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Foreword

Rights are not denied to women. Women do not get what is their right. This statement is conflicting yet is the reality. Women as human beings find place in the scheme of life as promised in religion and in the laws of the land. A very sensitive issue concerning rights of women is the right of inheritance. Right of inheritance is one such right that is denied to women on one pretext or the other in real life. The non-discriminatory rights to equality and justice are to be practiced in letter and spirit. The need to sift the myth from the reality necessitated this important research on Women’s Right of Inheritance and its Implementation. This is an effort to understand this intricate issue and how does it affect lives of women in general. The denial to implement these lawful rights restricts women in having control over their own lives and pressing them to suffer a life of subjugation and humiliation.

This study attempts to clarify the concepts and minimize the ambiguities of understanding. The object is to highlight some of these complexities and create an increased awareness to advance women’s rights within the parameters of jurisdiction. It is expected that this investigation will help in understanding the mechanism that create imbalance and disparities when it comes to dispense inheritance to women. The present research proposes amendments in legal framework for judicious implementation of law. Inequality has created an ambiance of mistrust, as at times the rights of women are forged in the name of traditions and customs. This needs to be corrected. I am hopeful that this extensive research will form the basis for revisiting this serious issue by enhancing understanding, the link of religion and customs in the marginalization of women. This study can also provide a base for strategy and policy change in the area of inheritance laws.

This crucial and important study was made possible under UNDP project for institutional strengthening of National Commission on the Status of Women. This support is deeply appreciated and the Commission remains grateful to Syeda Viqarunnisa Hashmi, the policy Research Officer under UNDP project who carried out this research work with utmost devotion.

I will be failing in my duty if I do not mention the former chairperson Justice (R) Majida Razvi, under whose supervision this research was initiated.

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Chairperson
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Federal Shari’at Court Library

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Acronyms

AGHS Name of an NGO based in Lahore
AJK Azad Jammu and Kashmir
BHUs Basic Health Units
BR Birth Registrar
CEDAW Convention on the Elimination of All Forms of Discrimination Against Women
CLC Civil Law Cases
Co. Company
DIMRC District Inheritance Monitoring and Resource Centres
FANA Federally Administered Northern Area
FATA Federally Administered Tribal Area
FIMRC Federal Inheritance Monitoring and Resource Centres
FSC Federal Shari’at Court
CII Council of Islamic Ideology
IMRC Inheritance Monitoring and Resource Centres
ITR Inheritance Transfer Registrar
MDR Marriage and Divorce Registrar
MFLO Muslim Family Laws Ordinance, 1961
NCSW National Commission on the Status of Women
NWFP North West Frontier Province
NY New York
NADRA National Database and Registration Authority
PLD Pakistan Law Digest
PIMRC Provincial Inheritance Monitoring and Resource Centres
RHCs Rural Health Centres
S or Sec. Section
SC Supreme Court
SCMR Supreme Court Monthly Report
U/s Under Section
UNDP United Nations Development Programme
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18. Julressur v. Uggur (1883) 9 Cal. 725
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24. Muhammad Fikree & 3 others v. Fikree Development Corporation, PLD 1988
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27. Muhammad Siddique v. The State, PLD 2002 Lah.444
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30. Matungini v. Ram Rutton (1892) 19 Cal.289 [F.B.]
31. Mussammat Suraj v. Attar (1922) 1 Pat. 706
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33. Mt. Sahodra v. Ram Babu (1943) 69 I.A. 145, 45 Bom. L.R. 350, 206 I.C. 396,
   (’43) A. PC.10.
34. Munda Chetty v. Timmaju, 1 Mad. H.C. 380
35. PLD 1988 Kar.1969
37. Rameshwar v. Mst Gnpati Devi (1937) Lah. 525
38. Rukhsana Kausar vs. Additional District & Session Judge Khanewal & 11 others,
   2000 CLC 585
40. Sohab Kuli v. Balour Jan, 89 CLC 407
41. Tara v. Krishna (1907) 31 Bom. 495

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42. Toawa v. Basawa (1899) 23 Bom. 229
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45. Vitta v. Chatakondu (1918) 41 Mad.1078
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Executive Summary

Women’s right to inheritance plays a vital role in the socio economic and political empowerment of women folk, but unfortunately women are often denied right to inheritance due to deep-rooted patriarchal system, biased interpretation of divine directives, laws of the land and above all inefficient mechanism for the implementation and enforcement of laws.

Present research study is an attempt to bring clarity in the concept of women’s rights to inheritance in the perspectives of different religions, constitutional guarantees and international human right standards which the Government of Pakistan is under an obligation to ensure. This study investigates the prevalent policy and legal framework, mechanism for the implementation of the law of inheritance in Pakistan, de facto and de jure lacunae therein, prevalent customary practices and their implications for the women of Pakistan. The outcome of this study is the proposed amendments in the existing policy and legal framework to ensure women’s right to inheritance in Pakistan.

The research revealed that the concept of inheritance evolved centuries ago as a deviation from the custom of burying wealth, widows, slaves along with the deceased, and continued to persist strictly under the patriarchal domain. Women’s right to inherit which developed at a much later stage however, was granted under limited circumstances. As for instance in the absence of male legal heir, of different religions viz., Judaism, Christianity, Islam, Hinduism and Zoroastrianism (followed by Parsis), vested in women, a right to inheritance. Owing to deep-rooted patriarchal customary practices and mind-sets, these relevant religious directives were interpreted to the disadvantage of women. Thus women’s right to inheritance, as practiced in Pakistan is quite controversial from a certain perspective. The most recent example of this controversy is Inayat Bibi’s case (PLD 1992 Supreme Court 385). Though Islam is most liberal and explicit on the rights of women particularly inheritance, its injunctions are interpreted in the most conservative manner that strengthens patriarchy rather than equity and justice. The most debatable issues in this context include half share of daughters, disentitlement of the descendents (children) of the pre-deceased child and of non-Muslim relatives. Such issues, have however, been taken care of to quite an extent in other Islamic countries like Egypt, Kuwait, Sudan, Turkey etc. Such initiatives would certainly serve as guidelines for the rest of the countries including Pakistan.

The ‘fundamental rights’ in the Constitution of 1973 guarantee, inter alia, right to property and equality of citizen before the law. It, also calls for bringing all laws in conformity with the Holy Qur’an and Sunnah and to strike down any custom or usage, with the force of law to align it with fundamental rights. The National Policy for Development and Empowerment of Women 2002, also provides for the empowerment of women, removal of inequalities and imbalances in all sectors of socio-economic development and the protection of rights of women.

Though there is no exclusive policy on women’s right to inherit but is in line with the aforesaid Constitutional provisions and relevant laws of National Policy, for instance, Succession Act, 1925, Family Laws Ordinance 1961, that deal with the inheritance rights
of Hindus, Parsis and others, have been enacted. But, no uniform mechanism exists for their implementation.

In Pakistan, the implementation of inheritance laws as to immoveable property is regulated under the West Pakistan Land Revenue Act, 1967 but due to the multiplicity of laws involved therein and lack of close coordination relevant institutions and other concerned functionaries viz., the Revenue Department, Educational Institutions, Nikah Registrar, BHUs/RHCs, NADRA, etc., women’s right to inheritance is often easily evaded. The conditions have aggravated because of numerous discriminatory customary practices, resulting into the following:

1. Discriminatory attitude towards women in general
2. Lack of decision making power especially in respect of the following:

   o Selection of Profession
   Mostly women do not have this freedom (66.6%). The denial of this right is the highest in Baluchistan, Gilgit(FANA) and AJK (96%), followed by NWFP/FATA (56%), Punjab (44%) and Sindh (12%).

   o Selection of Spouse
   Overwhelming majority of marriages are arranged (77.1%) and are endogamous. It is the highest in Baluchistan (96%), followed by Gilgit and AJK (94%), NWFP (65.6%), Punjab (83%), and Sindh (24%). In Baluchistan, the prevailing mode of marriage is walver (involving payment of bride price) (81.5%), while, in other parts of the country, the frequency is comparatively low. As for instance in NWFP/FATA and Sindh it is 6.25% and 1.5%, respectively. The prevalence of exchange marriage (watta satta) has been observed to be the highest in Gilgit (FANA) (17.5%), followed by Punjab (13.5%), Baluchistan (12.5%), NWFP/FATA (12%) and AJK (8.5%). In Sindh, it appeared negligible during the course of survey, but the general perception is that this practice is very much rampant in Sindh also).

   Though Swara/vani, i.e. giving of girl in marriage by way of compensation are commonly reported in Punjab and Baluchistan yet we didn’t come across any such case during survey. This may be because of the fact that this customary practice has since been made a cognizable offence. The people, therefore, feel reluctant to disclose it. Recently the newspapers were full of cases of vani. The Supreme Court has also taken suo moto notice in many such cases and have saved the girls.

   o Independence in Travelling
   About 66.13% women lacked this freedom. In Baluchistan it was absolute (100%), followed by Gilgit (FANA) and AJK (98%), NWFP/FATA (60.8%), Sindh (22%) and Punjab (18%).
Interaction with Other People

About 64.97% women face problem in meeting or keeping contact with other patriarchal set-up. This problem has been observed to be the highest in Baluchistan (100%), followed by Gilgit (FANA) (98%), AJK (95%), Sindh (53%) but negligible in Punjab (3%).

3. As per survey, registration of birth and marriages is mostly avoided in Pakistan. It indicates that the births of about 49.4% of female and 50.6% of male respondents respectively were found unregistered. Similarly, the marriages of 53.21% female and 39.68% male respondents respectively were unregistered.

4. Denial of women’s right of inheritance is generally on multiple pretexts. However, the survey revealed that 40.81% of female respondents did get share in inheritance. However, such women were generally not given control and authority over the property. The women who were either denied share in inheritance or who succeeded in getting their right mostly faced challenges owing to customary practice, complex legal system and procedure.

5. Owing to customary practices mostly women are forced to withdraw their right to inheritance in favour of male family members seemingly voluntarily or under compulsion.

6. The widow loses her right of inheritance, if she remarries outside the family of her deceased husband, prior to getting her share in husband’s inheritance. However, in case a widow has already acquired share and wants to remarry outside her husband’s family, she is mostly made to transfer her share to male family member of her deceased husband.

7. Women face challenges in claiming their right of inheritance, owing to customary practices, lacunae in the prevailing legal framework and procedure. The frequency of the said challenges has been observed to be as follows:

   - **Customary Practices**
     
     Women generally accept the practice of not getting their share in inheritance. Overall ratio is 50.6%, but highest in Baluchistan (100%) followed by Punjab (97%), NWFP/FATA (55%), Gilgit (FANA) (50%), while negligible in Sindh. However, no female respondent in AJK expressed the experience of any such challenge.

   - **Legal Framework**
     
     Due to defective laws, non implementation of laws and lack of awareness, women do not get their share in inheritance. Overall ratio is 38.1%. However, it is maximum in Punjab (85%) followed by NWFP/FATA (75%), Gilgit (FANA) (50%), Baluchistan (12%) and Sindh (07%).

   - **Procedural Impediments**
     
     Due to lack of awareness of procedures and information women do not get their share in inheritance. Overall procedural impediments are 28%,
but again the highest in Punjab (76%), followed by NWFP/FATA (75%) and Baluchistan (17%). No such problem was indicated in Sindh, FANA and AJK.

In view of the discriminatory customary practices and lacunae in the laws and prevailing systems, reforms have been suggested through amendments in the relevant laws. Close coordination between the institutions / functionaries concerned has been considered imperative. The establishment of statutory bodies for the monitoring and supervision of inheritance transfer have also been recommended. The said monitoring bodies at provincial level will also serve as resource institutions for the dissemination of information and creating awareness of women’s right to inheritance among masses and initiating programmes for the capacity building of women to manage their own property.
Chapter 1

Introduction

National Commission on the Status of Women (NCSW), constituted under the Ordinance No. XXIV of 2000, is a recommendatory body vested with a mandate to review all policies, laws, rules and regulations affecting the status and rights of women in Pakistan, and to suggest repeal, amendments or new legislation(s) essential to eliminate discrimination, safeguard and promote the interest of women, achieve gender equality in the light of the constitutional provisions and international human right standards to which the Government of Pakistan is committed.

NCSW realizes the fact that women’s right of inheritance is of vital importance for their socio-cultural and political empowerment. Most of the religions, as well as the prevailing laws of the land give women the right to inherit on the basis of equality and equity and the constitution of Pakistan fully guarantees the same.

Nevertheless, inheritance right is one of the most ignored gender issues owing to biased interpretations of religious directives and deep-rooted patriarchal customary practices denying women their due right. If they are at all given a share in inheritance, often possession and authority over it is denied. This problem is aggravated owing to inadequate policies/laws, inefficient implementation, enforcement system and absence of monitoring mechanism. Lack of political will is also a contributing factor to this situation.

Taking cognizance of the potential infringement of women’s right to inheritance in Pakistan, the NCSW initiated an in-depth research study on the subject. As an outcome of this, the study in hand was conducted by Syeda Viquar-un-nisa Hashmi, Policy Research Officer, NCSW, under the supervision of Justice (R.) Majida Razvi, Chairperson National Commission on the Status of Women. The outcome of the research was shared with the religious scholars, retired judges of the superior courts, lawyers, parliamentarians, public sector officials concerned and civil society representatives and their feedback was incorporated in the report.

The policy research has been substantiated by the national field research conducted by NCSW in six identified regions of Pakistan viz., Punjab, Sindh, Baluchistan, NWFP/FATA, FANA and AJK (complete survey reports are available on NCSW website)1, for reference.

1.1. Objectives

The research study is aimed to achieve the following:

- To assess whether the current policy framework relating to women’s right to inheritance is effective enough to ensure that women get their due share and are empowered enough to exercise their control over the property.

1 See NCSW website http://new.ncsw.gov.pk
• To identify lacunae/shortcomings and resulting anomalies in the prevailing policy/legal framework and their implementation mechanism.

• To formulate policy recommendations for the Government of Pakistan to bring necessary changes/amendments in the said legislation according to the correct interpretation of the Islamic injunctions, ensuring removal of defects and discrimination against women.

1.2. Scope of Research

Initially the scope of the study was very limited but as the research and consultation with the experts progressed, its parameters were extended to ensure comprehensiveness. The revised parameters of the study are as follows:

1. The origin and background of women’s right to inherit.
2. The differences resulting from various religions in the above context and the issues relating thereto.
3. The prevailing policy and legal framework with respect to women’s right of inheritance in Pakistan.
4. The effectiveness of the prevalent policy and legal framework to ensure women’s right of inheritance.
5. The prevailing mechanism for the implementation and enforcement of women’s right to inheritance.
6. The customary practices relating to inheritance.
7. The implications of the lacunae in the policy and legal framework, implementation mechanism and customary practices on the status and rights of women in Pakistan.
8. The demarcation of future strategy.
Chapter 2

Methodology

For a holistic understanding of the issues, the policy research was substantiated by a sociological survey by employing a mix of the quantitative and qualitative methods of data collection. Field survey method was adopted by conducting structured interviews and focus group discussions with adult men and women both. Alongside, in-depth interviews of the key stakeholders i.e. eminent scholars, lawyers, parliamentarians and government functionaries were also conducted.\(^2\) Such a triangulation approach enabled the researcher to complement the data of this study with a comprehensive analysis explaining the complex issues relating to the realization of women’s right to inheritance within the broader traditional, legal and sociological context of Pakistani society.

