

## ISLAMIC LAW OF INHERITANCE: AWARENESS AMONG WOMEN OF THE PUNJAB

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Inheritance laws are an important part of a state's legislature. Awareness about the existing policies governing any matter plays a pivotal role in the successful implementation of those laws, and empowerment of the target group. The present study is an attempt to explore Islamic law of inheritance along with the extensive field work to analyze the awareness among the women of Punjab about their right of inheritance. The study follows the ontological stance of interpretive school of thought and epistemological stance of social constructionist. Case study design has been adopted to execute the study plan. A sample of 30 women was selected through theoretical sampling technique. A technique of thematic analysis is being used for data analysis. Findings of the study indicate a major dilemma facing the Pakistani society, which is lack of knowledge and awareness regarding Shariah law and state legislature due to rampant illiteracy and dominant role of custom and culture which greatly affects utilization of female friendly policies. The study result also highlighted the role of religious leaders and family in forming popular opinions, and believes that their utilization in creating mass awareness with regards to female inheritance rights is instrumental and thus it should be encouraged.

**Keywords:** Islam, Inheritance, Right, Women, Awareness, Punjab

### Introduction:

Inheritance laws are an important part of a state's legislature. It is a source which assures equitable transfer of a deceased's resources. In most of the cases, these inheritance shares are a major source of sustenance for the younger generations. Its significance is further augmented in developing and agrarian economies; in countries like Pakistan, the livelihoods of a large number of people dependent on the inherited farms and businesses. Since Pakistan is an Islamic state, its law of inheritance has been established according to the directives of the Holy Quran and Sunnah. Though the Islamic law deals with matters of inheritance in an exhaustive manner its practice in Pakistan is much different; women are often deprived of this fundamental right especially when it comes inheritance of immovable assets i.e. land.<sup>1</sup> The susceptibility of women for numerous reasons has been obstructing them in the exercising their

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right to inheritance; viz.- patriarchal set-ups, misinterpretation of the divine mandate, inadequate implementation of the land laws.<sup>2</sup> This phenomenon of deprivation is deeply rooted in the country's cultural practices underpinned by its patriarchal setup. Cultural practices such as considering dowry as an alternative to inheritance often have nothing to do with religious commandments, which can be seen in case of West Bengal<sup>3</sup> and China<sup>4</sup> where female inheritance is denied on the basis of a similar reasoning.

The present article is an attempt to explore the Islamic Laws pertaining to inheritance in general and women's right of inheritance in specific. It's twofold in nature with its first part dealing with Islamic laws of inheritance through extensive desk review and the latter, is based on empirical research regarding awareness of women of Punjab about their inheritance rights. To deal with the first part of desk review the four basic sources of inheritance in Islam along with state law were explored. To investigate the second part of empirical study the scientific method of qualitative research was used. Scientific research methods help to unearth the reality through logic and empirical evidence. There are two major schools of thought under scientific research methods; positive and interpretive. Positive school of thought is closer to the natural sciences as it looks for scientific objectivity and considers humans to be the rational beings who with their knowledge and observation discover casual laws. Positive school of thought follows deductive reasoning to uncover the truth through quantitative research methods and believes in ultimate truth while the interpretive school of thought goes along inductive reasoning with qualitative research methods and believes that reality is viable and socially constructed. The basic purpose of the interpretivist school of thought is to understand the social meaning in context and it believes in human agency and subjectivity.<sup>5</sup> The very nature of present study's inquiry deals with the subjective variable of awareness amongst the women of Punjab. The philosophical stance of interpretivist school of thought was best suited to this type of research inquiry. Every step of this research study, from research questions- to the analysis was guided by the ontological stance of interpretive school of thought and the epistemological stance of social constructionist. To execute the study plan case study method was used. Thirty women were selected from Lahore, Mianwali and Muzzafargarh by adopting the

theoretical sampling method. A semi structured interview guide was used as a tool of data collection. The Data was collected from in-depth interviews as it is one of the best methods to gauge individual voices and personal experiences.<sup>6</sup>The component of awareness is further divided into the following themes:

- i) Knowledge about women's right of inheritance,
- ii) Clear understanding about women's right of inheritance in Islam,
- iii) Would women have their shares on their names,
- iv) Should they be allowed to manage their property by themselves?
- v) Sources of awareness about their rights of inheritance.

