

**THE IMPACT OF COLONIALISM ON WOMEN'S
RIGHTS TO INHERITANCE: A CRITICAL
EVALUATION UNDER SHARIAH AND
PAKISTANI LEGAL SYSTEM**



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Abstract

This study explores the historical, legal, and socio-cultural factors influencing women's inheritance rights in Pakistan, with a focus on the enduring impact of British colonial interventions, the evolution of Islamic laws, and post-independence legal reforms. The research highlights how colonial administrators selectively codified customary laws, such as *wajib-ul-arz* and *rivaj-i-am*, reinforcing patriarchal norms and marginalizing women from inheritance. While Islamic law traditionally ensures fixed property shares for female heirs, colonial disruptions diluted these principles, creating legal ambiguities and fostering socio-religious discontent that persist today. Post-independence Pakistan introduced progressive legal reforms, including the Muslim Personal Law (Shariat) Application Act of 1961 and the Enforcement of Women's Property Rights Act of 2020, supported by judicial interventions and socioeconomic programs like the Benazir Income Support Program (BISP). However, deeply entrenched patriarchal norms, cultural resistance, procedural inefficiencies, and a lack of legal awareness continue to undermine the practical realization of these rights. The study underscores the need for a holistic approach, combining legal amendments, judicial capacity-building, technological solutions like digital land records, and large-scale awareness campaigns to bridge the gap between legal provisions and societal practice. By addressing these challenges, Pakistan can ensure gender equality in inheritance rights, contributing to women's economic empowerment and broader societal progress. In order to present the foregoing arguments, this analysis will rely on legal doctrinal research methodology

Dedication

This thesis is dedicated to all the courageous women in Pakistan who continue to struggle for their rightful inheritance and basic human rights. Your resilience, strength, and perseverance in the face of societal and legal challenges inspire change and progress. May this work contribute to the broader fight for justice and equality, and may it stand as a testament to your enduring spirit and unwavering determination. Your stories and struggles are the driving force behind this research, and this dedication honors your relentless pursuit of what is rightfully yours.

Declaration

I, **Sajida**, hereby declare that this dissertation is original and has never been presented before in any other Institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

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Date: _____

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List of Abbreviations

BISP	Benazir Income Support Program
Customary Law	Share of Women in Landed Property
Children	Inheritance/Legal Heirs
Distant Kin	Uterine Heirs
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
Islamic Shariah Law	A Comprehensive System Of Religious And Legal Principles
EWDD	Establishment of Women Development Department
KPCWS	Khyber Pakhtunkhwa Commission on the Status of Women
PCWS	Punjab Commission on the Status of Women
LRMIS	Land Revenue Management Information System
PBUH	Peace be Upon Him
PCSW	Punjab Commission on the Status of Women
PMHR	Pakistan Ministry Human Rights
MDGs	Millennium Development Goals
NCSW	National Commission on the Status of Women
NRSP	National Rural Support Program
Sharers	Quranic Heirs
SMEDA	Small and Medium Enterprise Development Authority
Residuaries	Agnatic Heirs
Shari'ah	Islamic Law
Shariat Application Act of 1962	West Pakistan Muslim Personal Law
Wajib-ul-Urz	Village Administration Papers

INTRODUCTION

Thesis Statement

Islamic law recognizes women's rightful share in property as a matter of inheritance. However, customary practices and colonial legislation have significantly impacted women's property rights. Therefore, it is essential to analyze the effects of these customs and colonial laws on women's inheritance rights within the context of Sharia (Islamic Law) and the Pakistani legal system.

Statement of the Problem

The Constitution of the Islamic Republic of Pakistan, 1973, safeguards the property rights of citizens without any distinction. However, it also acknowledges legally imposed reasonable restrictions on the acquisition, holding, and disposal of property.¹ Property can be acquired through various means, one of which is inheritance. Inheritance law in Pakistan is primarily based on Islamic law, specifically the Quran and Sunnah (traditions). Islamic law recognizes women as shareholders in the legacy of deceased Muslim males and females across all three categories of sharers: sharer, residuary, and distant kindred.² During the pre-partition era (colonial period), inheritance practices and procedures were generally governed by customs. Following the creation of the new dominions of India and Pakistan, the regime addressing inheritance matters was soon replaced by positive laws in Pakistan,

¹ Article 23 of the Constitution of Pakistan: “**Provision as to property.** Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.”

² “Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one’s estate. And if there is only one, for her is half. And for one’s parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children – you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.” Al Quran (Nisa 4:11).

thereby recognizing women's rights to inheritance under Sharia. This transition was not merely mechanical; rather, laws were enacted by the legislatures, and court decisions were rendered that ultimately paved the way for the full endorsement of Islamic inheritance law within the Pakistani legal framework.

The *Wajib-ul-Arz*, which documents village administration, and the *Rivaj-E-Am* (records of marriage) served as the foundation for a universal code of customs established during the British colonial era.³ The creation of these documents involved consultations with the "men of the most influential families in the village," specifically the village headmen of major castes who held land in the region. Unfortunately, discussions with women, who were often marginalized and unfamiliar with legal processes, were notably absent.⁴ Many illiterate individuals were apprehensive about engaging with the legal system, and a significant portion of the population was already resistant to women's rights.

The colonial administrators recognized a disparity between the 'ideal customs' that the dominant caste men sought to project and the actual practices of those customs, which often reflected the perspectives of the administrators themselves.⁵ Consequently, customary law during the colonial period became the primary authority governing civil matters such as succession, alienation, marriage, land tenure, and adoption. This legal framework had a profound and detrimental impact on women's rights, effectively prohibiting them from owning land or agricultural property. While the right of women to inherit property is now acknowledged under Sharia law, the Constitution of Pakistan, and

³ Prem Chowdry, "Emerging Patterns: Property Rights of Women in Colonial and Post-Colonial South-East Punjab" *Journal of Punjab Studies* 20, 1&2 (2013): 112 in 111-134.

⁴ Ibid.

⁵ G.C. Walker, *Customary Law of the Main Tribes in the Lahore District*, Vol. XIII (Lahore: Civil and Military Gazette Press, 1894), ii.

international obligations, a significant disconnect persists between these legal provisions and the reality on the ground. The legacy of colonial customs continues to influence societal attitudes and practices, hindering the full realization of women's inheritance rights in contemporary Pakistan.⁶

Undoubtedly, women's economic independence and social and political empowerment are directly correlated. In societies, where women are systematically alienated from the economy, an inheritance can be a lifeline for their economic independence. In theory Pakistani legal system has progressed significantly to protect the women's right to inheritance, but in practice there seems a lack of will on the part of state to enforce these rights on society level. Besides legislation on Federal and provincial level, the Superior Courts in Pakistan have also played a significant role in curbing the menace of customary practices of depriving women from property in inheritance. Therefore, in order to evaluate that how these customary practices adversely affect the women's inheritance rights and how these practices originated from colonial era is the domain of this work. Moreover, the existing legal framework will be examined as well so that to identify if any legal vacuum exist on the subject.

Literature Review

This section aims to situate the inheritance issue amid broader discourses that have sparked discussions about gender and women's empowerment. The study's key ideas have been examined in light of the body of literature already in existence, particularly that which focuses on South Asian female inheritance. It has also been explored how religion and culture have shaped the legal tradition. The section also compiles the institutional and legal structures safeguarding women's inheritance rights throughout South Asia, especially in Pakistan. Alongside such discussions, the shortcomings of

⁶ Khawar Mumtaz and Meher M. Noshirwani, "Women's Land Rights and Inheritance Rights in Pakistan," in *Where there is land, there is hope: Women's Land Rights and Inheritance Rights in Pakistan* (Lahore: Shirkat Gah - Women's Resource Centre, 2013): 9-28 at 9, 10, accessed November 25 2024, <https://shirkatgah.org/shirkat/wp-content/uploads/2017/01/Land-Rights-2nd-Special-Bulletin-2013-English.pdf>.

earlier research have also been noted. The theoretical justifications and frameworks applied for analysis are also covered in great detail in this section.

As regard the concept of inheritance, *Chris Hann* published in the article *Reproduction and Inheritance* in which a brief conceptual account of inheritance has been given.⁷ According to the article, one of the key components of well-organized human civilizations is inheritance. It makes resource ownership in society more normal. Inheritance, in its broadest definition, can refer to the transfer of tangible possessions as well as intangible assets like culture and ideals. The transfer of assets between generations is governed by concrete laws that were formed over time from a variety of informal regulations (norms and practices). In general, inheritance is the transfer of a person's titles, debts, and liabilities following their death, as well as their property (both immovable and movable). However, the aim of the present thesis is to discuss the issues surrounding female inheritance and how they have changed throughout time, particularly in South Asia, which is altogether missing in the mentioned work.

Historically, women have been the gender that has been alienated. As described by *Gilman* in her book *The Man-Made World* we have taken different paths as a result of historical and anthropological investigations into the causes of inequality.⁸ One could argue that the unequal connection between the sexes is reflected in the asymmetry in females' material inheritance distribution. It might be asserted that most societies display androcentric tendencies, wherein their culture, knowledge, organizations, and organizations reflect and replicate the dominant dominance of men. However, feminist scholars and philosophers have differing views on the matter. Although the

⁷ Chris Hann, "Reproduction and Inheritance: Goody Revisited" *Annual Review of Anthropology* 37 (2008): 145-158, accessed November 22 2024. <https://doi.org/10.1146/annurev.anthro.37.081407.085222>.

⁸ Charlotte Perkins Gilman, *The Man-Made World* (New Jersey: Humanities Press, 2001), accessed October 11, 2024, <https://seminariolecturasfeministas.wordpress.com/wp-content/uploads/2012/01/charlotte-perkins-gilman-the-man-made-world-or-our-androcentric-culture.pdf>.

exact origin of inheritance is unknown, it is generally accepted that Egyptian established civilizations were the first to adopt the concept. The custom of burying the deceased with their belongings was supplanted by the concept of inheritance, according to which the deceased's children, who were nearly invariably men, were to inherit his possessions and belongings. Similarly, although being referred to as the "mistress of her household," women's inheritance rights are not mentioned in ancient Vedic literature. However, it is pertinent to mention that the book generally takes into account issues concerning the social status of women but it lacks the issue of women's inheritance in the context of Pakistan which is the key theme of the present work.

In historical context, the women's right to inherit has always been a matter of controversy and this aspect has well elaborated by *Priya Darshini* in her article *Women and Patrilineal Inheritance during the Gupta Period*.⁹ She has argued that there are not many differences between ancient Roman and Greek societies. Given that women are viewed as men's property, the idea of inheritance appears out of place in Greek or Roman culture. How can they be presumed to own anything on their own? Many theories have been proposed to explain this historical classification of women as something of an "object." A deeper comprehension of the inheritance issue and the disparity that still exists in modern society may result from an examination of this issue. After being exhaustive in certain aspects, the article is missing what the present work aims to ascertain as regard the women's rights in the context of Sharia and Pakistani Law.

The Islamic Law of Inheritance demonstrates that there is no gender bias in Islam. Similar to how humans are formed equal but not identical, equality is not the same as sameness or identically. There is no room to judge that men are better than women. Women are granted equal rights in Islam,

⁹ Priya Darshini, "Indian History Congress Prize Essay: Women and Patrilineal Inheritance during the Gupta Period." *Proceedings of the Indian History Congress* 62 (2001), 71–77, accessed October 23, 2024, <http://www.jstor.org/stable/44155747>.

meaning that they are taken into account and acknowledged as autonomous. Because women's rights differ from men's, Islam recognizes women's efforts to eradicate the idea that women are less significant than men.¹⁰

To this end, Cherif in her article *Culture, Rights, and Norms: Women's Rights Reform in Muslim Countries*¹¹ asserts that gender inequality is fostered in Muslim countries by Islam, specifically the prevalent perspectives of Islamic law and attitudes. She further argues that Islamic law is perceived as impeding women's pursuit of full citizenship by concentrating on inheritance matters, where women are granted half as much as men. However, the mentioned work lacks the issue of the impact of colonial rights over the women's inheritance rights, which the present work aims to evaluate. Similarly, in a study conducted by Haonarvar titled *Behind the Veil: Women's Rights in Islamic Societies* states that following a comparison of the pre-Islamic and Islamic principles of inheritance laws, the Qur'an addressed the economic injustices and inequities that existed in pre-Islamic Arabia concerning the dissemination of wealth.¹² The mentioned work is only limited to the discourse in Islamic context. On the other hand, the present study is broad in scope and it covers both Islamic, Pakistani and Colonial perspectives on the issue of women's right to inheritance.

The book titled *The Status of Women under Islamic Law and Modern Islamic Legislation* written by JJ Nasir stresses that women did not have any inheritance rights before Islam, nor did they have the same legal protections or financial independence as they do today.¹³ The Shari'ah's reforms

¹⁰ "Whoever does good, whether male or female, and is a believer, We will surely bless them with a good life, and We will certainly reward them according to the best of their deeds." Al-Qur'ān (Nahl 16:97)

¹¹ Feryal M. Cherif, "Culture, Rights, and Norms: Women's Rights Reform in Muslim Countries" *The Journal of Politics* 72, No. 4 (October 2010): 1144 – 1160, accessed November 11, 2024, doi.10.1017/S0022381610000587.

¹² Nayer Honarvar, "Behind the Veil: Women's Rights in Islamic Societies," *Journal of Law and Religion* 6, no. 2 (1988): 355-387, accessed November 28, 2024, <https://doi.org/10.2307/1051156>.

¹³ Jamal J Nasir, *The Status of Women under Islamic Law and Modern Islamic Legislation* 3rd rev. edn. (Lieden/Boston: Brill/Nijhoff, 2009).

guaranteed women's equitable and just inheritance rights. However, the book is silent as regard the issue of women's inheritance rights in Pakistani context. Aside from all other economic regulations, the Holy Quran specifies the norms of inheritance in great detail. In seventh-century Arabia, women's economic security and social standing were reinforced by this right, even if a female heir's entitlement is often only half that of a man in the same class of Inheritors as described by the book *The Long Divergence: How Islamic law held back the Middle East* written by Kuran.¹⁴ Quite the opposite, the present work is distinguishable because it addresses the issue from Islamic, Pakistani and colonial perspective. Moreover, the present work aims to identify the gaps in the existing literature,

The principles of justice and equitable considerations that are widely accepted in the English Courts of Justice are not unique to the Muslims, in fact, they are frequently mentioned and used when cases are decided under that system. According to the article *Equality between Men and Women in Islam Especially in Respect of Inheritance and Its Compatibility with International Human Rights* published by Islam¹⁵, humans of both sexes are limited by different categories and are not equally capable in every area of life. Justice for both sexes will only be established if they fulfill their respective responsibilities and uphold their legal rights. Conversely, if the word “equality” is used literally, none of them will benefit; on the contrary, it may lead to disputes about shared rights and responsibilities. Because of this, in the context of rights and obligations under Islamic jurisprudence, the term “equity” is more applicable than the term “equality.” The article further illustrates that the Islamic law of inheritance must be supported and respected from an international human rights perspective, which is primarily based on a western perspective, even though it appears to be discriminatory in their eyes. From an Islamic perspective, however, it has guaranteed justice since men

¹⁴ Timur Kuran, *The Long Divergence: How Islamic Law Held Back the Middle East* (New Jersey: Princeton University Press, 2012).

¹⁵ Md. Towhidul Islam, “Equality Between Men And Women In Islam Especially In Respect Of Inheritance And Its Compatibility With International Human Rights” *The Dhaka University Studies* 15, No. 2 (2004): 163-206.

have been saddled with responsibilities and expenses that women do not need to share, and as a result, men should undoubtedly receive some form of subsidy. However, the present work is different in many aspects from the mentioned work, as it focuses on the impact of colonialism on women's inheritance rights.

According to the article *Women's Human Rights in the Koran: An Interpretive Approach*, written by Niaz A Shah,¹⁶ the Islamic perspective on human rights places greater emphasis on obligations than rights; upholding the rights of others is equivalent to carrying out a divinely mandated obligation. When one party observes their obligations, another party has rights. Additionally, he believes that women receive a smaller share of the family's wealth due to their economic contributions rather than their gender. In general terms, the article is a good work depicting the concept of women rights in Islam, however, the issue in the present thesis is distinguishable as it takes into account the impact of colonialism on women's inheritance rights.

Radford in his article *Inheritance Rights of Women under Jewish and Islamic Law* presents that Islamic inheritance law may be unjust to women if specific practices are applied piecemeal without considering the context, application, or bigger picture.¹⁷ However, this seems to be a premature conclusion in practice. He provided two arguments for obtaining larger inheritance shares. Two of these are that men serve as the family's breadwinners and that the spouse is entitled to all of her wealth as well as her husband's, while a husband is only entitled to his own. The mentioned work lacks discussion on the women rights in the context of Pakistani legal landscape.