2.1. Locale

The findings of this study were expected to provide socio-economic parameters for the formulation of national level policy recommendations. The regionwise detail of the selected districts is given in Table 1.

Table 1. Regionwise detail of the Selected Districts of the Countrywide Survey

<table>
<thead>
<tr>
<th>Sr. #</th>
<th>Name of Region</th>
<th>Name of the District</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>NWFP</td>
<td>Peshawar, Charsada, Swabi and Dir</td>
<td>04</td>
</tr>
<tr>
<td>2</td>
<td>FATA</td>
<td>Khyber Agency</td>
<td>01</td>
</tr>
<tr>
<td>3</td>
<td>FANA</td>
<td>Gilgit</td>
<td>01</td>
</tr>
<tr>
<td>4</td>
<td>AJK</td>
<td>Muzaffarabad</td>
<td>01</td>
</tr>
<tr>
<td>5</td>
<td>Punjab</td>
<td>Lahore, Sialkot, Jehlum and Rajanpur</td>
<td>04</td>
</tr>
<tr>
<td>6</td>
<td>Balochistan</td>
<td>Quetta, Kalat, Pishin and Loralai</td>
<td>04</td>
</tr>
<tr>
<td>7</td>
<td>Sindh</td>
<td>Karachi, Dadu, Khairpur Mirs and Badin</td>
<td>04</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>19</strong></td>
</tr>
</tbody>
</table>

2.2. Selection Criteria of the Districts

Alongside the existence of state laws and procedure ensuring women’s right of inheritance, various variables play together to influence it, like socio-cultural norms, values, customs and traditions, literacy, ethnic, tribal and urban/rural background of the people living across the country etc. Therefore, keeping in view the diversity and heterogeneity of the population under study, seven regional divisions were created as homogeneous clusters for further selection of districts. Purposive sampling (random

\(^2\) Chapter 6 give details of the field research findings.
selection of one male or female respondents whose relatives left inheritance) was adopted to give representation to all the seven regions of the country in the sample frame.

Within the regions developed and underdeveloped districts were given due representation. For instance, Peshawar district represented a mix of the multi-ethnic urban and rural population in NWFP. The rest of the districts i.e. Charsada, Swabi, Dir and Khyber Agency represented the rural and tribal areas of the Province. Likewise, Gilgit and Muzaffarabad districts were selected from FANA and AJK respectively representing major urban centres of these regions.

Lahore and Sialkot represented more developed and industrialized northern districts of Punjab province, while Jehlum represented a relatively underdeveloped area. Similarly, Rajanpur was selected from Southern Punjab as an underdeveloped district of Siraiki belt dominantly marked with feudal and tribal culture.

Equal representation was given to predominant Baloch and Pukhtoon areas of the Balochistan Province. Almost all the population living in district Kalat are predominantly Baloch, whereas districts of Pishin and Loralai are largely Pukhtoon areas. Quetta represented a mix of the multi-ethnic nature of the urban population. It included almost all the ethnic communities i.e. Baloch, Pukhtoons, Punjabis, Hazara etc. This area was to study the impact of the two dominant Pukhtoon and Baloch cultures and customs on women’s right to inheritance and its implementation. Similarly, Karachi represented the multi-ethnic urban population of Sindh whereas Badin, Khairpur Mirs and Dadu districts were selected from interior Sindh.

2.3. Sample Frame and Sample Size

Purposive random sampling method was opted for the selection of respondents. In this respect, regardless of their marital status, literacy/urban and rural background men and women living in the 19 selected districts from the entire country were more than 18 years of age and their parents possessed immovable property.

Eminent academicians, religious scholars, parliamentarians, lawyers, key government functionaries and local leaders were also included in the sample frame of the respondents for conducting their in-depth interviews.

As per the objectives of this study, equal representation of both men and women in the sample was mandatory. Accordingly, out of 50 respondents from each selected district an equal proportion of men (25) and women (25) were included in sample size who were prospective inheritors of their fathers’ or husbands’ properties. The regionwise sample size of the respondents for conducting structured interviews, focus group discussions and in-depth interviews is given in table 2.
Table 2. Regionswise Sample Size of the Respondents

<table>
<thead>
<tr>
<th>Sr. #</th>
<th>Name of Regions</th>
<th>Sample Size of Structured Interviews</th>
<th>Total</th>
<th>Focus Group Discussions (FGDs)</th>
<th>Total</th>
<th>In-depth Interviews</th>
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<td></td>
<td></td>
<td>Men</td>
<td>Women</td>
<td></td>
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<td>2</td>
<td>FATA</td>
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<td>100</td>
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<td>5</td>
<td>Punjab</td>
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<td>200</td>
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<td>6</td>
<td>Balochistan</td>
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<td>200</td>
<td>04</td>
<td>04</td>
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<tr>
<td>7</td>
<td>Sind</td>
<td>100</td>
<td>100</td>
<td>200</td>
<td>04</td>
<td>04</td>
</tr>
<tr>
<td>Total</td>
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<td>525</td>
<td>525</td>
<td>1050</td>
<td>21</td>
<td>21</td>
</tr>
</tbody>
</table>

Given this context, one respondent of 18 years and above age per household, whose parents left immovable and moveable property after death, was selected randomly. Out of the total 1050 respondents, 525 men and 525 women were selected from all the 20 selected districts for structured interviews. Two focus group discussions (one for each category of men and women respondents) were carried out in each of the selected districts.

Keeping in view the heterogeneous tribal and socio-economic characteristics of the population under study, structured interviews were mostly conducted in the district headquarters and their suburbs. Total 58 in-depth interviews of the eminent personalities representing different walks of life including the key functionaries of revenue department were also accomplished.

2.4. Preparation and Pretesting of Questionnaire

The questionnaires for use among the respondents in this survey were prepared in English and then translated into Urdu. Guidelines were prepared for in-depth interviews with the experts while worksheets were handed out in focus group discussions.

Questionnaires were pretested in Islamabad with two respondents, before their use in the field.

2.5. Data Collection, Coding & Analysis

The entire data was collected between 4th week of December 2004 to 2nd week of January 2005.

About 1000 questionnaires were processed using SPSS software. Various tables were derived from the questionnaires in order to clarify an understanding of the raw data.
The relevant data procured during the field research was verified by the concerned government functionaries at the district levels with the cooperation of the M/o Local Government, Government of Pakistan, Islamabad.

2.6. **Limitations of Study**

The study was intended to present a comprehensive report on the basis of qualitative and quantitative research methodologies. Taking Gilgit as a representative district as one with socio-cultural diversities, the weather conditions of the winter months discouraged the possibility of carrying out survey in other areas.

Another limitation to conducting this study in the tribal areas, was that these areas are governed by a parallel judicial system like jirgas, and not by laws that are enforceable in the Courts of Pakistan.

2.7. **Research Report, Analysis and Feedback**

The policy research report with recommendations was scrutinized by NCSW ‘analysis unit’ to weigh its effectiveness. The draft report was widely disseminated to the experts including religious scholars, government functionaries, civil society, organizations and academia. Their feedback was incorporated in the report, highlights of which are attached as annexure “E”.

Countrywide consultative meetings with the stakeholders and experts, mentioned above were held, shared the research-based issues with solutions thereof and suggestions were asked for.
Chapter 3

Women’s Right of Inheritance

3.1. Concept of Inheritance

Inheritance in common parlance means money or property derived from one’s parents or ancestor.\(^3\) In legal terms it is the property received from an ancestor under the laws of inheritance or a property that a person receives by bequest or devise.\(^4\)

The rules of inheritance are characteristic of a developed civilization, and are meant to ignore claims outside the direct line. In order to have an understanding of the women's right of inheritance and its implementation in the contemporary age, it is pertinent to observe the historical facts that have a direct bearing on the prevalent customary practices; the details of which are discussed in the following chapters.

3.2. Background of the Concept

According to the Encyclopedia of Religion,\(^5\) the origin of inheritance dates back to the primitive era as a deviation from the customs and religious belief (particularly in Egypt) of burying wealth, widows and slaves along with the deceased, to the practice of substituting ceremonial and valuable objects, thus avoiding human sacrifice. Behind the improvement of this tradition the motive of the heir could be to prevent the reduction of his inheritance. Another aspect would be to prevent personal property from destruction and to pass it only to a near relative. The rules of inheritance and succession progressed in this perspective.

It is difficult to determine how the concept of women’s right to inheritance developed worldwide prior to religious directives. However, history reveals the following concepts in relation to time, custom, tradition and laws of diverse groups:

3.2.1 Women not Entitled to Inherit

Women were not regarded as heirs in Africa, and amongst ancient Arabs and Hindus (the followers of the schools of thought like Baudhayana and Vasishtha). The principle of inheritance was based on the concept of "comradeship in arms". Since men were physically stronger and better fighters, they were entitled to inheritance to the exclusion of women, minors of both sexes and disabled persons.

Another reason for excluding women from their inheritance, in some parts of the world, was that they were regarded as part of the estate to be passed on to heirs in accordance with the regular rules of inheritance. In Africa, Wales, Athens, Hindus (Aryan type family system), Arabia and Israel (during nomadic stage), the independent status of

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\(^3\) Concise Oxford Dictionary, 10th ed, Edited by Judy Pearsall, Oxford University Press
women was not recognized at all. Every woman of the deceased had to be attached by a clear relation to a male protector. Thus, the son or the brother of the deceased would marry the widow of the deceased, except his own mother.

This practice was condemned and prohibited by the Holy Qur’an (more than 1400 years ago), in the following words:

“O ye who believe! Ye are forbidden to inherit women against their will.”

3.2.2. Women’s entitlement to inheritance subject to conditions or under limited circumstances

The practice of giving women the right to inherit, was practiced in those tribes where there was an ancient matriarchal culture that ensured that the woman remains within the tribe after marriage. In such cases, whatever she inherited would remain within the tribe and be passed on to her offsprings. If a woman left the tribe after her marriage, the inheritance would be drastically reduced to avoid its falling into the hands of another tribe.

The women were entitled to inherit if the deceased had no legal male heir, was the last survivor of the coparcener, had been separated from the other members or his property had been self acquired. But the women’s right would not extend beyond their claim to a personal maintenance.

3.2.3. Women’s Entitlement to Dowry or Maintenance instead of Share in Inheritance

In Babylonia (a custom similar to the Assyrians), the property of the deceased was to be divided equally among his children, but the immovable property was often kept together and enjoyed in common. Thus, the daughters, who left the parental house after marriage, were debarred from possessing the immovable property.

The father was responsible for providing a dowry for each daughter on her marriage, but if the daughter took vows (a set of promises leading to a monastic life of a nun) with the father’s consent or at his instigation he would give a share in his property. And in cases where the father had not given a vowed daughter a share before his death, she would receive only one-third of a son’s share to be utilized till her lifetime only. In the event of her death this would revert to her male sibling.

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6 Surah Al Nisa verse 19, the Holy Qur’an, text, translation and commentary by Sh. Muhammad Ashraf, Vol.I
8 The prime source of information as to inheritance is in the code of Hammurabi, which appears to have remained in force from the close of the 3rd millennium. B.C. down to the 6th century
If the daughter took vows without the father’s consent, she would be entitled to a dowry on his death. If a daughter was unmarried at the time of her father’s death, she was entitled to receive her dowry from her brothers and sisters over which she had a right till her lifetime only; if she had children, then it would pass on to them. If she died issueless, her dowry would be reverted to her family-brothers in the first instance, and their heirs after them.

The requirements for inheritance with reference to daughters was applicable mutatis mutandis to mothers and widows too. A widow used to be left in possession of what her father had given to her on her marriage, but with only a life interest in it. She had the right to live in her husband’s house but she had no right to dispose it off as it was meant for her children. If her husband gave her a marriage gift, she could continue to enjoy it, or otherwise she could use some of her inheritance which would be transferred to her children on her death. In case she died issueless, all she had received from her father would revert to his heirs, except the bride-price which her husband had paid for her to her father. If her father had given her that, her husband could keep it. If not, her father or his heirs would repay it to her husband. But if her father had given her the right of disposal, she could dispose it off as she liked.

The slaves were considered a property and a part of the inheritance. However, free children of a slave who married a free woman were given the right to inherit from their mother (free woman) and half from their slave father (in case of his being well off). The other half of the slave father’s property was meant for his master.

The children of concubines, though free, were not entitled to inherit unless acknowledged by their father. A father could give his daughter to be a concubine, and he might also give her property as gift, but she was not entitled to inheritance from him. However, her brothers were bound to give her a proper marriage portion.

In Ireland, initially women were not given inheritance at all, except dowry. Likewise, in Athens, daughters had no right of inheritance but their brothers were under an obligation to provide them with a suitable dowry.

3.2.4. Women’s Equal Right to Inheritance

Among the feudal lords, inheritance⁹ was divided into several different categories. Generally speaking the succession regarding the head of the province or the estate was governed by the principle of father to son, but the private law treated woman at par with man, subject to royal authorization. At marriage, the daughter’s share would remain distinct and she had absolute power to administer and dispose off the same. She was also entitled to receive the property from her husband but only in the name of the children born of the wedlock.

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⁹The largest amount of information regarding the laws of feudal inheritance is gained from some inscriptions belonging to the Middle Empire, the theory of investigation being founded on the idea that the laws of the old nobility would preserve more clearly than the laws relating to ordinary private individuals: Hastings, James, Encyclopedia of Religion, Vol.VII, Hymns-Liberty Edinburgh: T&T Clark, 38 George Street, NY
3.2.5. Women’s Right of Inheritance in Preference to Men

Among Hindu polyandrous tribes, one woman was entitled to have children from different men and the home belonged to the woman and her children. The husband could inherit from one family and his children from another, but the property would remain in the name of the female only. In Canara, this system is practiced in its most archaic form, here the actual management of the property was, and even now generally is vested in females.\textsuperscript{10}

In Colombia and New Britain, however, priesthood was hereditary in the female line, because according to them progeny was traced from the female. Certain classes of female were entitled to property in the absence of direct heirs; even this privileged position of women was superseded in general usage.

The following major causes supported the patriarchal hierarchy in the inheritance rights.

1. The payment of the bride-price was a custom that became a deliberate attempt to exclude the woman and her children from claiming their rightful share.

2. The belief that only those are entitled to inheritance who are capable of ownership of property, [by force if necessary] or to take part in the affairs of the state and the defence if and when required, established the fact that only men were entitled to inherit.

The primitive concepts and customary practices, have changed considerably with the passage of time owing to religious directives, laws of the land, awareness of human rights and an influx of information through media. However, some of the primitive concepts of women’s right to inheritance adversely affecting their status and rights are still prevailing in this modern era and are required to be improved.