At first the in- depth interviews were transcribed carefully and verbatim transcripts were made. The transcripts were then used in analysis to understand the emic perspective of the study (the viewpoint of the study: participants in their own words). Later, the data was made anonymous by giving fictitious names to the participants in order to fulfill the ethical considerations and to assure the safety of the participants.<sup>7</sup>Then the data were categorized based on themes which rose from the responses, similar phrases and concepts to explore the component of awareness among the women of Punjab. Basically a pure qualitative technique of thematic analysis was used to draw the conclusion.

#### **Sources of Islamic Law of Inheritance:**

There are four major sources of Islamic law. The Quran, Hadith and Sunnah of Prophet (salalallahohalahewasalam) (the actions and sayings of the Prophet), Ijma (concurrence of the opinions of the Prophet's companions and disciples) and Qiyas which is an analogical deduction derived from the comparison of the first three sources when they do not apply to a particular case. All of these four lay down the foundation of the Islamic law of inheritance.<sup>8</sup>

#### **Islamic Concept of Inheritance Explained in the Holy Quran and Sunnah:**

The Holy Quran is seen as the ultimate source of guidance and knowledge in Islam. It defines inheritance as the automatic transfer of possessions by which the estate of deceased person transfers to the heirs as successors. The law of inheritance is formulated in Islam such that property left by the deceased cannot be

concentrated in one place. It is distributed in such a way that all near relatives get their share first. In the absence of nearer kin, the property would be transferred to the next kin (Maududi, 1960)<sup>9</sup>.

In this regard, the primary and most noteworthy instruction in the Quran with regards inheritance is offered in *Sūrat l-Baqarah*:

*“It is prescribed for you, when death approacheth one of you, if he leaves wealth, that he bequeath unto parents and near relatives in kindness. (This is) a duty for all those who ward off (evil).”*<sup>10</sup>

The concept of inheritance is further supported by *Sūrat l-Māidah*: *“O ye who believe! Let there be witnesses between you when death draweth nigh unto one of you, at the time of bequest - two witnesses, just men from among you, or two others from another tribe, in case ye are campaigning in the land and the calamity of death befall you. Ye shall empanel them both after the prayer, and, if ye doubt, they shall be made to swear by Allah (saying): We will not take a bribe, even though it were (on behalf of) a near kinsman nor will we hide the testimony of Allah, for then indeed we should be of the sinful.”*<sup>11</sup>

Both the quoted verses show how much emphasis is placed by Islam on immediate distribution of property among the relatives of the deceased.

According to Islamic law of inheritance, there is no distinction between movable and immovable property or between familial and self-acquired property. For claiming inheritance the only requirement is kinship with deceased person. In Islam the right of an heir either apparent or presumptive comes into existence for the first time on the death of ancestor.<sup>12</sup> It is evident from Quranic teachings that inheritance is not a birth right but it shall only be claimed after the ancestor's death. Furthermore, claiming inheritance is a right of both male and female heirs and or relatives of the deceased according to their shares designated by Islam. The shares of property as determined by Quran should not be altered as commanded in *An-Nisā*(4: 33) and:

*“And unto each We have appointed heirs of that which parents and near kindred leave; and as for those with whom your right hands have made a covenant, give them their due. Lo! Allah is ever Witness over all things.”*<sup>13</sup>

**Islamic way of Succession and Administration of Deceased's Property:**

The Holy Quran has dealt with the matters regarding inheritance comprehensively by defining the shares of kinsmen in accordance of relationship with the deceased. According to Islamic law, the estate of a deceased Muslim is to be applied successively in many matters as laid down by Islam: in Payment of (1) the deceased's funeral expenses; (2) expenses of obtaining probate, letters of administration, or succession certificates; (3) wages due for services rendered to the deceased within three months next preceding his/her death by any laborer, artisan or domestic servant, (4) other debts of the deceased according to their respective priorities (if any); (5) legacies not exceeding one-third of what remains after all the above payments have been made. The remaining is to be distributed among the heirs of the deceased according to the law of the sect the deceased belonged to, at the time of death.<sup>14</sup>

