance rights. It is a common observation in the country that the women transfer their parental property in their brothers’ name with their consent. There are several cases in the courts which show the reality of relinquishment of women inheritance rights.

#### ***Complicated Legal System***

The inconvenience of the prescribed, high-priced, multifaceted, poorly governance and time-consuming court system also supports the poor women status in getting their

property rights. On the actual grounds; women hardly take control over their property. An expert opined;

*“After facing denial of property rights, if a woman wishes to get her property, she has to go to the court to hold it. In practice, there is complicated legal system in Pakistan. One has to go through this complicated legal system to get their inheritance right. There are a dozen of laws for inheritance in the country adopted from colonialism. The proper implementations of these laws are hard to view. Further, if a woman files her property case, it takes at least 10-12 years to get completion. Policies are not much facilitating for women alarming issues of property”.*

Mostly, women are in domestic domain in Pakistani culture. They learn to live in the four walls of the home and to manage the kitchen affairs for life time. On the other side, courts and legal affairs are managed by the male members of the families; so women have no experience in this field. They move everywhere with their male family members and cannot manage the outside home affairs. They even do not have any idea to go to court. Although they have knowledge of their rights but they have no way to approach it. They also know about the complicated and expensive legal system which prevents them from approaching there. If they file a case against their brother, it is only possible when their husband or son is with them in the courts affair. Otherwise women are not socialized to move and face the complicated legal system in the country.

### ***Informal Social Safety Nets***

The customary privileges of the female members of a family are harmonious with their status in the family and society. The State and Islamic law delegates the daughter share in the paternal property. But in contrast to it, women do not ask for their share in the property of their fathers/brothers. What she gets in return is the love and affection of her father and brothers and what she sacrifices is her relationship to the natal family. In contrast to this, if a woman claims her due share of inheritance she can only get it at the cost of her relationship with her stem family. When she does not demand for property rights, she even then gets some compensation for it. It is observable in different parts of the country that there is an informal social security system for married women from their paternal side. Experts are of the view that;

*“There is informal exchange of gifts between a woman and her parental family. She receives gifts at the eve of Eids, Shabe-Barat, and birth of their children, at the death of her parents’ in-laws and at all the other occasions. Even in some families burial garment is given by the parents of the deceased daughter or sister. Women do not like to leave this status quo which is beneficial for them in case of getting all these gifts. In case of demanding property, they lose all this status and luxuries. In addition to this, they have to face social boycott, partial boycott and no informal exchange of gifts from the parental family”.*

On the actual grounds, all these kind of informal exchange of gifts is given as a compensation for not dividing the property. No matters, her property share is in millions

or billions, she relinquish it for the sake of these in formal exchange of gifts. Actually a Pakistani woman knows that she will have to relinquish her property rights, so she accepts these gifts and has adopted thinking that it is her status and right instead of property share.

### **III. Discussion**

Having Muslim majority population, women in Pakistan are lucky to get their property rights under Islamic Law, women are provided their property share half of their male siblings. Here religion and constitution in Pakistan delegate a woman her due share of property, but in practice they are denied of their right to get a share of their property. Customary laws kept women away from their due share in parental property.

Under religious concepts, Islam provides gender-based equivalence in economic issues. It gives provisions to empower women by the provision of property rights. She has no economic responsibility of the family, though she is given right to get property from parents and husband. Some consider it is not forbidden in Islam that women can enter in the economic scenario outside the four walls of the home. But the prominent hurdles are seen through the socio-cultural constraints which disallowing women to hold and manage property in Pakistan. In spite of all this, women can inherit and have property on legal grounds. But most of the women relinquish their property ownership to their brother or husband (Gondal, 2003).

NCSW (2005), states that in Pakistan, it is considered a matter of dishonoring the parental family when their women start claiming to inheritance from their father's property. Similarly, when husbands demand for the share from wife's property, it is condemned on customary grounds. Usually, it is customary that the well-to-do brothers bid some compensation amount to their sisters in response to relinquishment of their right to inheritance. Under some rare cases, women are delegated their share in inheritance, but the custody and hegemony is forbade. They, however, obtain some share in the production of the agrarian product, if have.

These are the Socio-cultural limitations of the society which consciously keep women as a browbeaten and underprivileged group. So it is a fact that women are not presented their property rights in Pakistan. There is a large population of women who never get any share from their husband's property. It is in vogue in Pakistan that women, by themselves do not demand for their inheritance. They relinquish their right of property for their brothers. To reveal the fact, there is a fear of isolation on the part of women from their parental family, which restrict them from asking for their property. The inclusive percentage of women "not getting their share" is 50.6 % in Pakistan; it has a highest ratio in Baluchistan (100%), followed by Punjab (97%), NWFP/FATA (55%), and Gilgit/FANA (50%) (NCSW, 2005).