Mihammad Qutb in his book *Islam the Misunderstood Religion* argues that the ratio of males to

¹⁶ Niaz A Shah, "Women's Human Rights in the Koran: An Interpretive Approach," *Human Rights Quarterly* 28, No. 4 (2006), 868-903, accessed December 08, 2024, DOI:10.1353/hrq.2006.0053.

¹⁷ Mary F. Radford, "The Inheritance Rights of Women under Jewish and Islamic Law" *Boston College International and Comparative Law Review* 23, No. 2 (2000): 135-184, accessed September 11, 2024, <https://lira.bc.edu/work/sc/8f2859b8-1ee0-4b2b-b25c-dc83f20a38a5>.

females is normal and reasonable because, according to Islam, men are solely responsible for providing for their wives, children, sisters, widows, and other dependents.¹⁸ However, women are not required to spend wealth on their families and are free to keep their own property without using it for home expenses. Similarly, *Soltan* mentions in their book, *Woman's Inheritance in Islam: Discrimination or Justice?*¹⁹, that it is refuted that Islamic inheritance regulations favor men when one carefully reads and comprehends their entire scope. Although in four cases women inherit less than males, in sixteen cases they inherit more, and in ten cases they are on par with men. The present work is distinguishable from both the mentioned works due to the reason that here the impact of colonial era laws and custom over the inheritance rights of women will be evaluated, whereas the mentioned literature gives a general account on the status of women in Islam.

Islam maintains a rigid family structure that was not observed in pre-Islamic Arabia, despite its rigid patrilineal agnatic system as stated by *Coulson* in their book *A history of Islamic law*. Coulson contends that by implementing this method, the female right to inherit is maintained in a manner that was not possible under the tribal structure of Arabia.²⁰ Islamic law acknowledges all female heirs, albeit the percentage varies according on the deceased's relationship. In the same manner, *Bishin & Cherif* in their article *Women, Property Rights, and Islam* mentions that although the ratio of women is typically half that of men, different Islamic schools have varied specifics. It's interesting to note that although Islam restricts women's inheritance rights, it gives them equal access to and control over those rights.²¹ The distinctions between indigenous behaviors and Islamic jurisprudence can aid in

¹⁸ Muhammad Qutb, *Islam the Misunderstood Religion* (Lahore: Islamic Publication Limited, 2019).

¹⁹ Salah Soltan, *Woman's Inheritance in Islam: Discrimination or Justice?* trans. Ghina El Gindy (Hilliard: Sultan Publisher, 2004).

²⁰ Noel Coulson, *A History of Islamic Law* (London: Routledge, 2017).

²¹ Benjamin G. Bishin and Feryal M. Cherif, "Women, Property Rights, and Islam," *Comparative Politics* 49, No. 4 (July 2017): 501-519.

identifying the theological and cultural foundations of prejudice. Despite a generalized brief account on the status of women, both the mentioned works lacks addressing critical issue that is the impact of colonialism over the women's inheritance rights.

Raza and Saeedi in their article *Women's Rights of Inheritance: An Overview in the Present Era* argue that Islam, as the final divine religion, offers teachings that are rooted in natural justice, one of which is the right to inheritance.²² Upon the death of a Muslim man or woman, their descendants, and other relatives become entitled to inherit their estate. The authors also connect these Islamic principles to the context of the Indian subcontinent, observing that after British colonial rule, certain social and ethical issues related to inheritance laws began to surface. These issues include manipulative practices by individuals seeking to deprive relatives of their rightful inheritance, such as coerced marriages, deceptive practices involving agricultural land, exploitation in trade and business, and delays in court decisions, all of which have contributed to the deprivation of inheritance rights. Despite attempting to pinpoint the underlying reasons for these problems, their research does not offer workable options for implementing inheritance rules that are consistent with the Quran, Sunnah, and the Pakistani Constitution. Further research is needed to explore the shift from colonial influences to the modern state of Pakistan, particularly in light of Shariah and the legal system.

Likewise, *Khan* in his study *The impact of British rule on women's rights in India and Pakistan* acknowledges that the issue is exacerbated by ambiguous legislation and a prevalent ignorance of women's rights.²³ Many women are still unaware of their rights, and even those facing major challenges when attempting to exercise them. The patriarchal structure of society often discourages women from pursuing legal action, leaving them vulnerable and without rights. In the aftermath of the

²² Ahmad Raza and Rabia Binte Sajjad Ahmed Saeedi, "Women's Rights of Inheritance: An Overview in the Present Era," *Islamic Sciences* 3, no. 1 (2020): 236-250.

²³ S. A Khan, "The impact of British rule on women's rights in India and Pakistan," *Journal of South Asian Studies* 15, No. 3 (2022): 45-67.

War of Independence in 1857, numerous adjustments were made to the imperial and political links that existed between the subcontinent and other countries. The subcontinent saw the emergence of numerous reformers, both Muslim and Hindu, who sought to better the existing circumstances. Among the subjects discussed was women's education. Many Muslims, including Sir Syed Ahmad Khan, decided to educate women in order for them to recognise their rights and obligations as outlined by Islam. Harsh criticism of British rule resulted from the low status of women in the Indian subcontinent. In actuality, however, the British government took little action to raise women's standing. In nutshell, the study lacks the critical issue of the women's inheritance rights in the context of Pakistani legal system and Sharia.

In South Asian post-colonial states, inheritance laws often follow a similar pattern, except in Afghanistan, most have both customary and religious inheritance rules, however, in every nation, the proportion of female inheritance is lower than that of male inheritance as described by *Scalise* in her report *Women's Inheritance Rights to Land and Property in South Asia*.²⁴ Due to the existence of legal diversity, customary norms that do not guarantee women the right to inherit prevail even in cases where religious laws do. These restrictions in the nation's current legal systems result in the denial of women's rights. Even though Pakistan was founded in the framework of Islam, the ability of women to inherit under Islamic law wasn't codified until the late 1950s. In the same manner, *Agarwal* in her article *Gender, resistance and Land: Interlinked Struggles over Resources and Meanings in South Asia*²⁵ addresses that Hindu law in India prohibits daughters from inheriting if they have no male heirs or offspring. The lack of successors to continue the family name is the driving force behind this

²⁴ Elisa Scalise, Rural Development Institute, *Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan, and Sri Lanka* (Report for the World Justice Project, December 2009).

²⁵ Bina Agarwal, "Gender, Resistance and Land: Interlinked Struggles over Resources and Meanings in South Asia," *The Journal of Peasant Studies* 22, no. 1 (1994): 81-125, accessed August 24, 2024, <https://doi.org/10.1080/03066159408438567>.

legislation. Except for Sri Lanka, documentation in these nations is likewise not filed into gender-specific categories. This usually implies that although women possess assets, it is challenging to determine their access to or control over the property because the information they provide is not registered in their names.

As apparent by the literature, an evident gap exists regarding the influence of colonization on women's right to inheritance. Therefore, the current study, titled "The Impact of Colonialism on Women's Rights to Inheritance: A Critical Evaluation under Shariah and Pakistani Legal System," seeks to provide a comprehensive analysis of women's inheritance rights, tracing their evolution from historical practices under colonial rule to their present-day implementation within the frameworks of Shariah and the Pakistani legal system.

Significance of Research

The literature addressing the impact of colonization on women's inheritance rights to land and property remains sparse. *The Impact of Colonialism on Women's Rights to Inheritance: A Critical Evaluation under Shariah and the Pakistani Legal System* fills this critical gap by examining how colonial-era legal frameworks have shaped the evolution of inheritance laws, particularly regarding women's rights. During British colonial rule, imposed legal systems often diverged significantly from indigenous cultural and religious practices, including Islamic inheritance laws. This study aims to critically assess the lasting effects of these colonial legacies on women's inheritance rights under both Shariah law and Pakistan's post-colonial legal framework. By delving into this intersection, the research highlights how colonial influences have perpetuated gender inequities in legal rights and hindered progress toward equality. Moreover, the study will illuminate the broader social and political ramifications of inheritance law reforms in Pakistan, offering valuable insights for policymakers and legal scholars. This analysis underscores the importance of addressing colonial

legacies to foster a more equitable legal system that upholds gender justice.

Research Questions

Based on the gaps identified in the review of the literature, the following research questions are formulated:

1. How Colonialism has impacted the Women's Inheritance rights through customs?
2. What were the English law codes which affected the women's inheritance rights in Pre-Independent Pakistan?
3. How the legislation and Islamic Law of Inheritance shaped the Socio-Economic structure of Pakistan's Society?
4. What is the actual gap between theory and practice regarding the Women's inheritance Laws which is being ensured by Sharia , Pakistani law, and International obligations?
5. What changes to the legal framework or legislative and judicial processes can improve women's economic status and equal access to inherited property?

Research Objectives

1. To analyze the impact of colonialism on women's inheritance rights, with a focus on the role of customs in shaping these rights.
2. To examine the influence of English legal codes on women's inheritance rights during the pre-independence era in Pakistan.
3. To critically assess the interplay between legislation and Islamic principles of inheritance in shaping the socio-economic fabric of Pakistani society.
4. To identify the gap between theoretical frameworks and practical implementation of women's inheritance laws, as articulated in Sharia, Pakistani legislation, and international legal obligations.

5. To propose reforms in the legal framework, as well as legislative and judicial processes, aimed at enhancing women's economic empowerment and ensuring equitable access to inherited property.

Research Methodology

The research aims to explore the impact of colonial legacies on women's inheritance rights within the context of Sharia, Pakistani law, and international obligations. Given the nature of the research questions and objectives, a doctrinal research methodology is adopted. Doctrinal research has been defined as "a detailed and highly technical commentary upon, and systematic exposition of, the context of legal doctrine".²⁶ This methodology is ideal for examining legal principles, statutes, and case law and offers a structured approach for analyzing the historical and legal dimensions of the subject matter. Doctrinal research is often described as the systematic analysis of legal principles, involving the interpretation and critical evaluation of statutes, case law, and legal doctrines. This method suits the research's focus on examining:

1. The influence of colonial English legal codes on women's inheritance rights in pre-independent Pakistan.
2. The evolution of Islamic inheritance law and its integration into Pakistan's legislative framework.
3. Gaps between the theoretical underpinnings of women's inheritance rights and their practical application.

The research primarily utilizes primary and secondary sources of legal information, including:

²⁶ Michael Salter and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (UK: Pearson, 2007), 31.

colonial-era legal codes, such as the Transfer of Property Act (1882) and other relevant statutes; Islamic legal texts and principles governing inheritance rights. the Constitution of Pakistan and relevant domestic statutes, including inheritance and property laws. As secondary sources, the research utilizes scholarly articles and books on colonial legal legacies and their impact on women's rights, commentaries on Sharia law and its interpretation within the Pakistani context, reports and studies by international organizations on gender equity in inheritance rights.

The methodology aligns directly with the research objectives. The doctrinal approach allows for a comprehensive analysis of colonial influences and Islamic law, addressing objectives related to the historical and legal evolution of inheritance rights. The combination of comparative and gap analysis facilitates the identification of disparities between legal theory and practice. The socio-legal assessment provides insights into the broader societal implications of inheritance law reforms, aiding in the formulation of policy recommendations.

In Chapter One, the methodology will be applied to trace the historical development of women's property rights in the subcontinent, examining colonial legal reforms and their patriarchal influences on customary law. By analyzing the transition from custom to formal legislation, the chapter critically evaluates the legal frameworks inherited from British colonial rule and their ongoing challenges post-partition. Chapter Two shifts to Shariah law, using doctrinal analysis to explore women's inheritance rights under Islamic law, comparing them with customary practices, and assessing how colonial powers targeted Islamic inheritance principles. This doctrinal approach provides an in-depth evaluation of the tension between Islamic law and local customs, particularly in the context of inheritance.

In Chapter Three, the research applies doctrinal analysis to Pakistan's legal framework, including key statutory provisions like the Muslim Family Laws Ordinance and the role of

constitutional courts in protecting women's inheritance rights. The chapter also explores Pakistan's international obligations under conventions like CEDAW. Chapter Four focuses on the policy and legislative initiatives aimed at advancing women's inheritance rights, with the doctrinal methodology used to assess the effectiveness of reforms such as the Enforcement of Women's Property Rights Act. The research methodology in each chapter allows for a critical examination of the legal, historical, and socio-legal factors influencing inheritance laws, providing actionable insights into bridging the gap between legal theory and practice in the protection of women's inheritance rights.

CHAPTER ONE: WOMEN'S RIGHTS IN PROPERTY - TRADITION IN SUBCONTINENT

1.1 Introduction

The evolution of customary law into formal legislation in British India and Pakistan reveals a complex interplay of societal norms, colonial objectives, and gender dynamics. Historically, pre-colonial India operated under a pluralistic legal framework where diverse customs regulated matters of marriage, inheritance, and property rights. However, the advent of British colonial rule introduced a centralized legal system that selectively codified customs, often reinforcing patriarchal norms and marginalizing women. The colonial administration's emphasis on preserving the male-dominated agrarian structure and its alliances with local elites effectively denied women inheritance rights, relegating them to a subordinate status in property matters. The principle aim of this chapter is to answer the research question: how Colonialism has impacted the Women's Inheritance rights through customs?

This chapter explores the transformation of customary practices into legislative frameworks, underscoring the colonial government's role in perpetuating gender inequalities. It examines how patriarchal customs were institutionalized through records such as the *wajib-ul-arz* and *rivaj-i-am*, systematically excluding women from inheritance and alienation rights. Furthermore, the chapter delves into the broader societal attitudes that shaped these exclusions, revealing a pattern of resistance to legislative reforms aimed at achieving gender equality. Post-independence Pakistan inherited this colonial legacy but sought to address gender disparities through significant legal reforms, such as the Muslim Personal Law (Shariat) Application Act of 1961 and the Enforcement of Women's Property Rights Act of 2020. While these reforms marked a progressive shift towards equity, their implementation faced challenges due to deeply entrenched patriarchal norms and cultural resistance.

This chapter critically analyzes the historical development of property laws, the colonial imposition of patriarchal legislation, and the ongoing struggle to reconcile tradition, religion, and modernity in achieving gender equality in inheritance rights.

1.2 Historical Development of Customary Law in British India

The colonial government codified only select traditions favoring men, effectively denying women any inheritance rights and preserving land and property within the patrilineal line of descent.²⁷ After independence, a significant shift occurred after partition when laws were enacted to establish gender equality in inheritance. However, given the prevailing ethical and cultural norms that strongly discouraged women from inheriting property, this legal reform was unlikely to achieve its intended impact.²⁸ The evolution of property laws in India reflects a dynamic interplay of legal principles, social customs, and enforcement challenges, particularly during the transition from colonial to post-colonial governance.²⁹ This period witnessed profound transformations in property regimes, often exposing tensions between codified law and traditional practices, societal acceptance of legislative changes, and the mechanisms to implement these reforms effectively. In the context of colonial rule, the British administration aimed to preserve the structure of village communities, a strategy driven by economic, political, and military considerations, especially in regions corresponding to present-day Pakistan.³⁰ British officials justified this approach by emphasizing that the predominantly agrarian population in these areas largely did not conform to the legal frameworks of either Hindu or Muslim

²⁷ Prem Chowdry, "Emerging Patterns: Property Rights of Women in Colonial and Post-Colonial South-East Punjab" *Journal of Punjab Studies* 20: 1&2 (2013), 112 in 111-134.

²⁸ Ibid.

²⁹ Ibid, 113.

³⁰ Ibid, 115.

traditions, necessitating a distinct regulatory approach to land and property management.³¹

The settlement officers, in consultation with village headmen representing the principal landowning castes—recognized as influential figures in the district—developed a general code of custom based on the *wajib-ul-arz* (village administration papers) and *rivaj-i-am* (records of customs and rights).³² Notably, women, particularly those who had no interaction with law enforcement, were excluded from these records. This exclusion mirrored broader societal attitudes, with the majority also opposing women’s suffrage. Administrators acknowledged discrepancies between the “ideal practices” portrayed by ruling caste men and the actual customs followed.³³ By prioritizing customary law over the personal laws of Hindus and Muslims in civil matters, colonial authorities significantly undermined women’s inheritance rights in the Subcontinent. Land ownership and inheritance were tied to male agnatic descendants of the localized clan, reflecting the belief that land belonged to the ancestors who originally settled and cultivated it, making its alienation outside this group impermissible.³⁴

Daughters and sisters, rather than widows, became the focal point of inheritance conflicts due to the widow’s limited rights, as her property typically reverted to her husband’s male collaterals upon her death.³⁵ Daughters and sisters, seen as potential carriers of new descent lines through marriage, were strategically excluded from inheritance rights to preserve the kinship group and maintain the broader “tribal” social structure. This system, instrumental for British rule in Punjab, also aimed to

³¹ Ibid, 116.

