

**SHARIAH APPRAISAL OF LETTERS OF ADMINISTRATION AND
SUCCESSION CERTIFICATE ACT 2020 WITH SPECIAL REFERENCE
TO NADRA PRACTICES**

LLM THESIS

LLM SHARIAH (MUSLIM FAMILY LAWS)



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DEDICATION

I dedicate this thesis with a special gratitude to my most respected and valued Father Riazat Hussain, my beloved mother Fehmida Begum (late) and my beloved brother Chaudhary Asif Hussain, who supported me in every step of my life and encouraged me during my study, my mentor Bano Jahangir Raja, Advocate Supreme Court, my most beautiful friend, Faiqa Noor Raja Advocate. Their constant support, motivation and encouragement by providing me a peaceful atmosphere assisted me in accomplishment of my research work comfortably. May Allāh Almighty shower His countless blessings upon them, increase their 'īmān, provide them peace, ease and satisfaction in their lives and He be always happy with them.

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DECLARATION

I, Maryyam Khatoon , hereby declare that work in the instant thesis is owned by me to the best of my knowledge and belief. The information derived from the literature has been duly acknowledged in the text and bibliography provided. No part of this thesis contains any material previously published. I also declare that information used in this thesis has been duly acknowledged.

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IIUI

ABSTRACT

It is mentioned in the Act of 2020 Concerning Letters of Administration and Succession Certificates that the Authority shall issue the letters of administration and succession certificate to the legal heirs of deceased with detail of their prospective shares as provided in the personal law of such legal heirs, the said Act did not set any rule related to the religion and sect of deceased, in the practice of our society many male legal heirs of the departed change the sect of the departed from *Sunnī* to *Shīā* just to deprive the widow of an issueless deceased from inheriting immoveable property as the *Shīā* law does not give the widow of an issueless deceased a right to inherit immoveable property from the estate of her late husband. There are certain enactments promulgated by central and provincial legislatures for safeguarding the rights and well being of women in Pakistan, yet only one amendment is made for the protection of *Shīā* issueless deceased's widow's right to inheritance in immoveable property i.e. the Muslim Family Laws (Amendment) Act, 2019, that is not clear but full of ambiguities and there is difference between practice in case laws and procedure. However, there is no particular enactment passed by either the central or provincial legislature to protect the widow of *Shīā* issueless deceased right to take her share of the immovable property of her deceased husband. This time, it compels the state legislature to make appropriate amendments to the Letters of Administration and Succession Certificate Act 2020. This research outlines the concept of succession under Islamic law and proposes enacting a comprehensive law in Pakistan by virtue of an analysis of comparative laws of different *Shīā* states, particularly Iran. The present study aims to evaluate the extent of courts duty with respect to protecting the inheritance rights of women, specifically

the right of inheritance of the widow of *Shīā* issueless deceased from his immovable property and streamline the difference between practice and procedure. This research work can be a source of guidance for all stakeholders in this regard, such as law students and parties, and provide assistance to legislators in Pakistan in enacting a law in this field in the near future.

List of Abbreviations

NADRA: National Database and Registration Authority

SC: Supreme Court

HC: High Court

FRC: Family Registration Certificate

CEDAW: The Convention to Eliminate All Forms of Discrimination Against Women

UDHR: Universal Declaration of Human Rights

MFLO: Muslim Family Laws Ordinance

NWFP: North West Frontier Province

NIC: National Identification Card

CPC: Code of Civil Procedure

CrPC: Code of Criminal Procedure

LIST OF CASE LAWS

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Muhammad Bashir v Latifa Bibi, 2010 SCMR 1915

Miam Mazhar Ali vs Tahir Sarfraz, PLD 2011 Lahore 23

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Mst Sarwar Jan vs Mukhtar Ahmed, PLD 2012 SC 217

Latifan Bibi v. Rehmat Ali, 2012 SCMR 1251

Mst Mehmooda Begum vs Zubair Ahmed, 2013 CLC 1834

Khalida Shamim Akhter vs ghulam Jaffar & others, 2016 LHC 1757

Faizullah and others v Dilawar Hussain and others, 2022 SCMR 1647.

Mst. Rasoolan Bibi v Provice of Punjab and others, 2023 CLC 1171

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Introduction to Research

Thesis Statement

Legal heirs face problems at the time of the opening of succession as NADRA does not grant the succession certificate according to the personal law of the deceased; hence, there is a need to analyze the provisions of the current law in order to propose appropriate amendment to the present legislation.

Introduction and Importance of the Research Topic

Pakistan is a Muslim state, and Pakistan's constitution provides clear directions where Muslims could live according to the dictates of Islam as no laws can be enacted that are against the injunctions of Islam. Inheritance is the process that makes a person entitled to a deceased person's property. There are a number of ways in which the property of the propositus is shared between heirs by law, depending on the customs and traditions of each society¹. Both civil and Islamic inheritance practices have historically been governed by a number of laws and rules and required the involvement of pertinent organizations in addition to the deceased's relative's.² After the death of a person his estate may be devolved in two manners by the way of his will (testamentary) or by the law of succession when there is no will (intestate). After the deduction of the burial expenses, debt and bequest are taken; the inheritance is then devolved according to

¹ Salihū O. Muḥammad, "Principles and Practice of Succession under Islamic Law," *National Judicial Institute Abuja* 8 (2017): 5.

² Muḥammad Amrullāh and Zati Ilhām Abdūl Manāf, "An Overview of the Inheritance legal system in Malaysia and Indonesia: Issues faced by both countries," *Journal of Shariah Law Research* 6 (2021): 181.

Muslim law. Initially the family law governed under Muslim Personal Law (Shari‘at) Act 1937, the provisions of said Act covers ten subject matters under its umbrella.

The Act's goal of guaranteeing equal rights for men and women was not fulfilled. Customary laws were limited in their application, and courts were unable to apply Muslim law in disputes involving agricultural land, charitable endowments, and charities because of the authority granted by the Shari‘ah Application Act of 1937.³

It was the authority of District judge to grant a Succession certificate in manner prescribed under the Succession Act 1925⁴, the district judge within whose limits where any part of the deceased property is located is competent to grant a succession certificate. Sections 370 to 388 specifically deal with this matter. The succession act failed to address the specific requirements and principles of Islamic inheritance law, which is based on Quran and Hadith. As a result, Muslims found themselves facing conflicts between the provisions of the said Act and their religious beliefs regarding inheritance. Now, for the purpose of reducing the burden of the district courts and curtailing fraud the power to grant succession certificate is transferred to NADRA through the Letters of Administration and Succession Certificates Act, 2020.⁵ The main objectives of this Act are to curtail fraud and forgery. This research work mainly based on the analyses of the provisions of said law that either the provisions of 2020 Act are according to Islamic inheritance law and the legal heirs of deceased are getting their rights according to sect and religion or not.

³ Muslim Personal Law (Shariat) Act (Act No. XXVI of 1937), (The Official Gazette of Pakistan, Extraordinary Part I, October 1, 1937), section 2.

⁴ The Succession Act (Act No. XXXIX of 1925), (The Official Gazette of Pakistan, Extraordinary Part X, September 25, 1925), section 370-388.

⁵ The Letters of Administration and Succession Certificate Act (Act No. VI of 2020), (The Official Gazette of Pakistan, Extraordinary Part I, February 14, 2020).

NADRA grants certificates to legitimate descendants of the deceased related to both moveable and immovable property according to Family Registration Certificate (FRC). It is important to discuss the significance of this Act and note its drawbacks as well. The said Act contradicts with the Islamic inheritance law, in so far as the said legal documents are issued either in accordance with FRC (S. 3), which mentions the immediate family relations by birth, marriage or adoption; or as per the list of legal heirs provided by the applicant (S. 6); however in both cases it is not bound to follow the complete list of legal heirs enlisted through Islamic inheritance law, it is mentioned in the said Act that the Authority shall issue the letters of administration and succession certificate to the legal heirs of deceased with detail of their perspective shares as provided in the personal law of such legal heirs, the said Act did not set any rule related to the religion and sect of deceased, here a question arise that if there is a clash between the sect of deceased and legal heirs which sect will prevail? And under which sect NADRA grant certificates and set the shares according to the sect, as the sectarian allegiance of the deceased is not easily ascertained and the point may be contested between the heirs, in the practice of our society many male legal heirs of the departed change the sect of the deceased from *Sunnī* to *Shīā* just to deprive the widow of issueless deceased from her right to inherit real estate as the *Shīā* law did not give the widow of issueless deceased right to inherit immovable property from the estate of her late husband, hence there is need to critically analyze the pertinent clauses in the said law, in order to propose appropriate legislation in Pakistan⁶.

The equal rights of Pakistani citizens to acquire, own, and dispose of property are guaranteed under Article 23 of the country's constitution and laws. However, in situations when property ownership or disposal is deemed to be at odds with the perceived larger public interest,

⁶ The Letters of Administration and Succession Certificate Act (Act No. VI of 2020), (The Official Gazette of Pakistan, Extraordinary Part I, February 14, 2020).

the authority to intervene in property rights is reserved.⁷ The state also has an obligation to protect its citizens. The laws pertaining to Islamic inheritance are not entirely codified in 1961, Muslim Family Laws Ordinance which regulated certain aspects of Muslim personal law.⁸ Article 227 of the Pakistani Constitution,⁹ states that all legislation of the state is determined by religion. Therefore, neither a judicial challenge nor a constitutional challenge has been made to the laws that discriminate against women in the inheritance of property, nor has any reform been suggested.

Land distribution rights and property issues are governed by a number of international accords. "Everyone has the right to own property both individually and jointly," states Article 17 of the Universal Declaration of Human Rights.¹⁰ Pakistan is obliged to grant "equal rights for each spouse with regard to property ownership, acquisition, management, administration, pleasure, and disposal, whether property is given away for free or in exchange for a significant sum of money in accordance with Article 16(h) of the 1979 Convention on the Elimination of All Forms of Discrimination against Women,¹¹ which Pakistan ratified.

⁷ The Constitution of the Islamic Republic of Pakistan (The Official Gazette of Pakistan, April 12, 1973), Art.23.

⁸ Muslim Family Law Ordinance (VIII of 189), (The official Gazette of Pakistan, Extraordinary Part I, March 2, 1961).

⁹ The Constitution of the Islamic Republic of Pakistan (The Official Gazette of Pakistan, April 12, 1973), Art. 227.

¹⁰ United Nations Universal Declaration of Human Rights (1948), Art. 17-46.

¹¹ United Nations Convention on the Elimination of All Forms of Discrimination against Women (1979), art 16(h).

The government of Pakistan enacts many laws for the preservation of women's property rights;¹² still the women face discrimination in inheritance distribution as the male family relatives fraudulently try to exclude women's from their right of property. This is due to the failure of administrative system of inheritance and non-implementation of the laws that protect the women's right of property, so for as long as it is necessary to legislate a law for the protection of the rights of legal heirs and determine their portion of inheritance according to what has been determined by the injunctions of Sharī'a.

The role of courts in inheritance matters is undoubtedly essential, as it is the sole body having the authority to determine the matters of succession. Now that this power is granted to NADRA as well, its relevance as an administrative authority, however, is justifiable by looking thoroughly at the relationship between the courts and NADRA. This could further explain the reason behind the requirement for a better legislative framework for the succession laws within the injunctions of Sharī'a. So to mitigate the problems of legal heirs that they face due to the complex and unclear distribution procedure of NADRA, it is necessary to formulate brief laws of succession for the protection of the interests of the legitimate descendants of the deceased person as per the Sharī'a rulings.

¹² The Punjab Enforcement of Women's Property Right Act (Act No. X of 2021), (The Official Gazette of Pakistan, Extraordinary Part I, May 17, 2021).

Literature Review

Succession certificates and the distribution of inheritance are contemporary matters in Muslim society that has been discussed in many books, journal and articles from the perspective of Islamic law as well as state law of Pakistan. Few of this literature shall be analyzed below.

Denial of women's right of inheritance Enhancing their vulnerability to Domestic and social violence, is a book written by Saeed ur Rehman¹³. He describes and sheds light on the women basic rights and explains that despite the long-standing historical foundations, women do not have formal control over property and resources. The main objectives of his study are quite different from this research work. Through the questionnaire he has also put views of different women of present era; however, he did not mention the practice and procedure that is mentioned in Succession Act 1925, to grant certificates to legal heirs related to deceased moveable and immoveable property.

The Islamic Law of Succession is a book by Dr. A Hussain¹⁴ In this book, the author has mentioned Islamic schools of jurisprudence, the conditions necessary for succession, causes for succession, impediments to succession, and all legal heirs with their prescribed shares under Shariah. However, he did not mention the subject of letters of administration and succession certificates under the provisions of Succession Act 1925. The present research discussed the relevant provisions of Succession Act and powers of NADRA regarding succession certificates and explored the loopholes to make the existing law of Pakistan according to injunctions of Islamic law.

¹³ Saeed ur Rehman, *Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic and Societal Violence* (Multan: Awaz Foundation Pakistan, 2010):1-35.

¹⁴ A Hussain, *The Islamic Law of Succession* (Karachi: Darussalam Publishers, 2005): 17- 413.

Inheritance in Islam an Attempt to simplify one of the Complex Branches of Shariah is a book written by Muhammad Imran Muhammad,¹⁵ in this book, the author describes the shares of legal heirs in inheritance; he discusses the shares of grandparents, parents, siblings, children, uncles, and aunts. The author mentioned the procedure for solving inheritance problems in the form of charts and graphs; however, he did not discuss the practice of giving certificates to legal heirs in Pakistan.

An Analysis of the Application of Traditional Islamic Law of Inheritance in Pakistani Courts is an Article written by Shahbaz Ahmed Cheema¹⁶, Shahbaz Ahmed Cheema highlights a few instances involving the implementation of Pakistan's traditional Islamic inheritance law that were decided by the Supreme Court of Pakistan and many High Courts situated in various provinces. In this regard, two distinct trends—actually, two sides of the same coin—are evident: first, traditional *Sunnī* and *Shīā* laws are strictly adhered to, especially in areas without enacted legislation; and second, when it comes to matters in which the legislature has the power to alter customary inheritance laws, the courts uphold the enacted law.

Attitude towards Women's Right to Inheritance in District Lakki Marwat Pakistan is an article by Eatzaz Ahmed, Ambereen Bibi and Tahir Mehmood,¹⁷ In this article, the writers examine how Pakistani women's views and ideas about their rights to inheritance, property

¹⁵ Muḥammad 'Imrān Muḥammad, *Inheritance in Islam: An Attempt to Simplify One of the Complex Branches of Sharī'ah* (Ṣadaqatu Ṭayyibatun Foundation Publisher, 2012) 1-96.

¹⁶ Shahbaz Ahmad Cheema, "An Analysis of the Application of Traditional Islamic Law of Inheritance in Pakistani Courts," *Al-Qalam* 17 (2012): 106-120.

¹⁷ Eatzāz Ahmed, Ambreen Bibi and Tāhir Maḥmood, "Attitude towards Women's Rights to Inheritance in District Lakki Marwat of Pakistan," *Pakistan Institute of Development Economics, Islamabad* 51 (2012): 197-217.

ownership, and management are influenced by a number of economic, demographic, and social factors, including marriage, customs, education, and awareness. Based on arbitrary samples of 507 households from Pakistan's rural Lakki Marwat district.

Women Inheritance: A case study of Balochistan is an article of Sohail Ahmed Ansari¹⁸. This article defines the ground realities, male-dominated society and gender discrimination in Pakistan, however it does not mention the procedure of grant of succession certificate and the problems face by the legal heirs while getting letters of Administration and succession certificate.

Family laws in Pakistan, is a book written by Muhammad Zubair Abbasi.¹⁹ The author well explained the inheritance law, categories of legal heirs, and their shares; he mentioned relevant case laws and clarified the points through judgments; however, he did not mention the subject of the administration of inheritance and succession certificates as per the legislation or the powers of the court to grant succession certificates, as the case may be. He did not mention the rules of Succession Act regarding letters of administration and succession certificates and the debate on personal law, which was discussed in this research. He did not mention the problems faced by widows due to the non-implementation of laws that preserves women's rights.