3.3. Religious Perspective

A great change in the original primitive concepts of women’s right of inheritance was caused by religious laws that provided justice to humanity. These laws were revealed gradually in stages of community development according to the circumstance and needs of the people of that time to Prophets, like Dawood\textsuperscript{æ} (David), Moosa\textsuperscript{æ} (Moses), Essa\textsuperscript{æ} (Christ), and finally, the Holy Prophet Muhammad\textsuperscript{æ} through the holy books Zaboor, Torah, Bible and Quran respectively. The concept of women’s right of inheritance in different religions varies substantially. This will be discussed in the context of Judaism, Christianity, Islam, Hinduism and Parsi religions, separately.

3.3.1. Judaism

In Mary F. Radford’s view,\textsuperscript{11} the Jewish law is referred as Halakhah, based in the Torah, the written component of which (also known as the Pentateuch) comprises five Books of Moses i.e., Genesis, Exodus, Leviticus, Numbers, and Deuteronomy. The text

\textsuperscript{10} Munda Chetty v. Timmaju, 1 Mad. H.C. 380

\textsuperscript{11} Radford, Mary F., “The Inheritance Rights of Women under Jewish and Islamic Law.” Source: Internet
of these books was given to Moses along with a large body of “oral law” that continued as such for several centuries. The process of interpretation (midrash) was used for clarification and for filling out the skeletal structure in the said written law. In approximately 200 c.e., (century era), Rabbi Judah, the prince produced a code of laws that was recognized as an authoritative statement of the oral law; the third tractate (short essay on a subject)\textsuperscript{12} of its fourth order (Baba Bathra) deals with inheritance.

In view of the Biblical references and illustrations in Judaism, we find diverse concepts on women’s right of inheritance:

1. Women are not entitled to inheritance.
2. Daughter(s) can inherit only in the absence of male legal heir(s).
3. Daughters are entitled to inheritance on equal footing with sons.

According to the first concept, women are completely ousted from inheritance. The rationale behind it, according to some, the father is bound to give them dowry and if he has not done so before his death, his sons are expected to set aside sufficient funds from his estate to meet the dowry expenses. After the father’s death, the legal heir is bound to maintain the daughters. The following verse of the Old Testament is often quoted to say that only sons have a right to inheritance:

“When he wills his property to his sons he must not give the rights of the firstborn to the son of the wife he loves in preference to his actual firstborn, the son of the wife he does not love. He must acknowledge the son of his unloved wife as the firstborn by giving him a double share.” \textsuperscript{13}

Secondly, the mother and the mother’s family are not heirs of a descendant. Thirdly, a husband inherits from his wife but a wife does not inherit from her husband.

According to Mary Radford, in modern times many Jews have toned down this discriminatory effect through the use of testamentary bequest and devices; this process is too under scholarly dissension.

The second concept derives its strength from the provision that “Say to Israelites, ‘if a man dies and leaves no son, turn his inheritance to his daughters.’”(27:8, Numbers)\textsuperscript{14}.”

The above verse, along with verses 9-11 (Numbers) on the subject, has been interpreted (in Baba Bathra) and codified to fill certain gaps to clarify the order of succession:

“…the son precedes the daughter, and all the son’s offspring precede the daughter; the daughter precedes the brothers and the daughter’s offspring precedes the brothers; brothers precede the father’s brothers and the brothers’ offspring precede the father’s brothers.”\textsuperscript{15}

\textsuperscript{12} Tractate means short essay on a subject
\textsuperscript{13} Bible, Deuteronomy 21:16
\textsuperscript{14} Bible, Numbers 27:8
\textsuperscript{15} Quoted by Mary F. Radford in her article on “The Inheritance Rights of Women under Jewish and Islamic Law.” < http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/23_2/01.TXT.htm >
A dispute arises as to who should inherit if the descendent is survived by a daughter and the daughter of a deceased son. The Old Testament is silent but Talmud (a collection of discursive commentary on the subject) provides that the son’s daughter of the deceased would inherit and the decedent’s daughter would take nothing.

The third concept as expressed in the later part of the New Testament is based on the explicit verse of the Old Testament providing, “and their father granted them inheritance along with their brothers.”

3.3.2. Christianity

The holy Bible (New Testament) does not have any explicit provision on inheritance. Since the Christians also follow the Old Testament along with the New Testament, their concept on women’s right to inheritance is somewhat similar to that of Jews.

According to Eldereen K. Naseer, the daughters are not at all entitled to share in inheritance along with sons, under the principle law. But most of the Christians do not believe in this discrimination. They firmly believe in the equality of rights among men and women on the basis of these verses of the Holy Bible, in addition to the story of Job, mentioned in the Old Testament, wherein daughters were given equal inheritance along with sons:

1. “He created them male and female and blessed them. And when they were created, he called them “man.” According to some scholars the “man” is “Adam.”
2. Jesus called them equally one as “…at the beginning, the Creator made them male and female, and said, for this reason a man will leave his father and mother and be united to his wife, and the two will become one flesh. So they are no longer two, but one. Therefore what God has joined together, let man not separate;”
3. “You are all sons of God although faith in Christ Jesus, for all of you who were baptized into Christ have clothed yourselves with Christ. There is neither Jew nor Greek, slave nor free, male nor female, for you are all one in Christ Jesus. If you belong to Christ, then you are Abraham’s seed, and heirs according to the promise.”
4. “Husbands, in the same way be considerate as you live with your wives, and treat them with respect…and as heirs with you of gracious gift of life, so that nothing

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16 The Old Testament comprises 38 books that are claimed to have been received through the Prophets who were prior to Prophet Jesus.
17 Job, 42:15
18 The New Testament books, collectively called Bible, were written through inspiration after Jesus.
20 Genesis 5:2
21 Mathew 19: 4-6
22 Galatians 3:26-29
will hinder your prayers;” 23 and that “the spirit himself testifies with our spirit that we are God’s children, then we are heirs of God and co-heirs with Christ……” 24
5. “In the last days, God says, I will pour out my Spirit on all people. Your sons and daughters will prophesy….” 25
6. “To open their eyes, {and} to turn {them} from darkness to light, and {from} the power of Satan unto God, that they may receive forgiveness of sins, and inheritance among them which are sanctified by faith that is in me”. 26
7. “And if ye {be} Christ’s, then are ye Abraham’s seed, and heirs according to the promise” 27

By virtue of their belief all Christians are legal heirs, hence women are also entitled to inheritance 28

3.3.3. Islam

Islam, according to Muslims’ faith, is the final religion and is meant for all ages. The Muslims have been allowed to develop it further with the changing world in the light of the Holy Qur’an and Sunnah by having the choice of the “age-old processes of Ijma’ (consensus of jurists), Qiyas (analogical deduction of rules) and individual or collective Ijihadh (evolving new legal principles on the basis of the old ones) as well as by adopting some new principles like Takhayur (eclectic choice out of divergent legal principles within the Islamic law) and Talfiq (combination of two or more parallel legal rules to evolve a new one).” 29

Inheritance has been considered to be one of the most important branches of the Islamic family law. The very basis of this concept, as spelled out in verse 11 of Surah Nisa, is the nearness of relations in terms of benefit to the inheritor. Because of the inability of human beings in shaping the balance of relations in benefit, Allah Almighty has defined settled shares in inheritance.

Though Islam presents a predominantly patrilineal system as the framework for inheritance, it established explicit rights for women. Its elaborate system of rules for the devolution of property has been clearly spelled out in Surah Al-Nisa and Surah Al-Baqarah of the Holy Qur’an. By this system, the death of a person brings about an automatic transfer of most of his/her rights 30 and obligations. 31 What is left after completing all obligations, the property of the deceased is distributed according to the

24 Romans 8:16-17
25 Acts 2:17
26 Acts 26:18
27 Galatians 3:29
28 Article in urdu, ‘Aurat ki Kahanat,’ by Mughal Domanic, page.9
29 Tahir, Mahmood, Personal Law in Islamic Countries
30 Transmissible rights include all rights to property, usufruct, rights connected with property, many dependent rights, such as debts chooses-in-action, rights to compensation, etc.
31 Transmissible obligations are, generally speaking, those which are capable of being satisfied out of the deceased’s estate such as funeral expenses, dower amount of the widow, if unpaid, etc.
law of inheritance without making any distinction between real and personal property. The distribution of estate among heirs is set in such order and proportions that are in harmony with their natural claim on an equitable basis.

Accordingly, the property which belonged to the deceased devolves on those who, by reason of consanguinity (blood relation) or affinity, have the strongest claim to be benefitted by it in proportion to the strength of such claim, irrespective of the gender, as Allah Almighty ordains:

> "From what is left by parents and those nearest related there is a share for men and a share for women."  

A broad principle in this context has been provided in the Holy Qur’an as follows:

> “To (benefit) everyone, we have appointed sharers and heirs to property left by parents and relatives. To those, also, to whom your right hand was pledged, give their due portion. For truly Allah is witness to all things.”

Accordingly, the Islamic jurisprudence divides the entire body of the relatives of a deceased person, together with the husband or wife, in three classes, viz., Sharers, Residuaries, and Distant Kindred (please see appendix ‘A’). The first two classes are mentioned under the common names of “heirs.” The said classes of heirs are discussed below:

The **Sharers** are those legal heirs whose shares are determined by the Holy Qur’an, Sunnah and Ijmah. They may be grouped under the following:

1. Husband or wife.
2. Female agnatic descendants (which means female legal heirs descended from the same male ancestor).
3. Ancestors, including female ancestors, who are not customary heirs.
4. Collaterals, such as full (of unmixed ancestry) and consanguine (of the same origin) sisters, and uterine sisters and brothers (descendent from the same mother as another but from a different father).”

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32 Surah Al Nisa verse 7
33 Surah Al Nisa verse 33
34 This division of heirs is derived from the Hanafi School of Law, which has the largest following among the Sunnis. Aspects of the Shi’a law of inheritance in comparison shall be discussed later in this report.
The male heirs include father, father’s father how high-so-ever or true grandfather, uterine brother, and the husband, while female heirs are wife, daughter, son’s daughter how low-so-ever, full sister, consanguine sister, uterine sister, mother and true grandmother, i.e., grandmother in whose line of relationship to the deceased no false grandfather intervenes.

**The Residuaries**

They are sometimes called “residuaries by relation,” because they take the residue after the sharers (who are not excluded) are satisfied. To distinguish “residuaries by relation” from “residuaries for special cause,” the latter are generally those who take no prescribed fractional part, but, generally, divide the residue among them after the sharers are satisfied, and the whole if there are no sharers.

The residuaries are of the following three (3) categories:

i. Residuary in his own right;
ii. Residuary in another’s right; and
iii. Residuary with another.

The residuary in his own right is defined as “every male into whose line of relation to the deceased no female enters.” This category of residuaries includes heirs like the son, the son’s son how-low-so-ever, father, brother, paternal uncle and his son and so forth. The female heirs, on the other hand, belong to the other two categories of residuaries.

The residuaries in another’s right are those females who, as sharers, are entitled either to one-half or two-thirds and who become residuaries only if they co-exist with males who are parallel to them in degree of relationship to the deceased. They are four (4) in number: (i) daughter; (ii) son’s daughter how-low-so-ever; (iii) full sister and (iv) consanguine sisters of the deceased.

The residuary with another is a female heir who becomes a residuary because of her co-existence with another female heir. This category comprises of two anomalous cases of full sister and the consanguine sister, when they inherit with daughters. When the daughters or son’s daughters how-low-so-ever inherit as sharers and there is no nearer residuary than the full or consanguine sister, and a residue is left after assigning the shares to the sharers, then the full or consanguine sister takes the residue. The full sister in such a case wholly excludes the consanguine sister.

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36 Collateral means a person descended from the same ancestor as another but through a different line or a descendant from the same stock but by a different line.
37 A true grandfather is a male ancestor between whom and the deceased no female intervenes. See Khan, Hamid. Islamic Law of Inheritance: A Comparative Study with Emphasis on Contemporary Problems. Lahore Law Times Publications; Lahore: 1980. p. 44.
38 Khan, Hamid; p. 51.
Besides residuaries by consanguinity there are residuaries for special cause, namely, patrons (protector or supporter) of freemen, who could be female as well. If there be no residuary then the residue returns to the sharers by consanguinity in proportion to their shares.

The third branch of legal heirs is distant kindred, also termed as “the more distant kindred,” and all relations who are neither sharers nor residuaries fall under this category of heirs. When there are no sharers, residuaries by relation, or residuaries for special cause, the distant kindred take the whole among themselves according to certain rules. The only exception arises in the presence of a spouse, who does not totally exclude the distant kindred, but inherit with them. In this case, after assigning share to the husband or wife, as the case may be, the residue goes to the distant kindred.

It appears from the above Sunni scheme of inheritance that the Islamic laws of succession do not, in absolute terms, reflect any gender discrimination. A Muslim woman under Shari‘at is entitled to succeed and inherit her prescribed share as a sharer, residuary or distant kindred with full proprietary rights in whatever share she gets. Unless she alienates the same during her lifetime the same devolves on her heirs after her demise according to Shari‘at. The percentage of the woman’s share, however, varies in accordance with the nature of her relationship with the deceased and the circumstances she is living in, as for instance, in the following female relations:

**Widow:** Widow’s share is prescribed in verse 12 of Surah Al-Nisa as follows:

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In what ye leave, their share is a fourth, if ye leave no child;  
But if ye leave a child, they get an eighth; after payment of legacies and debts”.
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Accordingly, the Prophet Muhammad directed the giving of 1/8th to the widow and all schools of thought have consensus on this point.

The share of a widower on the other hand, according to the above verse, is half in the absence of any child and in presence thereof it is reduced to one fourth, after payment of legacies and debts. This difference in share appears mainly because, men are directed to bequeath in favour of their widows in the following words of the Holy Qur’an:

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42 Ibid, p. 57.
Those of you who die and leave widows should bequeath for their widows a year’s maintenance and residence. But if they leave (the residence) there is no blame on you for what they do with themselves provided it is reasonable. And Allah is exalted in Power, Wise.  

According to Abdullah Yusuf, opinions differ whether the provision of a year’s maintenance, with residence, is abrogated by the share which the widow gets (one-eighth or one-fourth) as an heir in view of Surah Al-Nisa verse 12.

**Mother**

Like father she is entitled to 1/6th in the presence of the deceased’s children or in the presence of deceased’s brothers/sisters, while, in the absence of the deceased’s children, her share will be 1/3rd, provided, the deceased has not left behind more than one brother or sister, whether full, consanguine or uterine.

**Daughter**

She is entitled to 1/2 of the estate of the deceased in case of her being the only child and, where there are two or more daughters, they take 2/3rd of the estate collectively which is to be divided equally among them, while, in the presence of male sibling(s), the daughter inherits as a residuary and her share will be equal to half share of the male sibling.

Accordingly, Prophet Muhammad directed the giving of ½ to a daughter (in case she is the only legal heir), while 2/3rd share (in case of two daughters).

A slight variation in the established principle has, however, been observed in a tradition narrated by Saad bin Afra(RD) reported in Sunan Nisai Sharif, stating that Prophet Muhammad directed the giving of 1/3rd share in charity while the rest to the legal heirs of a person who had just one daughter and wanted to give the whole of his property.