³² See on this aspect the observation of the High Court of Bombay (India) in case *Musammat Subhani Vs. Nawab*, 1941 (43) BomLR 432 (Judgment of August 17, 1940), 21-33.

³³ G.C. Walker, *Customary Law of the Main Tribes in the Lahore District, Vol. XIII* (Lahore: Civil and Military Gazette Press, 1894), ii.

³⁴ Ibid.

³⁵ David Gilmartin, “Kinship, women and politics in twentieth century Punjab,” in *The Extended Family: Women and Political Participation in India and Pakistan*, ed. Gail Minault (Delhi: Chanakya Publications, 1981), 153-73.

prevent unprofitable fragmentation of landholdings. The *wajib-ul-arz* records from the 1840 settlement primarily detailed the rights of the government and male landowners, with little mention of succession, alienation, or women's rights.³⁶ Available evidence suggests that women's inheritance rights were even more restricted than today, reflecting the era's entrenched patriarchal norms and colonial priorities.

The *wajib-ul-arz* from the 1863 settlement addressed inheritance, alienation, and pre-emption rights, though these were later subjected to limitations. At that time, women's land rights were somewhat broader than they are today. By the 1910 settlement, customary law had evolved significantly on these issues, but women's rights, especially regarding land, had further declined. This included restrictions on alienation and inheritance, particularly of ancestral property. The region's prosperity, largely due to the expansion of canal irrigation, brought greater clarity to individuals' stated preferences for future property arrangements.³⁷ These preferences often emphasized limiting women's rights to land, particularly for daughters, sisters, or their descendants. This exaggeration is understandable, as sons-in-law—typically a minority—were often viewed as the driving force behind attempts to exclude women from inheriting family estates.³⁸

The constraints on alienating property, particularly concerning daughters and sisters, were often depicted as more restrictive than they may have been in practice. In the case of self-acquired property, the authority to alienate was generally less confined than commonly suggested. Historical practices in regions of modern-day Pakistan illustrate that when labor was scarce and land abundant,

³⁶ Dharambir, "Wajib-ul-Arz: A Major Source of Rural Society of the South-East Punjab," *Vegueta* 24, no. 2 (2024), 164 in 164-169, accessed December 12, 2024, <https://vegueta.org/index.php/VEG/article/view/108>.

³⁷ *Ibid*, 165.

³⁸ *Ibid*, 165, 166.

women—daughters, sisters, and even cousins—were frequently involved in cultivating the land.³⁹ However, as land values rose and population densities increased, male collaterals asserted stronger claims, severely limiting or completely abolishing women's rights to property. British colonial authorities actively endorsed the tradition of keeping land within the "tribal" group, justifying it as a measure that benefited the agrarian community. This official approval not only preserved these customs but also contributed to their evolution, further marginalizing women in matters of landownership.⁴⁰

In nutshell, colonial-era property laws in Punjab, heavily influenced by the *wajib-ul-arz* and other customary practices, systematically marginalized women in matters of inheritance and alienation. While early settlements acknowledged broader rights, later developments saw these rights significantly curtailed due to rising land values, population pressures, and the entrenchment of male-dominated kinship structures. British authorities, favoring tribal cohesion, reinforced these exclusions under the guise of benefiting agrarian communities. This evolution underscores a deliberate reshaping of traditions that progressively eroded women's property rights, setting the stage for examining their contemporary implications in the next section.

1.3 From Custom to Legislation

The transition from custom to legislation represents a critical shift in societal structures, where established traditions and social norms give way to formalized legal systems. This shift was significantly influenced by feminist movements, particularly at the turn of the 19th and 20th centuries,

³⁹ See generally Farhana Mehmood, Manahi Yaqoob and Nasira Mehmood, "An Anthropological Perspective of Female Share in Inheritance: An Appraisal of Gender Gap between Islamic Law and Practice," *Journal of Islamic Thought and Civilization* 12, No. 1 (2022): 154–165, accessed November 20, 2024, <https://doi.org/10.32350/jitc.121.11>.

⁴⁰ Chowdry, "Emerging Patterns", 118-119.

as women began to challenge the restrictive customs that governed their lives.⁴¹ Feminism, in its broadest sense, seeks to expose and dismantle the patriarchal systems that have historically denied women social power, autonomy, and opportunities for self-expression. As Donald Hall aptly notes, feminist analysis emphasizes gender as a central focus, exploring how women have been systematically marginalized and silenced in various spheres of life.⁴² Literary works, such as Kate Chopin's *The Awakening* and *Story of an Hour*, provide insightful reflections on these struggles, portraying female characters who wrestle with the limitations imposed upon them by societal expectations and the roles ascribed to them by gender norms.⁴³ These works exemplify the complex interplay between custom and legislation, as they highlight the personal rebellion against both social conventions and legal frameworks that have long confined women to subordinate positions. In these stories, we witness the awakening of female characters to their desires for freedom, autonomy, and self-identity, signaling the early stirrings of feminist thought and the transformation of societal values.

Feminist theory shares key principles with critical theory, as both examine the social dynamics between the genders, particularly the imbalance in patriarchal societies. Central to feminist theory is the struggle for women's rights, which encompasses voting rights, property ownership, equal pay in the workforce, and broader opportunities for advancement. These are rights women have long fought for, yet they remain largely unfulfilled. The ongoing question of gender equality remains unanswered, despite these efforts.⁴⁴ Male domination is deeply entrenched in societal structures, with women

⁴¹ Simone de Beauvoir, *The Second Sex* trans. Constance Borde, and Sheila Malovany-Chevallier (London: Vintage Books, 2015), 23, accessed November 21, 2024, https://uberty.org/wp-content/uploads/2015/09/1949_simone-de-beauvoir-the-second-sex.pdf.

⁴² Donald E. Hall, "Introduction Female Trouble: Nineteenth-Century Feminism and a Literature of Threat," in *Fixing Patriarchy* (London: Palgrave Macmillan, 1996), 2 in 1-17.

⁴³ See e.g. Kate Chopin, *The Awakening* (New York: Dover Publications, 1993).

⁴⁴ See generally on this discourse Rosemarie Tong and Tina Fernandes Botts, *Feminist Thought A More Comprehensive Introduction* 6th ed. (New York/London: Routledge, 2024).

historically subjected to humiliation, oppression, and undervaluation by men. Even in contemporary society, men continue to be viewed as the heads of households, while women remain confined to traditional domestic roles.⁴⁵ The persistence of patriarchy is so ingrained that it is unclear how long it will take to fully dismantle these structures and achieve genuine gender equality. In this context, patriarchy is not just a system of power but a deeply rooted social reality, where men hold power and women continue to face the consequences of this inequality.⁴⁶

Pre-colonial India was an agrarian society characterized by diverse customs governing marriage, property rights, and gender relations. Smritis and tribal customs varied significantly, reflecting the complexity of India's pluralistic society.⁴⁷ Some communities, particularly among lower castes and tribes like the Lingayats, Kapus, and Maravars, exhibited liberal attitudes towards women, permitting practices such as divorce and remarriage. Conversely, upper-caste Brahminical customs were deeply patriarchal, restricting women's rights to property and enforcing rigid gender norms. Legal authority during this era was localized, with family or caste councils and village panchayats adjudicating disputes based on established customs.⁴⁸

1.4 Colonial Reforms: Imposition of Patriarchal Legislation

The British colonial period marked a significant shift, transitioning India from a society governed by diverse customs to one regulated by centralized legislation. The British justified their colonial mission by portraying Indian traditions as barbaric and sought to “civilize” society through legal reforms.⁴⁹

⁴⁵ Bell Hooks, *Feminist Theory: From Margin to Center* (Boston: South End Press, 1984), 6.

⁴⁶ See for detail discussion Sylvia Walby, *Theorizing Patriarchy* (Oxford: Blackwell, 1990) at 20.

⁴⁷ Flavia Agnes, *Law and Gender Inequality: The Politics of Women's Rights in India* (Oxford: Oxford University Press, 1999), 10-11.

⁴⁸ Ibid, 12.

⁴⁹ Varsha Chitnis and Danaya C. Wright, “The Legacy of Colonialism: Law and Women's Rights in India” *Wash. & Lee L. Rev.* 64 (2007), 1315 in 1315-1348.

However, these changes often perpetuated existing patriarchal structures rather than dismantling them. Key reforms included the Age of Consent Act (1891), which sought to regulate child marriages, and changes to widow inheritance laws. While these were modeled on English legal standards, they disregarded India's cultural and social nuances. The colonial administration's alliances with native elite men and British feminists resulted in laws that served British economic and political interests more than addressing women's rights.⁵⁰ For instance, reforms such as the Contagious Diseases Acts further marginalized Indian women by linking their sexuality to public morality, reinforcing gender inequalities under the guise of legal progress.⁵¹

1.5 The Partition of India and Legal Developments in Pakistan

After the partition in 1947, Pakistan inherited a colonial legal framework that retained many of the patriarchal norms established during British rule. However, over the decades, Pakistan introduced significant legal reforms to address women's rights, particularly in inheritance laws. The Muslim Personal Law (Shariat) Application Act of 1961 played a transformative role in granting Muslim women inheritance rights, ensuring their access to ancestral property. This legislation marked a departure from the customary practices that previously denied women inheritance, particularly in rural areas. The act also emphasized women's legal entitlement under Islamic law, reinforcing the state's commitment to equity within a religious framework. Subsequent reforms, such as the West Pakistan Muslim Family Laws Ordinance of 1961, further enhanced women's rights, mandating equitable inheritance distribution and regulating polygamy to protect women's interests. In recent years, the Enforcement of Women's Property Rights Act of 2020 has strengthened mechanisms to safeguard women's inheritance claims, demonstrating a progressive evolution in addressing gender disparities.

⁵⁰ Ibid, 1318.

⁵¹ Ibid, 1325.

1.6 Legacy and Ongoing Challenges

While legislative advancements in Pakistan signify progress, patriarchal norms remain deeply entrenched in societal attitudes, hindering full implementation of these laws. The colonial legacy of marginalizing women persists, with economic and social barriers continuing to restrict women's empowerment. The reforms in British India and later Pakistan reflect an ongoing struggle to balance tradition, religion, and modernity, highlighting the complexities of achieving gender equality in diverse cultural contexts. By moving from a reliance on customary practices to codified legislation, both British India and Pakistan have navigated a transformative legal journey. Yet, the challenge of eradicating deeply rooted patriarchy underscores the need for continued efforts to realize the promise of equality and justice for all women.

1.7 Conclusion

The historical development of customary law in British India, transitioning into formalized legislation, underscores the profound impact of colonial rule on gender dynamics in property rights. The codification of select patriarchal customs by the colonial administration not only marginalized women but also entrenched male-dominated kinship structures, limiting women's access to inheritance. Records such as the *wajib-ul-arz* and *rivaj-i-am* institutionalized these exclusions, reflecting broader societal attitudes resistant to women's empowerment. Post-partition legal reforms in Pakistan sought to rectify these disparities, introducing progressive legislation to ensure gender equality in inheritance. However, the persistence of cultural and ethical norms that discourage women from claiming their rightful property underscores the complexity of implementing these reforms. While legislative advancements such as the Muslim Personal Law (Shariat) Application Act of 1961 and the

Enforcement of Women's Property Rights Act of 2020 demonstrate a commitment to equity, their effectiveness is often undermined by societal resistance and enforcement challenges.

The findings of this chapter highlight the enduring influence of colonial policies on contemporary gender dynamics in inheritance law. The struggle to balance tradition, religion, and modernity remains central to achieving genuine gender equality. Moving forward, addressing these challenges requires not only robust legal frameworks but also societal transformation to dismantle deeply entrenched patriarchal norms. The journey from custom to legislation reflects a broader narrative of resilience and reform, underscoring the need for sustained efforts to ensure justice and equality for all women.

CHAPTER TWO: WOMEN’S RIGHTS IN PROPERTY – ISLAMIC LAW

2.1 Introduction

This chapter examines the influence of English legal codes on women’s inheritance rights during the pre-independence era in Pakistan, a period marked by colonial interventions that significantly reshaped Islamic legal traditions. The British colonial administration introduced English common law principles, often undermining the Shariah-based inheritance framework, which had long ensured defined property rights for women. This research explores the extent to which colonial policies disrupted Islamic inheritance laws, altered societal perceptions of women’s property rights, and contributed to enduring disparities in inheritance practices. By analyzing the interplay between Shariah and English legal codes, the chapter aims to uncover the historical roots of contemporary challenges in upholding women’s inheritance rights in Pakistan.

2.2 Women Rights under Islamic Law

Islam brought about a revolutionary change in society by granting women a defined legal share in inheritance, ensuring their economic security on par with men. Through the Sharī‘ah, Islamic teachings explicitly outline inheritance shares for both genders, elevating the status of women and affirming their rights. This marked a profound departure from pre-Islamic practices, where women were often regarded as property to be inherited rather than individuals with their own rightful claims.⁵² The basic rule was laid down in the Qur’an as: “There is a share for men and a share for women from what is left by parents and those nearest related, whether the property be small or large - a legal

⁵² Haifaa A. Jawad, *The Right of Women in Islam: An Authentic Approach* (New York: St. Martin Press, 1998), 2.

share.”⁵³ The Sharī‘ah establishes clear guidelines to prevent individuals from arbitrarily determining or distributing inheritance shares. Human judgment, often influenced by personal desires and greed, is prone to fall short of achieving true justice.⁵⁴ Therefore, adherence to the Sharī‘ah is indispensable to ensure fairness and uphold justice in matters of inheritance.⁵⁵

According to Sharī‘ah, it is obligatory for both the state and the heirs to ensure that women receive their share following the death of the deceased. The allocation of inheritance shares becomes effective immediately after the deceased’s death, without requiring any legal proceedings.⁵⁶ The Qur’an identifies inheritors: as the father, mother, husband, wife, son’s daughter, full sister, paternal half-sister, maternal half-sister, and maternal half-brother.⁵⁷ A Muslim woman’s share is generally half of that of a man’s because economic responsibilities, as prescribed by Sharī‘ah, are primarily borne by the male members of the family.⁵⁸ This rule is well explained in the following verses of the Qur’an:

"Allah commands you as regard your children's (inheritance): to the male, a portion equal to that of two females; if (there are) 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 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 is) after the payment of legacies, he may have bequeathed or debts. You know not which of them, whether your parents or your children, are nearest to you in benefit; (these fixed shares) are ordained by Allah."⁵⁹

In a situation where a deceased individual has only one daughter and no son, the daughter is entitled to two-thirds of the total inheritance. Importantly, during her lifetime, no one, including her

⁵³ Al-Qur’an, *Surah An-Nisa*, 04:07.

⁵⁴ Sayyid Abul Ala Maududi, *The Meaning of the Qur’ān* (Lahore: Islamic publications, 2003), 312-313.

⁵⁵ See Muhammad Shafi, *Maariful Quran: A Comprehensive Commentary of the Holy Quran* (Karachi: Maktaba Darul-Uloom, 2005), 340.

⁵⁶ Dr. Abid Hussain, *The Islamic Law of Succession* (Riyadh: Darussalam Publication, 2005), 25.

⁵⁷ Ibid, 25, 26.

⁵⁸ Ibid, 26.

⁵⁹ Al-Qur’an, *Surah Al-Nisa*, 04:11.

husband or father, can claim any right to a woman's inheritance share. It is further laid down in the Qur'an:

“You will inherit half of what your wives leave if they are childless. But if they have children, then ‘your share is’ one-fourth of the estate—after the fulfilment of bequests and debts. And your wives will inherit one-fourth of what you leave if you are childless. But if you have children, then your wives will receive one-eighth of your estate—after the fulfilment of bequests and debts. And if a man or a woman leaves neither parents nor children but only a brother or a sister ‘from their mother’s side’, they will each inherit one-sixth, but if they are more than one, they ‘all’ will share one-third of the estate¹—after the fulfilment of bequests and debts without harm ‘to the heirs’. ‘This is’ a commandment from Allah. And Allah is All-Knowing, Most Forbearing.” (Nisa 4:12)⁶⁰

These divine instructions indicate that if a deceased person leaves no children, the surviving wife or wives are entitled to one-fourth of the inheritance. However, if the deceased leaves behind children, the wife or wives are entitled to one-eighth. The following tradition of the Holy prophet solidifies the text:

Amir b. Sa'd reported on the authority of his father (Sa'd b. Abi Waqqas) who said: The Messenger of Allah (ﷺ) visited me in my illness which brought me near death during the year of the Farewell Pilgrimage. I said: “O Messenger of Allah, you can see the pain I am suffering, and I am a man of wealth, and there is none to inherit me except my only daughter. Should I give two-thirds of my property in charity?” He (the Prophet) said: “No.” I said: “Half of it?” He said: “No.” Then he said: “One-third, and one-third is much (or large). To leave your heirs wealthy is better than to leave them poor, begging from others. You will not spend anything, seeking thereby the pleasure of Allah, without being rewarded for it—even a morsel that you place in your wife's mouth.” I said: “O Messenger of Allah, will I survive my companions?” He said: “If you survive them, then do such deeds by which you seek the pleasure of Allah, but you will increase in status and rank. Perhaps you may live so that some people benefit from you, and others are harmed by you.” The Messenger of Allah (ﷺ) then said: “O Allah, complete the migration of my Companions and do not cause them to turn back upon their heels. But the unfortunate one is Sa'd b. Khawla.” (The Messenger of Allah expressed sorrow for him as he had died in Mecca.)⁶¹

The Prophet also rejected the idea of giving half but permitted one-third, emphasizing that it is better to provide for one's offspring rather than leave them in poverty. The Prophet further stated that any act of spending in the way of Allah, even placing a morsel of food in one's wife's mouth, is

⁶⁰ Al-Qur'an, *Surah An-Nisa*, 04:12.