The laws of Inheritance in Islam is an Article written by Muhammad Zubair²⁰, To raise Muslims' awareness of inheritance, the author of this article has addressed the Islamic laws

¹⁸ Sohail Ahmed Ansari, "Women Inheritance: A Case Study on Balochistan," *Balochistan Review Center* 26 (2012): 27-32.

¹⁹ Muhammad Zubair Abbasi, *Family laws in Pakistan* (Oxford: Oxford University Press, 2014): 358- 407.

²⁰ Muhammad Zubair "The Laws of Inheritance in Islam," *Journal of Basic and Applied Scientific Research* 4 (2014): 84-89.

governing inheritance. The Sunnī law of inheritance is the major topic of this article; however, he did not mention the problems faced by widows due to the non-implementation of laws that protect women's rights; he also did not mention the *Shīā* law of inheritance.

Discrimination in Realizing women's inheritance and property rights in Pakistan, is an article of Shaista Naznin,²¹ In her article, she mentioned Quranic verses to discuss the importance of women's right to inheritance. She also discussed the common practices affecting the property and inheritance rights of women. She also mentioned the relevant provisions of the 1973 Constitution of Pakistan. This research work is different from her work as she covers the Quranic verses and importance of women inheritance rights, but in her work she did not cover the use of modern devices to recognize the legal heirs; she did not mention the laws that protect the rights of women and their drawbacks. Due to their lengthy, unsatisfied, and complex procedures, the women are deprived of their inheritance rights, specifically widows of Shīā issueless deceased who face a lot of hurdles to get their Islamic rights that are protected under the Quran, sunnah, and constitution of Pakistan.

Islamic Law of Inheritance Practices in Pakistan is a book written by Shahbaz Ahmed Cheema²². In his book, He presents the intricate fundamentals of Islamic inheritance law, draws a comparison between the Sunnī and Shīā laws. He explains the intricate phenomena of shifting sectarian allegiances due to variations in the inheritance laws of the Sunnī and Shīā schools of thought, which is tied to proprietary privileges, whereas this research work covered the practice

²¹ Shaista Naznin, "Discrimination in Realizing Women's Inheritance and Property rights in Pakistan," *Journal of Law and Society* 45 (2014): 35-56.

²² Shahbaz Ahmed Cheema, *Islamic Law of Inheritance Practices in Pakistan* (Islamabad: Shariah Academy International Islamic University, 2018), pg. 13- 251.

of Pakistani courts while providing succession certificate and discussed the relevant provisions of The Letters of Administration and Succession Certificate Act 2020 and the Succession Act 1925.

Women's Right of Inheritance: Choices and Challenges in Punjab is an article of Iram Rubab and Ahmed Usman,²³ this article specifically deals with the reasons for surrendering and challenges faced by women in claiming their inheritance rights such as lack of awareness, absence of proper legal documentation, primary socialization, emotional attachment with brothers, dowry as an alternative to inheritance and the absence of female staff in land revenue departments. They did not mention the laws that protect the rights of women and their drawbacks that due to their lengthy, unsatisfied and complex procedure, the women were deprived from their inheritance right, specifically widow of *Shīā* issueless deceased, who faces a lot of hurdles to get her Islamic rights that are protected under Quran, sunnah and constitution of Pakistan.

The above mentioned literature has been published before the enactment of The Letters of Administration and Succession Certificate Act 2020, however, the above mentioned literature did not discuss the subject of the administration of inheritance and succession certificates as per the legislation or the powers of the court to grant succession certificates, as the case may be. In The above mentioned books and articles the authors did not mention the rules of Succession Act regarding letters of administration and succession certificates and the debate on personal law, which has been discussed in this research. They did not mention the problems faced by widows due to the non-implementation of laws that preserves women's rights

²³ Iram Rubab and Ahmed Usman, "Women's Right of Inheritance: choices and challenges in Punjab," *Journal of Islamic Thought and Civilization* 8 (2018): 2-18.

This research analyzed the powers of NADRA to grant certificates under the Letters of Administration and Succession Certificate Act 2020 and also identified loopholes in the said Act to suggest appropriate legislation. Through the relevant case laws, this research highlights the problems of women, especially widows of the shia issueless deceased.

The Islamic Law of Inheritance: Introduction and Theories written by Busari Jamiu Muhammad,²⁴ is an article related to Inheritance; he describes the meaning of inheritance and succession, inheritance regime before Islam, pillars of inheritance in Islam, division of inheritance in Islam, conditions of inheritance, heirs and their categories. He did not discuss the procedure of issuance of succession certificate.

Hamid Khan's book, "Islamic law of inheritance," deals with the study of Islamic succession law, both intestate and testamentary.²⁵ It incorporates the theological and historical underpinnings of law established by Muslim schools of jurisprudence and is based on original sources. The author also draws comparisons between the laws of inheritance between the Sunnī and the Shīā and concentrates on problems Muslims encounter when old Islamic law is applied rigidly to their current situation. These issues are examined in light of various reforms introduced by Islamic countries to address them. The book contains the most recent case laws established by Pakistan's superior courts. However, he did not touch the subject of administration of inheritance and succession certificates under the current legislation, or the powers of the court to grant succession certificates as the case may be. He did not mention the rules of NADRA regarding succession certificates and the debate on personal law that is discussed in this research.

²⁴ Busari Jamiu Muhammad, "The Islamic Law of Inheritance: Introduction and Theories" (London: Abu Aisha Publishers, 2020): 1- 79.

²⁵ Hamid Khan, *The Islamic Law of Inheritance* (Lahore: Oxford University press, 2021): 1- 290.

Succession in Family Businesses: Kinship Culture and Islamic law of Inheritance is an article of Nasir Afghan,²⁶ in this article, the author first explains the succession process within kinship culture-based family businesses by using a case-based method to comprehend the values, beliefs, conventions, and mindsets of a certain business family. However, the writer, in his work, did not discuss the present Pakistani law related to succession certificates; this research work discussed the Letters of Administration and Succession Certificate Act in the light of Islamic inheritance law.

Land Ownership and Inheritance Rights of Women in Rural Pakistan, is an article by Riffat Haque, Rabbia Aslam, Aisha Anees Malik.²⁷ In their article, they discuss women's experience. In terms of land ownership through inheritance, along with government commitments and initiatives in the backdrop of international commitments regarding the inheritance right of women's in Pakistan. They did not mention the laws that protect the rights of women and their drawbacks that due to their lengthy, unsatisfied and complex procedure the women are deprived from their inheritance right, specifically widow of *Shīā* issueless deceased, who face a lot of hurdles to get her Islamic right that protects under Quran, *Sunnā,h* and constitution of Pakistan.

The above mentioned literature has been published after the enactment of The Letters of Administration and Succession Certificate Act 2020, however, the above mentioned literature did not discuss the subject of the administration of inheritance and succession certificates as per the legislation or the powers of the court to grant succession certificates, as the case may be. In The above mentioned books and articles the authors did not mention the rules of Succession Act

²⁶ Nasir Afghan, "Succession in Family Businesses: Kinship Culture and Islamic Law of Inheritance," *Business Review* 4(2021): 104 – 118.

²⁷ Riffat Haque, Rabbia Aslam and Aisha Anees Malik, "Land Ownership and Inheritance Rights of Women in Rural Pakistan," *National Defense University* 19 (2022): 3002-3015.

regarding letters of administration and succession certificates and the debate on personal law, which is discussed in this research. They did not mention the problems faced by widows due to the non-implementation of laws that preserves women's rights

The above mentioned literature review clearly depicts the lack of research in this particular perspective of family laws. This research aims to fill the gaps by giving the detailed description, comparison and analysis of the provisions of the succession laws in Pakistan with special reference to the shariah appraisal of the Letters of Administration and Succession Certificate Act 2020, to infer their compliance and non-compliance with Islamic law and suggest to formulate and legislate better laws related to succession in Pakistan and to mitigate the miseries of legal heirs.

Research Questions

The following questions are discussed in this research:

1. What are the principles of distribution of inheritance in Islamic Law?
2. What is the procedure of acquiring succession certificate and how the shares are distributed among legal heirs keeping in view the women inheritance rights?
3. Whether the provisions of the Letters of Administration and succession Certificate Act 2020 are compatible with Islamic law?
4. What measures can be taken to mitigate the problems of legal heirs and to formulate comprehensive law of succession according to Shariah?

Objectives of the research

The primary goals of research are:

1. To explore the principles of inheritance in Islamic and Pakistani laws
2. To critically analyze the provisions of the Letters of Administration and Succession Certificate Act, 2020 and explore the relevant laws addressing succession and inheritance issue.
3. To analyze the grounds on the basis of which the courts decide the cases of succession to mitigate the problems specifically faced by the widows of deceased while acquiring their inheritance portion in immoveable property.

Research Methodology

The methodology intended to be followed for this research shall be qualitative, analytical and descriptive. The reliance shall be placed on the primary sources such as verses of the Holy Qur‘ān (translated by Abdullah Yusuf Ali), Aḥādīth of Holy Prophet (S.A.W). The relevant provisions of Letters of Administration and Succession Act 2020 shall be studied and analyzed in the light of Muslim Personal law and customary practices in Islamic and Pakistani law. Among the secondary sources which may include the books, articles, journals, dictionaries, websites, research papers and other relevant sources shall be consulted.

Tentative Outlines

Chapter 1 Inheritance under Islamic Family law

This chapter introduces the concept of inheritance in Islamic law; it devolves into a comprehensive explanation of verses of the Holy Quran that are related to inheritance. The prior

charges and bars to inheritance are briefly described in this chapter. The distinction between Sunni and *Shīā* laws of inheritance also discussed in this chapter.

Chapter 2 Succession certificate in Pakistani law

This chapter begins with an introduction, followed by various laws of succession in Pakistan, i.e. Provisions of Succession Act 1925, **Shariat** Application Acts from 1936 to 1962, and Muslim Family Law Ordinance 1961, section 4 and then highlighting the drawbacks related to distribution of assets between legal heirs.

Chapter 3: An analysis of the letters of Administration and succession certificate Act 2020

This chapter provides an analysis of the letters of Administration and succession certificate Act 2020, with a special focus on the conversion of sects and difficulties faced by widow of *Shīā* issueless propocitus. The chapter also highlights case laws that clarify the present situation of women and the difficulties faced by them due to the non implementation of succession laws as per the injunctions of Quran.

Chapter 4: Recommendation and conclusion

In this chapter Islamic inheritance law and Pakistani legislation on inheritance is analyzed. At the end, the chapter provides conclusion and recommendations.

Bibliography

CHAPTER 1

INHERITANCE IN ISLAMIC LAW

Introduction

The procedure that grants someone the right to inherit a deceased person's belongings is called inheritance. In essence, inheritance is the transfer of a person's status from the deceased to the living with regard to a certain estate or item of property. The term "ilmul farā'id" or "ilmul mīrāth" refers to the knowledge of inheritance or succession in Islamic law of inheritance. Both speak to the information that must be obtained in order to quickly distribute a deceased person's inheritance to their beneficiaries. The significance of inheritance and its understanding is such that the Qur'ān and Aḥadīth provide explicit instructions about the distribution of a deceased person's belongings. Actually, when the Prophet (PBUH) stated, "O people! ", he not only acknowledged that it was just half of knowledge but also exhorted them to learn it. Acquire understanding of inheritance, or farā'id. It only represents half of knowledge. In addition, 'ilmul farā'id is significant since it reduces poverty. It improves the quality of life for beneficiaries.

There are a number of ways in which the property of the propositus is shared between legal heirs, depending on the customs and traditions of each society. After the death of a person, his property may be devolved in two ways, by the way of his will (testamentary) or by the law of succession when there is no will (intestate). After the requisites of inheritance are made, that is, the burial expenses, debt and bequest are taken; the inheritance is then devolved according to Muslim law. The chapter presents a brief look at all the modes of distribution of inheritance with reference to

Qur‘ān and Aḥadīth and the procedure of distribution of deceased estate among his or her legal heirs. The chapter also gives a brief discussion of the Sunni and *Shī‘ā* inheritance law separately, and then finds out the differences and similarities between both schools. The chapter also discusses the basic aspects of Islamic law of succession. The chapter gives a brief discussion on the impediments to succession. The main questions addressed in this chapter are; what are the modes of distribution of property in Islamic law? What is the structure of Sunni and *Shī‘ā* law of inheritance? How the property will be distributed between the legal heirs of the deceased?

1.1: Inheritance in Quran

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثِيَيْنِ ۖ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ ۖ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ ۚ وَلِأَبَوَيْهِ لِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ ۚ وَإِنْ لَّمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَتْهُ أَبَوَاهُ فَلِلْمُتَّكِئَةِ النِّصْفُ ۚ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِلْمُتَّكِئَةِ السُّدُسُ ۚ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنٍ ۚ لِأَبَائِكُمْ وَلِأُمَّاتِكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفْعًا ۖ فَرِيضَةٌ مِّنَ اللَّهِ ۚ إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا

Allah (thus) directs you as regards your Children's (Inheritance): to the male, a portion equal to that of two females: if only daughters, two or more, their share is two-thirds of the inheritance; if only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children; if no children, and the parents are the (only) heirs, the mother has a third; if the deceased Left brothers (or sisters) the mother has a sixth. (The distribution in all cases ('s) after the payment of legacies and debts. Ye know not whether your parents or your children are nearest to you in benefit. These are settled portions ordained by Allah; and Allah is All-knowing, Al-wise.²⁸

Explaining this verse, According to Imām Bukhari, Jabir Ibn Abdullāh stated, "When Allah's Messenger visited me on foot at Banū Salamah with Abū Bakar, the Prophet PBUH discovered

²⁸ Al Quran 4: 11(Abdullah Yusuf Ali)

me unconscious. After asking for some water, he pounded it on me and used it to perform an ablution, which helped me regain awareness. "What do you command me to do with my money, O messenger of Allah?" I asked. Additionally, this verse was made clear.²⁹

Imām Ahmed records from Jabir (R.A) "The prophet of Allah was visited by the spouse of Sa'ad bin Ar-Rabi! These two are the daughters of Sa'ad bin Ar-Rabi, who was killed in Uhad as a martyr. Their uncle took their money and left them with nothing. They don't have enough money to be married. "Allah will decide on this matter," declared the Prophet PBUH. When the verse regarding the inheritance was eventually made known, Allah's messenger informed their uncle, telling him to give two thirds of Sa'ad's two daughters and one eighth for their mother, with whatever remained being theirs.

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّتِهِ يَوْصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَنَّ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمْنُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّتِهِ تَوْصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةٌ وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِّنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّتِهِ يَوْصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّتِهِ مِّنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ

In what your wives leave, your share is a half, if they leave no child; but if they leave a child, ye get a fourth; after payment of legacies and debts. In what ye leave, their share is a fourth, if ye leave no child; but if ye leave a child, they get an eighth; after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left

²⁹ Muhammad b. Isma'il Al-Bukhari, *Sahih Bukhari*, (Darussalam Publishers), Book 80, volume 8, Number 716

a brother or a sister, each one of the two gets a sixth; but if more than two, they share in a third; after payment of legacies and debts; so that no loss is caused (to any one). Thus is it ordained by Allah; and Allah is All-knowing, Most Forbearing.”³⁰-

Jabir b. Abdullah (Allah be pleased with him) reported: While I was ill Allah's Messenger (may peace be upon him) came to me and found me unconscious. He (the Holy Prophet) performed ablution, and sprinkled over me the water of his ablution. I regained my consciousness and said: Allah's Messenger, my case of inheritance is that of Kalala. Then the verse pertaining to the inheritance (of Kalala) was revealed. I (one of the narrators) said: I said to Muhammad b. Munkadir: (Do you mean this verse) "They ask you; say: Allah gives you decision in regard to Kalala" (4. 177)? He said: Yes, it was thus revealed.³¹

Abū Talha reported: 'Umar b. al-Khattab (Allah be pleased with him) delivered a sermon on Friday and made a mention of Allah's Apostle (may peace be upon him) and he also made a mention of Abū Bakr (Allah be pleased with him) and then said: I do not leave behind me any problem more difficult than that of Kalala. I did not refer to Allah's Messenger (may peace be upon him) more repeatedly than in case of the problem of Kalala, and he (the Holy Prophet) never showed more annoyance to me than in regard to this problem, so much so that he struck my chest with his fingers and said: 'Umar, does the verse revealed in summer season, at the end of Sura al-Nisa' not suffice you? Hadrat 'Umar (then) said: If I live I would give such

³⁰ Al Quran 4: 12

³¹ Abūl Hussain Muslim al Hajjaj, *Sahih Muslim*, translated by Abu Tahir Zūbair, *Sahih Muslim*, Volume 4, no 4147

verdict about (Kalala) that everyone would be able to decide whether he reads the Qur'an or he does not.³²

Author of Rūḥ al-Ma'ānī 'Allāmah al-Ālūsī claims that Kalalah is actually a verbal noun used in the sense of Kalal', which means 'to grow fatigued' and signifies 'weakness'. Since the link between a father and son is stronger than any other relationship, every other relationship has been given the moniker Kalalah.³³

Subsequently, the term began to refer to assets bequeathed by a deceased person who had no son or father. This section has covered the shares of inheritance three times. In verse 12 of Surah Nisa the share of uterine sister as one sixth if she is alone and if there are two or more such sisters or brothers, they will share one third of the property equally.