#### Classes of Heirs According to Sunni Law of Inheritance:

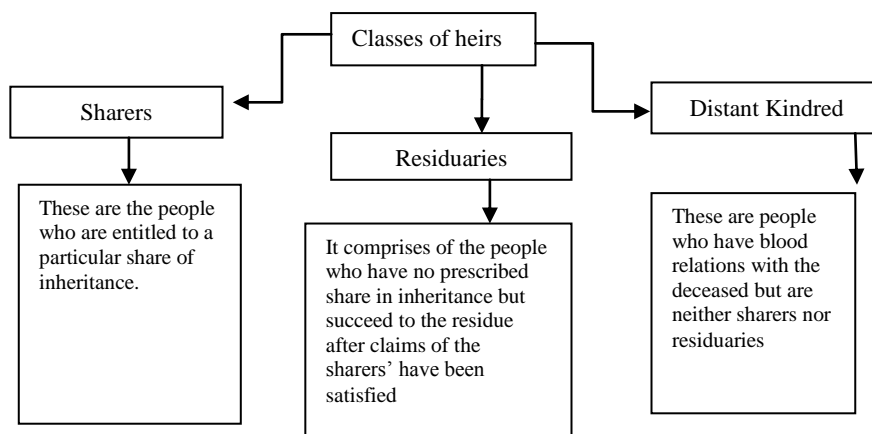


Figure 1: Classes of heirs in Sunni law of inheritance

#### Women's Right of Inheritance according to Islam:

In The Holy Quran, SuratAn-Nisa explains about inheritance in a just manner that is due to each individual, male and female. This chapter of The Quran very clearly specifies that women should no longer be treated as chattels and commodities, but as individuals, they have the legal right to inherit. It is enjoined:

*"O ye who believe! It is not lawful for you forcibly to inherit the women (of your deceased kinsmen)"*<sup>15</sup>

Contrary to pre-Islamic practices (where women, slaves and minors could never inherit), Islam not only recognizes women as free individuals, but also gives legal insight regarding their right to inherit property.

The Quran mentions this plainly in Al- Nisa

*“Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much - a legal share.”*(Surat An-Nisā’- 4:7)<sup>16</sup>

Those fix and determined shares of relatives are described in the next verses of SuratAn-Nisa:

*“Allah chargeth you concerning (the provision for) your children: to the male the equivalent of the portion of two females, and if there be women more than two, then theirs is two-thirds of the inheritance, and if there be one (only) then the half. And to each of his parents a sixth of the inheritance, if he have a son; and if he have no son and his parents are his heirs, then to his mother appertaineth the third; and if he have brethren, then to his mother appertaineth the sixth, after any legacy he may have bequeathed, or debt (hath been paid). Your parents and your children: Ye know not which of them is nearer unto you in usefulness. It is an injunction from Allah. Lo! Allah is Knower, Wise.”*<sup>17</sup>

In the very next verse the shares of spouses are very clearly defined:

*“And unto you belongeth a half of that which your wives leave, if they have no child; but if they have a child then unto you the fourth of that which they leave, after any legacy they may have bequeathed, or debt (they may have contracted, hath been paid). And unto them belongeth the fourth of that which ye leave if ye have no child, but if ye have a child then the eighth of that which ye leave, after any legacy ye may have bequeathed, or debt (ye may have contracted, hath been paid). And if a man or a woman have a distant heir (having left neither parent nor child), and he (or she) have a brother or a sister (only on the mother's side) then to each of them twain (the brother and the sister) the sixth, and if they be more than two, then they shall be sharers in the third, after any legacy that may have been bequeathed or debt (contracted) not injuring (the heirs by willing away more than a third of the heritage) hath been paid. A commandment from Allah. Allah is Knower, Indulgent.”*<sup>18</sup>

The shares of distance kindred are further explained in last verse of Surat An-Nisa:

*“They ask thee for a pronouncement. Say: Allah hath pronounced for you concerning distant kindred. If a man die childless and he have a sister, hers is half the heritage, and he would have inherited from her had she died childless. And if there be two sisters, then theirs are two-thirds of the heritage, and if they be brethren, men and women, unto the male is the equivalent of the share of two females. Allah expoundeth unto you, so that ye err not. Allah is Knower of all things.”<sup>19</sup>*

Although Islam further elaborates about the rights of all heirs including the residuary class, the researcher’s major focus is on the right to inheritance of women as nearest kin of the deceased. The figures below briefly illustrate shares of women in inheritance as mother, daughter, sister and wife.