⁶¹ Sahih Muslim, *Book of Bequests (Kitab al-Wasiyyah)*, Hadith Number 1628.

rewarded by Allah.⁶²

2.3 Inheritance Shares of Women in Islam

The Quran mandates inheritance as a binding obligation and explicitly defines the shares entitled to rightful heirs. It makes no distinction between movable and immovable property or between ancestral and self-acquired assets. The primary criterion for inheritance is kinship with the deceased. Upon death, a person's estate is automatically distributed among the legal heirs after debts and funeral expenses are settled.⁶³ Islamic inheritance laws categorize heirs into three groups. Sharers are entitled to fixed portions of the estate and include parents, children, spouses, and grandparents.⁶⁴ Residuaries receive whatever remains after Sharers' shares are allocated, typically encompassing paternal relatives like the grandfather or uncle.⁶⁵ Distant kin, though not Sharers or Residuaries, inherit based on blood relations with the deceased.⁶⁶ Quranic heirs, such as the father, mother, son, daughter, husband, and wife, cannot be excluded from inheritance. This discussion focuses on the inheritance shares of women as daughters, wives, and mothers, which vary depending on sect (personal law) and family structure under Islamic law.

2.3.1 Islamic Laws of Inheritance

While civil laws concerning property ownership in Pakistan are gender-neutral, inheritance rights are governed by Muslim Personal Laws, which delineate shares based on gender. The West Pakistan Muslim Personal Law (Shariat Application) Act of 1962 mandates that inheritance matters adhere to

⁶² Al-Sahih al-Bukhari, *Inheritance of offspring from the property or the parents*, (Kitab al Fariad), Haith no. 725.

⁶³ Jawad, *The Right*, 66.

⁶⁴ Hussain, *The Islamic Law*, 62.

⁶⁵ Ibid, 62-63.

⁶⁶ Ibid, 63.

the religious personal laws of citizens.⁶⁷ Under Islamic law, only blood relatives can inherit, excluding adopted children. The inheritance includes movable and immovable property, ancestral and self-acquired, distributed according to fixed Quranic shares.⁶⁸ In the Hanafi school, 12 sharers are recognized, including both male and female heirs such as wives, mothers, grandmothers, daughters, and sisters. Shia law acknowledges eight sharers, with allowances for female heirs to inherit as sole beneficiaries in specific cases.⁶⁹ Female heirs generally receive half the share of their male counterparts, as evidenced by the allocation of 1/6th to fathers and 1/3rd to mothers, or 1/2 to husbands and 1/4th to wives in spousal estates.⁷⁰

Mechanisms like oral gifts, wills, and dowries have historically provided flexibility in property distribution.⁷¹ However, courts have frequently addressed disputes surrounding these practices. For example, the Supreme Court of Pakistan in *Muhammad Rafiq v Ghulam Zohran Mai* stressed the illegality of purported gifts that deprive female heirs of their inheritance, underscoring the constitutional mandate to protect women's rights under Articles 24, 25(3), and 35.⁷² The Court noted that such practices are contrary to Islamic law and public policy and held the petitioners accountable for depriving female heirs for over 22 years. Similarly, cases like *Laila Qayyum v. Fawad Qayyum*

⁶⁷ Section 2 of the West Pakistan Muslim Personal Law (Shariat Application) Act 1962 states: “Application of the Muslim Personal Law.— Notwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, including waqfs, trusts and trust properties, the rule of decision, subject to the provisions of any enactment for the time being in force, shall be the Muslim Personal Law (Shariat) in cases where the parties are Muslims.”

⁶⁸ See for details Lucy Carroll, “The Hanafi Law of Intestate Succession: A Simplified Approach,” *Modern Asian Studies* 17, no. 4 (1983): 629–70.

⁶⁹ See for more details Lucy Carroll, “The Ithna Ashari Law of Intestate Succession: An Introduction to Shia Law Applicable in South Asia,” *Modern Asian Studies* 19, no. 1 (1985): 85–124, accessed December 04, 2024, <http://www.jstor.org/stable/312322>.

⁷⁰ Hussain, *The Islamic Law*, 63–64.

⁷¹ Badriah Khaleel et al., “Critical Discourse Analysis of Pakistani Inheritance Law and Justice System for Women” *Pakistan Social Sciences Review* 7, no.3 (2023), 96 in 87–100.

⁷² 2023 SCMR 988.

reinforced that denying women their Quranic shares in inheritance is both unconstitutional and un-Islamic.⁷³ Pakistani courts have also emphasized the challenges in inheritance claims based on sectarian differences. The Lahore High Court in case of *Mst. Bhagan v. Ghulam (deceased)* through legal heirs ruled against defendants who failed to prove the deceased's sectarian conversion, which would have affected the inheritance shares.⁷⁴ This highlights the critical role of evidence in determining inheritance entitlements

The relinquishment of inheritance shares by female heirs is another contentious issue. Courts typically require such agreements to be voluntary and free of coercion.⁷⁵ However, the societal prevalence of relinquishment raises concerns about women's equitable access to property, a gap requiring legislative and judicial scrutiny to ensure adherence to Islamic principles of justice.

2.3.2 The Role of Customary Inheritance Laws in Asset Distribution and Social Harmony

Customary inheritance law comprises a set of principles and rules designed to govern the distribution of a deceased person's assets within a specific locality or cultural context.⁷⁶ A significant function of such laws is to mitigate disputes and conflicts that might otherwise arise in the absence of structured guidelines for allocating the deceased's property.⁷⁷ By establishing an organized system for asset distribution, customary inheritance laws aim to prevent prolonged and contentious disagreements among family members, which could escalate into costly and protracted legal disputes. Beyond

⁷³ PLD 2019 Supreme Court 449.

⁷⁴ 2018 MLD 1892 Lah.

⁷⁵ *Mst. Gohar Khanum v Mst. Jamila Jan*, 2014 SCMR 801.

⁷⁶ *See on this topic* Benjamin Bishin and Feryal Cherif, "Women's Rights in the Muslim World," *Journal of Law and Society* 45, no. 2 (2018): 245–270.

⁷⁷ Beenish Ijaz Butt and Amir Zada Asad, "Refutation, Relinquishment and Inheritance: Exploring Women's Inheritance Rights in Pakistan," *Pakistan Journal of Social Sciences* 36, No. 2 (2016), 1103 in 1001-1009.

conflict resolution, customary inheritance laws reinforce social cohesion by fostering clarity and fairness in asset allocation. When property is distributed in accordance with accepted community practices, it promotes harmony and unity among family members and contributes to the preservation of broader societal order.⁷⁸ These laws often carry religious or cultural significance, reflecting the community's traditions and values. They provide not only a framework for equitable distribution but also a mechanism to honor the deceased's wishes while adhering to the norms of their society. The overarching purpose of customary inheritance laws is to ensure fairness in property distribution, balancing individual rights and collective harmony.⁷⁹ By reflecting the community's traditions and cultural heritage, these laws maintain social stability and promote cooperative relationships within families and local communities.

2.3.3 Islamic Law vis-a-vis Customary Inheritance

Islamic Law is a comprehensive system of divine guidance encompassing spiritual, ethical, and legal dimensions, including specific provisions for inheritance.⁸⁰ The Islamic inheritance framework, referred to as *Faraid*, ensures equitable distribution of a deceased person's estate among heirs.⁸¹ This system is designed to uphold justice, prevent conflicts, and safeguard the rights of all beneficiaries, with particular emphasis on protecting women's inheritance rights. Under Shariah, women are explicitly recognized as rightful heirs. They inherit from various familial relations, including their fathers, mothers, husbands, and children. The share a woman receives depends on her relationship with the deceased and the number of surviving heirs. For instance, if a man dies leaving a wife, two

⁷⁸ Ibid, 1003-1004.

⁷⁹ Ibid, 1007.

⁸⁰ Javeria Khan et al., "Women's Inheritance Rights in the West Pakistan Muslim Personal Law, Shariat Act 1962: An Analysis of Practices," *Journal of Gender and Social Issues* 21, No.1 (2022), 64 in 63-74.

⁸¹ See Muslim ibn al-Hajjaj, *Sahih Muslim, Kitab al-Faraid (The Book of Inheritance)*, trans. Abdul Hamid Siddiqui (Riyadh: Darussalam, 2007).

sons, and a daughter, the wife is entitled to one-eighth of the estate, while the sons and daughter share the remainder with each son receiving double the daughter's portion. While the share of a female heir is generally half that of her male counterpart, this structure reflects a broader socio-economic balance: male heirs bear greater financial responsibilities, such as providing for dependents.⁸²

Importantly, Shariah's inheritance laws are rooted in the Quran, specifically Surah An-Nisa (4:11-12), which explicitly outlines the shares allocated to heirs. This clarity in allocation minimizes ambiguities, reducing the likelihood of disputes among family members. Moreover, Islamic law ensures that women's inheritance rights provide them with financial security and independence, which is especially significant in patriarchal societies where women may face limited access to economic opportunities.⁸³ Beyond gender equity, Shariah inheritance principles maintain social harmony by preempting conflicts through well-defined rules. These laws not only distribute wealth equitably but also reflect the values of familial support and community cohesion. In contrast, customary inheritance practices in some societies—such as excluding women or restricting their rights to land—often contradict Islamic principles, highlighting the need for stronger enforcement of Shariah-based provisions to address such disparities.⁸⁴

Furthermore, Islamic law permits limited discretion in estate planning, such as bequeathing up to one-third of the estate through a will (*wasiyyah*), provided it does not infringe on the Quranic shares of heirs. This flexibility enables individuals to account for specific needs or circumstances within the family while adhering to Shariah's broader objectives of justice and fairness.⁸⁵

⁸² Jawad, *The Right*, 67-68.

⁸³ See generally Noel J. Coulson, *Succession in the Muslim Family* (Cambridge: Cambridge University Press, 1971).

⁸⁴ See e.g. Tahir Mahmood, *Statutes of Personal Law in Islamic Countries: History, Texts, and Analysis* (New Delhi: Oxford University Press, 2010).

⁸⁵ Jamal J Nasir, *The Islamic Law of Personal Status* 3rd ed. (Leiden: Brill Academic Publishers, 2009), 46.

2.3.4 Colonial Targeting of Islamic Law in Subcontinent

The British colonization of the Indian Subcontinent from 1757 to 1947 significantly impacted the legal and cultural frameworks of the region. A central aspect of their colonial strategy was the deliberate targeting of Islamic law (*Shariah*), which had been the dominant legal system since the Delhi Sultanate (13th century) and the Mughal Empire.⁸⁶ Before British colonization, Islamic law governed various legal and social matters, including family, criminal, and property law. However, the British gradually supplanted *Shariah* with English common law. The Bengal Regulations of 1772 introduced separate courts for Muslims and Hindus, ostensibly to respect religious laws but eventually marginalizing Islamic jurisprudence. Over time, English-style courts staffed by British officials became dominant, diminishing the influence of Islamic legal institutions.⁸⁷

Colonial laws directly conflicted with *Shariah* principles. For instance, British reforms allowed women to own property independently, challenging existing interpretations of Islamic inheritance laws.⁸⁸ They also outlawed practices like polygamy.⁸⁹ This dual approach of institutional replacement and legislative contradiction eroded the authority of Islamic law. Colonial powers targeted Islamic law to establish control, promote their values, and align legal systems with their administrative goals. They viewed *Shariah* as outdated and incompatible with modern governance.⁹⁰ By imposing English law, the British sought to assert cultural superiority and integrate the region into the colonial framework.

⁸⁶ M. Anderson, "Islamic Law and the Colonial Encounter in British India," in C. Mallat and J. Connors, eds., *Islamic Family Law* (London: Graham and Trotman, 1990), 170 in 165-185.

⁸⁷ *Ibid*, 171.

⁸⁸ Chowdry, "Emerging Patterns", 114.

⁸⁹ Mitra Sharafi, "The semi-autonomous judge in colonial India: Chivalric imperialism meets Anglo-Islamic dower and divorce law," *The Indian Economic and Social History Review* 46, no. 1 (2009): 65 in 57-81, accessed December 05, 2024, DOI: 10.1177/001946460804600104

⁹⁰ *Ibid*, 66.

Additionally, economic motivations played a role, as centralized legal systems facilitated resource extraction and governance.⁹¹

The marginalization of Islamic law led to a decline in the status of Muslim scholars (*ulama*) and jurists, disrupting the traditional custodianship of Islamic jurisprudence.⁹² The imposition of British legal principles alienated Muslims culturally and religiously, fostering resentment. This sense of alienation contributed to the rise of Muslim separatism, culminating in the Partition of India in 1947. Furthermore, colonial policies disrupted the cohesiveness of Muslim identity. By displacing *Shariah*, the British inadvertently sowed the seeds of Islamic revivalism in the region, as communities sought to reclaim their religious and cultural heritage.⁹³ The legacy of these policies continues to influence legal and social dynamics in South Asia. The British targeting of Islamic law in Subcontinent India was a calculated effort to consolidate power and impose their values. While it achieved immediate administrative goals, it left a legacy of cultural dislocation and legal challenges for the Muslim community. This historical experience underscores the enduring interplay between colonialism, law, and cultural identity.

2.4 Conclusion

This chapter finds that Islamic inheritance laws, rooted in divine guidance, explicitly allocate shares to women, ensuring their financial security and social dignity. However, during the pre-independence era, the British colonial administration undermined these provisions by imposing English legal codes that marginalized Islamic jurisprudence. The introduction of English common law principles diluted

⁹¹ Ibid, 67.

⁹² Syed Khalid Rashid, "Islamization of "Muhammadan Law" in India," *The American Journal of Islamic Social Science* 5, No. 1 (1988), 136 in 135-148.

⁹³ Ibid, 142.

the application of Shariah, disrupted traditional custodianship by Muslim scholars, and eroded women's inheritance rights. While English reforms allowed women to own property independently, they conflicted with Islamic laws, creating legal ambiguities and fostering socio-religious discontent. These colonial interventions not only altered inheritance practices but also contributed to the socio-legal marginalization of women, the effects of which persist in contemporary Pakistan. The findings highlight the need for a robust revival of Islamic principles to ensure equitable inheritance rights for women in line with Shariah.

CHAPTER THREE: LEGAL FRAMEWORK - INHERITANCE IN PAKISTAN

3.1 Introduction

This chapter examines the legal framework governing inheritance in Pakistan, with a particular focus on the rights of women in the context of Islamic law and constitutional principles. Inheritance law in Pakistan is predominantly shaped by Sharia, which guarantees fixed shares for female heirs. While the Constitution of Pakistan provides constitutional safeguards for women's rights, the effective implementation of inheritance laws remains challenged by cultural practices, societal norms, and procedural inefficiencies. The chapter explores Pakistan's international obligations, the evolution of national laws concerning inheritance, and the role of the judiciary in enforcing gender equality in property rights, with special attention to the Supreme Court and provincial high courts' rulings on women's inheritance. Through this analysis, the chapter provides an overview of the advancements and persisting challenges in ensuring equitable inheritance for women in Pakistan. Generally, this chapter focuses on the research question that how the legislation and Islamic Law of Inheritance shaped the Socio-Economic structure of Pakistan's Society?

3.2 Legal Framework Regarding Inheritance in Pakistan

In Pakistan, Islamic law serves as the foundational principle of the legal framework governing inheritance. All constitutional procedures, particularly those concerning women's inheritance rights, are interpreted and implemented through the lens of Sharia. While Pakistan fulfills its international obligations, including the ratification of treaties, these commitments are always aligned with Islamic principles. Consequently, no legal order can contravene the teachings of Islam. For instance, although

Pakistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1979, it explicitly declared that its accession to the Convention is subject to the provisions of the Constitution of the Islamic Republic of Pakistan.⁹⁴ Furthermore, Article 227 of the Constitution mandates that all existing and future laws must be brought into conformity with Islamic injunctions.⁹⁵

The 1973 Constitution of Pakistan guarantees full protection and equal rights to women. Article 25 ensures equality before the law for all citizens, regardless of sex, caste, race, or ethnicity.⁹⁶ It further safeguards women's inalienable rights to life, liberty, security, and fundamental freedoms. Article 23 grants every citizen the equal right to hold, own, and dispose of property, whether self-acquired or inherited.⁹⁷ Similarly, Article 24 protects property rights by prohibiting the forcible deprivation of property.⁹⁸ While the Constitution enshrines equality and justice in protecting women's

⁹⁴ Declarations and Reservations to CEDAW, Pakistan: "Declaration: The accession by [the] Government of the Islamic Republic of Pakistan to the [said Convention] is subject to the provisions of the Constitution of the Islamic Republic of Pakistan. Reservation: The Government of the Islamic Republic of Pakistan declares that it does not consider itself bound by paragraph 1 of article 29 of the Convention." Accessed December 02, 2024, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&clang=en.