يَسْتَفْتُونَكَ قُلِ اللَّهُ يُفْتِيكُمْ فِي الْكَلَالَةِ ۚ إِنِ امْرُؤٌ هَلَكَ لَيْسَ لَهُ وَلَدٌ وَلَهُ أُخْتٌ فَلَهَا نِصْفُ
مَا تَرَكَ ۚ وَهُوَ يَرِثُهَا إِن لَّمْ يَكُن لَّهَا وَلَدٌ ۚ فَإِن كَانَتَا اثْنَتَيْنِ فَلَهُمَا الثُّلُثَانِ مِمَّا تَرَكَ ۚ وَإِن
كَانُوا إِخْوَةً رِّجَالًا وَنِسَاءً فَلِلَّذَكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ ۚ يُبَيِّنُ اللَّهُ لَكُمْ أَن تَضِلُّوا ۚ وَاللَّهُ بِكُلِّ
شَيْءٍ عَلِيمٌ

“They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance: If (such a deceased was) a woman, who left no child, Her brother takes her inheritance: If there are two sisters, they shall have two-thirds of the inheritance (between them): if there are

³² Ibid, Sahih Muslim, no; 4150

³³ Abū 'Abdullāh Muḥammad ibn Aḥmad al-Qurṭubī, *Al-Jāmi' al- aḥkām al- Qur'ān*, Vol. 3 (Beirut: Mu'assasat ar-Risālah, 2006), 414.

brothers and sisters, (they share), the male having twice the share of the female. Thus doth Allah make clear to you (His law), lest ye err. And Allah hath knowledge of all things.”³⁴

The revelation of verse (176) came to answer to a query from some of the Holy Prophet ﷺ's companions concerning a Kalalah's inheritance. To be kalalah means to pass away without leaving ascendants and descendants.

Al-Bara' (Allah be pleased with him) reported that the last verse revealed in the Holy Qur'an is: "They ask thee for a religious verdict; say: Allah gives you a religious verdict about Kalala (the person who has neither ascendants nor descendants)".³⁵

Abū Ishaq said that he heard al-Bara' b. 'Azib (Allah be pleased with him) say: The last verse revealed (in the Holy Quran) is that pertaining to Kalala, and the last sura revealed is Sura al-Bara'at.³⁶

Abū Ishaq said that he heard al-Bara' b. 'Azib (Allah be pleased with him) say : The last complete sura revealed (in the Holy Qur'an) is Sura Taūba (i e. al-Bara'at, ix.), and the last verse revealed is that pertaining to Kalala.³⁷

Abū Ishaq reported this hadith on the authority of al-Bara' (Allah be pleased with him) with a slight variation of words, viz. the last sura that was revealed complete.³⁸

³⁴ Al Quran 4: 176

³⁵ Sahih Muslim, book 11, no 4156

³⁶ Ibid, Sahih Muslim, no 4153

³⁷ Ibid, Sahih Muslim no 4154

³⁸ Ibid, Sahih Muslim no 4155

In verse 12 of Surah Nisa the share of uterine sister has mentioned as one sixth if she is alone and if there are two or more such sisters or brothers, they will share one third of the property equally. Whereas, in verse 176 it is mentioned that In the event that the Kalalah leaves behind a true sister or a consanguine sister, three she will receive half of the property until preferred rights (such as debts, wills, and burial fees) are settled. The difference between both the verses is clear that the verse 12 is about the share of mother's side (uterine) sisters and the verse 176 is about the share of father's side full or consanguine sisters.

1.2: Liabilities Attached To Deceased's Estate

There are number of rights and liabilities attached to deceased's estate. As for the rights related to estate they are of two types:

1.2.1: Preparing and shrouding the dead:

It is obligatory to begin shrouding the dead and preparing him in a reasonable manner according to the Maliki's, Shafi'is and Hanbali's or without extravagance and frugality according to the Hanafis because this is one of the necessary matters related to the rights of the dead and the care of his sanctity and human dignity by hiding him in his grave.³⁹

According to almighty saying "and those who, when they spend, are neither extravagant nor stingy and there is a measure between that"

This is according to the Sunnah, taking into account the number (three garments for a man and five for a woman) and considering the value as much as he used to wear in his life from his

³⁹ Abū 'Abdillāh Muḥammad ibn Idrīs ash-Shāfi'ī, *Kitāb al-Umm* (Beirut: Dār al-Ma'rifah, 1990), part 8.

middle clothes not which he adorns himself with on Fridays and holidays. The conditions of the heirs also taking into account.⁴⁰

The required preparation is everything that the dead person needs from the time of his death until he is buried in his grave, including the expenses of washing him, buried him and digging his grave. The preparation is part of the estate. If the dead person does not have an estate, then shrouding it is the responsibility of the person who is obligated to support him while he is alive.⁴¹

There is no standard criterion for determining those expenses because they vary depending on the financial condition of individuals. But ethically such spending should not be extravagant.

1.2.2: Debt

According to Abū Hurairah, the messenger of Allah declared: "Until all debts are settled, a believer's soul remains in suspense and cannot enter paradise." Muhammad Ibn Abdullāh Ibn Jahsh told the story. "By Him in whose hand Muhammad's soul is," declared the messenger of Allah, "if a man were to be killed in Allah's path and then come to life, be killed again in Allah's path and come to life owing a debt, he would not enter into paradise until his debt was paid." ⁴²

The deceased estate will be utilized for repaying his debts. After preparation, the debts of the dead person are paid from all of his remaining money. According to the words of Ali may Allah be happy with him. "I saw Allah's prophet, (PBUH) starting with the debt before the will. The

⁴⁰ Abū ' Abdillāh Muḥammad ibn Idrīs ash-Shāfi'ī, *Kitāb al-Umm* (Beirut: Dār al-Ma'rifah, 1990): 9.

⁴¹ Ibid :9

⁴² Muḥammad Muṣṭafā Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, .31

bottom line is that the reason for prioritizing the commandments over religion in the view is the following:

It was narrated from Abū Hurairah that a deceased man who owed debts would be brought to the messenger of Allah. He would ask “did he leave behind anything to pay off his debt? If he was told that he had left behind something to pay off his debt, he would offer the funeral prayer for him, otherwise he would say: pay for your companion, when Allah granted him conquests, he said: I am closer to the believers than their own slaves. Whoever does owing a debt, I will repay it, and whoever leaves behind wealth, it is for his heirs.⁴³

The debt that must be paid according to Ḥanafī school of thought is the one that has demands on the part of the savants. As for the debts of Allah, such as Zakat and expiations, the heirs are not obligated to pay them unless the deceased has made a will to pay them.⁴⁴

1.2.3 Will

The will is made on the inheritance, whether it is absolute, such as a common part of the estate, such as a third or a quarter, or specific, which is something from the estate, such as a known house or estimated money.⁴⁵

It was narrated from Sâlim, from his father, that he heard the Messenger of Allah say: "It is not right for a Muslim man who has anything to be bequeathed to stay for three nights without

⁴³ Sahih Muslim, no 4157

⁴⁴ Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 30.

⁴⁵ Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), 30.

having his will written down with him." 'Abdullâh bin 'Umar said: "Since I heard the Messenger of Allah say that, no night passed but I had my will with me."⁴⁶

The will is the transfer of a estate, making it effective following the passing of the property's owner. Islamic law stipulates that it cannot be more than 1/3 of the whole estate after deduction of debts owned and the funeral expenses have been taken⁴⁷.

It was narrated from 'Amir bin Sa'd that his father said: "The Messenger of Allah visited me during the Farewell Pilgrimage, when I fell sick with a sickness that brought me close to death. I said: 'O Messenger of Allah, you can see how bad my sickness is, and I am wealthy, and no one will inherit from me except one daughter of mine. Can I give two-thirds of my wealth in charity?' He said: 'No.' I said: 'Can I give half of it in charity?' He said: 'No. (Give) one-third, and one-third is a lot. If you leave your heirs rich and wealthy, that is better for them than leaving them dependent and asking from people. You will never spend on maintenance, seeking thereby the Face of Allah, but you will be rewarded for it, even a morsel that you put in your wife's mouth.' I said: 'O Messenger of Allah, will I be left behind my companions?' He said: 'You will never be left behind by them and do good deeds, seeking thereby the Face of Allah, but it will increase you in status. Perhaps you will live until some people benefit from you and others are harmed by you. O Allah, complete the emigration of my Companions and do not cause them to turn back on their heels.' How unfortunate Sa'd bin Khawlah was." He said: "The Messenger of Allah il felt sorry for him because he died in Makkah."⁴⁸

⁴⁶ Sahih Muslim, no 4207

⁴⁷ Muḥammad Muṣṭafá Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, p.31.

⁴⁸ Sahih Muslim, no 4209

The Islamic law also stipulates that will can't be made effective in favor of legal heirs. The Prophet (SAW) said: "Certainly whoever is qualified to inherit shall not qualify for will"

After deducting the above claims, whatever is left from estate of the deceased will be divided among the deceased's legal heirs, as per their shares as ordained by shariah.⁴⁹

1.3: Distribution of inheritance in Sunni and Shīā law

It is important to differentiate between Sunni and *Shīā* law of inheritance in order to understand that this difference has significant role in sectarian affiliation. It is important to analyze both laws for the sake of understanding the provisions of the Letter of Administration and Succession Certificate Act 2020 on procedure of issuance of letter of administration and succession certificates.

There are two schools of Islamic law sunni and *Shīā*. Both have their distant laws of inheritance, these will be discussed separately in two different sections.

1.3.1 Sunni law of inheritance

There are different types of heirs:

- 1) The Sharers: their shares are fixed in Quran, they are first to inherit.

⁴⁹ Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), part 30.

- 2) The Residuaries: they are the second to inherit from the estate after respective share of the sharers have been given to them.
- 3) Distant Kindred: these are the relatives of the deceased who comes after sharers and residuaries. For example maternal uncle, maternal aunt, paternal aunt, daughter's son, and daughter's daughter.

Sharers

- 1) Father
- 2) Uterine brother
- 3) Husband
- 4) Wife
- 5) Mother
- 6) Daughter
- 7) Son's daughter
- 8) Full sister
- 9) Consanguine sister
- 10) Uterine sister
- 11) Paternal grandmother
- 12) Maternal grandmother

1.3.2: Husband

As for the husband, he is the holder of a share of the sharer, and he has two conditions: half when there is no child (male or female) of the deceased wife from her present or previous husband and when the child or children are born, whether male or female of the deceased wife from her present or previous husband then he will inherit a quarter from his deceased wife estate.⁵⁰ This is proven by the verse of Quran: “And for you is half of what your wives have left” [An-Nisa: 12]⁵¹

1.3.4: Wife

As for the wife, she is the one with a share of the sharer and has two cases: a quarter when there is no male or female child, this was proven by the Almighty’s saying: “And for them is a quarter of what you have left” [An-Nisa: 12]⁵² and the share of the wives is distributed between them equally, two, three, or four, in no case more than a quarter, and not less than an eighth when she have children, male or female from her deceased husband.⁵³

1.3.5: Inheritance of more than one daughter

The Muslims unanimously agreed on the inheritance of a child from their father and mother, if they are both male and female, is that the male among them gets the share of two females, and that one son, if he is alone, has all the money, and that if the daughters are alone, then they are

⁵⁰Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Ma‘rifah, 1993), part 30

⁵¹ Al Quran 4: 12

⁵² ibid

⁵³Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Ma‘rifah, 1993), part 30

one, then they have half, and if there are three or more, then they have two-thirds. They disagreed about the two, so the majority believed that they had two-third.⁵⁴

The reason for their difference:

The frequency of the concept in the Almighty's saying: {And if there are women more than two, then to them is two-thirds of what he left}. Is the ruling on two that is silent about attached to the ruling of three or to the ruling of one? It is clear from the context of the evidence of the discourse that they are attached to the ruling on one. It been said that what is well-known from Ibn Abbās is like the saying of the majority. It was narrated on the authority of Ibn Abdullāh bin Muhammad bin Aqeel, according to the authority of Hatem bin Abdullāh and according to the authority of Jabir, "that the Prophet, may God's prayers and peace be upon him, gave the two daughters two-thirds," he said, while Abu Omar bin Abdūl-Barr and Abdullah bin Aqeel thought that a group of scholars accepted his hadith and others disagreed with them.

The reason for the agreement in this sentence is the Almighty's saying: "God enjoins upon you regarding your children: The male's portion is equal to that of two females" up to His saying "And if it is one, then she gets half."⁵⁵

1.3.6: The inheritance of the father and mother:

The scholars unanimously agreed that if the father is alone, he has all the properties and that if the parents are alone, the mother gets a third and the father gets the rest, according to God

⁵⁴ Abū l-Walīd Muḥammad Ibn 'Aḥmad Ibn Rušd, *Bidāyat al-mujtahid wa-nihāyat al-muqtaṣ*, translated in English by Imrān Ehsan Khan Nayazee (Islamabad: International Islamic Research Institute, 1994).

⁵⁵ Ibid

Almighty's saying: {And his parents inherit from it, then to his mother a third.}⁵⁶ They agreed that the parents' share is from their son's inheritance if the son has a son or a son who is one-sixth old. I mean that for each one of them, a sixth, according to the Almighty's saying: {And if he has a son, a sixth of what he leaves is for each of his parents⁵⁷.

1.3.7: Daughters

The daughter will inherit a half share of her parents if she is alone and no other daughter and son of the deceased, two or more than two daughters will inherit 2/3 in the absence of son

1.4: Residuries

Aṣābah or the residuaries refers to those male relatives whose share is not specified or fixed like sharers, but their relationship with the deceased make them entitled to inheritance of the residue of estate after giving sharers their due share.⁵⁸

1.4.1 Types of Residuary

Residuaries in their own right (*Asabah bi- Nafsihi*)

Residuaries in another's right (*Asabah bi- Ghairihi*)

⁵⁶ Muḥammad Muṣṭafá Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, p.33.

⁵⁷ Abū Bakr Muḥammad b. Aḥmad b. Abī Sahl Al-Sarakhsī, *Al-Mabsūṭ* (Beirut: Dār al-Maʿrifah, 1993), part 30

⁵⁸ Muḥammad Muṣṭafá Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, p.31.

Residuaries together with another (*Asbah ma,a Ghairihi*)

1.4.2 Residuaries in their own right

These are the residuaries who, according to their blood relationship, are entitled to residue. This occurs when a male relic is connected to the deceased directly, without the help of a woman. i.e., there are no females in the chain. The descendants of the deceased are known as the residuaries (*Asābatun sababiyah*). The residue is distributed equally among the sons in the event that there is no female and they are residuaries. Some examples of residuaries in this group are fathers, grandfathers, sons, and grandchildren.⁵⁹

1.4.3 Residuaries through the rights of another

This category of *Asbāt* is comprised of four persons and all of them are women. They are sharers originally, but are converted into residuaries owing to the presence of someone else. They converted into *asbāt* when a male from their own category having a same level of relationship with the deceased join them. These women are: daughter of the deceased, son's daughter, full sister, consanguine sister.