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44 Surah Al Baqra verse 240
46 Surah Al Nisa verse 12
47 Khan, Hamid; p. 48.
48 Surah Al Nisa verse 11
49 Hadith 6736, attributed to Huzail bin Shurhabil, Sahih Al Bukhari, compiled by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraj, Vol.VIII, published by Darul Isha’at, Karachi, Pakistan, page 393
in charity.52 The same tradition has been reported in Sunan Ibn-e-Majah Sharief.53 This, is in line with the rule derived from the Holy Qur’an that a valid bequest can be made in favour of a stranger up to one-third of the total property of the deceased at the time of his/her death.54

**Sister**

Sisters (of the deceased) are entitled to exactly the same share as that of their brother. However, like brothers, there are three categories of sisters which are entitled to inherit as sharers, namely, (i) full sisters; (ii) consanguine sisters; and (iii) uterine sisters. Each of these is briefly discussed below.

**The Full Sister’s Share** is ½ (if there is only one) or 2/3 (collectively, if more than one), provided that the deceased is not survived by a child, a child of a son how-low-so-ever, father, true grandfather or full brother. In the case where a full brother is present, the full sister or sisters become residuaries.55

**The Consanguine Sister’s Share** is ½ (if there is only one) or 2/3 (collectively, if more than one), provided that the deceased is not survived by a child of a son how-low-so-ever, father, true grandfather or full brother. In the case where a full brother and, additionally, he/she is not survived by a full sister or consanguine brother. Where there is only one full sister present, the consanguine sister(s) will take 1/6th collectively. Further, when there is a consanguine brother, the consanguine sisters’ become residuaries.57

**The Uterine Sister**58 is entitled to 1/6th share, if alone, and in the presence of other siblings her share is 1/3rd of the inheritance jointly with the others,59 provided that the deceased is not survived by a child, child of a son how-low-so ever, father or true grandfather.60 While, in the absence of any of the descendants or ascendants of the deceased as heirs, she shall be entitled to half of the inheritance.

However, in view of a hadith, 61 Prophet also directed the giving of 1/2 share to a daughter, 1/6 to son’s daughter and rest to a sister. Similarly another hadith attributed

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54 Khan, Hamid; p. 6.
56 Consanguine sisters are daughters of the same father but different mothers.
57 Balchin, Cassandra; p. 270.
58 Uterine sisters are daughters of the same mother but different fathers.
59 Surah Al-Nisa verse 12
60 Balchin, Cassandra; p. 270.
61 Hadith 6736, attributed to Huzail bin Shurhabil, Sahih Al Bukhari, compiled by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraji, Vol.VIII, Published by Darul Isha’at, Karachi, Pakistan, page 393
to Al-Aswad b. Yazid (RD) reveals that Mu’adh b. Jabal (RD) gave half share of inheritance to a daughter and other half to a sister, in the life of Prophet Muhammad.\textsuperscript{96}

**True Grandmother**

Her share has not been defined in the Holy Qur’an. However, according to a hadith\textsuperscript{63} attributed to Qabish b. Dhuwaib (RD), a woman (grandmother of a deceased) came to Hazrat Abu Bakr (RD) and asked about her share in inheritance. He told her that there is nothing prescribed for her inheritance in the Holy Qur’an, but after consulting the people including al-Mughirah b. Shu’bah (RD) he said that Prophet Muhammad\textsuperscript{97} directed the giving of 1/6 share of inheritance to the grandmother and further directed that in the case of two grandmothers both will share 1/6.

Accordingly, the true grandmother how-high-so-ever takes 1/6th of the deceased’s estate, whether maternal (provided there is no mother or nearer true grandmother) or paternal (provided there is no mother, father, nearer true grandmother or intermediate true grandfather).\textsuperscript{64}

**Granddaughter**

The Holy Qur’an has again left this matter to be decided by the Ummah (Muslim community) by observing silence on this point. The Sunnah of Prophet\textsuperscript{98} reveals instances in which granddaughters had been given 1/6 share in inheritance.\textsuperscript{65} Accordingly, a son’s daughter’s share is ½ where she is the only child, whereas if there are two or more, the share is 2/3 collectively. These shares are heritable provided that the deceased has not left behind any son, daughter, higher son’s son, higher son’s daughter, or equal son’s son.\textsuperscript{66} Also, if the deceased is survived by only one daughter or higher son’s daughter, the son’s daughter’s share shall be 1/6th. When there is a son’s son, the son’s daughter becomes a residuary.\textsuperscript{67}

One of the relations which is most neglected in our society is a person with neutral sex, termed as Khoonsa or hermaphrodite.\textsuperscript{68} Although their right of inheritance has been recognized in the Holy Qur’an as son or daughter, Islamic law\textsuperscript{69} divides such persons subject to the determination of their sex into the following three classes:

1. those in whom distinguishing tokens of manhood appear alone or preponderate

\textsuperscript{63} Hadith 2888, Chapter 1075 on ‘the inheritance of grandmother’, Sunan Abu Dawud, translation by Prof. Ahmad Hasan, Vol.II, Sh. Muhammad Ashraf, page 817

\textsuperscript{64} Balchin, Cassandra; p. 269.

\textsuperscript{65} Hadith 1920, attributed to Hazrat Huzail Bin Shurhabil, Chapter 1346, title ‘Inheritance to grand daughter’s along with daughter,’ Jame Tirmizi, translated by Moulana Fazal Ahmed, Vol.I, Urdu, Darul Ishaat, Karachi, page 752. Same tradition has been reported as hadith 6736, in Sahih Al Bukhari by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraj, Vol.VIII, published by Darul Isha’at, Karachi, Pakistan, page 393

\textsuperscript{66} Khan, Hamid; p. 49.

\textsuperscript{67} Balchin, Cassandra; p. 269.

\textsuperscript{68} Khoonsa or hermaphrodite is a person having the generative organs of both the sexes.

2. those in whom distinguishing tokens of womanhood appear alone or preponderate and
3. those in whom neither one or other appears equally. The first are treated as males, the second females, and the third are called “equivocal” or “ambiguous” or hermaphrodites “whose sex is quite doubtful.”

According to Abu Hanifa (RD), an equivocal hermaphrodite takes the same portion as a male or a female on the same level, and if there be no such male or female, the same that would be taken by such male or female, if any, whichever is the smaller under the particular circumstances of the case. The reason being that the right to the smaller portion is unquestionable, while the right to anything more is doubtful.’

3.3.3.1 Issues

With reference to inheritance rights, the following issues have been a subject of debate since long:

2.3.3.3.1.1. Can a daughter be given a share more than the prescribed limit?
2.3.3.3.1.2. Whether the legal heir of a predeceased children of a propositus are entitled to inherit?
2.3.3.3.1.3. Whether in Islam, a relative is excluded from inheritance on the ground of difference in religion?

Before we proceed to discuss the above issues, all of which are related to the doctrine of exclusion, it is necessary to understand the doctrine first.

Under the Islamic law of inheritance70 there are certain classes of legal heirs who are excluded from inheritance by virtue of the doctrine of exclusion (hujb). There are those who can never be excluded from inheritance, completely e.g. father/husband/mother/wife/children/parents/son/daughter and the widow of the deceased.70 The exclusion is said to be of the following two kinds:

1. Partial Exclusion (Hujb Nuqsan); and
2. Total Exclusion (Hujb Hirman)

The Partial exclusion is in reality a reduction of the share receivable by one heir from the fact of co-existence with another heir. As, for instance, the mother gets 1/3 in case of there being no issue of the deceased, and 1/6th in case of there being an issue.

While, the Total exclusion debars the heir from inheritance completely, for example, the total exclusion of the grandfather in the presence of the father of the deceased.72

There are three fundamental principles of exclusion:

1. Excluder’s direct relationship with the deceased

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2. Excluder’s relationship with the deceased being closer as compared to that of the excluded one
3. Excluder’s relationship with the deceased being stronger as compared to that of the excluded one.

Now let us come to our points of concern.

3.3.3.1.1. Can a Daughter be given a Share more than the Prescribed Limit?

This issue, though appearing to fall within the ambit of partial exclusion, does not appear to have attracted much scholarly opinion. This may be because of the following clear directives of the Holy Qu’ran:

“Allah (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two female.”

The logic behind this scheme of inheritance is required to be understood in the light of the Islamic system as a whole which, while conferring rights, delegates reciprocal obligations in the context of the circumstances. Accordingly, the arguments extended by various scholars in favour thereof are as follows:

1. The son is under an obligation to protect and maintain women of his family in view of the following verse of the Holy Qur’an:

“Allah (thus) directs you as regards your children’s (inheritance): to the male, a portion equal to that of two female.”

The daughter, on the other hand, inherits her share of the parental property without any obligations and the moment she gets married, she is entitled to receive a dower amount from her husband, the payment of which is mandatory.

2. The son is under an obligation to look after the parents particularly in their old age. Hence, he is a closer relation in terms of benefit as compared to daughters who leave the parents after marriage.
3. The son has to settle dower for his wife (if he is married), while the daughter is not under any such obligation.

72 Surah Al Nisa verse 11
73 Surah Al Nisa verse 34
Here the question is what would be the situation if the son does not fulfil his obligations that go with the greater share? i.e. his obligation to look after the parents or to pay the dower of the sister. Should the fixed shares (also termed as ‘determinate shares’) be altered?

Islam is a religion of justice and is for all times. It, therefore, puts in place a system for catering to the needs of the changing world in order to ensure justice through the doors of ijtihad (judicial activism). But here another question arises as to whether ijtihad may be allowed in areas that have been explicitly defined in the Holy Qur’an. The answer, according to some scholars, as for instance, Dr. Muhammad Farooq Khan, is simply “No.” He firmly holds the view that ijtihad can be exercised only on issues which are ambiguous or are not provided for in the Holy Qur’an and Sunnah, but not otherwise. Muhammad Aslam Saleemi, Advocate has expressed a similar contention on the ground that Shafi-i Jurists, who think that the door of Ijtihad is open, hold the view that, “There is no ijtihad with the ‘nass’.” And “nass” is the theme in verse no. 11 of Surah Al-Nisa which is definitive with respect to transmission as well as meaning, hence it is not subject to ijtihad. Javed Ghamidi seconded this opinion.

Dr. Muhammad Fathi Osman, however, holds a different opinion. In his views, the matter of inheritance falls under the category of civil transaction, which can be altered in view of the changing circumstances. Thus, the State has a legitimate right to initiate amendments in the legislation in this context through ijtihad to ensure justice. While understanding his point of view we find support from ahadith as in the case of a grandmother. Though her share has not been defined in the Holy Qur’an, she has nevertheless been allowed 1/6th share in inheritance. Similarly, by virtue of another hadith attributed to Al-Aswad b. Yazid (RD), the Prophet directed the giving of ½ share to a sister instead of 1/6th, as provided in the Holy Qur’an.

Another view is that the Holy Qur’an has fixed the minimum limit and females may be given more than the fixed share, as has also been held by Justice (R) Shaiq Usamani in Mst. Halima’s case:

“…. though the law of inheritance in Islam is exceedingly strict and the shares of male and female children are well-defined. The inequality between the shares of male and female children in Islamic law of inheritance, as it is being practiced in an essentially

73 Surah Al Nisa verse 7
75 Mr. Javed Ghamidi, is a religious scholar and President of Al Mowrid Institute of Religious Sciences in Lahore, Pakistan. A meeting of NCSW team was held with him, on the subject on 21st June, 2006.
76 The researcher had personal meeting on the subject with Dr. Muhammad Fathi Osman. He is a renowned religious scholar. Presently Head of Institute for Study of Islam in the Contemporary World, Omar Ibn Al Khattab Foundation, Former Head of the Deptt: Administration of Islamic Culture, Al-Azhar University, Cairo.
78 Mst. Halima vs. Muhammad Alam & others 1999 Monthly Law Digest 2934
male dominated society of ours, is by no means a declaration of a female’s inferiority in status and thereby lending sanction to the practice as depriving of females of their right of inheritance. Indeed the provisions regarding a female child being entitled to half the share of the male child is being subjected to wrong interpretations by attributing immutability to it and is being perpetuated only because of male chauvinistic attitudes in society. Islam by giving half a share to females only lays down the lowest limit and not the highest. It is, however, possible for an Islamic state, through exercise of ijtihad, to increase the female’s share.

At least in one Muslim country, i.e. Turkey, male and female children have equal rights to inheritance. It is a paradox of today that because Islam has given full right to a woman over her property as enshrined in Married Women’s Property Act 1874 (Act No.111 of 1874), ironically enforced in British India by non-Muslim colonial rules, that such practices as mentioned above have arisen with regard to deprivation of the women of the shares they are rightfully entitled to.”

In addition to Turkey, as mentioned herein above, Somalia is another exception wherein the law provides for the equality of shares among males and females. To give effect to this general principle, the widow’s share has been raised to put it on equal footing with the widower. Equal shares have also been provided to the males and females among children, grandchildren and brothers and sisters.79

Another way of providing benefit to daughter(s) out of inheritance in view of the circumstances and without confronting the explicit Qur’anic provisions, could be a mandatory bequest in favour of daughters (as is a policy in Egypt, Iraq, Kuwait and Tunisia) or a mandatory will (as in Algeria, Morocco and Jordan) in the case of child(ren) of a propositus son/daughter. In the opinion of Muhammad Aslam Saleemi, Advocate will or bequest out of inheritance cannot be made in favour of a legal heir hence daughter cannot be benefitted in this manner.

According to Javed Ghamidi, keeping in view the need and proximity of relationship of a daughter with the inheritor, daughter may be given an additional share by way of will (wasiyat), after satisfying the defined shares.

Here the question arises as to what is the limit of the share for will (wasiyat)? According to general consensus it is 1/3rd. Javed Ghamidi, however, disagrees to this limit as the same is not based on Qur’anic injunction but a tradition. Hence, it cannot be considered a firm rule.

Anyway, this is a matter which invites attention of religious scholars for Ijtihad and it is hoped that religious scholars will take it up to enforce Islam in its true spirit.

However, in view of the above discussion following two main alternatives can be proposed in this respect:

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1. Outright Increase in the Daughter’s Share Equal to that of her Male Sibling

Advantages

The advantage of equal share is obvious. Women will be more empowered than before, and will have access to financial resources on the same footing as men have, such as loans, micro-credit, etc. for income-generating purposes or otherwise. Thus they will be less dependant on the male members of their family for their economic well-being and are likely to acquire more decision making power in matters directly affecting them.

Disadvantages

An increase in the daughter’s share of inheritance appears to be in direct contravention of express Quranic injunctions, it is unlikely that any viable consensus will be achieved for such a policy. It is clear from the results of the National Survey, the implementation of women’s right to inheritance, as they stand today (half portion of the male sibling), is far from being satisfactory. Equalizing the shares of daughters and sons suddenly is likely to attract excessive ill-will from the patriarchal community in Pakistan. It is, therefore, more appropriate at this stage to concentrate on strengthening the implementation and enforcement mechanism for women’s existing right to inheritance. Thirdly, the outright increase of a daughter’s share is bound to have an impact on women’s right to dower and maintenance from their spouses. Balancing the different rights, viz, inheritance, dower and maintenance, would require a prolonged and tedious exercise in consensus-building amongst the jurists as well as the communities. This is not, therefore, the most viable option at this stage of Pakistan’s social milieu.