⁹⁵ Article 227 of the Constitution of Pakistan, 1973: "227. Provisions relating to the Holy Qur'an and Sunnah. (1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions. [Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]

(2) Effect shall be given to the provisions of clause (1) only in the manner provided in this Part."

(3) Nothing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.

⁹⁶ Article 25 of the Constitution of Pakistan, 1973: "25. Equality of citizens. (1) All citizens are equal before law and are entitled to equal protection of law. (2) There shall be no discrimination on the basis of sex. (3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children."

⁹⁷ Article 23 of the Constitution of Pakistan, 1973: "23. Provision as to property. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest."

⁹⁸ Article 24 of the Constitution of Pakistan, 1973: "24. Protection of property rights. (1) No person shall be compulsorily deprived of his property save in accordance with law. (2) No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given. (3) Nothing in this Article shall affect the validity of :-

(a) any law permitting the compulsory acquisition or taking possession of any property for preventing danger to life,

rights, the practical realities often fall short of these constitutional ideals.

3.3 Pakistan's International Obligations Regarding Property Rights and Women

As a member of the international community, Pakistan has ratified several key international human rights treaties, obligating it to harmonize national laws with its international commitments. These agreements emphasize gender equality, equitable property rights, and women's access to resources such as land. Article 17 of the Universal Declaration of Human Rights (UDHR) asserts the universal right to own property, either individually or in association with others, and explicitly prohibits arbitrary deprivation of property.⁹⁹ The UDHR inspired the development of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR), collectively known as the International Bill of Human Rights. Both treaties enshrine non-discrimination in property rights.

property or public health; or

(b) any law permitting the taking over of any property which has been acquired by, or come into the possession of, any person by any unfair means, or in any manner, contrary to law; or

(c) any law relating to the acquisition, administration or disposal of any property which is or is deemed to be enemy property or evacuee property under any law (not being property which has ceased to be evacuee property under any law); or

(d) any law providing for the taking over of the management of any property by the State for a limited period, either in the public interest or in order to secure the proper management of the property, or for the benefit of its owner; or

(e) any law providing for the acquisition of any class of property for the purpose of

(i) providing education and medical aid to all or any specified class of citizens or

(ii) providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; or

(iii) providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves ; or

(f) any existing law or any law made in pursuance of Article 253.

(4) The adequacy or otherwise of any compensation provided for by any such law as is referred to in this Article, or determined in pursuance thereof, shall not be called in question in any court.”

⁹⁹ See e.g. Johannes Morsink, “Women’s Rights in the Universal Declaration.” *Human Rights Quarterly* 13, no. 2 (1991): 229–56, accessed November 14, 2024, <https://doi.org/10.2307/762661>.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), often referred to as the Universal Declaration of Women's Rights, advocates for gender equality across all spheres of life. Article 15(2) of CEDAW mandates non-discriminatory property rights for women as a fundamental human right.¹⁰⁰ Similarly, the International Convention on the Elimination of All Forms of Racial Discrimination and Article 2(1) of the Convention on the Rights of the Child address property rights from a non-discrimination perspective. In the realm of development, the Millennium Development Goals (MDGs) emphasized gender equality in Goal 3, while Sustainable Development Goals (SDGs) expand this focus. SDG 5 directly addresses gender equality and empowerment of women, and SDG 8 underscores women's economic inclusion and equitable access to resources.¹⁰¹ Despite these comprehensive frameworks, the implementation of these rights in Pakistan remains inconsistent, especially regarding women's access to and ownership of property.

3.4 Analysis of the Legal Framework of Inheritance in Pakistan

The legal regime governing women's inheritance rights in Pakistan reflects a gradual yet significant evolution, aiming to ensure gender equity in property distribution. The 1937 Muslim Personal Law (Shariat) Application Act marked the initial step toward replacing customary practices that excluded women from inheritance with Islamic principles guaranteeing fixed shares.¹⁰² Subsequent legislation, such as the 1962 West Pakistan Muslim Personal Law (Shariat) Application Act, extended these provisions to agricultural land, a critical step in an agrarian society. The 1961 Muslim Family Law

¹⁰⁰ José E. Alvarez and Judith Bauder, *Women's Property Rights Under CEDAW* (New York, 2024; online edn, Oxford Academic, 21 Mar. 2024), 12,13, accessed December 05, 2024, <https://doi.org/10.1093/oso/9780197751879.001.0001>, accessed 4 Dec. 2024.

¹⁰¹ Elissa Braunstein and Mimi Houston, "Pathways towards sustainability in the context of globalization: A gendered perspective on growth, macro policy and employment," in *Gender Equality And Sustainable Development*, Melissa Leach ed, (New York: Routledge, 2016), 37 in 34-55.

¹⁰² N. Iqbal, "The Shariat Act of 1937: A turning point in Muslim women's rights," *Journal of Islamic Legal Studies* 12, no. 3 (2019), 100 in 99-115.

Ordinance (MFLO) introduced the concept of "representation," enabling grandchildren to inherit the shares of their predeceased parents, though it has sparked debates on its alignment with Islamic law. More recently, the 2011 Prevention of Anti-Women Practices Act sought to criminalize the denial of women's inheritance rights, while the 2012 Punjab Partition of Immovable Property Act and the Punjab Land Revenue (Amendment) Act emphasized procedural safeguards to prevent women from being excluded in inheritance proceedings. The 2019 Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act demonstrated a proactive approach by creating institutional mechanisms to address disputes and enforce women's property rights effectively. On punitive side, Section 498-A of the Pakistan Penal Code, introduced in 2011, criminalizes depriving women of their rightful inheritance through deceitful or illegal means. Offenders face up to ten years of imprisonment, a fine of one million rupees, or both. However, as a non-cognizable offense under Schedule II of the Code of Criminal Procedure, an FIR cannot be filed directly with the police.

Despite these advancements, challenges persist in implementing these laws due to cultural resistance, social stigma, and procedural inefficiencies. Many women remain unaware of their legal rights, especially in rural areas, and face societal pressures that deter them from asserting claims.¹⁰³ Weak enforcement mechanisms and corruption within revenue departments further complicate the process. To bridge the gap between legal provisions and their practical application, it is essential to enhance awareness, strengthen institutional accountability, and train officials to handle inheritance disputes equitably. Community engagement and collaboration with religious scholars can also play a pivotal role in challenging patriarchal norms and promoting compliance with both Islamic and

¹⁰³ Muhammad Babar Shaheen, Hafiza Madiha Shehzadi and Muhammad Hassan Sajjad, "From Exclusion to Inclusion: A Comparative Analysis of Pakistani Inheritance Laws and International Best Practices for Women's Empowerment," *Annals of Human and Social Sciences* 5, No. 3(Jul-Sep 2024), 701 in 700-711, accessed November 29, 2024, [http://doi.org/10.35484/ahss.2024\(5-III\)62](http://doi.org/10.35484/ahss.2024(5-III)62).

statutory inheritance laws. By addressing these barriers, Pakistan can ensure that its progressive legal framework translates into tangible empowerment for women.¹⁰⁴

3.5 The Role of Constitutional Courts in protecting the women's right to inheritance

Inheritance disputes in Pakistan are frequently intricate and emotionally charged, particularly concerning women's inheritance rights. Historically, the legal and cultural landscape has been skewed against women, with entrenched societal practices often curtailing their access to rightful shares of inherited property. However, in recent years, the judiciary in Pakistan has emerged as a vital force in safeguarding women's inheritance rights and addressing these systemic inequities.

3.5.1 Supreme Court of Pakistan

The Supreme Court of Pakistan has categorically held regarding the inviolability of women's inheritance rights. For reference few cases will be mentioned here in order to understand that how the Supreme Court has dealt with the issue of female's right to inheritance.

Ghulam Ali v. Mst. Ghulam Sarwar Naqvi: In this case, the Supreme Court emphasized that the deprivation of women's inheritance rights, whether through coercion or so-called "relinquishment," violates both shariah and public policy. The Court highlighted that strict enforcement of inheritance laws ensures the equitable circulation of wealth and deemed any relinquishment of such rights void, as it contradicts Islamic principles and undermines social justice.¹⁰⁵

Islam-ud-Din v. Noor Jahan: The Supreme Court of Pakistan upheld the inheritance rights of women, invalidating fabricated mutations and an unproven gift deed used to deny a daughter her share of

¹⁰⁴ Ibid, 708.

¹⁰⁵ PLD 1990 SC 1.

property.¹⁰⁶ The Court found the alleged mutations and gift invalid due to non-compliance with Article 79 of the Qanun-e-Shahadat, 1984, which mandates two attesting witnesses.¹⁰⁷ It emphasized that inheritance rights under Shariah are inviolable and must be respected.¹⁰⁸ The judgment serves as a reminder of the judicial commitment to protecting women's rightful shares in inheritance.

Mrs. Khalida Azhar v. Viqar Rustam Bakhsh: The Supreme Court of Pakistan in this case reaffirmed the rights of women to inheritance under Islamic law, holding that gifts or transfers depriving female heirs must meet strict legal criteria.¹⁰⁹ In this case, the appellant (sister) successfully challenged the validity of gift mutations for agricultural land, as the respondent (brother) failed to prove the essential elements of a valid gift, including offer, acceptance, and delivery of possession. The Court upheld her rightful share in the land, directing its partition and awarding *mesne profits*. However, her claims regarding other assets and a registered gift deed were dismissed due to lack of evidence and undue delay in raising objections. This judgment highlights the judiciary's role in safeguarding women's inheritance rights while emphasizing the need for timely and substantiated claims.

Mirza Abid Baig v. Zahid Sabir: In this case, the Supreme Court of Pakistan dismissed an appeal by a brother who attempted to deprive his sisters of their rightful inheritance through fabricated documents—a purported compromise application and agreement.¹¹⁰ The Court held that the appellant failed to discharge the burden of proof under Articles 117 and 118 of the Qanun-e-Shahadat, 1984, and the documents were void under Section 25 of the Contract Act, 1872.¹¹¹ It emphasized that inheritance rights vest immediately upon death and that denying such rights contravenes Shariah and public

¹⁰⁶ 2016 SCMR 986.

¹⁰⁷ Ibid, para 8.

¹⁰⁸ Ibid, para 11.

¹⁰⁹ 2018 SCMR 30.

¹¹⁰ 2020 SCMR 601.

¹¹¹ Ibid, para 10.

policy. The Court admonished the appellant's misconduct and urged prompt execution of inheritance matters to prevent further delays.¹¹²

Mst. Brikhna v. Faiz Ullah Khan: The landmark judgment of the Supreme Court of Pakistan in this case underscores the critical importance of safeguarding women's inheritance rights as enshrined in Islamic law and the law of inheritance.¹¹³ The court reaffirmed that a daughter's right to inherit her father's legacy arises immediately upon his demise, making her a co-owner of the property. The judgment denounced the regional practice of depriving women of their rightful shares, terming it a violation of Sharia and national law.¹¹⁴ By restoring the trial court's decision granting the petitioner her due share, the court sent a strong message against discriminatory practices and emphasized adherence to Islamic principles of justice.

Farhan Aslam v. Mst. Nuzba Shaheen: The Supreme Court of Pakistan in this case reaffirmed the inheritance rights of women under Islamic law, condemning the use of fictitious gift mutations to deprive widows and daughters of their rightful shares.¹¹⁵ In this case, the petitioners, nephews of the deceased, failed to prove the validity of a purported gift, as required under the law. The Court noted that the widow and daughter were unjustly denied their inheritance due to greed and negligence by revenue authorities, emphasizing the constitutional and shariah-based protections for women and orphans.¹¹⁶ The petition was dismissed, with costs awarded to the respondents, and directions were issued for prompt execution of judgments ensuring their inheritance rights.

¹¹² Ibid, para 12.

¹¹³ 2020 SCMR 1618

¹¹⁴ Ibid, para 2.

¹¹⁵ 2021 SCMR 179.

¹¹⁶ Ibid, para 9.

3.5.2 Provincial High Courts

The Constitutional High Courts of Pakistan have also affirmed the women's inheritance rights as compulsory and based on sharia. For our present discussion, few cases decided by various High Courts in Pakistan are selected for adding into the current discussion.

Khalid Dad v. Ahmad Nawaz (Peshawar High Court): This case emphasizes the critical importance of upholding women's inheritance rights, which are firmly established under Islamic law and reinforced by the Khyber Pakhtunkhwa Muslim Personal Law (Shariat) Application Act, 1935.¹¹⁷ The court highlighted that customary practices (riwaj), often used to exclude female heirs, cannot override the principles of Shariah, which ensure equitable distribution of inheritance.¹¹⁸ It was held that depriving women of their legal share in inheritance violates both religious and legal principles. The court observed that inheritance rights open immediately upon the death of a Muslim owner and cannot be waived or negated by adverse possession or mere lapse of time.¹¹⁹ Moreover, the possession of male heirs is presumed to include the share of female heirs unless expressly repudiated. This judgment also decried the systemic exclusion of women, especially in rural areas, through fabricated practices or manipulation of records, urging courts to adopt a vigilant approach to ensure justice. By granting the plaintiff his due share through his female predecessors, the court reaffirmed the inviolability of inheritance rights and the necessity of protecting women's entitlements against unjust customs or societal biases.

Ghous-ud-Din v. Rashida and others (High Court of Balochistan): This case revolved around a suit for declaration, partition, and possession concerning inheritance rights filed by female legal heirs

¹¹⁷ 2014 MLD 1706 Pesh.

¹¹⁸ Ibid, para 8.

¹¹⁹ Ibid, para 9.

against their male relatives.¹²⁰ The defendants argued that the plaintiffs had gifted their shares in the disputed property but failed to provide any written deed or convincing evidence to support their claim. The trial and appellate courts both decreed in favor of the plaintiffs, affirming their entitlement to their "sharai" shares in the inheritance. The courts noted that the subsequent gift executed by one of the plaintiffs during the pendency of the suit invalidated the defendants' earlier claim of a gift. It was also emphasized that under Islamic law, inheritance rights vest immediately upon the death of the propositus, and no female heir can be deprived of her share on flimsy or baseless pretexts, even if new constructions have been raised on the property.¹²¹

The judgment relied on landmark precedents, including PLD 1990 SC 1 and 2007 SCMR 635, which highlight the inviolability of female heirs' rights under Islamic law.¹²² The court reaffirmed that raising new constructions without consent or alleging relinquishment without clear proof cannot bar female heirs from their rightful shares. Besides, depriving women from their inheritance is a punishable crime.¹²³ The petitioners' attempts to contest the earlier decrees were dismissed, with the court terming their stance an effort to delay the enforcement of the plaintiffs' rights. The petition was consequently dismissed in limine.

Muhammad Siddique & others v. Mst. Kaniz Fatima through L.Rs (Lahore High Court): This case underscores the protection of women's inheritance rights under Islamic law and the legal system of Pakistan.¹²⁴ The plaintiff, Mst. Kaniz Fatima, filed a suit for declaration and possession, challenging the fraudulent exclusion of her name from the inheritance mutation of her late father's property. Her

¹²⁰ 2014 YLR 293 Balochistan.

¹²¹ Ibid, para 5.

¹²² Ibid, para 5 (A) & (B).

¹²³ Ibid, para 6.

¹²⁴ 2017 MLD 1567 Lah.

brothers, the defendants, argued that no custom existed to grant inheritance to daughters at the time of their father's death and that her claim was barred by limitation. Both contentions were rejected by the court. It was held that inheritance rights of legal heirs, including daughters, vest immediately upon the death of the predecessor, and no limitation applies to claims of inheritance. The defendants failed to provide any evidence supporting their claims of exclusion based on custom or other grounds.

The judgment highlights that women, being a vulnerable segment of society, cannot be deprived of their rightful inheritance through customs, emotional exploitation, or fraudulent practices.¹²⁵ It emphasized that subsequent purchasers of the disputed land were not bona fide purchasers as they failed to take legal precautions before acquiring the property. Declaring all transactions related to the property void, the court reaffirmed that depriving women of their inheritance is both unlawful and a violation of Islamic principles.¹²⁶ Additionally, the defendants were burdened with costs for their conduct, signaling the judiciary's commitment to enforcing women's inheritance rights.