⁵⁹ Ibid

1.4.4 Residuaries in another's right

This category of Asabāt is comprised of women only. They are sisters either full or consanguine along with daughters. The daughters here are inclusive of son's daughters how low so ever. In this category full or consanguine sisters are converted into Asabāt.⁶⁰

1.5 Distant kindred

Arḥām is a plural of Rāhm which refers to a mother's womb. The fact of the matter is that this type is not limited to mother relative only and includes the relatives from father's side as well. The share of distant kindred is not specified like sharers neither they will inherit as residuary.⁶¹

1.5.1 Types of distant kindred

There are two categories of distant relatives.

- (1) Relatives of the mother, such as her grandfather, her uncles, aunts, and their offspring; and
- (2) Relatives of the father, aside from sharers and residuaries, such as the daughter, sister, and father's wife (e.g. sister's children, daughter's children, and paternal uncle's wife).⁶²

⁶⁰ Muḥammad 'Imrān Muḥammad, *Inheritance in Islam: An Attempt to Simplify One of the Complex Branches of Sharī'ah* (Ṣadaqatu Ṭayyibatun Foundation Publisher, 2012) 1-96.

⁶¹ Muḥammad Muṣṭafā Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, 31.

⁶² Muḥammad 'Imrān Muḥammad, *Inheritance in Islam: An Attempt to Simplify One of the Complex Branches of Sharī'ah* (Ṣadaqatu Ṭayyibatun Foundation Publisher, 2012) 1-96.

In sequence of succession, there are four kinds of distant kindred. The following two rules should be used to establish the first class's succession sequence.

- (1) The closer in degree eliminates the farther away. For example, a daughter's son is favored above a son's daughter.
- (2) The offspring of sharers and residuary claimants are given precedence over those of distant relatives. For example, the son's daughter's son is given precedence over the son of a daughter's daughter.⁶³

1.6: Shīā law of Inheritance

The distinct inheritance laws of the Sunni and *Shīā* schools of thought are so deep rooted that it is impossible to cross the gap. When calculating the share of the widow of the issueless deceased, the Sunni school of law does not distinguish between moveable and immovable property. In contrast, the *Shīā* school of law grants the widow of a *Shīā* issueless deceased no share in his immovable property.⁶⁴

1.6.1 Shīā Inheritance Law on Widow of an issueless deceased:

When the deceased does not have children, his widow does not inherit the land, houses, arms and animals, but apart from the land, she gets a portion of other items' worth, such as doors, reeds, timber, house debris, trees and dates etc. But daughters inherit everything.

⁶³ M.Farani, "Manual of Family Laws in Pakistan" (Lahore Law times Publications 1999) : 889,890

⁶⁴ Imām 'Alī Ḥusaynī Sīstānī, *Tawḍīḥ al-Masā'il* (Jāmi'a Ta'limāt-e-Islāmī, 2005) 427-428.

Ḥaḍrat Shaykh Kulaynī (peace be upon him) narrates from Zarrāh and he narrates from Hazrat Imam Muhammad Baqir who said: the husband who leaves settlements, houses, arms and animals, the wife does not inherit anything from him.⁶⁵

On the authority of Muḥammad ibn Muslim, he narrates on the authority of Imām Ja‘far Ṣādiq

(peace be upon him) who said: a woman inherits from bricks but not from land. The reason she does not inherit? He said that since a woman and a man are not consanguineous and their relationship is temporary, that’s why she inherits from branch and not from original, so that no stranger enters her husband’s tribe because of her widowhood.⁶⁶

Faḍl, Burayd, and Muḥammad ibn Muslim narrated from Ḥaḍrat Imām Muḥammad Bāqir (peace be upon him) and Ḥaḍrat Imām Ja‘far Ṣādiq (peace be upon him) that they said that a woman does not inherit the soil or land of a man’s house, and will be declared entitled to a quarter or half of this price.⁶⁷

Ḥaḍrat Shaykh Ṭūsī (peace be upon him) narrates from Muḥammad ibn Sinān that Ḥaḍrat Imām ‘Alī Riḍā (peace be upon him) wrote in response to the problems that a woman does not inherit anything from a man’s property, but she inherits from the debris of the house etc. The reason they do this because change and change is not possible in the land, while the relationship of a woman is temporary and sometimes it is broken and change is possible, but the relationship

⁶⁵ Muḥammad ibn Ḥasan Ḥurr ‘Āmilī, *Masā’il al-Sharī‘a wa Wasā’il al-Shī‘a* (Sargodha: Maktabat al-Ṣabṭayn, 2015) 316.

⁶⁶ Ibid 316

⁶⁷ Ibid 317

between parents and children is not like that. Because it is inviolable, so that relationship is coming and going, and the inheritance of the relationship that is established and permanent is also from the established property.⁶⁸

Ḥaḍrat Shaykh Ṣadūq (a.s) narrates from Basnad himself, his statement is that I heard Imām Ja‘far Ṣādiq (a.s.) saying that women, i.e. widows, do not inherit property, get their share from the price of dates etc. wives mean widows.⁶⁹

The husband will inherit all the movable and immovable property of his wife. But the wife will inherit from the movable estate of her husband, but she will not inherit from his lands, either in the form of land itself or in the form of its value, even if the land contains agriculture, trees and buildings or not.⁷⁰

If a woman dies having no child behind half of a woman's wealth passes to her spouse upon her death, the remaining portion goes to other heirs. And if a woman has children from the same or any other husband, the husband gets a quarter of property and the rest goes to other heirs.⁷¹ Neither a woman gets inheritance from house land garden, field and other lands, nor its value. She does not leave the things established in the atmosphere of the house, such as buildings and

⁶⁸ Muḥammad ibn Ḥasan Ḥurr ‘Āmilī, *Masā’il al-Sharī‘a wa Wasā’il al-Shī‘a* (Sargodha: Maktabat al-Ṣabṭayn, 2015) 317.

⁶⁹ Ibid 317

⁷⁰ Imām Khomeini, *Tahrīr al-Wasīla* (Quds Sara: Āthār Imām Khomeini, 2016) 68.

⁷¹ Ḥājī Sayyid ‘Alī Ḥusaynī Sīstānī, *Tawḍīḥ al-Masā’il* (Karachi: Jāmi‘a Ta‘līmāt-e-Islāmī, 2008) 427.

trees, but she gets leave in the form of their value and the trees, fields and buildings that are in the garden land, cultivated land and other lands also have the same of the fruits and were on the trees at the time of her spouse passed away.⁷²

An interview conducted with Qari Eisā Muhamdi, according to his point of view the widow of *Shīā* issueless deceased only inherit movable property of her deceased husband and does not get anything from immovable property, while giving this view he mentioned Surah Nisa verse 12 and two books of *Shīā* inheritance law.⁷³

Pakistan's higher courts have shown a constant lack of consistency when it comes to handling the inheritance of a widow of *Shīā* issueless deceased. The lack of relevant legislation is the primary cause of this discrepancy. When this matter came up in *Khalida Shamim Akhtar v. Ghulam Jaffar* in 2016, the Lahore High Court addressed it and made its decision exclusively based on Surah Al-Nisa's Ayat no. 12. According to the court, it is declared that even a widow of issueless deceased from Fiqh al-Ja'farīya would be entitled to claim 1/4th share from her husband's estate unless the Legislature, in the course of its duty, codifies any laws in this regard. The question of the competence of a widow of issueless deceased from Fiqh al-Ja'farīya has not yet been decided by the judiciary. In the light of the foregoing, the ruling and order issued by the knowledgeable Additional District Judge, Chakwal, on June 8, 2010, are deemed invalid and should be set aside. In contrast, the trial court's judgment and decree from December 16, 2008, are reinstated, and the present petitioner's suit is subsequently decreed.⁷⁴ In this landmark judgment, the court granted

⁷² Ibid, 428

⁷³ Qari Eisa Muhamd Muḥammaī is a Shia Scholar at Imām Ja'far Ṣādiq Library. Meeting held dated: June-6-2024, Thursday. After Zoher prayer.

⁷⁴ *Khalida Shamim Akhtar v Ghulam Jaffar* PLD 2016 Lahore 865.

the widow of an issueless deceased a right to inherit one- fourth share from her late husband's property, but it is not clear in this judgment whether it is moveable or immovable property.

1.6.2: Classes of Legal heirs

The Shia law divided heirs into two categories:

(1) Heirs through consanguinity and

(2) Heirs through marriage

1.6.3: Consanguinity heirs

Three groups of descendants are derived from consanguinity;

Class 1: Parents, children, and other lineal descendants, how low so ever;

Class 2: Brothers, sisters, and their offspring; grandparents, how high so ever

Class 3: The deceased's parents, grandparents, and all of their ancestors, no matter how high or low, as well as their uncles and aunts, are all included in this group.⁷⁵

1.6.4 Heirs by marriage

If the deceased have children, the wife will receive 1/8 of the estate, respectively. However, if the deceased leaves multiple wives as lawful heirs, each wife will get an equal share from fixed share, which is 1/8. In the event of an issueless death, the wife 1/4, accordingly.⁷⁶

⁷⁵ Shahbaz Ahmed Cheema, "Shia and sunni laws of inheritance: A Comparative Analysis" *Pakistan journal of Islamic research*, vol. 10, (2012)

⁷⁶ *ibid*

1.7 Differences between Sunni and Shīā law of inheritance

Understanding a significant distinction between Sunni and *Shīā* law makes it simple to recognize this discrepancy. *Shīā* law acknowledges just two types of legal heirs, namely sharers and residuaries, Legal heirs are split into three categories under Sunni law: sharers, residuaries, and distant kindred. Distant kindred are not recognized under *Shīā* law. There are differences of opinions under Sunni law regarding distant kindred.

Sunni law considered the distinction between true and false grandfathers between the paternal and maternal grandfathers. *Shīā* law does not make this kind of distinction, as the above classification makes clear. Both the maternal and paternal grandfathers belong to the same class. Again, this disparity results from the absence of the distant kindred in the *Shīā* inheritance system.

The same kind of variation in results will be seen if a deceased person leaves in their wake a grandson and a daughter. According to Sunni law, the grandson will receive the remaining portion as a residuary, the daughter receiving half of the inheritance. Because of the rule's varied application under *Shīā* law—the closer in degree will exclude the farther in degree. The daughter is closely related to the deceased than the grandchild. She will consequently be entitled to the whole estate, with half being held under the Radd/return concept and the other half as sharer.⁷⁷ It is important to note that the primary distinction between the inheritance laws of the Sunnis and *Shīā* is that, in the former case, a widow of an issueless deceased will receive one-fourth share of her late husband's moveable and immovable property, while in the latter case, she will only receive moveable property.

⁷⁷ Shahbaz Ahmed Cheema, *Islamic Law of Inheritance Practices in Pakistan*, (Shariah Academy International Islamic University Islamabad, January 2018)13- 251

1.8 Similarities in Shīā and Sunni Laws:

As previously mentioned, the laws of inheritance between *Shīā* and Sunnis differ in multiple ways. Since both rules are based on passages from the Qur'ān, there are certain similarities between them. A few of the parallels were previously discussed in the previous analysis, which also clarified the actual significance of *Shīā* law's unique characteristics. According to Sunni law, there are twelve sharers; nine sharers are recognized under *Shīā* law. Sharers include the spouse, wife, father, mother, daughter, full sister, consanguine sister, uterine brother, and uterine sister.

Given the nine sharers that Sunni and *Shīā* laws agree upon, it is reasonable to anticipate that there will be circumstances in which both laws recommend the same kind of share distribution. Such as:

a). A widow and son are left behind when a spouse passes away. The son will receive the remaining estate assets, and the widow will receive her allotted $1/8$ portion.

Son= $7/8$ as a residual, wife/widow= $1/8$ as sharer.

b). A wife passes away, leaving her husband and her full sister behind. According to *Shīā* and Sunni law, the husband and the full sister shall each receive half of the inheritance as sharers. Half of the sharers are the husband and the full sister.

c) A person passes away, leaving behind his brother and his wife. According to *Shīā* and Sunni law, his wife will receive $1/4$ as sharer, and the remaining $3/4$ will pass down to the full brother as a residuary. Full brother= $3/4$ as a residuary, wife= $1/4$ as sharer.

d) When a wife passes away, her husband, one full brother, and one full sister survive her. According to *Shīā* and Sunni law, the spouse will receive half of the estate, with the remaining portion going to the full brother and full sister. The full brother will receive twice as much as the full sister. Full brother and sister= $1/2$ as residuaries, husband= $1/2$ as sharer,

Six fictitious shares will be used to solve the proposition. 1/3, full brother 2/6, full sister 1/6, and husband 3/ 6.⁷⁸

1.9 Impediments to inheritance

There are circumstances in which one is completely deprived of any share of inheritance. Such circumstances are considered to be barring inheritance. The Shaf'ī and Hanbl'ī mentioned three impediments to inheritance: Murder, slavery, and religious differences: Shaf'ī added three more impediments, so the impediments for them become six and these are: apostasy, judicial role, the differences of opinion between people of original disbelief and banditry.⁷⁹

1.9.1 Murder

The jurists agreed that murder is an impediment to inheritance as the murderer does not inherit from the one he killed, Holly Prophet , may Allah be please be upon him said “A murderer has no inheritance” because he hastened the inheritance before its time by doing a forbidden act, he was punished by depriving him of what he intended, so that he could be rebuked for what he had done, and because bequeathing with murder leads to corruption, and Allah does not like corruption, but they differed regarding the types of preventable killing:⁸⁰

According to Hanafī School of thought: It is forbidden murder, which is the one to which the obligation of retaliation or expiation is attached and it includes premeditated murder, it's like, error, and what constitutes a mistake, what necessitates retaliation is premeditated murder, which

⁷⁹ Muḥammad Muṣṭafá Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10: 15.

⁸⁰ Ibid: 16.

according to Imām Abu Hanifa is: hitting intentionally with a weapon or something that takes its course in separating parts of the body, such as a weapon of wood or stone. According to the two companions and the other three Imāms: it means hitting intentionally with something that usually causes death, even if it is not specific, such as a large stone.⁸¹

Killing by right, such as killing the inheritor to carry out retaliation or punishment due to apostasy or adultery while married, and killing in self-defense and the just killing of his unjust inheritor according to Hanaf'ī agreement, and the opposite according to Imām Abu Hanīfa and Muhammad, which is the killing of the unjust his inheritance with the imam, so that is not prohibited at all.⁸² In Shāfi'ī law notion that a murderer does not inherit from their victim is strictly applied and cover every case of murder whatever he was directly or caused for an interest such as hitting the father, husband or teacher or not, whether he was forced or not, rightly or not, whether he was accountable or not. This is the broadest of opinions and their evidence is the generality of the report of Al-Tirmidhi and others: "the murderer has nothing" that is of inheritance.⁸³ Under Ḥanbalī law only actionable homicide create a bar to inheritance and non actionable homicide does not constitute an impediment. The Hanblī's believed that killing prevents inheritance is unlawful killing, and is guaranteed by retaliation. It includes intentional, semi-intentional and mistakes actions, such as killing by causing, and a killing of a sleeping person. Mālikī holds the opinion that an actionable homicide that is committed intentionally constitute a bar to inheritance. It includes the one who orders it, the one who instigates it, the facilitator, the accomplice, the place during the killing, the false witness if the judgment is based

⁸¹ Muḥammad Muṣṭafā Zuḥaylī, *Islamic Jurisprudence and its Proofs: Financial Transactions in Islamic Jurisprudence*, translated in English by Mahmood A. EI-Gamal, Vol.1 (Beirut: Dār al-Fikr, 2003), part 10, p.26.