Figure 2: Shares of women as nearest kin of the deceased in Sunni

Relationship with the deceased	Share in property (In accordance with Sunni law)
<b>Daughter</b>	In case of brother(s): 1/2 of the share of the brother. In case of only daughter(s): 2/3 of the total inheritance. The remaining is directed towards the residuary class.
<b>Wife</b>	In case of children: 1/8 <sup>th</sup> of the property. In case of no children: 1/4 <sup>th</sup> of the deceased’s property.
<b>Mother</b>	Inherits 1/6 <sup>th</sup> of the property in some cases and 1/3 <sup>rd</sup> in others.

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### Findings of the study based on the empirical data

Women’s awareness about their right of inheritance is the indispensable and absolute step which can help them protect and further practice their right to inheritance. In order to investigate the awareness among the female respondents of Punjab a semi-structured interview guide was used, which was guided by five main probes (1) basic knowledge (2) Clear understanding (3) ownership on their names (4) basic notion of control and access (5) basic sources of awareness about the women’s right of inheritance as prescribed by Islam.

Pakistan is an Islamic state and follows the Islamic law of inheritance. The Islamic law of inheritance is based upon the teachings of the Holy Quran which are further explained by Hadith and Sunnah of Holy Prophet (salalallahohalahewasalam), however the basic share of each individual is determined by the Quran and these shares are absolute. The study results revealed that almost all women were aware of their Islamic rights of inheritance, but the degree of awareness varied from respondent to respondent. All female respondents knew that a woman's share, according to Islamic jurisprudence is half of that of a man. However, it was seen that level of awareness was higher among educated and women belonging to religious backgrounds as compared to illiterate women and those from Mianwali and Rahim Yar Khan, where very few women had a clear understanding of women's right of inheritance as defined by Islam. This was because in areas of low education man is considered to have a higher position in the society because of his role as breadwinner. This concept is so deeply rooted among the people that they often confuse it with the Islamic point of view as was widely observed by the researcher. Furthermore, due to the patriarchal mindset of society women were compelled to withdraw their claim from agricultural land as to them the idea to inherit land is an alien concept. The data revealed that the matter of the denial of inheritance rights of women was never felt as a practice contrary to the Islamic teachings; rather denial was attached to the biological weaknesses which were according to the majority of respondents endorsed by the religion. During in-depth interviews and focus group discussions it was felt that women had very little knowledge about the real teachings of Islam as one respondent from Mianwali said *"Property and inheritance issues are men's domain so we need not to interfere in such matters"* Revealing that in many cases women themselves are conformity with the norms which deprive them from their right to inherit.

While another respondent from Rahim Yar Khan told *"I don't have enough knowledge about Islamic laws of inheritance"* She further explained that *"woman has nothing to do with the land as they are ordered by Allah to stay inside their homes"*. However, the level of awareness about women's right of inheritance in Islam was much higher among the female respondents from Lahore. Although due to better educational levels and less restricted social

mobility, women were well aware of their Islamic rights, but still many of them were still entangled in stereotypical beliefs about women's right of inheritance as one of the respondents from Lahore expressed her views. *"Although Islam has empowered women by granting them rights to inherent property, but how we can deviate from custom and culture? How we can face detachment from our natal families...?"* In short the data clearly indicated that the clear understanding of women's right of inheritance in Islam is rare among women respondents. Women respondents either in complete ignorance or having awareness about their Islamic rights, in most cases were reluctant to claim their rights.

Awareness about the laws and the legal system is the only concrete step through which women's chances to claim and to gain access and control over their inherited property can be increased, however, the study results indicated that unfortunately awareness level about the laws of inheritance and legal systems were very low with a slight difference in all three selected cities despite different levels of education and different regional backgrounds of the respondents. The data collected from the field showed that the major reason behind the lack of awareness of about Pakistan's legislations related female right to inheritance is embedded in the general perception of women as homemakers. Women are associated with domestic work and are usually kept in the dark about the world outside. This has resulted in a generally low level of knowledge among women about the legal system and their rights which have been ensured by the constitution; especially the occurrence of ignorance about the laws and legal system was high in Mianwali and Rahim Yar Khan. The majority respondents from Mianwali claimed *"kotkechhari tai janaya da kamai"* meaning legal matters and court related issues are men's domain. While a popular perception among women of Rahim Yar Khan was *"Qanoon zabita har ghar da apna Honda ai jehra wad wadera banata ai"* It means that in each family the rules and regulations (which are even taken in terms of law by the women) are decided by the family patriarch. The most unfortunate thing was that these rules and regulations took precedence over the laws made by state in matters like inheritance. At the same time, it was interesting to note that four women from the same area had better knowledge of legal procedures regarding inheritance rights as they were working