Mst. Kausar Bibi v. Mst. Ayesha Bibi and others (Lahore High Court): The judgment in this case emphasizes the inviolability of women's inheritance rights as prescribed by Islamic law, condemning the fraudulent practices often employed to deprive women of their rightful shares.¹²⁷ The court nullified a decree based on fraud and misrepresentation, holding that inheritance rights, as ordained in the Quran (Surah Al-Nisaa, Surah Baqarah, and Surah Maidah), cannot be overridden by deceitful tactics or collusion.¹²⁸ Highlighting societal biases where male heirs manipulate legal processes to usurp female heirs' entitlements, the court stressed that women must be impleaded in proceedings

¹²⁵ Ibid, para 8.

¹²⁶ Ibid, para 10.

¹²⁷ 2017 CLC 1601 Lah.

¹²⁸ Ibid, para 7.

affecting their inheritance.¹²⁹ It further underscored the duty of judicial officers to uphold justice with integrity, warning against negligence that compromises the judiciary's role as the custodian of public rights. The judgment called for systemic vigilance, directing accountability for judicial lapses and advocating for the dissemination of this ruling to district judiciary members as guidance.¹³⁰

Khalida Idrees & others v. Anas Farooq Chaudary & others (Lahore High Court): The case highlights the critical importance of safeguarding women's inheritance rights, particularly in disputes involving immovable property.¹³¹ The court emphasized the obligation of courts to exercise heightened caution when women's shares are alienated through mechanisms like gifts, wills, or custom, which are often used to deprive them of their rightful inheritance.¹³² Such actions, whether driven by coercion or cultural practices, require careful judicial scrutiny to ensure that women's legal rights to property are protected. The judgment underscores that women must be granted their rightful share in inheritance, and courts have a fundamental duty to ensure that such rights are not undermined, whether by fraudulent means or unjust customs.

Muhammad Sajid Tareen v. Government of Balochistan (High Court of Balochistan): The judgment emphasizes the critical importance of women's inheritance rights, highlighting that these rights are not only enshrined in Islamic teachings but are also constitutionally protected in Pakistan.¹³³ It underscores the pervasive issue of women being systematically deprived of their rightful shares in inheritance due to cultural practices and societal norms that favor male heirs.¹³⁴ The court recognizes

¹²⁹ Ibid, para 8.

¹³⁰ Ibid, para 12.

¹³¹ PLD 2018 Lahore 819.

¹³² Ibid, para 7.

¹³³ PLD 2012 Balochistan 172.

¹³⁴ Ibid, para 7.

that such deprivation is contrary to the principles of justice, equity, and the divine injunctions of the Holy Quran, which clearly delineate the rights of women in matters of inheritance.¹³⁵ The ruling mandates that all legal heirs, including female heirs, must be acknowledged in the transfer of property, and it directs the relevant authorities to implement mechanisms ensuring that women's names are included in inheritance records.¹³⁶ This judgment serves as a vital step towards rectifying historical injustices faced by women in inheritance matters, promoting gender equality, and reinforcing the legal framework that protects women's rights in Pakistan.

Atta-ur-Rehman v. Mst. Ghulam Bibi and others (Peshawar High Court): This judgment highlights the critical importance of women's inheritance rights under Islamic law, particularly in the context of societal practices that often undermine these rights.¹³⁷ The petitioner argued that the respondent had relinquished her rightful share in an inheritance, yet the court found no concrete evidence to support the claim of relinquishment (takharuj).¹³⁸ The ruling emphasized that inheritance is a compulsory right in Islam, which cannot be waived or denied by an heir, including women.¹³⁹ Despite cultural pressures and the tendency to coerce women into relinquishing their shares, the court affirmed that any such actions are void and against public policy.¹⁴⁰ The judgment reinforced the principles established by previous rulings, which stress the need for strict enforcement of inheritance laws to ensure equitable distribution of wealth and uphold women's legal rights. The case serves as a reminder of the ongoing challenge to protect the inheritance rights of women in Pakistan and the importance of judicial oversight in safeguarding these rights.

¹³⁵ Ibid, para 6.

¹³⁶ Ibid, para 12.

¹³⁷ 2024 CLC 1705 Peshawar [Bannu Bench].

¹³⁸ Ibid, para 7.

¹³⁹ Ibid, para 6.

¹⁴⁰ Ibid, para 9-11.

3.6 Conclusion

The legal framework concerning inheritance in Pakistan has undergone significant progress in recent years, particularly in safeguarding women's rights under Islamic law. While legal provisions exist to guarantee women's equal entitlement to inheritance, the implementation of these rights remains hindered by societal norms, cultural resistance, and procedural inefficiencies. The judicial system, particularly the Supreme Court and provincial high courts, has played a pivotal role in enforcing women's inheritance rights, emphasizing the inviolability of these rights as ordained in Islamic law. Despite these legal safeguards, practical barriers, such as ignorance of rights, weak enforcement mechanisms, and corrupt practices, continue to undermine women's inheritance claims, particularly in rural areas. Moving forward, enhancing legal awareness, strengthening enforcement, and combating cultural biases will be crucial in ensuring that the progressive legal provisions translate into tangible empowerment for women in Pakistan.

CHAPTER FOUR: A CRITICAL ANALYSIS OF POLICY AND LEGISLATIVE INITIATIVES IN PAKISTAN - WOMEN'S RIGHT TO PROPERTY

4.1 Introduction

Inheritance rights are a cornerstone of women's empowerment and gender equality, particularly in societies where economic independence and social status are closely tied to property ownership. In Pakistan, women's inheritance rights have long been overshadowed by entrenched patriarchal norms and discriminatory practices, despite clear mandates in both Islamic and constitutional law. The issue has profound implications, not only for individual women but also for broader societal progress, as it intersects with justice, economic empowerment, and gender parity.

This chapter explores the progress and challenges surrounding women's inheritance rights in Pakistan. It delves into the legal framework, analyzing landmark legislation such as the Muslim Family Laws Ordinance, 1961, the West Pakistan Muslim Personal Law (Shariat) Act, 1962, and more recent provincial and federal enactments aimed at enforcing women's property rights. It also examines institutional efforts, including the role of commissions, in bridging the gap between legal provisions and their implementation. Additionally, the chapter evaluates the socioeconomic programs that complement legal reforms, such as the Benazir Income Support Program (BISP) and the National Rural Support Program (NRSP), which empower women to claim and protect their inheritance rights. While significant strides have been made in recent years, this chapter critically evaluates the persistent barriers, including socio-cultural resistance, bureaucratic inefficiencies, and inadequate enforcement mechanisms, which continue to hinder women's access to their rightful share of property.

4.2 Women's Inheritance Rights in Pakistan: Progress and Challenges

The issue of women's rights to inheritance has been a matter of debate and controversy in Pakistan for many years.¹⁴¹ In the past, women faced discrimination and marginalization when it came to inheriting property, particularly under the colonial laws.¹⁴² However, in recent years, the government of Pakistan has taken several initiatives to promote women's rights to inheritance and ensure that women are not excluded from their rightful share of inherited property.¹⁴³ Women's rights to property are essential for gender equality and social justice. The Government of Pakistan has taken several administrative initiatives over the years aimed at the empowerment of women, focusing on areas such as legal reforms, economic participation, health, education, and addressing violence against women. Therefore, it is crucial to provide women with legal protection to enable them to access and inherit property, which can contribute to their social and economic empowerment.¹⁴⁴

4.3 Legal Reforms to Protect Women's Inheritance Rights

In recent years, Pakistan has witnessed significant legal reforms aimed at safeguarding and promoting women's inheritance rights, with a particular focus on ensuring equitable access to property¹⁴⁵. These legislative measures, spanning both federal and provincial levels, reflect a commitment to addressing gender disparity and empowering women in accordance with Islamic principles and constitutional guarantees. From the Muslim Family Laws Ordinance, 1961, which provides essential protections for

¹⁴¹ Iram Rubab, Beenish Malik, & Zujajah Bakht Aziz, "Do Legal and Institutional Reforms in Punjab, Pakistan Protect Women's Inherited Land Rights?" *Journal of International Women's Studies* 25 no. 4, (2023), 2, accessed December 02, 2024, <https://vc.bridgew.edu/jiws/vol25/iss4/5>.

¹⁴² Ibid, 5.

¹⁴³ Ibid, 4.

¹⁴⁴ See e.g. Riffat Haque, Rabbia Aslam, Aisha Anees Malik, "Land Ownership and Inheritance Rights of Women in Rural Pakistan," *Webology* 19, no. 3 (2022): 3002-3015, accessed December 01, 2024, [https://www.webology.org/data-cms/articles/20220713122137pmwebology%2019%20\(3\)%20-%2020206.pdf](https://www.webology.org/data-cms/articles/20220713122137pmwebology%2019%20(3)%20-%2020206.pdf).

¹⁴⁵ See generally Javeria Khan et al., "Women's Inheritance Rights in the West Pakistan Muslim Personal Law, Shariat Act 1962: An Analysis of Practices," *Journal of Gender and Social Issues* 21, No.1 (2022), 64 in 63-74.

widows and children, to the various provincial acts such as the Khyber Pakhtunkhwa and Punjab Enforcement of Women's Property Rights Acts, these laws collectively work to eliminate discriminatory practices, provide women with legal recourse to reclaim property, and foster gender equality in inheritance matters. Through robust dispute resolution frameworks and clear enforcement mechanisms, these reforms have paved the way for greater socio-economic independence for women, ensuring that their rights to inherit, own, and possess property are upheld and protected.¹⁴⁶

4.3.1 Muslim Family Laws Ordinance, 1961

The Muslim Family Laws Ordinance, 1961, is a foundational piece of legislation designed to safeguard women's inheritance rights. By codifying explicit provisions, such as widows' entitlements to both movable and immovable property, it ensures that women are granted their rightful shares, addressing cultural practices that often hinder their access to inheritance. The ordinance not only protects widows but also secures the inheritance rights of children of deceased heirs through the per stirpes principle, promoting equitable distribution of assets.¹⁴⁷ For adherents of Fiqah-e-Jafria, it recognizes sect-specific inheritance rules, emphasizing inclusivity and fairness.¹⁴⁸ Furthermore, its dispute resolution framework empowers women to seek justice, reinforcing constitutional guarantees and Islamic injunctions for gender equity in inheritance.¹⁴⁹

4.3.2 The West Pakistan Muslim Personal Law (Shariat) Act, 1962

The West Pakistan Muslim Personal Law (Shariat) Act, 1962, plays a pivotal role in ensuring the inheritance rights of Muslim women by abolishing discriminatory customary practices that limited

¹⁴⁶ Ishaq Ahmad et al. "Inequality Regimes, Patriarchal Connectivity, And Women's Right To Property Inheritance In Rural Pakistan," *Journal of Positive School Psychology* 7, No. 1 (2023), 1252 in 1251-1267.

¹⁴⁷ See section 4 of the Muslim Family Law Ordinance, 1961.

¹⁴⁸ Ibid.

¹⁴⁹ Ahmad Hassan, Muhammad Ahmad Qadri, Muhammad Saleem, "The Muslim Family Law Ordinance 1961: Pioneer of Women Empowerment in Pakistan," *JRSP* 58, No. 1 (2021), 216 in 210-217, accessed December 08, 2024, https://pu.edu.pk/images/journal/history/PDF-FILES/25_58_1_21.pdf.

their ownership of immovable property. Through its provisions, the Act terminates life estates previously held by Muslim females under customary law, granting them rightful ownership as per Islamic principles.¹⁵⁰ It mandates that upon the termination of limited estates or certain wills, the property devolves according to Shariat law, thereby guaranteeing Muslim women their rightful shares in succession. By prioritizing the application of Muslim personal law over regressive customs, the Act upholds the principles of equity and justice, strengthening women's legal entitlement to inheritance and addressing a critical aspect of gender disparity.¹⁵¹

4.3.3 The Enforcement of Women's Property Rights Act, 2020 (Federal)

The Enforcement of Women's Property Rights Act, 2020 is a landmark legislation aimed at safeguarding the ownership and possession rights of women in their properties. It ensures that women are protected against harassment, coercion, force, or fraud that may deprive them of their rightful inheritance.¹⁵² The Act empowers the Ombudsman to address complaints swiftly, allowing women to reclaim their property without prolonged litigation.¹⁵³ It mandates state functionaries, such as Deputy Commissioners and law enforcement, to execute orders restoring ownership or possession to women. Additionally, the Act provides for compensation in the form of rent for the period women were unjustly deprived of their property.¹⁵⁴ By addressing both ownership and possession rights, this Act reaffirms the government's commitment to promoting gender equality and securing women's inheritance rights in accordance with legal and ethical standards.

¹⁵⁰ Section 3 of the West Pakistan Muslim Personal Law (Shariat) Act, 1962: "3. Termination of life estate under Customary Law. The limited estates in respect of immovable property held by Muslim females under the Customary Law are hereby terminated"

¹⁵¹ Usmat Batool and Muhammad Zia-ul-Haq, "Custom and Female Right of Inheritance: An Appraisal of the Evolution of Judicial Decisions in British India and Pakistan," *Islamic Studies* 58, no.1 (2019), 60 in 51-81, accessed December 08, 2024, <http://irigs.iiu.edu.pk:64447/ojs/index.php/islamicstudies/article/view/606/798>.

¹⁵² Section 5 of the Enforcement of Women's Property Rights Act, 2020 (ACT NO. XII OF 2020).

¹⁵³ Ibid, section 4.

¹⁵⁴ Ibid, section 8.

4.3.4 The Khyber Pakhtunkhwa Enforcement of Women Property Rights Act, 2019

The Khyber Pakhtunkhwa Enforcement of Women Property Rights Act, 2019 is a progressive piece of legislation aimed at protecting and ensuring women's inheritance rights in the province. It empowers women to claim their rightful ownership and possession of inherited property, providing a robust mechanism to address disputes.¹⁵⁵ The Act designates the Ombudsman as the authority to resolve complaints regarding the illegal deprivation of property rights, ensuring prompt and impartial investigations. State officials, including Deputy Commissioners and law enforcement agencies, are tasked with executing the Ombudsman's orders to restore women's property rights effectively. The Act also includes provisions to penalize those who attempt to dispossess women through fraud, harassment, or coercion, thereby creating a deterrent against such practices.¹⁵⁶ By affirming the fundamental rights of women to inherit and own property, this legislation promotes gender equality and strengthens women's socio-economic position within society.

4.3.5 The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012

The Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012 is a landmark law designed to protect and secure women's inheritance and ownership rights in property, in alignment with Islamic Sharia and the Constitution of Pakistan. The Act strictly prohibits any form of deprivation of women's ownership or possession of property, whether through coercion, fraud, forgery, or other illegal means.¹⁵⁷ It enforces penalties of imprisonment and fines for violators, ensuring accountability for those who contravene these provisions.¹⁵⁸ The Act also mandates that courts handle cases related to women's property rights expeditiously, with a six-month timeline for decisions and swift

¹⁵⁵ Section 4 of the Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2019.

¹⁵⁶ Ibid, section 5.

¹⁵⁷ Section 3 of the Khyber Pakhtunkhwa Enforcement of Women Ownership Rights Act, 2012.

¹⁵⁸ Ibid, section 4.

implementation of judgments through local law enforcement. By safeguarding women's right to inherit, own, and possess both movable and immovable property, this Act addresses systemic injustices and promotes gender equality in property ownership, reinforcing women's socio-economic independence in the province.

4.3.6 The Punjab Enforcement of Women's Property Rights Act, 2021

The Punjab Enforcement of Women's Property Rights Act, 2021 is a pivotal legal framework designed to protect and ensure women's inheritance rights in the province. It empowers the Ombudsperson to address complaints from women deprived of their property ownership or possession due to coercion, harassment, fraud, or force.¹⁵⁹ The Act provides mechanisms for expeditious resolution, mandating that the Ombudsperson investigate cases, conduct summary inquiries, and direct relevant authorities to restore possession or ownership of property to rightful female owners. Additionally, it allows women to claim compensation for loss of use, such as rent, during periods of dispossession.¹⁶⁰ By streamlining processes and reinforcing enforcement measures, the Act seeks to eliminate societal barriers and uphold women's constitutional and Islamic rights to inheritance and property ownership. This legislative effort is a significant step toward achieving gender equity in property rights within Punjab.

4.4 Institutional Efforts to Promote Women's Inheritance Rights

In Pakistan, a range of institutional initiatives has been launched to support and advance women's inheritance rights, reflecting a growing commitment to gender equality and legal empowerment. Various commissions, such as the National Commission on the Status of Women (NCSW) and provincial bodies like the Punjab, Khyber Pakhtunkhwa, Sindh, and Balochistan Commissions, play a crucial role in advocating for women's rights, monitoring the enforcement of inheritance laws, and

¹⁵⁹ Section 4 of the Punjab Enforcement of Women's Property Rights Act, 2021.