⁸² Ibid

⁸³ Abū 'Abdillāh Muḥammad ibn Idrīs ash-Shāfi'ī, *Kitāb al-Umm* (Beirut: Dār al-Ma'rifah, 1990), part 8.

on his testimony, the one who is forced to kill someone whose blood is innocent, the one who digs the well for his inheritor, and the one who places the stone in his path. He collides with it and dies. Accidental homicide does not constitute bar to inheritance, it does not prevent one from inheriting money, nor does it prevent one from inheriting blood money.

1.9.2 Difference of religion

Difference of religion is an additional barrier to inheritance. "A Muslim cannot inherit from a non-Muslim and a non-Muslim cannot inherit a Muslim," declared the Holy Prophet (PBUH).

Muslim can inherit from the estate of an apostate or not this issue is under debate, the Mālikī, Shāfi'ī and Ḥanbalī opinion that there will not be any mutual inheritance between an apostate and a Muslim, the reason is that the apostate is non Muslim and according to above mentioned hadith there is no succession between Muslim and non Muslim.⁸⁴

1.9.3 Illegitimacy

A child born out of wedlock may inherit from their mother instead of their father. Since an illegitimate kid in Islamic law is exclusively affiliated with the mother and will not have the father's name, as per Sunni law, the child has not eligible to inherit from the father but only from the mother. This is the consensus view among Muslim Sunni jurists; nevertheless, they disagree over the law regarding inheritance from an illegitimate kid. Normal principles dictate that the mother and her kin inherit from an illegitimate kid, according to Mālikī and Shāfi'ī schools.

⁸⁴ Abū 'Abdillāh Muḥammad ibn Idrīs ash-Shāfi'ī, *Kitāb al-Umm* (Beirut: Dār al-Ma'rifah, 1990), part 8.

Whereas under *Shīā* law the bar to inheritance exists upon the presence of criminal intent. Only intentional homicide creates a bar to succession. A Muslim will inherit from non Muslim but a non Muslim cannot inherit from Muslim.⁸⁵

Shīā law, an illegitimate child has no reciprocal rights with either of his or her parents and does not inherit from either. Even from the mother and her relatives, an illegitimate kid is not allowed to inherit under *Shīā* law. However, the legislation of the relevant school determines how an illegitimate person's legitimate offspring inherit their property.⁸⁶

To conclude the above mentioned data, it is clear that inheritance laws are found in the Qur'an, and the Prophet's authority. The divinely determined shares of each successor are set in the Quran. No one has the authority to deny an heir their inheritance aside from the law. This chapter has explained the basic features of Sunni law of inheritance and compared them with the principles of *Shīā* law to engender proper application of this area of law among the legal fraternity including students of law, legislature and parties to suit. It has been brought forth that if some structural aspects of *Shīā* and Sunni laws are grasped it would become relatively easy to master these systems. For instance, division of legal heirs into three classes according to *Shīā* law does not have any comparable features in Sunni law. As mentioned in this chapter, this difference has manifold implications in determination of shares of legal heirs. There is another noteworthy distinction between the two systems. Unlike Sunni law *Shīā* law does not recognize

⁸⁵ Sayyid 'Alī Ḥusaynī Sīstānī, *Tawḍīḥ al-Masā'il* (Karachi: Jāmi'a Ta'limāt-e-Islāmī, 2008) 430.

⁸⁶ Muhammad Mustafa Khan, *Islamic law of Inheritance* (publication Kitab I Havan, December 2002): 51

distant kindred as a category of legal heirs. Most of those who are classified as distant kindred under Sunni law are absorbed in the three classes under *Shīā* law; they are eligible to inherit either as sharer or as a residuary. As these schemes of inheritance are inspired from the verses of Quran, they are expected to be similar in certain respects, as the sectarian allegiance of the deceased is not easily ascertained and the point may be contested between the heirs, in the practice of our society many male legal heirs of the deceased change the sect of the deceased from *Sunnī* to *Shīā* just to deprive the widow of issueless deceased from her right to inherit real estate as under the *Shīā* law the widow of issueless deceased have right to inherit only moveable property of her late husband, hence there is need to critically analyze the pertinent clauses in the said law, in order to propose appropriate legislation in Pakistan. It must be admitted after comparing both the systems that the space characterized by similarity is too small in comparison to the area where *Shīā* and Sunni laws have different solutions to the same problems.

CHAPTER 2: SUCCESSION LAWS IN PAKISTAN

Introduction

The practice and procedure of inheritance, both Islamic and civil inheritance have traditionally been governed by a number of laws and rules and entail the involvement of the deceased person's family as well as pertinent authorities. This chapter highlights all the modes of succession and the relevant laws of succession. This chapter gives a deep insight into the letters of administration, succession certificates and a brief summary of pertinent sections of the Succession Act, 1925. The discussion of Section 4 of the Muslim Family Law Ordinance, 1961 and the historical development of the Muslim Personal Law Shariat Application Act, 1962, in the context of Sharī'ah are also covered in brief in this chapter. This chapter briefly analyzes the provisions of the Letters of Administration and Succession Certificate Act, 2020. Several questions have been discussed in this chapter, such as: "What are letters of administration and succession certificates, and how are shares of inheritance distributed among legal heirs?" "Whether Sec. 4 of MFLO 1961 is Sharī'a compliant?" "Whether the provisions of the Letters of Administration and Succession Certificate Act 2020 are compatible with Islamic law and abide by the principles compressed within Sharī'ah?" To highlight the gradually provisions of succession law and discussed and pointed out the same in this research.

2.1 Historical Background of the Succession Act, 1925

The Succession Act of 1925 was a significant piece of legislation introduced in British India to address issues related to inheritance and succession. Its primary objective was to provide a

uniform set of rules governing the distribution of property among heirs, regardless of their religion or personal laws. The Act aimed to modernize and streamline the complex and varied systems of succession prevalent in India at the time, which were often based on religious customs and traditions.

However, despite its efforts to create a more standardized legal framework, the Succession Act of 1925 still had several loopholes and limitations. One major limitation was its inability to fully accommodate the diverse religious and cultural practices of different communities, particularly Muslims, who follow Islamic law, or Shariah, regarding inheritance.⁸⁷

The Succession Act failed to address the specific requirements and the fundamentals of Islamic inheritance law, which is derived from Quran and the Hadith. As a result, Muslims found themselves facing conflicts between the provisions of the Act and their religious beliefs regarding inheritance.

These shortcomings led to the enactment of Shariat Application Acts in various Indian states. These Acts were introduced to supplement the Succession Act and provide specific provisions for Muslims to adhere Islamic law when it comes to inheritance. The Shariat Application Acts aimed to bridge the gap between statutory law and religious law, ensuring that Muslims could adhere to their personal beliefs while also complying with the broader legal framework.⁸⁸

Despite the efforts to address the inadequacies of the Succession Act, tensions and disputes between statutory law and religious law continued to persist. The complexities of balancing

⁸⁷ Jain Mahabir Prashad, *Outlines of Indian legal and Constitutional History*, Universal Law Publishing, (India feb,01, 2014): 693

⁸⁸ Ibid:693

secular legal principles with religious customs remain a challenge in many legal systems worldwide.⁸⁹

The Succession Act 1925 was a codification of all Indian laws pertaining to succession. Succession Act refers to the procedure to understand all types of property transfers.⁹⁰

2.2 Critical Analysis of Succession Act, 1925, of Pakistan

The intestate succession legislation, or unwilled succession, among Christians, Jews, and Parsis in India is regulated by the Indian Succession Act, 1925. It also applies to anyone who does not identify as a member of the Muslim, Hindu, Sikh, Jain, or Buddhist religions, unless it can be demonstrated that they are subject to their own traditions or laws.

Sections 372 to 392 of the Act are where the majority of the Succession Certificate-related provisions may be found. Here is a breakdown of several important sections:

Anyone who has a valid claim to a debt or security for which a Succession Certificate is necessary may apply to a District Judge for one.⁹¹

In *Naheed Kamal Afsar v GDA (2018)*,⁹² The succession certificate is issued exclusively for the debts and securities listed in Section 380(2) of the Succession Act, 1925 and is covered by section 372. The succession certificate does not grant the grantee of any general powers of administration over the deceased estate, confirm the grantee's status as the deceased heir, or give the power to gather debts owed to the departed or permit the deceased creditors to make

⁸⁹Ishita Banerjee, Family Matters: Gender, community and Personal laws in India, ResearchGate February, 2023: 43

⁹⁰ The Succession Act (Act No. XXXIX of 1925), (The Official Gazette of Pakistan, Extraordinary Part X, September 25, 1925).

⁹¹ Ibid, section 372.

⁹² *Naheed Kamal Afsar v GDA*, 2018 SCMR 762

payments to him without suffering a loss. Therefore, the purpose of the aforementioned certificate is to simplify collection, govern the administration of succession, and safeguard anybody who interacts with the supposed representatives.

The Judge may request additional proof from the applicant after receiving and reviewing an application. The judge will also decide whether the applicant has the legal right to request the certificate or whether anybody else has a prior claim.⁹³

Section 374 stipulates that the Judge shall issue an order granting the Succession Certificate once satisfied that the petitioner is the proper person. If there are many claimants, the Judge will also decide who will receive the certificate.⁹⁴

If the Judge decides it's essential for whatever reason, he has the option to reject the certificate. It might take place if there is a disagreement among the heirs or if the legitimate claimant is unclear.⁹⁵

The Judge may compel the applicant to post a bond with one or more sureties, or any other security, ensuring the proper collection and repayment of debts and securities, as well as the payment to the person who is entitled.⁹⁶

The certificate holder is responsible for all obligations and debts associated with the certificate, and are required to act honestly and faithfully in relation to the collection and management of the property and debts mentioned in the certificate.⁹⁷

⁹³ The Succession Act (Act No. XXXIX of 1925), (The Official Gazette of Pakistan, Extraordinary Part X, September 25, 1925), sec 373.

⁹⁴ Ibid, sec 374

⁹⁵ The Succession Act (Act No. XXXIX of 1925), (The Official Gazette of Pakistan, Extraordinary Part X, September 25, 1925), sec 375

⁹⁶ Ibid, sec 376

A certificate may be revoked for any of the reasons listed in Section 383 of the Succession Act of 1925, including a decree or order issued by a competent court in a lawsuit or other proceeding with respect to effects, including debts or securities specified in the certificate, making the revocation of the certificate appropriate. It was decided in *Liaqat Zaman and others v. Ms. Tazeem Akhtar and others* (2017)⁹⁸. In addition to the aforementioned, section 387 of the Succession Act of 1925 provides protection for legitimate claimants and establishes the responsibility of succession certificate holders toward the former.⁹⁹

This section outlines the conditions that can cause a certificate to be revoked, such as when it was obtained dishonestly or when the holder sold the entire property without the District Judge's approval.¹⁰⁰ In *Liaqat Zaman vs Mst Tazeem* (2017)¹⁰¹ which states that a certificate may be revoked for any of the reasons listed in the section, including a decree or order issued by a competent court regarding effects involving debts or securities listed in the certificate that make the revocation appropriate. In addition to the aforementioned, section 387 of the Succession Act, 1925, furnish protection for claimants and limits the obligation of succession certificate holders toward the former.

2.3 Background of the Muslim Personal Law (Shariat) Application Acts, 1935 to 1962

The North West Frontier Province Muslim Personal Law (Shariat) Application Act of 1935 was passed during the time Of British colonization in India. The act was passed in response

⁹⁷ Ibid, sec 381

⁹⁸ *Liaqat Zaman and others v Ms. Tazeem Akhtar and others*, 2017 YLR 150.

⁹⁹ Ibid.

¹⁰⁰ The Succession Act (Act No. XXXIX of 1925), (The Official Gazette of Pakistan, Extraordinary Part X, September 25, 1925), Sec 386.

¹⁰¹ *Liaqat Zaman v Mst Tazeem*, 2017 YLR 150

to the demands from Muslim groups in the North West Frontier Province (NWFP) in Pakistan, formerly known as Khyber pakhtun Khawa (KPK) for the recognition of Islamic law in matters relating to family law. The demand for Shariah law in the region was part of a wider movement in India for greater recognition of personal law of Muslims. Muslims in India, who made up a significant minority of the population, felt that their religious and cultural practices were being ignored or suppressed under British rule, which had introduced a common civil code that all communities had to follow.¹⁰²

The Muslim Personal Law Board of India was established in 1931 to promote the acceptance of Muslim personal law in India. The Board contended that, as Islamic law covered these matters, Muslims ought to be free to follow their own laws regarding inheritance, succession, marriage, and divorce. In response to these demands, the British colonial authorities allowed provincial governments in India to enact laws based on Shariah principles in matters relating to family law. When the Muslim Personal Law (Shariat) Application Act was passed in the North West Frontier Province in 1935, it became the first province to do so.¹⁰³

Under the act, Muslim citizens of the NWFP were authorized to follow Islamic laws pertaining to marriage, divorce, and inheritance, rather than being subject to the uniform civil code that applied to all communities. The act was seen as a victory for Muslim groups. The Muslim Personal Law (Shariat) Application Act, of 1937, extended this recognition of Muslim

¹⁰² The North West Frontier Province Muslim Personal Law (Shariat) Application Act of 1935

¹⁰³ North West Frontier Province Muslim Personal Law (Shariat) Act (Act No. XXVI of 1935), (The Official Gazette of Pakistan, Extraordinary Part I, October 1, 1935.

personal law of Muslims to the rest of India, outside of the province of North West Frontier.in the province, which had campaigned for greater recognition of Islamic law and traditions.¹⁰⁴

The British colonial authorities allowed provincial governments in India to enact laws based on Sharia principles in matters relating to family law. Outside of the province of North West Frontier, the Muslim Personal Law (Shariat) Application Act, 1937, expanded the recognition of Muslim personal law to include the all of India.

Under the act, Muslim citizens of India were allowed to follow Islamic laws in matters pertaining to marriage, divorce, and inheritance, rather than being subject to the uniform civil code that applied to all communities. The act was seen as a victory for Muslim groups in India, who had campaigned for greater recognition of Islamic law and traditions.¹⁰⁵ Muslim women's organizations who preferred the Shariat above customary laws supported the Muslim Personal Law Shariat Application Act of 1937. Since customary laws have the potential of discriminating Muslims however, the Act did not include any condition to protect the rights of women under its provisions.¹⁰⁶

The West Punjab Muslim Personal Law (Shariat) Application Act, 1948, was passed after the partition governed the freedom of Pakistan in 1947. The Act was enacted by the provincial assembly of West Punjab, which was then part of Pakistan. After the separation of India in 1947, Pakistan emerged as an independent Muslim state with a Muslim majority population. The new state sought to establish a legal system that was in line with Islamic principles and traditions.¹⁰⁷

¹⁰⁴ Saeed ur Rehman, *Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic and Societal Violence* (Multan: Awaz Foundation Pakistan Publishers, 2010), 34.

¹⁰⁵ Ibid, 35.

¹⁰⁶ Muslim Personal Law Shariat Application Act of 1937

¹⁰⁷ The West Punjab Muslim Personal Law (Shariat) Application Act, 1948

The 1948 Act for the Application of Shariat to Muslim Personal Law in West Punjab, was one of several laws passed by the Pakistani government to give legal recognition to Islamic law in matters relating to family law. The Act allowed Muslim citizens of West Punjab to follow Islamic laws pertaining to marriage, divorce, and inheritance, rather than being subject to the secular laws that applied to all communities. The 1950 Act regarding the Utilization of Shariat to Muslim Personal Law (Sindh Amendment) extended the recognition of Muslim personal law to cover additional matters, pertaining to the custody of children and the maintenance of wives. The debate over the acknowledgement of Muslim personal law in Pakistan continues to this day with ongoing discussions around the need for a legal system that is both in line with Islamic principles and traditions, and respects the rights and equality of all citizens.¹⁰⁸

Muslims make up the majority of Pakistanis. Pakistan's contemporary laws and policies are still firmly based on its historical past, after independence from British rule, Ayub Khan became president of Pakistan, Pakistan was successful in acquiring certain Acts in the sphere of personal law from the parent state, such as the Muslim Family Laws Ordinance of 1961 and the Muslim Personal Law (shariat) Application Act of 1937.. In 1948 and 1962, Pakistan passed the Muslim Personal Law Shariat Application Acts. These acts established women's right to inherit all types of property, which is in line with regional interpretations of Islamic law but not with widespread local customs.