2. Make a Bequest to the Daughter to increase her Share

Advantages

The main advantage of this option is that it does not run the risk of contravening the Quranic injunctions that explicitly lay down the daughter’s share as half that of the male sibling. Though most Sunni jurists stipulate that a bequest cannot be legally made to an heir of a deceased, the Shi’i school of law allows for bequests to any person(s), regardless of whether he/she is entitled to inherit from the remaining two-third of the deceased’s estate. Therefore, there is a certain amount of theological support for the proposition that a deceased can make a bequest to the daughter to increase her share in inheritance.

Disadvantages

In the case of a voluntary bequest, the main disadvantage to the daughter would be that her right to an increased share would not be guaranteed unless the law is amended in a manner providing option to make a bequeathed in favour of any person regardless of the fact that he/she is a legal heir. Given that the current socio-legal environment in Pakistan is not conducive to protection of women’s right to inheritance. The whole purpose of allowing bequest to a daughter would be defeated if it were to operate voluntarily. It is understood that the entire 1/3rd share may not be bequeathed in favour of one person but that portion can be divided among others also, including daughter. On the other hand, a mandatory bequest of the entire one-third of the deceased’s estate would not allow the
testator to make a bequest for other purposes that he/she wishes to contribute towards, for example, charity, etc. Hence, a compromise must be reached between a voluntary and mandatory bequest in favour of the daughter.

**Policy Proposal**

Keeping in view the diversity of views on the point of wasiyat or obligatory bequest in favour of a legal heir and the share of will, the attention of religious scholars is invited to build consensus on the point and people must be encouraged to benefit their daughters on the basis of their responsibilities and need through gift (hiba) during their lifetime, besides their legal share in inheritance to ensure their socio-economic protection. In this context, awareness of the religious, moral and ethical values must be propagated and initiatives must be taken to strengthen family bonds and laws must be amended accordingly.

3.3.3.1.2. Whether the Descendant(s) of Propositus’ Predeceased Child(ren) entitled to Inheritance?

Under Sunni law, the legal heirs of the predeceased children of the propositus are entitled to inheritance as residuaries and not the children of the propositus while, under Shia law, the grandchildren are entitled to inherit on behalf of their predeceased parents in accordance with the principle of representation, that is to say, the children of each dead son take the portion which their father, if living, would have taken as a residuary, and divide it among them according to Shar’iah’s rule of the double share to the male. Likewise, the children of each daughter take the portion which their mother, if living, would have taken either as a sharer or as a residuary and divide it among them according to the said rule.

The remoter lineal descendants, like great grandchildren, would also be governed by the same principle of representation.

In Pakistan, benefit has been provided to the descendants of the predeceased child(ren) of a propositus through an amendment in the Family Laws Ordinance, 1961. Section 4 of the said statute provides that “in the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens, shall per stripes receive a share equivalent to the share which such son or daughter, as the case may be, would have received, if alive.” This new rule was followed by the Karachi High Court in Muhammad Fikree’s case.

However, the aforesaid provision was challenged in the Federal Shari’at Court (FSC) on the grounds of being repugnant to the Qur’an and Sunnah. On examining the strength of Section 4, the FSC held that:

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80 Amendment by Ordinances 21 and 30 of 1961

81 The words ‘per stripes’ means by roots or stocks, by representation. Further, it means that the distribution has to be made to a group of shareholders taking the share of their ascendants: 1990 PSC SC (Pak) 1267(b)

82 Muhammad Fikree & 3 others vs. Fikree Development Corporation, PLD 1988 Kar. 446
“There is neither any ambiguity nor any clarification needed as regards devolution of inheritance and persons to inherit, about their shares. In line of inheritance prescribed by the Holy Qur’an, in the presence of son, the children of the predeceased children have been excluded as heirs and his position has been aptly taken care of by the Sunnah of our Holy Prophet Muhammad ﷺ in the Ahadith in which the process position of the grandchildren has been elucidated that the grandchildren are to be considered one’s children in the distribution simultaneously with the son of the propositus. This Hadith has been followed by all schools including Fiqah-e-Jafriah.”

The Court further held in the above case that “…it squarely follows that in the presence of the direct mandatory injunctions of the holy Qur’an itself and also Ahadith there was no occasion, and could possibly be none ever, to add anything or subtract anything therefrom, in the matter of inheritance.” Accordingly, the Court declared that the provision in question shall cease to have effect from 31st day of March, 2000. The appeal is pending in the Supreme Court.

The Council of Islamic Ideology (CII), in its reports on the subject, recommended that the uncles and aunts of orphans are duly bound to take care of their orphan nephews and nieces and provide for them. It has also been recommended that in the case of non-performance of this duty by aunts and uncles, a legal obligation be cast upon them to compel them to abide by their duty.

According to Khalid M. Ishaque, scholar and advocate Supreme Court of Pakistan, “when Family Laws Ordinance was in the making, Mr. Fazl-ur-Rehman did not agree completely to it. He had some objections. For instance if the principle that the daughter of a predeceased’s son is given the share of a son, what would happen in a case where the heirs are one daughter and a daughter of a predeceased son. Under the explicit text of the Qur’an the daughter is entitled to half of the estate. With this new law her share will be reduced to 1/3 and the daughter of the predeceased’s son will take 2/3 which would be direct interference with the text of the Qur’an and this would be unIslamic and therefore not applicable.’”

The other reasons extended in support of exclusion of predeceased child(ren) of the propositus’ child(ren) from inheritance are as follows:

1. Their share has not been defined in the Holy Qur’an. This could be because the Holy Qur’an has already talked about the shares thus there is no need to dwell on this topic. In other words what would have been inherited by a predeceased son/daughter would go to his/her children.
2. The basic principle of the Islamic law of inheritance (discussed herein above) is “nearer excludes the remoter” and it applies to all classes and generations of heirs. The rule of “representation” as recognized by Fiqah-e-Jafriah, and other religions like Christianity, Parsi and Hinduism, is not recognized by the established principles of the Sunni school of thought. Thus, in the presence of the

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83 Allah Rakah vs. Federation of Pakistan, PLD 2000 FSC 1
84 International Conference on Islamic Laws & Women In the Modern World, Giant Forum, 1996, page157
father, the grandfather, and in the presence of a child, a grandchild of the deceased cannot be his/her heir. In the latter case it is irrelevant whether the grandchild is the child of a son or daughter of the deceased who has survived him/her or of one who has predeceased him/her.

Accordingly, grandchildren cannot inherit when any of the children of the deceased are surviving. This argument is probably based on the following hadith narrated by Hazrat Zaid (RD) that “grandchildren are to be regarded one’s children (in the distribution of inheritance) in case none of one’s own children are still alive, a grandson as a son, and grand-daughter as a daughter, and they (grandsons and granddaughters) inherit (their grand parents’ property) as their own parents would (were they alive), and they prevent the sharing of the inheritance with all those relatives who would have been prevented from the same, were their parents alive…”85 …86 The situation may diagrammatically be described as follows:

![Diagram of Grandchildren's Right to Inheritance](image)

According to Muhammad Aslam Saleemi, Advocate 86 “the basic rule of inheritance is at nearer or immediate blood-relatives of the deceased exclude the remote relatives. According to this rule, the children of a propositus’ predeceased child are excluded by the living children of the deceased.

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85 Chapter 7, ‘The inheritance of one’s grandchild if one has no child,’ Sahih Al Bukhari, Darul-Ishaat, Karachi-Pakistan, page 392-393
Contrary to the above, there are strong arguments in favour of the inheritance of descendants of the propositus’ children in the presence of the deceased’s own child(ren). For instance:

1. There is no explicit Qur’anic injunction disentitling orphan grandchild(ren) from receiving inheritance from their grandfather, in the presence of deceased’s own child(ren).

2. The directive contained in verse no. 8 of Surah Al-Nisa is addressed to the heirs of the deceased that they should not be niggardly towards their relatives whether they may be close or distant, nor should they be niggardly towards poor and needy members of the family or towards orphans who are present when the inheritance is distributed. Although they are not legally entitled to any share, it is seemly for people to act magnanimously and give them something out of their inheritance, and especially to desist.

3. In view of Ahadith attributed to Hazrat Abdullah (RD), Huzail bin Shurhabil (RD) and Hazrat Mazil bin Sharjeel (RD), Prophet Muhammad (N.B.) directed the giving of 1/6 share to grand daughter in the life of his own daughter.

Now, when a granddaughter has been considered for inheritance, logically a grandson also ought to have been be considered in the light of the following explicit verse of the Holy Qur’an:

‘from what is left by parents and those nearest related’

On these lines a hadith attributed to Ibn-e-Abbas (RD) and Tawus (RD) reveals that Prophet Muhammad (N.B.) directed to give inheritance to those who are entitled to it and

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87 Hadith 20, attributed to Hazrat Sharhabil, Chapter 1346, title ‘Grand daughter’s share in inheritance with daughter’, Sunan Nisai Sharif, Vol.II, Urdu translation by Moulana Fazal Ahmed, Darul Ishaat, Karachi. The said tradition has also been reported in hadith 6736, attributed to Ibn Mas’ud, Sahih Al Bukhari by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraji, Vol.VIII, Published by Darul Isha’at, Karachi, Pakistan, page 393

88 Hadith 6736, attributed to Ibn Mas’ud, Sahih Al Bukhari by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraji, Vol.VIII, Published by Darul Isha’at, Karachi, Pakistan, page 393


90 Surah Al Nisa verse 7

91 Hadith [1615] & [1615R1], attributed to Ibn-e-Abbas, Sahih Muslim by Imam Muslim, rendered into English by Abdul Hamid Siddiqi, Vol. IIIA, Sh Muhammad Ashraf, Book sellers & Exporters, Lahore Pakistan, page 131. Similar ahadith (6732 & 6746), have also been reported in Sahih Al Bukhari by Imam Abi Abdullah Muhammad Bin Ismail Al Bukhari, rendered into English by Dr. Mahmood Matraji, Vol.VIII, Published by Darul Isha’at, Karachi, Pakistan, page 391 and 398 [1615], Sahih Muslim by Imam Muslim, rendered into English by Abdul Hamid Siddiqi, Vol. IIIA, Sh Muhammad Ashraf, Book sellers & Exporters, Lahore Pakistan.
what remains goes to the nearest male heir. This hadith has been reported through a chain of transmitters.”

“Let (those disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind: Let them fear Allah, and speak words of appropriate (comfort).”

The stress of all the Qur’anic injunctions and ahadith as discussed herein above supports that helpless orphan relations, children of the predeceased propositus and others more needy persons must be supported and given share in the estate of grandparents or other relations from where they can inherit, as the case may be.

Comparative Analysis of the Legal Provisions regarding Inheritance to the Legal Heirs of the Predeceased Children of Propositus, in Pakistan with the other Countries

In the light of the Islamic injunctions mentioned herein above, evolution in the established principles of inheritance law has been observed in Pakistan and other Islamic countries like Algeria, Bangladesh, Egypt, Iraq, Jordan, Kuwait, Morocco, Syria and Tunisia to benefit the children of the propositus’s predeceased son/daughter as follows:

1. **Direct Legislation** as in Bangladesh (like Pakistan). The descendants of the propositus’ predeceased son or daughter can directly inherit the share which such son or daughter would have received if alive at the opening of succession.

In Somalia, however, the grandchildren are entitled to inheritance, irrespective of the survival of their father.

2. **Mandatory Will** (called wasiyah wajibah) without going out of the limit of one-third of the estate (which the ‘law of will’ imposes in general on the power to bequeath property), as in Algeria, Jordan, Morocco and Syria.

3. **Bequest** as in Egypt, Iraq, Kuwait and Tunisia.

In addition to the above in Egypt, Jordan and Kuwait such a bequest is made mandatory in favour of the children of a predeceased son’s son how-low-so-ever. The amount of a bequest is inter alia specified as below:

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92 [1615R3], Sahih Muslim by Imam Muslim, rendered into English by Abdul Hamid Siddiqi, Vol. IIIA, Sh Muhammad Ashraf, Book sellers & Exporters, Lahore Pakistan.

93 Surah Al Nisa (4:9)

94 Tahir, Mahmood, Personal Law in Islamic Countries,’ page 290
(a) The obligatory bequest for such grandchildren shall be equivalent to the share that their father would have got in the estate, if he were alive; but it shall not exceed one-third of the estate;
(b) Such grandchildren will not be entitled to the bequest if they are heirs of their father’s ascendants, grandfather or grandmother; or where they have received property by way of bequest or gift during their lifetime. Where the father’s ascendants have bequeathed to them less than what the balance shall be given, but if they have bequeathed more than that, the excess shall be regarded as an optional bequest; and if they have bequeathed to some of them only, others shall be given their due.
(d) Such obligatory bequest is given priority over optional bequests in the disposal of one-third of estate. In Jordan such obligatory bequest for such grandchildren is out of 1/3 of his/her legal estate.

In all the aforementioned countries, if bequest to the child(ren) of the propositus is not made, then it is to be presumed by the law to have been made and shall be enforced in preference to any other bequests made voluntarily. If the grandchildren concerned have already got their due otherwise (by gift, etc.), the obligation will lapse, and if the gift, etc., meets only part of this obligation, or serves only some of those entitled to it, the obligation shall have to be discharged as far as necessary to comply with the law. This provision appears to have driven its strength from the following verse of the Holy Qur’an:

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كتب عليه إذا احترمك أو التمنيم إن ترك خبرة الوصية للولدان
والآترين بالمعروف خلقاً على السنين
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“It is prescribed, when death approaches any of you, if he leaves any goods, that he make a bequest to parents and next of kin, according to reasonable usage; This is due from the God-fearing.”

In view of the foregoing discussion, Section 4 of the Muslim Family Laws Ordinance, 1961 does not seem to be in conflict with the Islamic injunction. However, to be on the safe side and in view of the verse quoted herein above, obligatory bequest, (as is prevalent in Egypt, Iraq, Kuwait, Tunisia an Jordan) in favour of the children of a predeceased son/daughter of propositus is suggested.

In the opinion of Muhammad Aslam Saleemi, Advocate, verse no. 11 of Surah Al-Nisa narrates that, “All these shares are to be given after payment of the bequest he (deceased) might have made or any debts outstanding against him (deceased).” In Islamic law, a person has the right to bequeath up to a maximum of one-third of his property. The principle laid down in regard to bequest is that a person can bequeath a portion of his property either to a relative who is not legally entitled to any prescribed

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95 Surah Al Baqarah verse 180
share in the inheritance or to others whom he considers deserving of help, e.g. either an orphan grandson or granddaughter or the widow of a son in financial distress, brother’s wife, nephew, or niece and other relatives who seem to be in need of support. In short, the law has laid down as to the distribution of 1/3rd for wasiyat/will or bequest and out of the remaining the legal heirs are entitled to receive their shares according to the law which means, a maximum of one-third of the inheritance has been left to the discretion of the person concerned, who can dispose it of by means of bequest in the light of his particular preferences or family circumstances. If anyone makes either an equitable bequest or misuses his discretion so as to hurt the legitimate rights of others, it is permissible for the members of the family to rectify the situation either by mutual agreement or by requesting a court of law to intervene in the matter. In case where a person does not make a bequest in favour of orphaned children of his predeceased son or daughter, law can be enacted regarding Mandatory Will (Wasiyah Wajibah) to the extent of one-third of property, to protect in such situation.