Mehdi (2002) states that however Islamic law and Pakistani national law both guarantee a woman to inherit property. But on the customary grounds, lack the control and access over their inheritance. Basing on this scenario of non-transfer of property for women of Pakistan, they have evolved an accepted behavior that their brothers are eligible for holding property and not they are. This scenario also evolves a stereotype

attached to the women status that they are not eligible to handle their property in the society.

Asad (2007) while writing on “The Practice of Female Inheritance Rights in Pukhtoon Society” points out that Islam and the constitution of Pakistan consistently assure women’s rights to get and hold inheritance in consanguine properties. However the empirical data presents another side of the picture. Pakistani culture presents an entirely contradictory culture which is in contrast to Islamic law of inheritance. Women are almost conscious of their rights delegated to them on the religious basis; however the customary practices are conditioned to the attributed roles. Such pre-assumed attributed roles confine women to get formal and higher education, otherwise they have to face social and psychological punishments. All these acts, discourages women to break the cultural chains. Along with this punishment, such women are labeled with bad names in the society who either struggle for their property share or make effort to improve their status in society.

#### **IV. Conclusion**

Though, Pakistan is viewed as a reformist while discussing the women status and promulgating a set of laws for women status. But on factual grounds, women belong to poor marginalized and vulnerable group here. On one side, Pakistan’s legal system is based on constitutional provisions but along with this it is based on Personal Islamic Laws varying for different groups. Muslim women are permissible to purchase or sale their property, but the main road way through which they get hold of it, is inheritance. Inheritance rights for women in Pakistan are denied, relinquished and handling is far reach from the women hands by the families. But it is the one side of the picture. Family structure and customs, in any country, are always occupied by government policies. This study concluded that policy processes for providing women inheritance rights, have not yet successfully addressed under the different democratic and martial law governments. There is impediment in the entire policy process, from agenda setting through policy formation to implementation. These ground realities keep women away from their right to get property. This set of circumstances shows a grim picture of women status in Pakistan. Having legal and religious right, still women are denied of their right. This issue leads to the poverty among most of the women of the country.

#### **References**

- Asad, A. Z. (2007). The Practice of Female Inheritance Rights in Pukhtoon Society in *the Journal of Humanities and Social Sciences*, XV (2), Pp. 31-45.
- Awaz Foundation Pakistan. (2010). *Denial of Women’s Right of Inheritance: Enhancing their Vulnerability to Domestic and Societal Violence*. Multan: Awaz.
- Food and Agriculture Organization of United Nations. (2008). *Protecting Women’s Land and Property Rights in the Context of AIDS*. Retrieved from, <http://siteresources.worldbank.org/INTGENAGRLIVSOUBOOK/Resources/AfricaIAP.pdf>. Accessed at 1<sup>st</sup> April, 2015.
- Gomez, Mayra & Tran D. H. (2012). *Women’s Land and Property Rights and the Post-2015 Development Agenda and the Future We Want for All*. Retrieved from <http://globalinitiative-escr.org/wp-content/uploads/2012/10/28102012-FINAL->

- Inequalities-Paper-on-Womens-Land-and-Property-Rights-GI\_\_\_\_.pdf. Accessed at 5<sup>th</sup> April, 2015.
- Gondal, A. H. (2003). Women Involvement in Earning Activities: Evidence from Rural Pakistan, *The Lahore Journal of Economics*, Vol. 8, no. 2. Pp, 123-136.
- Government of Pakistan. (1985). *Women Status in Pakistan*. Islamabad: National Commission on the Status of Women.
- \_\_\_\_\_. (1973). *Constitution of Federal Republic of Pakistan 1973*. Islamabad: Ministry of Law and parliamentary Affairs.
- Human Rights Commission of Pakistan. (2002). *State of Human Rights in 2000*. Retrieved from "Pakistan: Insufficient Protection of Women. Amnesty International 2002.<http://web.amnesty.org/library/index/engASA330062002?>
- Human rights Watch Staff. (2002). *World Report 2002: Events of 2001*. New York: Human Rights Watch.
- Jones, H. (1990). *Social Welfare in Third World Development*. London: Macmillan Education.
- LEAD (n.d). *Denial of Women Inheritance*. Islamabad: LEAD Pakistan.
- Mehdi, R. (2002). *Gender and Property Law in Pakistan: Resources and Discourses*. Lahore: Vanguard Books Pvt. Ltd.
- National Commission on Status of Women, *Women's Rights of Inheritance and its Implementations* (GOP: Islamabad, 2005).
- Rehman, Saeed. (2010). *Denial of Women's Right of Inheritance: Enhancing their Vulnerability to Domestic & Societal Violence*. Multan: Awaz Foundation Pakistan.
- United Nations Food and Agriculture Organization. (2010). *Gender and Land Rights: Understanding Complexities, Adjusting Policies,' Economic and Social Perspectives Policy Brief 8*. New York: United Nations.
- United Nations Human Settlements Programme.(2005). *Women's Equal Rights to Housing, Land and Property in International Law*. Nairobi:UN-HABITAT.