2.4 Application of Muslim Personal Law (Shariat) Application Act, 1962

When there are Muslim parties involved in a litigation the Muslim Personal Law will be the final decision-making rule, subject to any current enactments. Testate or intestate succession,

¹⁰⁸ Saeed ur Rehman, *Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic and Societal Violence* (Multan: Awaz Foundation Pakistan Publishers, 2010), 34.

female specific property, betrothal, marriage, divorce, dower, minority, bequests, gifts, religious usages, or institutions, such as waqf trust and trust assets, are all included in this. Propositus, who passed away in 1933, intended for Sharia law to replace customary law in his country. A word decree, judgment, order in section 2A mean decrees, judgments, orders of courts¹⁰⁹, by which right to challenge under customary law might have been recognized sec 2A would have no application in a case where a question of the nature of estate was finally decided by court of competent jurisdiction long before enactment of sec 2A of Muslim Personal Law (Shariat) Application Act, 1962.¹¹⁰

2.4.1 Termination of estate

When the interim ordinance of 1963 amended, the privilege created by the proviso of section 3, stands as lost, and section 3, as originally written in Act of 1962, thus reemerges, the termination of Muslim women's limited estates under customary law is not saved. If a will that come up with for more than one legatee to inherit the devisor's property successively is in effect at the time this Act takes effect, its continuing operation will end when the legatee passes away in bliss.

The life estate terminated under Section 3 of the Muslim Personal Law Shariat Application Act 1962 or the property whose continuing operation by the will has ended under Section 4 of the Muslim Personal Law Shariat Application Act shall belong to the person who would have been eligible to succeed under Muslim law.¹¹¹

¹⁰⁹ North West Frontier Province Muslim Personal Law (Shariat) Act (Act No. XXVI of 1937), (The Official Gazette of Pakistan, Extraordinary Part I, October 1, 1937).

¹¹⁰ The Punjab Sindh N.W.F.P, Baluchistan Muslim Personal Law (Shariat) Application Act (Act No. XX of 1962), (The Official Gazette of Pakistan, Extraordinary Part II, September 21, 1962), sec 2-A.

¹¹¹ Saeed ur Rehman, *Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic and Societal Violence* (Multan: Awaz Foundation Pakistan, 2010): 23.

2.4.2 Inheritance right of women under Muslim Personal Law Shariat Act, 1962

When it concerns to women inheriting real estate, the West Pakistan Muslim Personal Law, the Shariat Act of 1962, plays an important role. Regarding ownership, purchase, and disposal of property, it gives full access and control over property. Regardless of custom or usage, the law explains partition in accordance with the Muslim Family Laws Ordinance of 1961. This legislation is relevant to all instances including succession, even if testate or intestate, women's specific property, engagement, marriage, etc.¹¹²

In *Mst Aisha Bibi and others v Muhammad Malik and others (2003)*¹¹³ in that case, the petitioner received a life estate from his estate, but the Pakistan Muslim Personal (Shariat Application) Act of 1962, ended that bequest. A mutation was then authorized, with his widow receiving 1/8 of the share and his daughter receiving 7/8 of the share. The collaterals filed a lawsuit on the fact that the deceased was a Sunni and that they were also qualified to the estate as residuary after the shareowners' shares were distributed. The trial court made its decree in favor of the widow and daughter, notwithstanding the first appellate court siding with the collaterals.

2.5 Muslim Family Laws Ordinance, 1961, Section 4

2.5.1 Background

When a son or daughter of a person passes away, leaving his child alive, the youngster does not receive his grandfather's property. In the son's presence, the orphan grandson or granddaughter of the deceased is categorically free from inheritance, according to all four Sunni schools. By using the idea of representation, Pakistan's Muslim Family Law Ordinance of 1961

¹¹² ibid

¹¹³ *Mst Aisha Bibi (deceased) through legal heirs and others v Muhammad Malik and others*, PLJ 2003 LHC 995.

section 4, modified the old rule such that grandchildren would inherit their part from their grandfathers as members of the antecedent family. In 1961, MFLO was formally adopted. On June 11, 1956, the commission delivered its findings to the government, which were then made public in the Pakistani Gazette.¹¹⁴

The inheritance under Islamic law has undergone a significant modification as a result of Section 4 of the MFLO of 1961. Section 4 of the Muslim Family Laws Ordinance of 1961 has a contentious past in a nation that has tried to strike a balance between secular legislative enactments and religious tenets. The main source of contention is the structure of inheritance shares under traditional Islamic law. The 'near' is supposed to 'exclude the remoter' in traditional Islamic law; therefore, if a propositus's son or daughter passes away before them, the grandchildren would not inherit. However, it was determined that this principle would hurt the interests of the orphaned grandkids, who the legislature felt should be protected. Therefore, section 4 of the MFLO was created by the Pakistani legislature in an effort to alleviate the pain of such grandchildren.¹¹⁵

2.5.2 Shariah Evaluation MFLO, 1961 section 4

MFLO 1961 section 4 is held contrary to the shariah for the following reasons:

The clause disrupts the inheritance under Islamic law as a whole. For instance, if a man had two daughters and a grandson, the two girls would each receive a third of the estate, while the grandson would be eligible to receive the remaining half, making the two daughters' share of the

¹¹⁴ Muhammad Munir, "The share of orphaned grandchildren under Islamic law and Pakistani legal system: A re-evaluation of representation succession in section 4 and its (mis)interpretation by court," *The Asian Yearbook of Human Rights and Humanitarian Law* 2 (2018): 100

¹¹⁵ Ibid

estate equal to that of his deceased father. Similarly, everyone would receive half if the propositus left one granddaughter from one deceased son and one grandson from another deceased son; nevertheless, as per Islamic law, a man would receive twice as much as a female.

Islamic law excludes grandson from inheritance in the presence of a son. In other words, Islamic law prefers the nearest heir over the distant one. The section in question brings both to par. The above mentioned rule has been emphasized in a number of texts. The Quran says: “From what is left by parents and those nearest related there is a share for man.”¹¹⁶

The Holy Prophet (P.B.U.H) said;

“Give the share of inheritance as prescribed in the Holy Quran to those who are entitled to receive it, then whatever remains, should be given to the closest male relative of the deceased”.¹¹⁷

These texts indicate that the lawgiver has fixed the shares, and that grandson is excluded from inheritance in the presence of own children of deceased. On these grounds the religious scholars have held this section of ordinance against the principles of Quran and sunnah. The Council of Islamic Ideology and Federal Shariat court have upheld the same view.¹¹⁸

2.5.3 The Concept of Mandatory Contribution

According to the council of Islamic Ideology, uncles and aunts of orphans' grandchildren have a duty to care for and support their orphaned nephews and nieces.¹¹⁹

¹¹⁶ Al-Quran, 4:7.

¹¹⁷ Sahih Muslim, no 4141

¹¹⁸ Muhammad Tahir Mansoori, *Family Laws in Islam: Theory and Application* (Islamabad: International Islamic University Shariah Academy Publishers, 2006), 235.

¹¹⁹ Tenth Report by Council of Islamic Ideology on islamization of muslim family laws, 1983, 13

Mufti Muhammad Shafi also regards it as a legal obligation of the uncle to provide for his poor nephew. He held that the verse

“And heir shall be chargeable in the same way”¹²⁰

The Federal Shariat Court believes that creating an obligatory will in the orphan grandchildren's name is the best way to address the issue of the orphan grandson.¹²¹

2.5.4 Case Laws Pertaining to Section 4 of MFLO, 1964

In *Ghulam Ali v Mst Ghulam Sarwar (1990)*¹²², It was mentioned that the Holy Quran lays down specific guidelines for inheritance; yet, national customs greatly impact the rights that women are originally provided by the Quran. The Pakistani Supreme Court further stated that under Muslim personal law, inheritance occurs naturally and each legitimate successor is entitled to get his or her share.

In *Eda Khan v Mst Ghanwar and others (2004)*¹²³, As per its commitments under international treaties, the constitution, and other legal frameworks, the Pakistani government must see to it that inheritance rules are applied appropriately. The court held that

“As per the standard Islamic inheritance concept, the property would naturally revert to the daughters of deceased, who would then immediately become co-sharers”. In response to the

¹²⁰ Muhammad Tahir Mansoori, *Family Laws in Islam: Theory and Application* (Islamabad: International Islamic University Shariah Academy Publishers, 2006), 235.

¹²¹ *ibid*

¹²² *Ghulam Ali vs Mst Ghulam Sarwar*, PLD 1990 SC 1.

¹²³ *Eda Khan v Mst Ghanwar and others*, 2004 SCMR 1524.

counsels father petitioner's objection in the Eda Khan case that the parties were governed by customs and the female could not inherit under them.¹²⁴

In *Mst. Saabran Bibi v. Muhammad Ibrahim (2005)*,¹²⁵ focuses on the topic of the widow of a deceased child's inheritance. The court has ruled that the widow has no claim to any assets from her late husband's estate left behind under the terms of the MFLO 1961, section 4, because that law was created to safeguard the children of a deceased daughters and son, and the widow is not capable of being understood in any way by the language or terminology used in that law.

In *Qutab ud Din vs. Zubaida Khatoon (2009)*¹²⁶ it was decided that only the children of the predeceased son are granted the right to inherit under section 4 of the MFLO. The above mentioned law's operation would prevent the spouses from receiving anything from the inheritance where they did not have right to receive share.

In *Mian Mazhar Ali and others v Tahir Sarfraz and others (2011)*,¹²⁷ the petitioner was Mehmooda Begum's spouse; her parents predeceased her. Due to the implementation of Section 4 of the MFLO, he claims his part from her late wife's estate, which she inherited from her parents. The matter concerning the eligibility of Mehmooda Begum's husband to inherit the wealth that her parents left to her as a result of the application of the MFLO 1961, Section 4 has become very crucial. The court found that the provisions of the MFLO are not intended to supersede the Shariah principles and the application of Section 4 has been restricted just to grandchildren and does not cover spouses.

¹²⁴ *ibid*

¹²⁵ *Mst. Saabran Bibi v. Muhammad Ibrahim*, 2005 CLC 1160.

¹²⁶ *Qutab ud Din v Zubaida Khatoon*, 2009 CLC 1273.

¹²⁷ *Mian Mazhar Ali and others v Tahir Sarfraz and others*, PLD 2011 Lahore 23.

In 2016 Justice Ibad ur Rehman Lodhi decided in the matter of the widow of an issueless deceased *Shīā* that she is eligible to get her one- fourth share from her deceased husband's estate. In his decision he also directed the legislative authorities to amend the present law for the protection of widow of issueless deceased.¹²⁸ As a result, a remarkable amendment was made in 2021 as the Muslim Family Laws Amendment Act 2021, in which MFLO 1961 Section 4 after sub-section 1, sub-clauses 2 to 4, was added to protect the widow of *Shīā* issueless deceased. But the same is also full of ambiguity and not clear because in sub-clause 2, it is clearly mentioned that a widow of issueless deceased from Ahl al-Tashayyu will inherit one fourth of the immovable property of her late husband, but in sub-clause 4, it is also mentioned that she will inherit the value of property, and If the widow is not granted the aforementioned terms by the deceased's legal heirs, i.e., the value of property, then she will inherit from the corpus of immovable property.

In these sub-clauses of Section 4 of MFLO 1961, the right is not absolute but conditional. Meanwhile, in sub-clause 5, it is mentioned that the widow is eligible to her portion of the corpus of movable property.¹²⁹ So the amendments of 2021 are not clear and absolute about the widow of *Shīā* issueless deceased right to inherit from immovable property, as in Sub clause 7 it is discussed that if a dispute arises between the parties, the decision of Mujtahid 'Ālamī shall have a status of award¹³⁰. In sub-clause 8, the legislature agrees that according to article 227 of the Islamic Republic of Pakistan's Constitution, Ahl al-Tashayyu inheritance disputes will be resolved in accordance with their personal law as understood by Fiqh al-Ja'farīya, a school of

¹²⁸ Khalida Shamim Akhter vs ghulam Jaffar & others, 2016 LHC 1757

¹²⁹ Muslim Family Laws (Amendments) Act, 2021 (Act No XXVIII OF 2021)(Official Gazette of Pakistan, Part 1, 03-December 2021) sec4(5)

¹³⁰ Muslim Family Laws (Amendments) Act, 2021 (Act No XXVIII OF 2021)(Official Gazette of Pakistan, Part 1, 03-December 2021) sec4(7)

Shīā philosophy.¹³¹ In the amendment of 2021 the legislature did not mention the definition of Mujtahid ‘Ālamī who is competent to pass award or can give a neutral decision. So the present amendment is failed to curb the miseries faced by the widows. There is also no clarification and definition of moveable or immovable property. So it is the need of the time to amend this law and make it more clear and affective for the legal heirs.

2.6 Moveable assets those are liable to distribution among successors:

2.6.1 Tarka:

In some situations, the court has issued a succession certificate but has since clarified that the pension package and monthly benevolence fund are not components of Tarka and must be managed by the appropriate government regulations. It is also made clear that the pension and other departmental obligations, such as gratuities, group insurance, GP funds, burial grants in aid, and charitable contributions, must be strictly handled in accordance with the pension regulations as determined by their individual sharers.¹³²

Zubair Ahmed v. Mehmooda Begum There are instances where the court has issued a succession certificate, but it has made it clear that the pension package and monthly benevolence fund concerns are not related to Tarka and must be managed by the applicable laws.¹³³

¹³¹ Ibid, section 4 (8).

¹³² 2013 CLC 1834 (Peshawar)

¹³³ ibid

2.6.2 Money in bank, insurance policies and savings

Family members typically cannot access money stored in the deceased person's sole name until the personal representative receives probate. If there isn't much money in the account, the bank could nonetheless give the money to the personal representative or next of kin.¹³⁴

2.6.3 Bank accounts in joint name

The money can typically be moved to the names of the surviving if the deceased's bank account was opened in joint names with their spouse or civil partner. To accomplish this, one will need the death certificate. If the deceased's bank account is in the joint names of the deceased and another individual, and the bank instructed the other individual to receive the funds, the money can be transferred to the survivor's name. You will also want a Letter of Clearance from Revenue if the account has more than 50,000 in it, permitting the money to be transferred to the survivor's name.¹³⁵

In *Syed Shah Pir Mian Kazmi v Mst Nelofar*¹³⁶ The father was merely a nominee in this particular case; thus, the court determined that he had no authority to change or supersede the clauses pertaining to Islamic inheritance law; instead, he was only eligible to his share, with the remainder going to the rightful heirs. Since the nominee or survivor of any joint firm does not have any unique or privileged position to refuse others allotted shares, this arrangement is perfectly compliant with the conventional law of inheritance.

¹³⁴ Malik Safdar Ali Khan and others vs Public at Large and others, 2004 SCMR 1219.

¹³⁵ *Syed Shah Pir Mian Kazmi v Mst Nelofar* PLD2012 Peshawar 101.

¹³⁶ *Syed Shah Pir Mian Kazmi v Mst Nelofar* PLD2012 Peshawar 101.

The apex court in *Mst. Amtul Habib and others v. Mst. Musarrat Parveen and others* (1974)¹³⁷ case that dealt with the widow's or nominee's right to the exclusion of other legitimate heirs beyond what is required by sharia. The *Mst Mehmooda Begum vs Zubair Ahmed* (2013)¹³⁸ revealed that the nominee has no legal claim to the excess funds over what is due to him. According to shariah shares, each lawful heir would be entitled to get their own share; hence the nominee does not have the same rights as the full owner. The nominee's sole responsibility, if any, is to gather the money as a representative of all legitimate heirs who are entitled to it under the rules that apply to nominees. The money is not vested in the nominee under Section 5 of the Provident Funds Act, nor is he recognized as the owner.