Two main policy alternatives can be proposed in this respect:

1. **Provisions of the Muslim Family Laws Ordinance, 1961 (“MFLO”) to be maintained**

**Advantages**

This is a viable option since support for it already exists in the Shi’i school of law. It is also more egalitarian in the light of the Quranic injunctions pertaining to the protection of orphans. Also, any “injustice” that may result from the rule is mitigated by the fact that the children of the predeceased child of the propositus do not take any more than the value of the share of the propositus’ predeceased child. In other words, the children in question are not permitted to take in excess of what their dead father or mother, as the case may be, would be entitled to at the death of the propositus.

**Disadvantages**

The main hurdle of this option is that Section 4 of MFLO’s has been challenged in the Federal Shari’at Court (“FSC”) in 2000 regarding its legal validity. However, the FSC’s decision is not final yet and, in any case, should not operate to completely oust the statute, the utility of which is otherwise acknowledged by various sectors of the population.

2. **Make a Bequest in Favour of the Children of the Propositus’ deceased Child**

**Advantages**

As argued above (with respect to increasing the daughter’s share), a bequest can be legally made by the propositus to benefit the children of predeceased child. Given that half or two-third (as the case may be) of one-third of the estate of the deceased has been proposed to be a mandatory bequest to his/her daughter(s). The deceased should be free to bequeath amount (a maximum of half or one-third, as the case may be, of one-third of the estate) to the children of the propositus’ predeceased child.
Disadvantages

Where the propositus chooses not to bequeath any amount to his/her grandchildren from a predeceased child, this may potentially leave the said grandchildren destitute in certain circumstances, or at the mercy of other family members.

Policy Proposal

It is proposed that the law should allow the propositus to bequeath half or one-third (as the case may be) of one-third of his/her estate in favour of the grandchildren from a predeceased child. In the event such a bequest is not made, MFLO should be enabled to operate by default. This would mean that where the propositus does not bequeath any amount to such grandchildren, the principle of representation under the MFLO shall automatically come into operation.

3.3.3.1.3. Whether in Islam Relatives are Excluded from Inheritance on the ground of difference in Religion?

This question is often raised by the minority community as to why non-Muslims have been debarred from inheriting from a Muslim relative or vice-versa under the Sunni Law. This policy has accordingly been viewed as contradictory to the Constitutional provision which ensures equality of all Pakistani citizens before law.

First of all, the Constitutional provision relating to equality does not apply in the case of personal law as “the Muslim Family Laws Ordinance, 1961 is not open to be challenged on the ground that it infringes the fundamental rights of the citizens to profess and practice their religion and thus is not hit by Art. 20 of the Constitution. It does not stand immune from Art. 2-A except the protection provided under Art. 8(3)(b) of the Constitution. Any provision of the Ordinance can be challenged to the extent that it comes into conflict with the provisions of Art. 2-A except clause (6) of the Objective Resolution relating to fundamental rights.”

Secondly, the scope of the Muslim Family Law Ordinance, 1961 as outlined in sub-section (2) of section 1 is restricted to Muslim nationals of Pakistan only. All the minorities in Pakistan are governed by their personal laws. However, this question is thought provoking and is required to be answered on the touchstone of the principles of Justice, as enshrined in the Holy Qur’an and Sunnah.

There are a couple of concepts with reference to inheritance to and from non-Muslim relations. One of the concepts is that ‘neither a Muslim can inherit from a non-Muslim nor a non-Muslim can inherit from a Muslim.’ It is not strictly based on any of the

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97 1/3rd is a generally accepted portion of the estate that could be given by way of wasiyat. However, some scholars like Javed Ghamidi do not agree to this. Hence, further research is required to be conducted in this context.
99 Art.25, Constitution of Pakistan, 1973
100 PLD 1988 Kar.1969
Qur’anic injunctions but on Ahadith. As for instance Usama bin Zaid (RD)\textsuperscript{101} narrated that Prophet Muhammad\textsuperscript{6} said that “a Muslim cannot be the heir of a disbeliever, nor can a disbeliever be the heir of a Muslim.” This hadith has also been reported in Sunan Abu Dawud,\textsuperscript{102} Sahih Muslim (1614) Vol. IIA and strengthened by the consensus of different schools of thought. Accordingly, in Malaysia non-Muslim relatives are debarred from inheritance under the Islamic law.

Prof. Ahmed Hasan, while commenting on the aforesaid hadith on the basis of previous write-ups, states “Muslims agree that an infidel will not inherit from a Muslim”. However, as regards the inheritance of a Muslim from an infidel, there is a difference of opinion amongst scholars. The majority of the Companions of the Holy Prophet\textsuperscript{6} and successors hold that a Muslim will not inherit from an infidel. But Mu’adh b. Jabal (RD), Muawiyah (RD) and Musayyab (RD) and Musriq (RD) and others maintain that a Muslim inherits from an infidel. Their argument is based on the tradition of the Prophet\textsuperscript{6} that Islam dominates and is not dominated.\textsuperscript{103} Further, according to another hadith attributed to Abu al-Awsad al-Duili (RD), “Mu’adh (RD) brought the property of a Jew whose heir was a Muslim. He then narrated a tradition from the Prophet\textsuperscript{6} to the same effect.”\textsuperscript{104}

Justice Khalil-ur-Rehman\textsuperscript{105} holds an entirely different opinion. According to him, only a non-Muslim wife can inherit from her Muslim husband but no other non-Muslim relations can inherit. He further explained that in Islam only a man can be married to a non-Muslim woman but not a Muslim woman to a non-Muslim man.

A glance at the Qur’anic injunctions does not reveal any discrimination between Muslim and non-Muslim legal heirs. Surah Al-Baqarah and Al-Nisa dealing with the inheritance only spell out the relations, i.e. father, mother, husband, sister, etc., who could be non-Muslim as well. Similarly, the right to Qisas and Diyat has been vested in the legal heirs who could be ‘Akhi’ (brother), by virtue of Surah Al-Baqarah\textsuperscript{106} or ‘Ahl’ (family, relative, inhabitant, people, etc.)\textsuperscript{107}, as per Surah Al-Nisa\textsuperscript{108}, of the victim and ‘Faman’ (victim).\textsuperscript{109}

\begin{itemize}
\item \textsuperscript{101}Hadith 6764, Sahih Al Bukhari, Darul-Ishaat, Karachi-Pakistan, vol. 8, page 405
\item \textsuperscript{102}Hadith 2903, Chapter 1080, ‘Can a Muslim Inherit from an Infidel?’ Sunan Abu Dawud, translated by Prof. Ahmed Hasan, Vol.II, Sh. Muhammad Ashraf, Lahore, page 820
\item \textsuperscript{103}Commentary: Chapter 1080, ‘Can a Muslim Inherit from an Infidel?’ Sunan Abu Dawud, translated by Prof. Ahmed Hasan, Vol.II, Sh. Muhammad Ashraf, Lahore, page 820-821
\item \textsuperscript{104}Hadith 2907, Chapter 1079, ‘Can a Muslim Inherit from an Infidel?’ Sunan Abu Dawud, translated by Prof. Hasan, Ahmed, Vol.II, Sh. Muhammad Ashraf, Lahore, page 821
\item \textsuperscript{105}Justice Khalil-ur-Rehman is a religious scholar, retired Judge of Federal Shari’at Court and presently the Rector of International Islamic University, Islamabad, Pakistan. Researcher’s meeting with him on the subject was held on 1st February 2005.
\item \textsuperscript{106}Surah Al Baqra (2:178), The Holy Qur’an, Text, Translation and Commentary by Abdullah Yousuf Ali, Sh. Muhammad Ashraf, Publishers and Booksellers
\item \textsuperscript{107}Arabic-English Dictionary, compiled by Maan Z. Madina, Darul Ishaat, Karachi
\item \textsuperscript{109}The word ‘Faman’ has been translated as ‘anyone’ by Abdullah Yousuf but according to Dr. Farooq Khan, here it is meant for the victim of hurt/injury.
\end{itemize}
Accordingly, Hazrat Naila (RD), the wife of Hazrat Usman (RD) who was Christian, exercised her right of Qisas, which is the exclusive right of the legal heirs.

By virtue of a hadith attributed to Hammam b. Munabbih (RD), Abu Huraira (RD) narrated that Prophet Muhammad ﷺ said “…And who amongst you leaves property, his inheritor is entitled to get it, whoever he is.”¹¹⁰ This hadith has also been reported in Jame Tirmizi (1917), vol.I.

Further, there is a tradition attributed to Masud (RD) that he heard the Apostle of Allah ﷺ saying: Islam increases and does not diminish. He, therefore appointed a Muslim as heir (of a non-Muslim).¹¹¹

Stress on providing financial support to the legal heirs is also evident from verse 180 of Surah-Al Baqarah, directing the Muslims to bequeath in favour of their parents and kins. Islamic history reveals that in pursuance of the said injunctions, one of the Prophet’s widows, namely Hazrat Safia (RD), who was a Jewess converted to Islam, left a bequest in her will for her non-Muslim nephew upon her death.¹¹²

Ahadith, as for instance the one attributed to Sa’ad bin Abi Waqas (RD)¹¹³ and Hazrat Amir bin Saad,¹¹⁴ also reveal that Prophet Muhammad ﷺ said that “the legal heirs should not be left helpless”, and that while stating the “legal heirs” (Wursa) no distinction has been made between Muslims and non-Muslims.

By applying the rule of deductive reasoning (Qiyas), if marriage of a Muslim is allowed with a non-Muslim who is the follower of divine books (Christian, Jewish, Zoroastrian, etc)¹¹⁵, it may be deduced that there is no intention in the Holy Qur’an to discriminate amongst the heirs on the basis of religion.

In order to ensure Islamic justice in its true spirit there is a need to emphasise those verses of the Holy Qur’an which extol freedom of religion rather than those that legitimize religious coercion. By drawing on these sources and being willing to set aside

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¹¹⁰ Hadith 1619 R3, Sahih Muslim, rendered into English by Abdul Hamid Siddiqui, corrected and revised by Dr. Hassan, Vol. IIIA, Sh. Muhammad Ashraf, page 139
¹¹¹ Hadith 2906, Chapter 1079, ‘Can a Muslim Inherit from an Infidel?’ Sunan Abu Dawud, translated by Prof. Ahmed Hasan, Vol.II, Sh. Muhammad Ashraf, Lahore, page 821
¹¹² Opinion of Mr. Niknoni received through Ms. Zainah, sisters-in-Islam
¹¹⁴ This hadith has also been reported in Jame Tirmizi(1917), vol.I, Translation & Commentary by Moula Fazal Ahmed, Darul Ishaat, Karachi
¹¹⁵ By virtue of Surah Al Baqrah verse 221, marriage of a Muslim with unbelieving woman is prohibited. Here the word unbelieving has been interpreted as “pagan.” The Holy Qur’an, Text, Translation & Commentary by Abdullah Yusuf Ali, Sh. Muhammad Ashraf, vol.I, page 89
archaic and dated interpretations of other sources, we can provide Islamic legitimacy for the full range of human rights for women.

Thus, in the absence of any explicit prohibition from inheritance on the ground of religion and in view of verse 180 of Surah Al-Baqarah, directing the Muslims to make a bequest in favour of their parents and kins, various Ahadith, the Last Sermon of Prophet Muhammad, which speaks of honour and dignity for "humankind" and "children of Adam" without distinction as to race, colour, gender, or religion, and numerous verses of the Holy Qur'an providing for freedom of choice in addition to non-compulsion in religious belief and conscience, there is a dire need to make necessary amendments in the inheritance laws to benefit the relatives of a deceased Muslim irrespective of their caste, creed, religion, gender, etc. and vice-versa.

By allowing benefits to non-Muslim relations of a deceased Muslim through mandatory will (wasiyat wajibah), not only will the institution of family be strengthened, women and children will also become less vulnerable, who would be so, on account of their poverty and disempowerment. This will also provide a chance to develop healthy social interaction between all monotheistic peoples and subsequently open the doors for the propagation and understanding of Islam for all such peoples.

The above arguments lead us to propose the following two main alternatives in this respect:

1. **Only allow those non-Muslim Relatives to Inherit from a Deceased Muslim who are part of a “Monotheistic” Faith**

   **Advantages**

   This option is advantageous in that it is more likely to attract a consensus amongst religious scholars and jurists, in view of the Ahadith.

   **Disadvantages**

   However, there are a number of disadvantages that outweigh purely theological considerations. Firstly, the interpretation of “monotheism” is not as clear as it seems. On the one hand, the Qur’an uses the phrase “People of the Book” for Jews, Christians and Muslims alike. On the other hand, a more literal interpretation of monotheism would operate to strike out the inclusion of Christians from inheritance due to their belief in trinity. Secondly, people from various religious backgrounds may proclaim themselves to be Muslims in order to acquire their share of inheritance.

   Since, Pakistan is predominantly inhabited by Muslims, the concern that non-Muslims may inherit from Muslims is neither rampant nor obviously grave. Still the issue has to be classified as a matter of policy and legal amendments must be made to lay down clearly the position of such non-Muslim legal heirs.
2. The Law should allow the Propositus to make a Bequest to non-Muslim relatives

Advantages
This option counters the disadvantages appearing in option (1) above, thereby making the process of transfer of inheritance more efficient. It is also advantageous in that it upholds the Constitutional guarantees of religious minorities and does not discriminate them on the basis of their religion.

Disadvantages
This option is not fully supported as there is a difference of opinion also supported by Ahadith that a non-Muslim cannot inherit from Muslim relatives.

Policy Proposal
As pointed out during the course of discussion herein above there is no express provision in the Holy Qur’an that bars non-Muslim relatives of a deceased Muslim to inherit from him/her. However, a recognized principle of Islamic Law of Inheritance (derived from the Ahadith) stipulates that non-Muslims cannot inherit from their Muslim relatives. It may be surmised that the word “inherit” in this context does not include inheritance through a bequest. Therefore, the law should allow the propositus to make a will or bequest to non-Muslim relative(s) (regardless of their religious background or belief). And State, in the interest of public, shall term that as ‘mandatory will’ to ensure economic security to the non-Muslim relatives of the inheritor. In this way, non-Muslim relatives will not fall within the main scheme of inheritance, but will be able to benefit from a mandatory will or bequest made by the deceased.

3.3.4. Hinduism
The provisions relating to right to inheritance are given in the books of Hinduism. The principles thereof are interpreted and applied by various schools of thought. According to a Treatise on Hindu Law & Usage, the right of women to possess and inherit the family property depends on organization of the family to which they belong. In this respect we have already discussed the situation in polyandrous tribes of the promiscuous type. However, an ordinary undivided family of Aryan family system is a normal condition of Hindu Society. The general principles relating to women’s right to inheritance are as follows (the property held absolutely by a female):

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117 Aryan (/əˈrjən/) is an English language word derived from the Iranian and Sanskrit terms ari-, aarya-, ārya-, and/or the extended form aryāna-. Beyond its use as the ethnic self-designation of the Proto-Indo-Iranians, the meaning “noble/spiritual” has been attached to it in Persian and Sanskrit. In linguistics, it is sometimes still used in reference to the Indo-Iranian language family, but it is primarily restricted to the compound Indo-Aryan, the Indic subgroup of the Indo-Iranian branch. [Source: http://en.wikipedia.org/wiki/Aryan]
Stridhan

The succession of stridhan, is governed by rules different from those which govern inheritance to the property of a male.