¹⁶⁰ Ibid, section 5.

recommending legal reforms to eliminate gender discrimination.¹⁶¹ These institutions not only provide oversight but also raise awareness, address grievances, and ensure swift action in cases of violations. Additionally, the Ministry of Human Rights' awareness campaigns, alongside digital initiatives like the Land Revenue Management Information System (LRMIS), further enhance women's access to property and inheritance. Through these collective efforts, the government, civil society, and provincial entities are working to dismantle socio-cultural barriers, promote legal literacy, and empower women to assert their rightful inheritance claims, contributing to their economic independence and broader societal empowerment.¹⁶²

4.4.1 National Commission on the Status of Women (NCSW)

The National Commission on the Status of Women (NCSW) plays a pivotal role in safeguarding and ensuring women's inheritance rights in Pakistan, as mandated by the National Commission on the status of Women Act, 2012. This legislation serves as a crucial tool in addressing systemic discrimination against women in matters of inheritance. The NCSW actively collaborates with relevant authorities to ensure the effective implementation of the Act by raising awareness about women's legal entitlements, monitoring compliance, and advocating for swift legal remedies in cases of deprivation. Through its interventions, the Commission empowers women to claim their rightful shares, combats socio-cultural barriers, and promotes gender equality in property ownership.¹⁶³ Its efforts not only

¹⁶¹ Rubab, “Do Legal,” 4-5.

¹⁶² M. Ahmed, M. Batool & S. F. Dziegielewski, “State of Inheritance-Rights: Women in a Rural District in Pakistan,” *Journal of Social Service Research* 42(5) (2016), 4-7.

¹⁶³ See section 11 of the Act which defines the functions of the commission: “11. Functions and Powers of the Commission.—The Commission,— (a) shall examine the policy, programs and other measures taken by the Federal government for gender equality, women's empowerment, political participation, representation, assess implementation and make suitable recommendations to the concerned authorities; (b) shall review all Federal laws, rules and regulations affecting the status and rights of women and suggest repeal, amendment or new legislation essential to eliminate discrimination, safeguard and promote the interest of women and achieve gender equality before law in accordance with the Constitution and obligations under international covenants and commitments; (c) shall sponsor, steer, encourage research to generate information, analysis and studies and maintain a database relating to women and gender issues to provide knowledge and awareness for national policy and strategic action for women empowerment; (d) shall develop and

protect individual rights but also contribute to fostering a fair and just society where women's economic independence is prioritized.

4.4.2 Launch of Awareness Drive about Women's Right of Inheritance by Ministry of Human Rights

In response to persistent issues regarding the deprivation of women's inheritance rights in Pakistan, the Ministry of Human Rights initiated an awareness campaign to educate the public and empower women. Despite previous efforts by provincial governments, particularly in Punjab, the actual conditions for women's inheritance rights have seen little improvement. Recognizing the critical nature of this issue, the Pakistani government tasked the Ministry of Human Rights with launching a nationwide awareness initiative in September 2018.¹⁶⁴ This campaign aimed to inform women and the broader society about the legal rights of women to inherit property under Pakistani law. As part of this initiative, the Ministry also introduced Helpline 1099, a service designed to provide free legal advice

maintain interaction and dialogue with non governmental organizations, experts and individuals in society and an active association with similar commissions and institutions in other countries for collaboration and action to achieve gender equality at the national, regional and international level; (e) mobilize grants from domestic and international, including multi and bilateral agencies, approved by the Federal Government, for meeting any of its obligations or performing its functions; (f) shall facilitate and monitor implementation of international instruments and obligations affecting women and girls to which Pakistan is a signatory, and advise the Federal Government before accession to any such proposed international instrument, protocol or treaty; (g) shall recommend to the Federal Government the signing or ratifying of international instruments (conventions, treaties and covenants) affecting rights of women and girls; (h) may seek and receive information, data and documents from any Federal source or entity in the course of performance of its functions; (i) while inquiring into complaints of violations of women's rights may call for information or report from the Federal Government civil society organizations and autonomous or concerned bodies; and in this regard the Commission shall have the powers vested in a civil Court under the Code of Civil Procedure, 1908 (Act V of 1908) for enforcing the attendance of any person and compelling the production of documents; (j) may in accordance with relevant laws and rules and prior permission of the provincial government concerned inspect any jail, sub-jail or other places of custody where women and girls are kept and to make appropriate recommendations to the authorities concerned; (k) may act for advocacy, lobbying, coalition building, networking and as a catalyst for promotion of cause of women to facilitate their participation in all spheres of life including legal, economic, social and political empowerment; (l) liaise with the Provincial Commissions set up under provincial laws and other concerned provincial organizations; (m) shall monitor the mechanism and institutional procedure for redressal of violation of women's rights; and (n) may perform any other functions which may be assigned to it by the Federal Government.”

¹⁶⁴ One of the objectives of this program is: “To develop communication strategy to address major human rights issues particularly violence against women, women's inheritance rights, child abuse, transgender, minorities and PWDs etc.” Accessed December 14, 2024, <https://mohr.gov.pk/Detail/M2RIYjU3MjEtNDE5Ni00YzdiLTkwNjYtM2IyMTFIZTBjY2Ni>.

and assistance to women facing challenges in securing their inheritance rights.¹⁶⁵ This move reflects a broader commitment to addressing gender disparities and enhancing women's access to justice in matters of inheritance. The federal government's digitization drive under the National Database and Registration Authority (NADRA) has also contributed to reducing fraudulent practices in property inheritance cases.

4.4.3 Punjab Commission on the Status of Women (PCSW)

The Punjab Commission on the Status of Women (PCSW), established under the Punjab Commission on the Status of Women Act, 2014, plays a significant role in protecting and ensuring women's inheritance rights. One of its core functions is to review laws, rules, and regulations affecting women's rights, including property and inheritance matters, to identify and advocate for amendments or new legislation that eliminate gender discrimination.¹⁶⁶ The PCSW serves as a monitoring and advisory body, engaging with government entities to ensure the implementation of policies that uphold women's legal entitlements. It also investigates complaints regarding violations of women's rights and makes recommendations for corrective actions. By raising awareness, fostering collaboration with civil society, and providing platforms for redress, the PCSW actively works to empower women, ensuring they can claim and protect their rightful inheritance, thereby advancing gender equality in Punjab.

¹⁶⁵ "Helpline for Legal Advice on Human Rights Violations". Objectives Of The Project: "(1) To establish a Helpline for addressing the issues of human rights violations through legal advice. (2) To establish grievance-redressal mechanism through referral services to the victims of human rights violations. (3) To maintain data-base on human rights violations at national level. (4) To facilitate and link relevant support services for the victims of human rights violations and their families. (5) To set up a strong network and coordination mechanism among the concerned stakeholders including law enforcement agencies, service providers, media, CSOs/NGOs, Law Colleges, Private Law Firms, Bar Associations and other organizations working in the field of Human Rights." Accessed December 14, 2024, <https://mohr.gov.pk/Detail/YWRiYjU0NzktMGE2Zi00NDYyLTljNzktMTA2N2M2MjBIZWZl>.

¹⁶⁶ Section 9 of the Punjab Commission on the Status of Women Act, 2014.

4.4.4 Punjab Women Development Department (WDD)

The Women Development Department, formed in 2012, supports gender equality by addressing economic disparities and facilitating women's access to inheritance rights. Through legal aid programs and skill development initiatives, the WDD empowers women to claim and manage their property, contributing to their financial independence and societal empowerment.¹⁶⁷

4.4.5 Land Revenue Management Information System (LRMIS)

The Land Revenue Management Information System (LRMIS) introduced in Punjab has played a pivotal role in improving women's access to land ownership. This digital system simplifies land registration processes, ensuring greater transparency and reducing the discrimination women often face in traditional land management systems. By modernizing land documentation, LRMIS empowers women to assert their inheritance rights and facilitates the resolution of disputes over property ownership.¹⁶⁸

4.4.6 The Khyber Pakhtunkhwa Commission on the Status of Women

The Khyber Pakhtunkhwa Commission on the Status of Women Act, 2016, plays a critical role in promoting and protecting the rights of women, including their inheritance rights. By reconstituting and empowering the Commission, the Act ensures that women's legal rights, especially in relation to property and inheritance, are safeguarded.¹⁶⁹ The Commission is tasked with reviewing laws affecting women's rights, proposing necessary amendments, and monitoring their implementation to eliminate discrimination. Through its provincial and district committees, the Commission provides vital oversight, ensuring that policies are gender-sensitive and that women's inheritance rights are upheld in practice. Additionally, the Commission serves as a platform for addressing grievances and promoting

¹⁶⁷ See for more details about the Women Development Department, <https://wdd.punjab.gov.pk/services>.

¹⁶⁸ Rubab, "Do Legal," 4-5.

¹⁶⁹ Section 8 of the Khyber Pakhtunkhwa Commission on the Status of Women Act, 2016

awareness about women's legal entitlements, offering essential support for their empowerment and access to justice.¹⁷⁰

The Khyber Pakhtunkhwa government has also undertaken significant steps to ensure women's inheritance rights. The Revenue and Estate Department has implemented digital land record systems to simplify the process of land inheritance. In addition, awareness campaigns targeting rural communities emphasize women's legal rights to property under Islamic and statutory law. KP's Directorate of Social Welfare, Women Empowerment, and Zakat also provides legal aid and mediation services to women facing inheritance disputes.

4.4.7 Sindh Commission on the Status of Women

The Sindh Commission on the Status of Women Act, 2015, plays a pivotal role in protecting and ensuring women's inheritance rights by reviewing and recommending reforms to existing laws and policies that may hinder gender equality. The Commission is tasked with examining governmental programs and measures related to women's rights, including the legal framework surrounding inheritance.¹⁷¹ By advocating for the elimination of discriminatory practices and promoting gender-equitable legislation, the Commission ensures that women's legal and economic rights, including those related to inheritance, are upheld.¹⁷² Through research, collaboration with NGOs, and interaction with other relevant institutions, the Commission seeks to strengthen awareness and ensure effective enforcement of inheritance laws, ultimately advancing the empowerment and protection of women's rights in Sindh.¹⁷³ In Sindh, the provincial government has taken measures to enhance women's

¹⁷⁰ See e.g. Khyber Pakhtunkhwa Commission on the Status of Women, *Annual Report 2019-2020* (Peshawar, KPCSC, 2020), accessed Decemebr 15, 2024, <https://kpcsw.gov.pk/wp-content/uploads/2021/02/KPCSW-Annual-Report-2019-20.pdf>.

¹⁷¹ Section 12 of the Sindh Commission on the Status of Women Act, 2015.

¹⁷² Ibid.

¹⁷³ See e.g. Sindh Commission on the Status of Women, *Strategic Plan 2018-2021* (Karachi: SCSW, 2018), accessed

access to property through the Sindh Revenue Board. This includes initiatives such as digitizing land records to prevent forgery and disputes. Sindh's Women Development Department also conducts training sessions for rural women on their legal rights.

4.4.8 Balochistan Commission on the Status of Women

The Balochistan Commission on the Status of Women Act, 2017 plays a pivotal role in promoting and safeguarding the rights of women in Balochistan, with a particular focus on addressing gender disparities in legal, social, and economic spheres. By establishing the Balochistan Commission on the Status of Women (PCSW), the Act empowers the Commission to review laws and policies affecting women's rights, including inheritance.¹⁷⁴ The Commission actively works to eliminate discrimination against women and ensure equal rights, including inheritance rights, as enshrined in the Constitution and international commitments. Similar to the role of the Sindh Commission on the Status of Women (CSW), the Balochistan Commission serves as an advocate and monitoring body, reviewing and recommending necessary changes in the law to protect women's inheritance rights. It also plays a crucial role in raising awareness, conducting research, and collaborating with other institutions to foster women's legal empowerment and secure their rightful share of inheritance, thus contributing significantly to women's socio-economic empowerment in the province. Balochistan's government has focused on raising awareness about women's inheritance rights through public campaigns and engagement with tribal elders. The provincial Women Development Department works in collaboration with non-governmental organizations to provide legal aid and counseling to women who are denied their inheritance. Efforts to digitize land records are also underway to ensure transparency

December 14, 2024,
<https://scsw.sindh.gov.pk/storage/resourcePage/EjaTe8rJf7NeFRv0tSSCj8W1k5lQEaf66tAOjAZH.pdf>.

¹⁷⁴ Section 11 of the Balochistan Commission on the Status of Women Act, 2017.

and accountability in property distribution.¹⁷⁵

4.5 Socio-economic Programs Supporting Women's Property Rights in Pakistan

The Pakistani government has launched various socioeconomic programs designed to empower women, particularly in the context of their inheritance rights. These programs not only aim to provide financial support but also create an environment that enables women to assert their property rights, access resources, and gain economic independence. Two of the most significant initiatives in this regard are the Benazir Income Support Program (BISP) and the National Rural Support Program (NRSP). Both programs contribute to women's empowerment, directly and indirectly reinforcing their ability to claim and protect inheritance rights.¹⁷⁶

4.5.1 Benazir Income Support Program (BISP)

The Benazir Income Support Program (BISP) is a flagship social welfare initiative launched by the government of Pakistan in 2008. It aims to provide financial assistance to low-income households, with a specific focus on empowering women, particularly those who face extreme poverty and social exclusion.¹⁷⁷ BISP offers unconditional cash transfers to women, which serves as a vital source of

¹⁷⁵ See generally Sohail Ahmed Ansari, "Women Inheritance: A Case Study on Balochistan," *Balochistan Review* 26, no. 1 (2012): 61-84. Accessed December 09, 2024, <http://web.uob.edu.pk/uob/Journals/Balochistan-Review/data/BR%2001%202012/61-84%20Women%20Inheritance,%20A%20case%20study%20of%20Balochistan,%20Sohail%20Ahmed%20Ansari.pdf>.

¹⁷⁶ Dr. Fozia Naseem, Dr. Farhana Nosheen & Dr. Nazia Malik, "Women Economic Empowerment in Pakistan: A Critical Analysis of Legal Framework," *Pakistan Journal of Social Research* 3, No. 3 (2021), 86 in 77-88, accessed December 10, 2024, <https://pjsr.com.pk/wp-content/uploads/2021/09/8.-Vol-3.-Issue-3.-Naseem-Nosheen-Malik-Women-Economic-Empowerment-in-Pakistan.pdf>.

¹⁷⁷ See e.g. Iftikhar Cheema et al. *Benazir Income Support Programme: Evaluation report* (UK: Oxford Policy Management Limited, 2020).

income, especially for widows, divorced women, and women from marginalized communities who may otherwise face significant barriers in asserting their inheritance rights.¹⁷⁸

Through this program, women are provided with the financial resources necessary to access legal and administrative support when pursuing their property claims. This is especially important in cases where women face coercion or familial pressure to relinquish their inheritance. The financial support from BISP empowers women to navigate inheritance disputes, hire legal counsel, and manage other logistical aspects of claiming their rightful share of family property.¹⁷⁹ Moreover, BISP's targeting mechanism ensures that the benefits reach women who are most vulnerable, thus contributing to gender equity in access to resources and economic opportunities.

In addition to direct financial assistance, BISP has helped raise awareness about women's legal rights, including their right to inherit property. This outreach can lead to greater legal literacy among women and help them assert their inheritance rights in the face of cultural practices that may otherwise deny them access to property. Through its poverty alleviation efforts, BISP indirectly supports women in securing their inheritance rights and enhancing their socioeconomic status.

4.5.2 National Rural Support Program (NRSP)

The National Rural Support Program (NRSP) is another important initiative that supports women's economic empowerment in Pakistan, particularly in rural areas. Established in 1991, NRSP focuses on poverty alleviation and community development, with an emphasis on empowering rural women through microfinance and community-driven development programs. NRSP offers women access to

¹⁷⁸ Durre Nayab and Shujaat Farooq, "Effectiveness of Cash Transfer Programmes for Household Welfare in Pakistan: The case of the Benazir Income Support Programme," *The Pakistan Development Review* 53, no.2 (2014), 148 in 145–174, accessed December 11, 2024, <https://thepdr.pk/index.php/pdr/article/view/2607/3651>.

¹⁷⁹ Ibid, 149.

financial services, including microfinance loans, which enable them to start small businesses, improve their agricultural productivity, or acquire assets such as land.¹⁸⁰

The microfinance loans provided by NRSP are particularly significant in the context of inheritance rights, as they allow women to secure financial independence and assert ownership over property, including inherited land.¹⁸¹ In many rural areas, women face social and cultural barriers that prevent them from inheriting land or property from their parents or husbands. By offering women the resources to purchase land or improve their living conditions, NRSP empowers women to assert their ownership rights and overcome the financial dependency that often results from being denied their inheritance.