2.6.4 Credit union accounts

The person or people mentioned on the valid nomination form that the deceased person filled out when forming the credit union account will get the funds in the account, up to a maximum of 23,000. Any sum left over becomes component of the decedent's estate and is dispersed in accordance with succession law or the terms of the will, if one exists.¹³⁹

To conclude the above research findings, Pakistan's current succession laws have many loopholes, and the distribution of property and assets is skewed toward men. Men typically hold the upper hand in societies where women are perceived as infirm than men and incapable of owning property and other assets. This procedure is motivated by discrimination hostile to

¹³⁷ *Mst. Amtul Habib and others v Mst. Musarrat Parveen and others*, PLD 1974 SC 185

¹³⁸ *Mst Mehmooda Begum v Zubair Ahmed*, 2013 CLC 1834.

¹³⁹ *MstAmiran vs Mst Shamim Akhter and others*, 2005 SCMR 512.

women, ignorance of rights and laws, or the desire to maintain wealth within the family and prevent it from leaving the family.

The government institutions, in addition to the courts and the police, are not increasing their competence to guarantee the shielding of women's rights and the implementation of state policy. Because of its flawed system, letters of administration and succession certificates are not implemented in favor of women. Even in 2021, under the Muslim Family Laws Amendment Act, it is mentioned that the widow of an issueless deceased from Ahl al-Tashayyu is eligible to inherit the immoveable property of her late husband, but on the other hand, in the same Act, there are certain conditions that create hurdles to getting the same. So it is time to legislate a clear and ambiguity-free law to protect the widow of the issueless deceased, from Ahl al-Tashayyu.

Despite being stated in the Muslim Family Law Ordinance 1961, the West Pakistan Muslim Personal Law Shariat Act 1962, which are briefly discussed in this chapter—the study concludes that women are not receiving their inheritance rights as prescribed by Islam.

This chapter has analyzed the application of the Pakistan laws of succession and the case law in this regard. In the next chapter it will be seen whether the Letters of Administration and Succession Certificate Act 2020 has improved the situation also a Shariah appraisal of the said law and its practice will be presented.

Chapter: 3

Shariah Appraisal of Letters of Administration and Succession Certificate Act, 2020

Introduction:

In the previous two chapters, it has been discussed that the inheritance law in Islam is clear about the legal heirs, as mentioned in verses of Surah Nisa. In the second chapter, it is clear that the laws related to inheritance and succession in Pakistan has deficiencies. Due to these loopholes, the legal heirs suffer a lot. As discussed through case laws, civil proceedings take years to reach a result. The women's rights to inheritance are not specifically protected in those statutes, as in the Succession Act of 1925; there is no special protection for women.

The legislation of Pakistan, named the Letters of Administration and Succession Certificate Act 2020, aims to safeguard the rights of legal heirs. The present Act 2020 brings about a drastic change in Pakistan. It also reduces fraud and burden of the courts. The relevant clauses of the above-mentioned statute shall be analyzed in this chapter in order to determine to what extent it has ensured the protection of legal heirs, specifically the widow of an issueless deceased belonging to *Shīā* school of thought. The foremost objective of enacting this legislation was to furnish a constructive and expeditious operation for facilitating the circulation of letters of administration and succession certificates objective to curtail fraud and forgery.

Article 38 of The Islamic Republic of Pakistan's constitution 1973, mandates that state shall secure the economic and social welfare of its citizens regardless of age, caste, sex, race and creed by elevating their living standard.

In this regard, the government of Pakistan enacted the Letters of Administration and Succession Certificate 2020 in Islamabad capital territory, while simultaneously, the provincial governments enacted the same statutes as the Punjab Letters of Administration and Succession Certificate Act 2021, the KPK Letters of Administration and Succession Certificate Act 2021, and the Sindh Letters of Administration and Succession Certificate Act 2021. The provisions of these laws are primarily the same.

3.1: Critical analysis of Letters of Administration and Succession Certificate Act, 2020

Letters of Administration refer to the official document that provides an individual with the legal right to distribute the assets and pay off the debts of a person who died without creating a will. Distributing the deceased's assets to those who are entitled to them is the major responsibility of the administrator of an estate. The distribution of the estate's assets is subject to the applicable laws of descent and inheritance.

There are several situations in which one should need a letters of administration including:

- If the deceased died without a will
- If the deceased left a will, but did not name an executor
- If the deceased left the will but the court declared it invalid.

The Letters of Administration and Succession Certificate Act, 2020¹⁴⁰ is enacted to provide a speedy and transparent method for the circulation of Letters of administration and succession certificate. When a request is filed to claim the assets that departed left behind for lawful heirs in respect of both movable and immovable property, a letters of administration and succession certificate is issued. Prior to the 2020 implementation of letters of Administration and Succession Certificate Act, the civil courts had the power to grant these letters of administration and succession certificates. Now, NADRA, the National Database and Registration Authority, is authorized to do so.¹⁴¹

NADRA may inform any of its subsisting offices as a Succession Facilitating Unit at such place or places as it may deem suitable. A legal heir may file an application on behalf of themselves and all other surviving legal heirs, or it may be filed with NADRA, which is in charge of any assets or property that belongs to the deceased.

On receipt of such an application, NADRA should proceed with the application following the FRC. Such an application must be appended to it:

- 1) The deceased person's death certificate
- 2) Copies of the NIC and a list of the heirs apparent
- 3) Authorization if the application is made by single legal heir on behalf of all others
- 4) Information on the movable and immovable property for which a request for a succession certificate and letters of administration has been made.

A notice must be made to the public which shall be published;

¹⁴⁰ The Letters of Administration and Succession Certificate Act (Act No. VI of 2020), (The Official Gazette of Pakistan, Extraordinary Part I, February 14, 2020).

¹⁴¹ *ibid*

1. Through an online web portal
2. A single national newspaper published daily in both Urdu and English¹⁴²

If no objection is raised under fourteen days of announcement of such notice, the authority shall do biometric verification of all the legal heirs. After the completion of due process, a letters of administration or certificate of succession is issued that contains in favor of everyone who is legitimate heir with their respective portions.

NADRA grants certificates to legal heirs of deceased related to both moveable and immovable property according to the Family Registration certificate (FRC). It is important to discuss the significance of this Act and note its drawbacks as well. The said Act contradicts with, Islamic inheritance law in so far as the said legal documents are issued either in accordance with section 3 dealing with FRC,¹⁴³ which mentions the immediate family relations by birth or marriage; or as per the list of legal heirs provided by the applicant under section 6,¹⁴⁴ however in both cases NADRA is not bound to follow the complete list of legal heirs enlisted through Islamic law of inheritance, it is mentioned in the said Act that the Authority will present the legitimate heirs of the deceased with letters of administration and a succession certificate, together with a breakdown of their prospective shares as specified in FRC, the authority did not mention or allocate the share of unborn child still in the womb(fetus) as per Islamic law. The authority issued the shares on the basis of FRC which is based on CNIC or B-Form of legal heirs if they are minor, the authority declines to issue the succession certificate if one of the legal heirs is minor or residing at abroad or if any legal document is missing. NADRA simply issued a

¹⁴² The Letters of Administration and Succession Certificate Act (Act No. VI of 2020), (The Official Gazette of Pakistan, Extraordinary Part I, February 14, 2020).

¹⁴³ *ibid*, section 3

¹⁴⁴ *ibid*, section 6

decline certificate to legal heirs to proceed their case in court. The court order for publication in local newspaper. After the recording of evidence of all legal heirs the court issue succession certificate with surety/security that the heirs has to submit in court. The said Act did not set any rule related to the religion and sect of deceased, here a question arises that if there is a clash between the sect of deceased and legal heirs which sect will prevail? And under which sect NADRA grants certificates and sets the shares according to the sect, as the sectarian allegiance of the deceased, however, is not easily ascertained and the point may be contested between the heirs before the court, while analyzing the relevant provisions of the said law with relevant case law mentioned below to explain and clear this aspect which create problems for women specially widow of *Shīā* issueless deceased, who faces many hurdles.

Here, the women's rights to inheritance are violated by the male family members. Most members deny the Sunni sect of the deceased to deprive the deceased widow of her right to inherit immovable property by contesting that the deceased was a *Shīā Muslim* and his widow had a right only to moveable property. The courts of Pakistan have decided many cases on this matter and given the widows their due rights. The Sunni and *Shīā* schools of thought have expressed the traditional inheritance law, which is applied by courts of Pakistan. The inheritance patterns of the Sunni and *Shīā* schools of thought differ.

In *Shahzado Shah v. M. Sardaro (2004)*¹⁴⁵ A disagreement arose between the widow of issueless deceased and the deceased's brother's immovable property bequest. Assuming the departed was a Sunni Muslim, a land mutation was approved; the deceased's brother had disputed land and chose not to oppose the mutation.

¹⁴⁵ *Shahzado Shah v. M. Sardaro*, 2004 SCMR 1783.

In *Mst. Nooran Bibi vs. Rajab Ali (2007)*¹⁴⁶ since a widow of issueless deceased cannot inherit immovable property from her spouse, the matter at hand concerned the inheritance of deceased agricultural land. Due to mutation, the deceased widow was the rightful owner of the land. Due to the fact that the deceased was a *Shīā* Muslim and his widow could not have received his farm land, the collaterals contested the aforementioned mutation.

It was further argued that the collaterals right on agriculture land was confirmed according to the customary *Shīā* law of inheritance. The trial court decides the matter in favors of deceased widow, while the respondents agitate the matter in appellant court. The widow filed a case in the High Court after the first appellate court overturned the trial court's ruling. The High Court upheld the trial court's ruling and recognized the widow as the legitimate owner of the deceased agricultural land, in accordance with Surah Nisa verse 12 of the Holy Quran.¹⁴⁷

In another case *Ghulam Shabbir vs. Mst Bakhat Khatoon (2009)*,¹⁴⁸ Fateh Muhammad passed away, leaving two widows behind him. One of them contested the mutation in front of the revenue authorities, arguing that since the departed was a Sunni Muslim, she was entitled to a portion of her husband's real estate. The collaterals proved in court that the deceased followed Shia Islam, and as such, his widow was not quailed to any of his real estate. The court came to this conclusion based on the initial presumption that many of his brother, sister, and widows were among his close family who practiced Sunni Islam. Unless the opposite is proven, all Muslims residing in Pakistan are assumed to be Sunni Muslims, and the collaterals were unable to have this presumption refuted on the basis of credible evidence in this particular case. Because

¹⁴⁶ *Mst Nooran Bibi vs. Rajab Ali*, 2007 SCMR 1840.

¹⁴⁷ *ibid*

¹⁴⁸ *Ghulam Shabbir vs. Mst Bakhat Khatoon*, 2009 SCMR 644.

of this, the revenue authority correctly identified the dead as Sunni, and his widow was qualified to receive a portion of his immovable wealth. The collaterals in this case conceal the deceased's Sunni Muslim faith in order to deny his widows their rightful portion. This is argued regardless the fact that the majority of the collaterals themselves practice Sunni Islam.

In *Syed Iftikhar Hussain Jafri vs. Mrs. Shamshad Begum (2011)*,¹⁴⁹ after the death of a man he left his widow, a son and a step brother. The step brother asserted that Shamshad Begum was not the deceased's spouse, how her son could be attributed to him? The court affirmed the traditional law of inheritance, which entails that his brother will not be eligible for any portion of the deceased's estate while his son is present.

In *Qamar Sultan vs. Mst Bibi Sufaidan (2012)*,¹⁵⁰ the deceased was a Sunni Muslim, the collateral filed a lawsuit to get his residuary share of the estate. When the deceased's estate first changed to reflect his status as a Shia Muslim, his mother and sisters received the entirety of his wealth. The court found that the mother's decision to deny collateral their portion of residual was motivated by her desire to support her daughter. The problem was determined by the Supreme Court in favor of collaterals for the residue of the estate, which was estimated to be a 1/6 portion

In *Farhan Aslam vs Mst Nuzba Shaheen (2021)*,¹⁵¹ The wife and daughter of the deceased were deprived of inheritance through fictitious gift mutation. Purported donees of the gift, who were nephews of the deceased purported donor, failed to establish the gift of land in their favor. Two donees were minors, but one was an adult, but he did not come forward to testify that the gift was made in his favor and that he accepted and received possession of land.

¹⁴⁹ *Syed Iftikhar Hussain Jafri v Mrs Shamshad Begum*, PLD 2011Kar 232.

¹⁵⁰ *Qamar Sultan v. Mst Bibi Sufaidan*, 2012 SCMR 695.

¹⁵¹ *Farhan Aslam vs Mst Nuzba Shaheen*, 2021 SCMR 179

Held, even if the petitioner's contested relinquishment of the right to inherit is proven to be false, it must be determined that it is opposition to governmental policy. The consent of the respondent to the surrender was therefore against public policy, and the agreement and contract that made up the relinquishment were null and void.

The succession certificate and letters of administration of the estate of late *Mr. Najaf (deceased) through legal heirs v The State (2023)*¹⁵² held, as per sec. 312 of succession Act, 1925 letters of administration could be granted upon demise of one or more administrators or executors and applicant being sole surviving heir of original deceased, was therefore entitled to be granted letters of administration of estate of original deceased, applicant was entitled accordingly.

In *Faizullah and others v Dilawar Hussain and others (2022)*¹⁵³, the legal heirs become owners and, at the same time, co-sharers in the property left by the deceased. A co-sharer's possession is regarded as belonging to all other co-sharers. Even though the rights of a co-sharer with symbolic possession were safeguarded, no limitation runs against a co-sharer. However, in certain cases, the law of limitation involving matters of inheritance cannot be ignored altogether. Where the predecessor transfers his lifetime and, after a considerable period of time, questions such a transfer, the question of limitation cannot be ignored lightly.¹⁵⁴

There are certain judgments that protect women's property rights, but the litigation takes years to decide the proceeding. As per the dictum laid down in 2005 SCMR 135 and 2018 CLC 1535,

¹⁵² *Mr. Najaf (deceased) through legal heirs v The State*, 2023 MLD 1030

¹⁵³ *Faizullah and others v Dilawar Hussain and others*, 2022 SCMR 1647.

¹⁵⁴ *Ibid.*

property gifted to others while depriving the legal heirs is an illegal and unislamic act, and in legal terms, gifts are worthless. Instead of all these precedents, women face a lot of problems in long-term litigation in court. There isn't a strict regulation that protects women from these lawsuits.¹⁵⁵

In *Ghulam Qasim and others v Mst. Razia Begum and others (2021)*¹⁵⁶ inheritance dispute between legal heirs over immoveable property; filing of suit; limitation; cause of action would only accrue when a legal heir was denied his or her rights and would be from such date that the time would start to run; burden to establish this would lay on the defendant legal heirs; however, the law of limitation would be relevant when the conduct of the claimant legal heir demonstrated acquiescence and particularly when third party interest was created in the inheritance property.¹⁵⁷

In *Mst. Rasoolan Bibi v Province of Punjab and others (2023)*¹⁵⁸, female heirs deprived of their share in inheritance, in such inheritance matters no limitation runs against the female heir.

In *Shahid Arshad Vs. Muhammad Naqi Butt (2023)*¹⁵⁹, impugned inheritance mutation was attested on 5.4.1958 in favour of sons only to the detriment of daughters, Legal heirs of daughters challenged said mutation through a suit filed on 20.6.2005 and decided that the statute of limitations would apply in cases when the claimant's actions show acquiescence, especially where a third party has a stake in the inherited property. The cause of action in this case arose

¹⁵⁵ 2005 SCMR 135 and 2018 CLC 1535,

¹⁵⁶ *Ghulam Qasim and others v Mst. Razia Begum and others*, PLD 2021 SC 812

¹⁵⁷ *Ghulam Qasim and others v Mst. Razia Begum and others*, PLD 2021 SC 812.