Female heirs

According to the Bengal, Benares and Mithila schools, there are only five females who can succeed as heirs to a male, namely, (1) the widow, (2) daughter, (3) mother, (4) father’s mother, and (5) mother’s mother. In the said list three more heirs have been added by the Hindu Law of Inheritance (Amendment) Act, 1929, namely, the son’s daughter, daughter’s daughter, and sister. The Madras school recognizes a larger number of female heirs including the three mentioned in the Act XVIII of 1937 viz., the widow of a predeceased son and the widow of a predeceased son of a predeceased son are among the heirs to a Hindu’s separate property in all the schools.

Limited Estate of Females

As opposed to males, females succeeding as heirs, whether to a male or to a female take a limited estate in the property inherited by them, except in certain cases in the Bombay Presidency.

Except in the case of stridhan and certain cases in the Bombay Presidency, a female cannot be the last full owner of property hence she cannot become the fresh stock of the descent.

Co-heirs

According to the Mitakshara school two or more persons inheriting jointly take as tenants-in-common except the following four classes of heirs who take as joint tenants with rights of survivorship:

(a) Two or more sons, grandsons, and great-grandsons, succeeding as heirs to the separate or self-acquired property of their paternal ancestor;
(b) Two or more grandsons by a daughter, who are living as members of a joint family succeeding as heirs to their maternal grandfather; &
(c) Two or more daughters succeeding as heirs to their father, except in the Bombay Presidency where they take an absolute estate in severalty.

In this context, the two main systems viz., Mitakshara and Dayabhaga, regulating the Hindu law of inheritance are worth mentioning. The notable features of the same with reference to women are as follows:

Mitakshara Law of Inheritance

As regard females, there are many who are recognized as heirs in the Bombay and Madras schools, but are not recognized as such in the Benares and Mithila schools.
The Hindu Women’s Rights to Property Act (XVIII of 1937 amended by Act XI of 1938) has introduced important changes in the law of succession. (S.35): The Act is prospective. Some of its main provisions on the subject are as follows:

In case of separate property (S.35(1))

(a) The widow along with the sons is entitled to the same share as the son.
(b) A predeceased son’s widow inherits in like manner as the son, if there is no son surviving of such predeceased son; and in like manner as a son’s son if there is surviving a son or son’s son of such predeceased son.
(c) The same provision applies mutatis mutandis to the widow of a predeceased son’s son of such predeceased son.

Widow

In the case of a Mitakshara joint family the widow takes the place of her husband (S.35(2)).

According to the above provision, the widow of a member of a joint family is to have the same interest in the joint property as her deceased husband has. Further, the provision that she is entitled to claim partition, would seem to indicate that mere devolution of the husband’s interest would not otherwise affect the joint family status as such, or to confer upon the widow all the rights of a male coparcener (co-sharer) other than those necessary for enforcing the rights expressly conferred on her. However, for the purpose of income-tax assessment the widow is regarded as a member of joint family. This Act is applicable to moveable properties in foreign countries.

Widow’s Estate

The order of succession among sapindas, that is, people with a common ancestor,118 is that the widow takes only a limited interest called the widow’s estate in the estate of her husband. She is entitled only to the income of the property inherited by her. She has no power to dispose of the corpus of the property except in certain cases. She may, however, alienate her life-interest in the estate.

Bars on Widow’s Right to Inheritance

The widow is debarred from the right to inheritance on the following grounds:

- Unchastity

An unchaste widow is not entitled to inherit from her husband’s estate. But once the husband’s estate has been vested in her (which can happen only if she was chaste at the time of her husband’s death), it will not be divested by unchastity subsequent to her husband’s death.

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118 Under Mitakshara sapindas relationship arises ‘between two people connected by particles of one body,’ namely, that of the common ancestor, in other words, from community of blood in contradiction to the Dayabhaga notion of ‘community in the offering of religious obligations.’ Source: Buddh Sindh v. Laltu Sindh, (1915) 42 I.A. 208, 217
• **Remarriage**

The remarriage of a widow, though now legalized by the Hindu Widow’s Remarriage Act, 1856, divests the estate inherited by her from her deceased husband. By her second marriage she forfeits the interests in her husband’s estate, and it passes to the next heirs of her husband as if she were dead. But a widow does not, by remarriage, lose her right to succeed to the estate of her son or daughter, by her first husband.

Similarly, according to various judicial decisions, for instance, in the cases of Matungini v. Ram Rutton, Vitta v. Chatakondu, Raghunath Shanker v. Laxmi Bai, and Musammat Suraj v. Attar, a Hindu widow who has ceased to be Hindu before her remarriage forfeits her rights to her husband’s property but not so according to the Court’s verdict in Abdul Aziz’s case.

**Two or more Widows**

They will succeed as co-heirs to the estate of their deceased husband and take as joint tenants with rights of survivorship and equal beneficial enjoyment.

Where a Hindu dies leaving only one widow, she can alienate her life-interest in the property inherited by her from her husband, but she cannot alienate the corpus of the property except for legal necessity. If she sells or mortages without legal necessity, that sale or mortgage will bind only her life-interest.

**Daughter-Priority among Daughters**

Daughters do not inherit until all the widows are dead. As between daughters, the inheritance goes, first, to the unmarried daughter, next would be the one’s who are married and “unprovided for,” meaning indigent, and lastly, to daughters who are married and are “enriched,” that is, possessed of means.

**Survivorship**

Two or more daughters of a class take the estate jointly as in the case of widows with rights of survivorship. Any one daughter may alienate her life-interest in the property, but not so as to affect the rights of survivorship of the other daughters. Like widows, daughters may enter into any agreement regarding their respective rights in their father’s estate, provided such agreement does not prejudice the rights of revisioners (i.e. the next heirs of the father).

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119 Matungini v. Ram Rutton (1892) 19 Cal.289 [F.B.]
120 Vitta v. Chatakondu (1918) 41 Mad.1078
121 Raghunath Shanker v. Laxmi Bai (1935) 59 Bom. 417
122 Musammat Suraj v. Attar (1922) 1 Pat. 706
123 Jamnabai v. Khimiji (1890) 14 Bom. L.R.118
124 Manki v. Kundan (1925) 47 All
125 Toawa v. Basawa (1899) 23 Bom. 229
126 Audh Kumari v. Darbo (1882) 4 All. 561
127 Danno v. Darbo (1882) 4 All. 243
128 Kann v. Ammakannu (1990) 23 Mad.504
129 Yelumal Chetty v. Natesachari (1945) Mad.35
Limited Estate
The daughter takes a limited interest in the estate of her father corresponding to the widow’s estate. On death of the widow, the estate passes not to her heirs, but to the next heirs of her father.

Bars to Daughter’s Right to inheritance
Like widows, daughters are also excluded from inheritance in some schools of thought, on the following grounds:

- **Unchastity**

  Unlike other schools of thought in Bombay, unchastity is recognized as a bar. Thus, in the case of an unmarried daughter who is a prostitute and a married daughter who is chaste, the latter succeeds in preference to the former.\(^{127}\)

- **Illegitimacy**

  The illegitimate daughter has no right of inheritance from her father.\(^ {128}\) But, she is entitled to inherit from her mother.

Mother-Limited interest
Mother takes a limited interest in the estate of her son corresponding to the widow’s estate. On her death, the estate passes not to her heirs, but to her son’s heirs.\(^ {129}\)

- **Unchastity and Remarriage**

  Neither unchastity nor her remarriage constitutes any such bar on her right to inheritance.\(^ {130}\)

  However, the fact that unlike, widow, daughter and mother the widower, son and father not being debarred by law on the ground of unchastity and remarriage is the reflection of inherent patriarchal set-up.

Stepmother
She is not entitled to inherit from her stepson. In the Bombay Presidency, however, she is an heir.\(^ {131}\)

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\(^{126}\) Kailash v. Kashi (1897) 24 Cal. 339
\(^{127}\) Tara v. Krishna (1907) 31 Bom. 495
\(^{128}\) Bhikya v. Babu (1908) 32 Bom. 562
\(^{129}\) Vribhukandas v. Bai Parvati (1908) 32 Bom. 26
\(^{130}\) Vedammal v. Vedanayaga (1908) 31 Mad. 100
\(^{131}\) Jullessur v. Uggur (1883) 9 Cal. 725
\(^{132}\) Kojiyadu v. Lakshmi (1882) 5 Mad. 149
\(^{133}\) Kesserbai v. Valab (1880) 4 Bom. 188
Adoptive Mother

She comes within the purview of a mother. Therefore, an adoptive mother, according to the Mitakshara law, succeeds before the adoptive father. On the death of a son, the adoptive mother and natural mother both inherit equally as co-heiresses.\(^{132}\)

Son’s daughter

Under the Hindu Law of Inheritance (Amendment) Act 2 of 1929, she inherits as an heir in all places where the Mitakshara law applies, and succeeds immediately after the father’s father. The son’s daughter takes an absolute estate in Bombay, while in Madras she takes a limited estate.

Daughter’s daughter

Under the Hindu Law of Inheritance (Amendment) Act 2 of 1929, she inherits as an heir in all places where the Mitakshara law applies, even in provinces where before this Act she was not an heir,\(^ {133}\) and succeeds next after the son’s daughter.

Sister

In the Bombay Presidency, she has been expressly mentioned as an heir in Mayukha but not in Mitakshara, though her right has since long been recognized. Her place in the order of succession has also been established since long. She succeeds immediately after the father’s mother, and before the father’s father. In Madras, however, she succeeds next after the daughter’s daughter.

Half sister (a female sibling with whom one shares the same father or the same mother, but not both\(^ {134}\))

By virtue of the decision of the Privy Council,\(^ {135}\) the term ‘sister’ includes a half-sister, but a full sister and a half sister do not inherit together. The latter takes only in default of the full sister.

Female heirs

According to the Bengal school, no female can inherit from a male unless she is expressly named as an heir in the texts. The result is that the only females recognized as heirs in that school are: (1) the widow, (2) the daughter, (3) the mother, (4) the father’s mother, and (5) the mother’s mother.

Before the Hindu Law of Inheritance (Amendment) Act, 1929, the only females recognized as heirs in the Benaras and Mithila schools were: (1) the widow, (2) the daughter, (3) the mother, (4) the father’s mother, and (5) the father’s father’s mother. The exclusion of other females was founded on a text of Baudhayana which says: “Women

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\(^{132}\) Basappa v. Gurlingama (1933) 57 Bom. 74

\(^{133}\) Dalsingar Sindh v. Jainath Kuar (1940) 15 Luck, 229

\(^{134}\) Black’s Law Dictionary, Edited by Brayan A. Garner, 7th ed., West Group, 1999

are devoid of the senses, and incompetent to inherit.” Accordingly, it has been held in Lahore that a sister’s son’s daughter is not an heir.

Madras and Bombay

Neither the Madras nor the Bombay school follows the text of Baudayana. These schools follow the text of Manu which says: “to the nearest sapinda (persons of common origin) the inheritance next belongs,” and they interpret the word “sapinda” to include females also. On that interpretation the Madras school also held that the brother’s daughter, sister’s daughter, brother’s son’s daughter and father’s sister are also heirs in the Madras Presidency. The Bombay school has gone much further, and it includes in the list of female heirs not only the heirs recognized in the Benares, Mithila and Madras schools, but also widows of gotraja sapindas (great great son of a great grandfather of a deceased). The recognition of widows of gotraja sapindas as heirs in Bombay has been placed by the Privy Council on the ground of usage. But the widows of bandhus (e.g., sister’s son’s widow) are not recognized as heirs anywhere.

Under the Hindu Law of Inheritance (Amendment) Act, 1929, which came into force on 21st February, 1929, the son’s daughter, the daughter’s daughter, and the sister rank as heirs in all parts of British India where the Mitakshara law prevails.

Madras recognizes not only the widow, daughter, mother, father’s mother and father’s fathers mother as heirs, but also other females including the son’s daughter, daughter’s daughter and sister who are now expressly named as heirs in the Hindu Law of Inheritance (Amendment) Act 2 of 1929 [sec.61A]. The Madras school does not admit the widows of gotraja sapindas as heirs, while Bombay recognizes not only the widow, daughter, mother, father’s mother and father’s father’s mother as heirs, but also the following females:

1. Sister, whether of the whole or half-blood.
2. Father’s sister, whether of the whole or half-blood.
3. Widows of predeceased gotraja sapindas, that is, of sapindas and samanodakas.
4. Female bandhus mentioned in section 56 above.

A sister is an heir in the Bombay Presidency and inherits immediately after the paternal grandmother both under the Mayukha and the Mitakshara as interpreted in Bombay. Her place in succession is not affected by the Hindu Law of Inheritance (Amendment) Act 2 of 1929.

136 Lallubhoy v. Cassibai (1880) 5 Bom. 110
137 Rameshwar v. Mst Gnapati Devi (1937) Lah. 525
138 Balamma v. Pullaya (1895) 18 Mad. 168, 170
139 Lallubhoy v. Cassibai (1880) 5 Bom. 110
140 Balamma v. Pullaya (1895) 18 Mad. 168 [widow of great-grandson of great grandfather of the deceased not an heir].
141 Lallubhoy v. Cassibai (1880) 5 Bom. 110
Both under the Mayukha and the Mitakshara, as interpreted in Bombay, a sister does not take before a full-brother’s son. In cases governed by the Mayukha, she takes even before a half-brother and half-brother’s son, but not in cases governed by the Mitakshara.

**Half-sister as an heir in the Bombay Presidency**

Half-sister is an heir in the Bombay Presidency and she inherits, in cases governed by the Mitakshara, immediately after the full sister, and in cases governed by the Mayukha after the half-brother.\(^{142}\) Her place in the order of succession is not affected by the Hindu Law of Inheritance (Amendment) Act 2 of 1929 [s.43 (13C)].

**Benares and Mithila**

Under the Hindu Law of Inheritance (Amendment) Act, 1929, the son’s daughter, the daughter’s daughter, and the sister also rank as heirs.

**Dayabhaga**

This recognizes five female sapindas, namely, the widow, the daughter, the mother, the father’s mother and the father’s father’s mother. No other female is recognized as an heir by the Bengal school.

Further two or more persons inheriting jointly take as tenant-in-common, except for only: (1) widows, and (2) daughters, who take as joint tenants with rights of survivorship.

**3.3.5. Zoroastrianism\(^{143}\)**

The Zoroastrian religion is followed by the Parsis. According to their law of inheritance the children of the deceased inherit equally and a widow is put in the same position as a widower.

However, like the Hindu laws, a Parsi female is ex-communicated and cannot succeed to the property of her parents/ kindred on marrying a person of a different religion. But, unlike Hinduism, no such bar exists in the case of a male Parsi legal heir. The Parsi law of inheritance has been codified and inserted in the Succession Act, 1925, as Chapter III (sections 50 to 56) on ‘Special Rules for Parsi Intestates.’