Additionally, NRSP's programs include training and capacity-building initiatives that focus on improving women's financial literacy, enabling them to understand and manage property and assets more effectively.¹⁸² This knowledge can be crucial when navigating inheritance disputes or negotiating their rightful share of family assets. NRSP also works to raise awareness about women's legal rights, including their right to inherit property, by organizing community meetings and workshops. By integrating legal literacy into its economic empowerment programs, NRSP contributes to women's overall empowerment, enabling them to assert their property rights within a patriarchal and often discriminatory societal structure.

¹⁸⁰ See NRSP, *Gender and Development Policy*, Policy Report by National Rural Support Program (2017/18), accessed December 15, 2024, <https://nrsp.org.pk/policy-documents/NRSP-Gender%20Policy%20and%20Action%20Plan.pdf>.

¹⁸¹ See NRSP, *23rd Annual Progress Report: Scalling-up Social Mobilization*, Report by National Rural Support Program (2016-17), accessed December 15, 2024, <https://nrsp.org.pk/publications/Annual-Reports/NRSP-Annual-Report-2016-17.pdf>.

¹⁸² See NRSP, *28th Annual Progress Report: Holistic Development*, Report by National Rural Support Program (2021-22), accessed December 15, 2024, <https://nrsp.org.pk/publications/Annual-Reports/NRSP-Annual-Report-2021-22.pdf>.

4.5.3 The Interplay between Socioeconomic Programs and Women's Inheritance Rights

Both BISP and NRSP play an instrumental role in addressing the intersection between women's socioeconomic status and their ability to claim inheritance. In a society where women often face significant barriers in accessing property and inheritance, these programs provide a crucial safety net. Women who are financially empowered through BISP or NRSP are better equipped to engage with legal and administrative systems to assert their rights, challenge discriminatory practices, and secure their rightful inheritance.¹⁸³ Moreover, these programs contribute to shifting societal attitudes by enhancing women's financial independence and social status, which can help break down entrenched cultural norms that restrict women's access to inheritance.

In the broader context of women's inheritance rights, both BISP and NRSP represent a holistic approach to empowering women. While legal reforms and institutional mechanisms play a crucial role in ensuring women's legal entitlements, socioeconomic programs provide the financial and educational support necessary for women to exercise those rights. These initiatives, therefore, form an essential part of the broader effort to eliminate gender-based disparities in property ownership and inheritance in Pakistan, ultimately fostering a more inclusive and equitable society.

4.6 Critical Analysis

The legal landscape for women's inheritance rights in Pakistan reflects both progress and persistent challenges. Landmark laws such as the Muslim Family Laws Ordinance, 1961, and the Enforcement of Women's Property Rights Act, 2020, demonstrate the state's commitment to safeguarding women's property rights. These laws provide mechanisms for dispute resolution, protection against coercion,

¹⁸³ See e.g. Ijaz Nabi, "Two Social Protection Programs in Pakistan," *The Lahore Journal of Economics* 18 (2013): 283–304, accessed December 16, 2024, https://lahoreschoolofeconomics.edu.pk/assets/uploads/lje/Volume18/13_Ijaz_Nabi1.pdf.

and swift restitution of property. Similarly, provincial acts, such as those enacted in Punjab and Khyber Pakhtunkhwa, ensure localized enforcement and penalties for violations.

However, despite these progressive laws, the practical realization of inheritance rights remains limited. Social norms often prioritize male heirs, sidelining women's legal entitlements. Furthermore, the lack of awareness among women about their rights, coupled with the intimidation and harassment they face, undermines the effectiveness of these legal protections. Bureaucratic hurdles, including corruption and inefficiencies in land revenue departments, exacerbate the problem, leaving many women unable to enforce their rights despite legal recourse being available.

Institutions such as the National Commission on the Status of Women (NCSW) and provincial commissions have made commendable efforts to promote legal awareness, monitor compliance, and advocate for gender-sensitive reforms.¹⁸⁴ Their awareness campaigns and complaint mechanisms have provided a platform for women to voice their grievances. Moreover, technological innovations like the Land Revenue Management Information System (LRMIS) in Punjab have increased transparency and reduced opportunities for fraud in property transactions. Despite these initiatives, institutional challenges persist. Many women remain unaware of the available resources or are unable to access them due to societal and logistical constraints. The effectiveness of these commissions is also hindered by limited budgets, bureaucratic delays, and weak enforcement mechanisms, which allow violators to act with impunity.

Programs such as BISP and NRSP provide crucial support for women's economic empowerment, indirectly strengthening their ability to claim inheritance rights. By offering financial

¹⁸⁴ Afiya S. Zia, *A Policy Framework for Women's Equal Rights: Issues, Concerns and Recommendations for Gendered Policy: Study for the National Commission on the Status of Women, Pakistan, June 2010* (Islamabad: National Commission on the Status of Women, 2010), 17-18.

assistance and microfinance loans, these initiatives enable women to navigate legal and administrative challenges, hire legal counsel, and assert their rights. Additionally, training programs aimed at improving women's legal literacy have raised awareness about their inheritance rights, contributing to gradual shifts in societal attitudes. However, the impact of these programs is limited by their reach and scale. Rural and marginalized women, who are most vulnerable to inheritance-related injustices, often remain excluded due to geographical, social, and logistical barriers. Moreover, while these programs address economic empowerment, they do not directly tackle the deep-rooted cultural biases that prevent women from asserting their inheritance rights.

One of the most significant challenges is the entrenched patriarchal mindset that views property inheritance as a male prerogative. Many families continue to exclude women from inheritance under the guise of family honor or financial stability. Religious misinterpretations further compound this issue, as traditional customs often override Islamic injunctions that clearly mandate women's shares in inheritance. Efforts to address these cultural barriers have been piecemeal and insufficient. While awareness campaigns and legal literacy programs have made some progress, societal transformation requires a sustained and multi-faceted approach involving community leaders, religious scholars, and educational institutions.

4.7 Conclusion

This chapter underscores the complex interplay of legal, institutional, and socio-cultural factors influencing women's inheritance rights in Pakistan. On the one hand, significant legal and institutional progress has been made, with the enactment of robust laws and the establishment of mechanisms to enforce them. Socioeconomic programs like BISP and NRSP have further strengthened women's capacity to assert their rights, paving the way for greater economic independence. On the other hand,

the practical realization of these rights remains constrained by entrenched cultural norms, bureaucratic inefficiencies, and a lack of awareness among women. While laws exist to protect women's inheritance rights, their enforcement is often weak, and societal attitudes continue to favor male heirs.

Addressing these challenges requires a holistic approach that combines legal reforms, institutional strengthening, and cultural transformation. Awareness campaigns must be scaled up to educate women and communities about inheritance rights, while technological innovations like digital land records should be expanded nationwide. Most importantly, sustained efforts are needed to challenge patriarchal norms and promote gender equity, ensuring that women can access and enjoy their rightful inheritance. Only by bridging these gaps can Pakistan move closer to achieving true gender equality and social justice.

CONCLUSION AND RECOMMENDATIONS

Conclusion

The evolution of inheritance rights in Pakistan reveals a complex historical and legal trajectory deeply influenced by colonial interventions, entrenched patriarchal norms, and the gradual development of modern legal frameworks. During the colonial era, British administrators selectively codified customary laws, often reinforcing patriarchal structures that systematically excluded women from inheritance and property ownership. Instruments such as *wajib-ul-arz* and *rivaj-i-am* institutionalized these exclusions, undermining the equitable inheritance principles of Islamic law. By imposing English legal codes, the colonial administration disrupted Sharia-based property rights, creating legal ambiguities and fostering socio-religious discontent that marginalized women's rights—a legacy that continues to shape contemporary gender dynamics in Pakistan.

Post-independence, Pakistan sought to address these historical injustices through legal reforms aimed at securing women's inheritance rights in line with Islamic principles and constitutional guarantees. Landmark legislation, such as the Muslim Personal Law (Shariat) Application Act of 1961 and the Enforcement of Women's Property Rights Act of 2020, marked significant steps toward gender equality. However, despite robust legal frameworks and progressive judicial interventions—particularly by the Supreme Court and provincial high courts—the implementation of inheritance laws remains constrained. Cultural resistance, deeply entrenched patriarchal attitudes, and procedural inefficiencies continue to impede women's ability to claim their rightful shares, especially in rural areas where awareness of legal rights is limited.

Efforts to bridge the gap between legislation and implementation have been complemented by socioeconomic programs such as the Benazir Income Support Program (BISP) and the National Rural

Support Program (NRSP). These initiatives aim to empower women economically and socially, equipping them with the means to assert their inheritance rights. However, these programs must be paired with a stronger focus on legal literacy, technological advancements like digital land records, and institutional reforms to combat corruption and bureaucratic delays.

Ultimately, achieving gender equality in inheritance rights in Pakistan requires a holistic approach that combines legal, institutional, and societal transformation. The challenges of cultural resistance and patriarchal norms must be addressed through sustained awareness campaigns, community engagement, and education. Furthermore, enforcing women's inheritance rights requires a strengthened judicial system and proactive governance to ensure that legal provisions translate into tangible empowerment. Only by dismantling structural barriers and fostering a culture of gender equity can Pakistan fulfill its constitutional and religious commitments to justice, ensuring that women are recognized as equal stakeholders in societal progress and economic development.

To align with Islamic principles and modern standards of gender equality, comprehensive revisions of existing inheritance laws are necessary. The government should consider amending the Muslim Personal Law (Shariat) Application Act, 1937, to remove any discriminatory clauses and explicitly guarantee equal inheritance rights for women. This reform should be complemented by the introduction of new laws that reinforce women's property rights and provide clear guidelines for the distribution of inheritance.

Key Findings of the Study

1. The study highlights that British colonial rule played a pivotal role in shaping inheritance rights in South Asia. By selectively codifying customary laws, the colonial administration reinforced patriarchal structures, systematically denying women access to inheritance. Instruments like *wajib-*

ul-arz and *rivaj-i-am* institutionalized these exclusions and preserved male-dominated kinship systems.

2. The introduction of English legal principles further disrupted Islamic inheritance laws, which had traditionally guaranteed women defined property rights. This imposition diluted Sharia-based frameworks, created legal ambiguities, and fostered socio-religious discontent, marginalizing women's inheritance rights.
3. Following independence, Pakistan undertook significant legal reforms to address these historical injustices. Laws such as the Muslim Personal Law (Shariat) Application Act (1961) and the Enforcement of Women's Property Rights Act (2020) were introduced to safeguard women's inheritance rights in accordance with Islamic principles.
4. Despite progressive legislation, the implementation of women's inheritance rights remains inconsistent due to deeply entrenched patriarchal norms, societal resistance, and procedural inefficiencies. This is particularly pronounced in rural areas, where cultural barriers and lack of legal awareness prevent women from asserting their rights.
5. The judicial system has played a critical role in advancing gender equality by interpreting and enforcing inheritance laws. The Supreme Court and provincial high courts have emphasized the inviolability of women's inheritance rights as ordained in Islamic law.
6. Institutional and socioeconomic efforts complement legal reforms. Programs like the Benazir Income Support Program (BISP) and the National Rural Support Program (NRSP) have empowered women by improving their economic independence and raising awareness about property rights.

7. However, challenges persist in the form of cultural resistance, corrupt practices, and bureaucratic inefficiencies in land administration systems. These barriers continue to undermine the effective enforcement of women's inheritance rights.
8. The study concludes that achieving gender equality in inheritance rights requires a holistic approach. This includes strengthening legal mechanisms, implementing technological innovations like digital land records, and launching large-scale awareness campaigns to educate women and communities.
9. Addressing these challenges is essential, as women's inheritance rights are closely tied to their economic empowerment, social status, and overall gender equality. Ensuring these rights will contribute to justice, equity, and broader societal progress in Pakistan.

Recommendations

1. Strengthening Judicial Mechanisms and Enforcement

Enhancing the judiciary's capacity to address women's inheritance cases is essential for ensuring justice and gender equality. Specialized courts or tribunals should be established to expedite inheritance disputes, ensuring a swift and focused resolution process. Additionally, appointing more female judges can create a supportive and sensitive environment for women seeking legal recourse. Expanding free legal aid services, particularly for disadvantaged women, will reduce barriers to justice and empower women to assert their inheritance rights without fear of financial or societal pressures.

2. Simplifying Legal Procedures

Complex legal procedures and bureaucratic inefficiencies hinder women from claiming their inheritance. The mutation process under the Land Revenue Act must be simplified to ensure women's names are automatically recorded in property records. The Succession Act (1925) should

be amended to streamline the issuance of succession certificates, making the process accessible and efficient, particularly for rural women. Additionally, inheritance transactions should be made transparent and mandatory under the Registration Act (1908) to prevent fraud and unlawful deprivation of women's rights.

3. Public Awareness and Legal Education Campaigns

Public education and awareness campaigns are critical to empowering women and challenging societal norms. The government, in partnership with civil society organizations, should launch targeted campaigns to educate women and communities about inheritance laws, legal processes, and available legal assistance. These campaigns must be tailored for rural and marginalized communities, where patriarchal norms are most entrenched. Incorporating legal awareness into school curricula and community programs will foster a long-term cultural shift towards recognizing and respecting women's inheritance rights.

4. Integration of Religious and Legal Frameworks

Collaboration with religious leaders and scholars is vital to counter cultural practices that undermine women's rights. Religious teachings should emphasize women's inheritance rights as a divine obligation under Shariah, aligning with legal provisions that protect gender equality. Training programs for religious leaders should focus on interpreting and promoting Islamic inheritance laws in a manner that supports women's rights. This approach can help bridge the gap between cultural resistance and religious principles, ensuring women receive their rightful inheritance.

5. Legislative Reforms

Addressing legal gaps through targeted amendments will strengthen women's inheritance rights. Laws such as the Islamic Family Law Ordinance (1961) should explicitly address grandchildren's

inheritance rights and ensure proper documentation procedures for women's property ownership. Under the Criminal Law (Amendment) Act (2011), penalties for depriving women of inheritance must be enhanced, and strict enforcement mechanisms should be introduced to combat coercive practices. Additionally, legal provisions under the Succession Act and National Accountability Ordinance should penalize corruption and manipulation in inheritance registration processes.

6. Protection Against Coercion and Fraud

To address coercion and fraudulent practices that deprive women of their inheritance, new legal safeguards must be enacted. These laws should criminalize undue pressure and fraud in inheritance matters, ensuring that women's consent to waive inheritance rights is voluntary, well-informed, and made with legal representation. Proactive enforcement mechanisms are necessary to ensure that women are not coerced into forfeiting their rightful shares.

7. Technological and Institutional Strengthening

Introducing technological solutions like nationwide digital land records will enhance transparency and reduce manipulation in property registration processes. Recruitment of female staff in revenue departments is also recommended to provide a more supportive and culturally sensitive environment for women navigating property claims. Establishing a centralized oversight body to monitor the implementation of inheritance laws and collect data on disputes will help identify gaps and inform future reforms.

8. Capacity Building for Legal Practitioners

Continuous training programs for judges, lawyers, and legal aid workers are essential to ensure the proper application of laws protecting women's inheritance rights. These programs should emphasize the nuances of Islamic and Pakistani inheritance laws, focusing on gender-sensitive interpretations and practices. Standardizing legal procedures across jurisdictions through

professional development programs will improve consistency and effectiveness in handling inheritance cases.

9. Socio-economic Empowerment Initiatives

Legal reforms must be complemented by socioeconomic empowerment initiatives that provide women with the financial resources and confidence to assert their inheritance rights. Programs such as the Benazir Income Support Program (BISP) and National Rural Support Program (NRSP) should integrate legal awareness training, equipping women with the knowledge and means to seek justice. Financial incentives or support mechanisms can also be introduced to encourage women to pursue legal recourse without fear of familial or financial consequences.

10. Engagement with International Human Rights Standards

Aligning Pakistan's legal framework with international human rights treaties, such as CEDAW, will reinforce the country's commitment to promoting gender equality. Collaboration with international human rights organizations can introduce best practices and innovative solutions for protecting women's inheritance rights. By integrating these principles into domestic law, Pakistan can strengthen its legal and moral standing in upholding women's rights.

11. Cultural and Societal Transformation

To achieve long-term change, targeted efforts must address cultural resistance to women's inheritance rights. Awareness campaigns should challenge patriarchal norms, particularly in rural areas, using media, community engagement, and success stories to inspire societal change. Local community leaders and elders should be actively involved in advocating for women's inheritance rights, ensuring cultural acceptance of legal and religious obligations.

12. Monitoring and Evaluation

A comprehensive monitoring framework must be established to evaluate the implementation of

inheritance laws across regions. Regular progress reports and statistics on women's inheritance cases will help identify areas for improvement and ensure accountability in enforcement processes. Data-driven insights will inform further reforms and provide evidence-based solutions to the challenges women face in claiming their inheritance.

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