¹⁵⁸ *Mst. Rasoolan Bibi v Province of Punjab and others*, 2023 CLC 1171

¹⁵⁹ *Shahid Arshad v Muhammad. Naqi Butt*, 2023 SCMR1928

when the appellants denied the daughter's rights since there is nothing in the record to indicate that she gave up her interest in the contested property or transferred it to her brothers. The lawsuit cannot be dismissed because, according to the plaintiff's allegations, the plaintiffs discovered the incorrect entry for the first time on December 22, 2004, when they received a copy of their maternal grandfather's inheritance mutation. The appeal was disposed of.¹⁶⁰ The important dictum laid down in this case is that one cannot gift whole properties to sons while depriving daughters. But the main issue here is that under this case law, the mutation was signed in 1958, the legal heirs of daughters filed suit in 2005, and the same was decided in 2023. The shape of the property totally changed. The title to the property has been transferred to its descendants. Possession is also a great issue. This long period of delay creates problems in the lives of legal heirs. Islam forbids long-term litigation and presents rules to mitigate the long-term litigation; still, the courts change their verdict in every case without knowledge of the latter consequences.

3.2: Iranian Law of Inheritance of Widows.

According to Article 913 of the Iranian Civil Code, in all circumstances specified in this subsection, the living spouse of a married couple shall receive their share, which is one-eighth of the estate for the wife and one-quarter for the husband in the event that the deceased left no kid or grandchildren, and half of the estate for the husband and wife in the event that the deceased left children or children's children. The other heirs will share in the remainder of the estate, as stated in the earlier paragraphs.¹⁶¹

¹⁶⁰ *Shahid Arshad v Muhammad. Naqi Butt*, 2023 SCMR 1928.

¹⁶¹ Civil Code of Iran Article 913

Article 927 - In all the situations outlined in this subsection, the surviving member of the married couple receives their portion of the original estate; the husband receives half, and the woman receives a quarter.¹⁶²

Article 938 -In all the cases mentioned in this paragraph, the living spouse is entitled to a share of the original estate; that percentage is half of the deceased's husband's original wealth and quarter of the deceased's wife's original inheritance.¹⁶³

In the event of a shortage, those related to the father will pay the consequences. Half of the original estate passes to those linked via the father, and the person related through the mother receives his part. Although Iran is a country with a 90 to 95 percent majority of Shias, they did not differentiate between moveable and immovable property and grant the widows their due share, as mentioned in Section 913 of the Civil Code of Iran.

So it is the demand of the time to legislate a comprehensive law of inheritance with compliance with Sharia to mitigate the ambiguities and solve the problems of courts selecting the sect and then deciding the matter of property.

To conclude this chapter, it is pertinent to mention here that there is a need to propose appropriate legislation in Pakistan regarding letters of administration and succession certificates in favor of the legal heirs of the deceased. Due to the discriminatory practices ingrained in Pakistani society's values, customs, and beliefs, women frequently struggle to get their inheritance rights. Religion and personal laws in Pakistan grant women significant inheritance rights; nevertheless, since inheritance in Pakistan is customarily acquired through a patriarchal

¹⁶² Ibid 927

¹⁶³ Ibid 938

system, many women encounter many obstacles while attempting to exploit these rights. There are laws like the "Muslim Family Laws Ordinance, 1961," and the "West Pakistan Muslim Personal Law Shariat Act, 1962," and the "Punjab Enforcement of Women's Property Rights Act, 2021" that represent women's rights to inherit and dispose of property, particularly farmland.

In the male-dominant Pakistani society, many women leave their inheritance rights in the love and affection of their father and brother. The male members of the family are the head and deal with all affairs, and they deal with property matters related to the allocation of property between all legal heirs, so they fraudulently try their best to deprive women of their inheritance rights. It is commonplace in our society for women to have no access to education and no decision-making power. Women are not considered distinct entities that need to enjoy separate property rights. The widespread belief is that women are unable to manage property because they lack knowledge and abilities.

Under the present Act of 2020, the procedure is that the authority is granted to a single member. In Pakistan, mostly male members manage outdoor activities, and they deprive women of property that is either moveable or immovable. Many of Pakistan's laws and practices are justified by Islam, but poor implementation and ambiguity allow obscurantist elements to reopen the discussion of established fundamental principles, leading to both internal insecurity for women and a very negative reputation internationally. It is the dire need of the present time to amend the said law of succession and make it more effective and for the betterment of women by granting them a simple and easy way to get their property rights that are granted by Islam and the constitution of Pakistan.

To overcome all types of socioeconomic gaps, women must be empowered. Adopting a unique policy on women's inheritance rights is necessary. This chapter concludes that, in accordance with Islamic law, the Act of 2020 is not legitimately applicable, as it is discriminatory and does not enlist all legal heirs of the deceased but is only confined to the wishes of the applicant and FRC. So it is time to change the law related to letters of administration and succession certificates to make them according to the injunction of Islam and present a better procedure to overcome all difficulties faced by people, especially women, due to the complex procedure of succession. The research also concludes that due to sectarian affiliation, the widow of *Shīā* issueless deceased faces a lot of problems while getting their due share from the estate of her deceased husband.

While analyzing the cases of inheritance determined by the Pakistani superior courts it is concluded that certain parties involved in these situations take advantage of the distinctions between the inheritance rules of Sunni and *Shīā* in order to gain a larger portion of the deceased's fortune. The cases mentioned in this chapter clears that the male members try their best to change the sect of the deceased from Sunni to *Shīā* to deny the widow of issueless deceased person the right to inherit from the immovable property of her late husband, they obtained attestation mutation to this effect and contended the same vehemently in the judicial proceedings despite the fact that the majority of them were themselves Sunni Muslims. While in some other cases where the deceased is not issueless, male relatives assert that the deceased was a Sunni Muslim, and widows also have a right to inherit from the estate of the departed as residuaries.

The distinction between the Sunni and *Shīā* laws of succession has left a huge space for those who are paying attention to obtain more share than their rightful claim under their respective sect. In many cases, the collaterals challenged that their deceased was a *Shīā*, while *Shīās* have

pleaded that their propositus was a Sunni Muslim. Claims were made after ascertaining from which sect they could obtain more shares. A number of cases illustrated that the widows (either childless or with children) are mostly affected by this concept of sectarian affiliation and changing of sect of their late husband by collaterals just to improve their financial status by getting more share by depriving the widows from their respective share.

To sum up the above-discussed data, it is pertinent to mention here that in South Asia, a widow of a *Shīā* issueless deceased is at a great disadvantage. She does not inherit her share, as prescribed in Surah Nisa verse 12, as one-fourth of the immoveable property of her late husband. In 2016, Justice Ibād ur Rehman Lodhi declared the rule that widow of *Shīā* issueless deceased does not inherit from immoveable property as a violation of the verse of the Holy Quran. The research through case laws concluded that no codification of Islamic inheritance and unstable procedures and practices create many problems for not only widows of *Shīā* issueless deceased but also for other legal heirs who face long litigations on inheritance matters. This system also increases the burden of civil courts. Legal heirs face problems when, after so many years, one of the legal heirs files suit and shakes the whole estate of the deceased, as the dictum laid down in the above-mentioned case law of 2023 states that ownership transfers from one party to another after 40 years.

CHAPTER 4: CONCLUSION AND RECOMMENDATIONS

4.1 Conclusion:

The study was set out to find out the meaning and importance of inheritance in classical Islamic law and contemporary statutes. The research was carried out in light of the initially set questions. Based on the data collected in all three chapters, the following was found.

The Qur'an, the Hadith (traditions of the Prophet PBUH), and the legal interpretations made by Islamic scholars throughout history all play a significant role in Islamic succession law. Justice, fairness, and equity are the cornerstones of Islamic heritage. Being an Islamic Republic, Pakistan inherited the majority of its succession rules from Islamic jurisprudence. In Pakistan, there has been interest in and discussion about inheritance rules and how they are applied. The issue, however, becomes more delicate and potentially divisive when it comes to the denial of inheritance rights based on sect or the status of being a widow.

The discourse on succession reveals divergent viewpoints between the *Sunnī* and *Shīā* schools of thought. In the *Sunnī* law of inheritance, the widow of issueless deceased is entitled to receive one fourth of her deceased husband's property, regardless of whether it is moveable or immovable. This is distinct from the *Shīā* perspective, in which the widow of issueless deceased does not have a right to receive her share from her husband's immovable property.

The Pakistani judicial system, particularly civil courts, grapples with a substantial caseload of inheritance cases, leading to prolonged civil cases and hardships for legal heirs, especially widows. Legal amendments are imperative to recognize the rights of legal heirs and make the use of modern devices more effective. In this regard, NADRA can play a vital role in relieving the burden on the courts.

The comparative study between the four *Sunnī* schools of thought and *Shīā Jāffariyyah* law, along with the examination of the practice of succession in Iranian and Pakistani succession laws, reveals noteworthy distinctions. The research study's objective is to advocate for amendments to Pakistan's succession laws to facilitate legal heirs, especially widows.

In this research work, it is made apparent that when selecting how much inheritance to give each successor, Allah takes into account the measure of responsibility he has bestowed upon them.

To conclude the above mentioned data, it is clear that inheritance laws are found in the Qur'an, and the Prophet's authority. The divinely determined shares of each successor are set in the Quran. No one has the authority to deny any heir from their inheritance aside from the law. The chapter one has explained the basic features of Sunni law of inheritance and compared them with the principles of *Shīā* law to engender proper application of this area of law among the legal fraternity including students of law, legislature and parties to suit. It has been brought forth that if some structural aspects of *Shīā* and Sunni laws are grasped it would become relatively easy to master these systems. For instance, division of legal heirs into three classes according to *Shīā* law does not have any comparable features in Sunni law. As mentioned in this chapter, this difference has manifold implications in determination of shares of legal heirs. There is another noteworthy distinction between the two systems. Unlike Sunni law *Shīā* law does not recognize

distant kindred as a category of legal heirs. Most of those who are classified as distant kindred under Sunni law are absorbed in the three classes under *Shīā* law; they are eligible to inherit either as sharer or as a residuary. As these schemes of inheritance are inspired from the verses of Quran, they are expected to be similar in certain respects. NADRA grant certificates and set the shares according to the sect, as the sectarian allegiance of the deceased is not easily ascertained and the point may be contested between the heirs, in the practice of our society many male legal heirs of the deceased change the sect of the deceased from *Sunnī* to *Shīā* just to deprive the widow of issueless deceased from her right to inherit real estate as the *Shīā* law does not give the widow of issueless deceased right to inherit immoveable property from the estate of her late husband, hence there is need to propose appropriate legislation in Pakistan. It must be admitted after comparing both the systems that the space characterized by similarity is too small in comparison to the area where *Shīā* and Sunni laws have different solutions to the same problems.

Some blood relatives, particularly those descended from women, are not eligible for inheritance under Islamic law. In their place, they take the shares of the fixed sharers and residuaries who aren't present. In this unit, laws governing the division of a decedent's property demonstrate how shares are distributed fairly. Priority is given to those who will carry out the duties and are closer relatives.

To conclude the second chapter research findings, Pakistan's current succession law has many loopholes, and the distribution of property and assets is skewed toward men. According to Pakistan's constitution, all legislation must be in accordance with the Qur'an and the Sunnah. As a result, the inheritance laws of Islam are mostly observed. Muslim Family Laws Ordinance 1961 establishes rules for Muslim family issues, including inheritance. It solves a number of related concerns while attempting to streamline the inheritance distribution process. Women's

inheritance rights have been the subject of discussion and debate in numerous nations, including Pakistan. Although there exist laws in Pakistan that guarantee women their part of the inheritance, prevailing customs and firmly ingrained patriarchal norms frequently obstruct the fulfillment of these rights.

Men typically hold the upper hand in cultures where it is believed that women are weaker than men and incapable of owning property and other assets. This practice is motivated by discrimination against women, ignorance of laws and rights, or the desire to maintain wealth within the family and prevent it from leaving the family.

The government institutions, in addition to the courts and the police are not increasing their competence to guarantee the preservation of women's rights and the implementation of state policy. Because of its flawed system, Letters of Administration and Succession Certificate are not implemented in favor of women.

Despite being mentioned in the Muslim Family Law Ordinance 1961, the West Pakistan Muslim Personal Law Shariat Act 1962, and the Letters of Administration and Succession Certificate Act 2020, the study concludes that women are not being granted their inheritance rights as prescribed by Islam.

To overcome all types of socioeconomic gaps, women must be empowered. Adopting a unique policy on women's inheritance rights is necessary. The chapter three concludes that, in accordance with Islamic law, the Act of 2020 was not legitimately applicable, as it is discriminatory and not enlisted all legal heirs of the departed but only confined to the wish of applicant and FRC. So it is the need of the time to change the law related to Letters of Administration and Succession Certificate to make it according to injunction of Islam and

present a better procedure to overcome all difficulties faced by the people specially women due to the complex procedure of succession. The research also concludes that due to sectarian affiliation the widow of *Shīā* issueless deceased faces a lot of problems while getting their due share from estate of her deceased husband.

While analyzing the cases of inheritance determined by the Pakistani superior courts it is concluded that some parties to such cases use the distinction between sunni and *Shīā* inheritance laws for the intention of receiving more share in estate of deceased. The cases mentioned in the third chapter clears that the male members try their best to change the sect of the deceased from Sunni to *Shīā* to deprive the widow of issueless deceased to inherit from immovable property of her late husband, they got attest a mutation to this effect and contended the same vehemently in the judicial proceedings in spite of the fact that the most of them were themselves Sunni Muslims. While in some other cases where the deceased is not issueless, male relatives assert that the deceased was a Sunni Muslim, and widows also have a right to inherit from the estate of the deceased.

The distinction between the laws of *Shīā* and Sunni succession has left a huge space for those who are paying attention to get more share than their legitimate entitlement under their respective sect. In many cases, the collaterals contested that their deceased was a *Shīā*, while *Shīās* have pleaded that their propositus was a Sunni Muslim. Claims were made after ascertaining from which sect they could get more shares. A number of cases illustrated that the widows are mostly affected by this concept of sectarian affiliation and changing of sect of their late husband by collaterals just to improve their financial status by getting more share by depriving the widows from their respective share.

To sum up the above-discussed data, it is pertinent to mention here that in South Asia, a widow of a *Shiā* issueless deceased is at a great disadvantage. She does not inherit her share, as prescribed in Surah Nisa verse 12, as one-fourth of the immoveable property of her late husband. In 2016, Justice Ibād ur Rehmān Lodhi declared the rule that widow of *Shiā* issueless deceased does not inherit from immoveable property as a violation of the verse of the Holy Quran. The research through case laws concluded that non codification of Islamic inheritance and unstable procedures and practices create many problems for not only widows but also for other legal heirs who face long litigations on inheritance matters. This system also increases the burden of civil courts. Legal heirs face problems when, after so many years, one of the legal heirs files suit and shakes the whole estate of the deceased, as the dictum laid down in the above-mentioned case law of 2023 states that ownership transfers from one party to another after 40 years.

While analyzing the data and based on the conclusion the following is the recommended.

4.2 Recommendations

The study recommends that:

- 1) To adopt social policies that empowers women to pursue their inheritance rights on their own initiative. Revenue Department is a vital department that maintains the record of an individual's immovable property at the tehsil and district levels in the event of an inheritance dispute, this department's role and the function become crucial when it comes to the inheritance rights of a class of *Shiā* childless deceased widows who are susceptible to being deprived.

- 2) All legal heirs of the inherited property shall personally appear before the tehsildar, and the NADRA facilitating center, where the property is located, and the owner of the nearby landed property, whose statement is considered the final proof to determine and identify the legal heirs of the departed, in order to determine the shares of the heirs.
- 3) With deeply ingrained conventions and customary law, the Pakistani government is obligated to ensure the execution of the rules of inheritance by suitable means used by NADRA and also made suitable amendment in Muslim Family Laws Ordinance 1961 Section 4 (2) to protect the rights of widow of an issueless shiā deceased.
- 4) Aside from landed property, various assets like charitable funds, pensions, and accident compensation are not made subject to succession, and the already disadvantaged female is not granted her fair portion of all of these. The greatest need of time is for immediate amendment in present legislation of 2020.
- 5) To reduce the detrimental function of patwaries and implement the electronic record-keeping system, a computerized system should be implemented in record offices as well as at NADRA facilitation center.

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