as lady health visitors and had frequent interaction with their respective community members. Women from Lahore had a higher level of knowledge about inheritance related laws than those from Mianwali and Rahim Yar Khan, despite their lack of knowledge about proper legal procedures to be followed in this regard. However, it was deeply felt that even educated respondents from Lahore were not interested in acquiring knowledge and had very little knowledge about laws related to inheritance. As a very well educated respondent of this research expressed her views:

*“My knowledge of inheritance is very limited. I only knew about the Quranic verses that deal with inheritance. Secondly, I got my knowledge through some off and on information from religious gatherings and newspapers. Unfortunately, I didn't have enough knowledge about the law and perhaps because of my circumstances, I never felt any need to get some”.* This response clearly illustrates the lack of knowledge among women regarding the law of inheritance in Pakistan and the reasons why women are unenthusiastic to acquire such knowledge.

The data identified three major sources of knowledge about inheritance rights and legal system among the respondents. The most prevalent and popular source of knowledge was mullah and religious gatherings. The knowledge obtained from these sources was quite limited and was confined to the Islamic law of inheritance. The other major source of information about inheritance was the knowledge transmitted through the ancestors. The knowledge which was passed on from one generation to another comprised of Islamic law of inheritance and in rare cases information about legal procedures as well. A third source of information about women was made especially the television shows and dramas, some of which were based upon inheritance issues. The newspaper also acted as a resource of knowledge for a limited number of educated women. It was interesting to note that none of the respondents had access to an authentic source of information. The major reason behind this general lack of awareness was the non - availability of authentic materials in local languages. The data suggested that lower female literacy rates greatly hindered the access of women to such information.

#### **Recommendations on the basis of study results:**

- a. Inheritance is a topic of immense importance in Islam. The Holy Prophet (P.B.U.H) is reported to have said “Learn

about the inheritance and teach it, for it is one half of knowledge, but will be forgotten. This is the first thing that will be taken away from my nation.”<sup>20</sup> This Ahadith sums up the importance of the law of inheritance in Islam and thus it should be taught to people in its true sense.

- b. Even though after amendment of the revenue act the withdrawal of women from inheritance also has to follow a proper procedure, but acceptance of giving this right to women in the society shall also be ensured and promoted through the school curriculum, and other effective sources like mosques and religious scholars to spread the right knowledge about the Islamic law of inheritance.
- c. Role of family in creating awareness about female inheritance rights should also be encouraged as family plays a vital role in ideological development of individuals.
- d. Awareness programs should be further extended to rural areas and knowledge about laws related to female inheritance should also be imparted in local languages.
- e. Women should be trained and appointed as revenue officers as many interviewed women expressed their hesitation to freely contact and interact with male officers due to religious and cultural restrictions. This will take the idea of creating awareness one step forward by enabling women to learn more easily about their access and control over their inherited property.
- f. Government should also form a cell at district level, which would create awareness amongst women about their inheritance rights and guide them regarding the legal matters. This cell would also keep a record about cases reaching the courts regarding female inheritance, and after taking under consideration the fate of those cases the cell would issue its annual reports.

**Conclusion:**

The research was conducted with the basic aim of gauging awareness among women regarding the Islamic laws governing inheritance. Data analysis highlighted that the lack of awareness amongst women about their legal rights has been perpetrated by low level of female education along with the misinterpretation of religious commandments, which is a common practice in patriarchal setups. It was observed during field work that

women themselves consider dowry as an alternative to inheritance and furthermore, have been socialized to believe that the Islamic notion of purdah also encompasses restriction of female mobility and thus women shouldn't have access and control over properties if they own any; making property ownership and control a male dominated affair. Similarly, knowledge about state laws protecting female inheritance, which are based on Islamic guidelines, was also limited. The study recommends utilization of religious leaders in spreading knowledge about inheritance laws owing to the fact that religious gatherings constitute a major source of knowledge for Muslims especially those residing in rural areas. Moreover, mass awareness should be created by disseminating this knowledge in local languages. Most importantly, female literacy should encouraged by establishing strong frameworks supporting these endeavors.

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