The relevant policy/laws as enacted and enforced in Pakistan, as we shall discuss in detail in the following chapter, are the reflection of the afore-discussed religious beliefs.

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\(^{142}\) Vithaldas v. Jeshubai (1880) 4 Bom. 188

\(^{143}\) **Zoroastrianism** is the religion and philosophy based on the teachings ascribed to the prophet Zoroaster (Zarathushtra, Zartosht). **Mazdaism** is the religion that acknowledges the divine authority of Ahura Mazda, proclaimed by Zoroaster to be the one uncreated Creator of all (God).[Source: http://en.wikipedia.org/wiki/Aryan]
Chapter 4

Policy/Legal Framework in Pakistan

4.1. Historical Background

The people of Pakistan are predominantly Hanafi Muslims. However, the country also has Ithna ‘Ashari, Shafi‘i, Isma‘ili and non-Muslim minorities, including Qadiani, having varying numerical strength. The policy and legal framework of the country accordingly encompasses the interest of all classes of the citizens of Pakistan.

The prevailing policy and laws have strong resonance in the country’s historical background. Even after the creation of Pakistan (on 14th August, 1947) it shared its legal history with India and inherited from the parent state the following Acts in the area of personal law:

1. Muslim Personal Law (Shari‘at) Application Act 1937 (along with a similar local Act in force in NWFP); and

In 1955, the Government of Pakistan set up a Commission charged with the work of reviewing the prevailing marriage and family laws with a view to recommending measures to ensure women “their proper place in society in accordance with the fundamentals of Islam.” The seven-member Commission submitted its recommendations (with the dissenting opinion of its only theologian member) in July 1956. The said recommendations, however, remained the subject of a countrywide debate.

The first Constitution of the Islamic Republic of Pakistan, 1956, explicitly provided that no law repugnant to Islamic injunctions would be enacted in future and that the laws then in force would be reviewed and revised in order to be brought in conformity with those injunctions. This Constitution lasted for two years only.

Based on the recommendations the Commission referred herein above in 1956, the Government of Pakistan promulgated the Muslim Family Laws Ordinance, 1961. This Ordinance was amended by Ordinance 8 of 1961. Further amendments were initiated in it vide Ordinances 21 and 30 of 1961. The said amendments sought to ensure, inter alia, rights for orphaned grandchildren of deceased persons in their estates.

A new Constitution was promulgated in 1962, once again mandating the State not to enact any law repugnant to Islamic principles and more or less repeating the “Islamic provisions” 144 of the earlier constitution. During the same year came in force the new Shari‘at Act of the then West Pakistan—the Muslim Personal Law (Shari‘at) Application Act 1962. 145 This Act widened the scope of the Shari‘ah law on a uniform basis for whole of the (West) Pakistan and repealed all earlier legislation on the subject.

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144 Constitution of Pakistan 1962, Art.199-206
145 (West) Pakistan Act 5 of 1962
During 1963-64 the new Shari‘at Act was amended in order to further enlarge the scope of Muslim Personal Law.\textsuperscript{146}

The third Constitution of Pakistan, promulgated in 1973, declared that “all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Qur’an and Sunnah” and that “no law shall be enacted which is repugnant to such injunctions.”\textsuperscript{147}

During 1980-1985, the Constitution of 1973 (since revived with some amendments) was amended in respect of its parts relating to ‘Judicature’ and ‘Islamic provisions.’\textsuperscript{148} The new (prevailing) Constitution (the “Constitution”) provides that in the context of “personal law of any Muslim sect” the constitutional expression “Qur’an and Sunnah” means “Qur’an and Sunnah” as interpreted by that “sect.”\textsuperscript{149}

The Constitution established a Federal Shari‘at Court and empowered it to examine and decide if any “law or provision” was repugnant to Islamic injunctions, and the Shari‘at Appellate Bench in the Supreme Court to hear appeals against the decisions of the Federal Shari‘at Court.\textsuperscript{150} However, “Muslim Personal Law” has been kept outside these powers of the Federal Shari‘at Court.\textsuperscript{151}

Since all the policies and laws of the country are required to be in the light of Constitutional guarantees and the international commitments of the Government of Pakistan, hence we will quickly browse through the same.

### 4.2. Constitutional Guarantees

There is no direct provision in the Constitution on women’s right to inheritance, but it provides inter alia, the following guarantees and principles of policy to ensure justice without discrimination:

1. The State shall ensure the elimination of all forms of exploitation ….. \textsuperscript{152}
2. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

In particular:

(a) No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
(b) No person shall be prevented from or be hindered in doing that which is not prohibited by law; and

\textsuperscript{146} Ordinance 39 of 1963 and Act 28 of 1964
\textsuperscript{147} Constitution of Pakistan, 1973, Art.227
\textsuperscript{148} ibid, Part VII: Art. 175-212; Part IX: Art. 227-231
\textsuperscript{149} ibid, Art.227(1), Explanation added by P.O. No.14 of 1980
\textsuperscript{150} ibid, Chapter 3A (Arts.203A to 203J) added in 1980
\textsuperscript{151} ibid, Art.203B
\textsuperscript{152} ibid, Art.3
(c) No person shall be compelled to do that which the law does not require him to do. 153

3. Any law, or any custom or usage having the force of law, so far as it is inconsistent with the rights conferred by this Chapter (Chapt.1, Fundamental Rights) shall to the extent of such inconsistency, be void.154

4. Every person 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.155

5. No person shall be compulsorily deprived of his property save in accordance with law.156

6. Nothing in this Article shall affect the validity157 of any law permitting the taking over of any property which has been acquired by, or has come into possession of any person by any unfair means, or in any manner, contrary to law; or 158

7. (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 alone.

3. Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.159

4.3. International Commitments

Pakistan has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) but with reservation. Though the said Convention, like the Constitution, does not have even a single provision that exclusively addresses the right of women to inherit property, it nevertheless implicitly secures this right by establishing the legal status of women and granting them property rights, under Article 15. The provision of the said article obligates the State to ensure that women are not discriminated against in the acquisition and administration of real property.

The Committee on the CEDAW in its General recommendation No.21, however, while elaborating on the implication of the aforesaid article, noted that the inheritance laws and practices in many countries severely discriminate against women, and unequivocally stated that “men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession.”160 Thus, the Committee proclaims that laws and practices that deny women an inheritance share equal to that of men “contravene the Convention and should be abolished.” 161

153 ibid, Art.4
154 ibid, Art.8(1)
155 ibid, Art. 23.
156 ibid, Art. 24(1)
157 165 ibid, Art.24(3)
158 ibid, Art.24(3)(b)
159 ibid, Art. 25
160 CEDAW Committee’s General Recommendation 21, note 24, para.34
161 ibid, Para. 35
Thus, in view of the aforesaid recommendations, Article 16 requires State Parties to abolish the practices targeted by the Convention. The basis of the said article is the equality of status between men and women. The meaning of equality and the ways to achieve it have also been clearly spelled out in the Convention. In doing so, the Convention establishes not only an international bill of rights for women, but also an agenda for the ratifying countries to guarantee the enjoyment of those rights. Accordingly, Pakistan is under an obligation to ensure the following:

1. Condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end undertake as under:

   (a) Adopt appropriate legislative and other measures, including sanctions where appropriate and prohibiting all discrimination against women;

   (b) Establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;

   (c) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

   (d) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

   (e) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

   (f) To repeal all national penal provisions which constitute discrimination against women.162

2. The State shall take in all fields, including economic, all appropriate measures, inter alia legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on the basis of equality with men.163

3. The State shall also take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.164

4.4. Prevailing Policies

Although Pakistan does not have any specific policy with reference to women’s right to inheritance, it is worth mentioning that, the National Policy for Development & Empowerment of Women, March 2002 in this context, as its goal, is to empower Pakistani women, irrespective of caste, creed or religion. Since women’s right to

162 ibid, Art.2
163 ibid, Art.3
164 ibid, Art.5
Inheritance is of vital importance for their empowerment in social, economic, personal and political spheres of life, it comes within its scope.

Accordingly, the aims and objectives of the policy are as follows:

1. Remove inequities and imbalances in all sectors of socio-economic development and ensure women’s equal access to all development benefits and social services.
2. Safeguard and ensure the protection of women’s human rights including economic, legal, political and social rights, especially the rights of minority women, rural and poor women, girls and women with disabilities, elderly women and women in vulnerable circumstances and situations.
3. Provide equal opportunity and create space for women to realize their full potential.

Its guiding principles, \textit{inter alia}, include the recognition of ‘women as equal partners in development and agents of change in economic, social and political processes’, and its key policy measures include the elimination of all negative social practices.

Realizing the fact that women are prevented from enjoying existing rights because of the prevalence of negative customary practices and attitudes, general ignorance about rights and poor access to, and procedural problems in the justice system, and generally poor implementation of the law, the following key policy measures have been mandated to be undertaken:

(a) Elimination of negative customary practices by increasing knowledge of women’s existing rights under the law, and of law itself, to access judicial relief and redress.
(b) Assurance of effective implementation and enforcement of existing rights.
(c) Removal of discrimination through legal reforms.
(d) Promotion of women’s access to justice by providing legal aid, assistance and counseling.

\textbf{4.5. Prevailing Laws}

The \textbf{Succession Act, 1925} is one of the main statutes governing the laws of inheritance viz., Muslim, Hindu, Christian, Buddhist, Sikh or Jaina living in Pakistan. It is based on English Law applicable to all classes of intestate and testamentary succession and our country inherited it from British India.

The notable feature of this statute is that it is a consolidating Act by virtue of which the following Acts have been consolidated and, in consequence of consolidation they stand repealed:

1. The Succession (Property Protection Act) Act (XIX of 1841)
2. The Indian Succession Act (X of 1865)
3. The Hindu Wills Act (XXI if 1870)
4. The Married Women’s Property Act (III of 1871), S.2
5. The Probate and Administration Act (V of 1881), Act VI of 1889,
Act II of 1890, and Act VIII of 1903

6. The District Delegates Act (VI of 1881)
7. The Succession Certificate Act (VII of 1889)
8. The Native Christian Administration of Estates Act (VII of 1901)

4.5.1. Islamic Law

Sunni Law

This subject has been dealt under Muslim Family Laws Ordinance, 1961, which is an overriding statute against the provision of any law, customs or usage to the contrary. The relevant provisions are provided under the heads of Sunni Law of Inheritance and Shia Law of Inheritance. The notable legal provisions which are substantially in consonance with the Islamic injunctions discussed in the proceeding Chapter, are as follows:

Women’s Right to Inheritance

The rules relating to the Sunni Laws of Inheritance are described under Khoja Disposition of Property Act, 1916. The distribution of the share of property is dependant upon the nature of the relationship within the family context and also dependant upon other surviving family members. (Table of shares under Sunni Law of Inheritance is attached as appendix ‘A’).

Mother

She is entitled to 1/6th share of inheritance when there is a child or grandson; or when there are either two or more brothers or sisters or equally one brother and one sister or when there is a husband and a father but no child or child’s son and more than one sibling (if any), while, her share is 1/3rd in the absence of a child or grandson and if she does not have more than one sibling, if any. However, it will be 1/4th if there is a wife and father in addition to one sibling (if any) but no child or child of a son.

Maternal/Paternal True Grandmother

Each one of them is entitled to receive 1/6th allocation of inheritance if there is no true mother or nearer true grandmother, either paternal or maternal.

The allowance and circumstances for a share of inheritance are almost identical for both maternal/paternal grandmothers but they have an encroachment on their right of inheritance, namely that if there be an immediate true grandfather, this right of inheritance is lost.

Wife

Her share is 1/8th of inheritance when there is a child or child of a son. The share entitlement remains the same even if there is more than one wife. However, her share is enhanced to 1/4th in the absence of a child. Again, the entitlement is the same in case of more than one wife. If there are more than one wives, they divide the share 1/8th or 1/4th as the case may be equally amongst themselves.
Daughter
Her share is 1/2 of the inheritance, if she is the only child. In case of two or more daughters, their share will be reduced to 2/3rd, which they will take collectively, provided they have no male sibling, while in the presence of a male sibling, the daughter will be entitled to inheritance as a residuary to ½ the sum of what her brother would be entitled to.

Son’s Daughter
She is entitled to inheritance only when there is neither any son, daughter nor son’s son of the deceased. Accordingly, ½ share will be apportioned to her if she is the only child and, if there are more than one sons daughters, they will collectively inherit 2/3rd share.

Her share will be 1/6th if there is only one daughter and there is no son or son’s son. But if there is a son’s son and no heirs then she will inherit as a residuary and her share will be like that of a daughter.

However, if there is no equal son’s son but one of a lower pegging, she will still inherit as a residuary with him. As a general rule, in all cases the son’s share will be double. Also if the son’s daughter takes as residuary with a lower son’s son and there are also other sons’ daughters at that level, then she will have to share equally with them.

Son’s son’s daughter
If one, she will get ½ subject to the absence of any son, daughter, son’s son, son’s daughter or son’s son’s son. In case of more than two, they will share 2/3rd jointly. Whether one or more, her share will be 1/6th, provided there is no son, son’s son, no son’s son’s son(s). However, in presence whereof she will inherit with them as residuary and her share will be like a son’s daughter.

Uterine Sister (that is a sister descended from the same mother as another)
Just like uterine brother her share is 1/6th, provided there is no child, child of a son, father or true grandfather. If there is more than one uterine sister, both will inherit 1/3rd jointly. If there is a uterine brother, then both will inherit 1/6th share equally.

Full Sister (having the same parents as another)
Her share will be ½ in case of her being the only child, provided there is no child, child of a son, father, true grandfather or full brother. In case there are more than one, both will share 2/3rd jointly.

If she has a brother then she will inherit as a residuary half of what her brother’s share would be.

In default of full brother, son, son’s daughter, daughter, father and true grandfather, she will inherit as a residuary even if there be daughter(s), son’s daughter(s) or even if there is a daughter and a son’s daughter(s).
**Consanguine Sister** (having common origin or blood relation)

Her share will be ½ in case of her being the only one, provided there is no child, child of a son, father, true grandfather, full brother, full sister or consanguine brother. If she has a consanguine sister(s), they will get 2/3rd jointly sharing equally.

However, if she is not otherwise excluded from inheritance, her share will be 1/6th subject to the survival of one full sister and she succeeds as a sharer of the inheritance and not simply as a residuary.

With consanguine brother she will inherit as a residuary, a portion half of what her consanguine brother will get, in the absence of any son, son’s son, daughter, son’s daughter, father, true grand-father, full brother or full sister.

**Distant Kindred**

There are four sub-categories within this group, with the first class succeeding in priority over the later classes. Succession to inheritance within the group of distant kindred is generally dependant upon there not being any sharers or residuaries. The only exception to this rule is the case of a spouse, who does not totally exclude the distant kindred, but inherits with them. So, after assigning the share to the husband or wife, as the case may be, the residue goes to the distant kindred.176

The general rule is that “the nearer in degree excludes the more remote.” Yet, it should also be noted that the same degree of gender inequality rules are applicable in this category as the above. For example, a son’s daughter’s son will succeed in preference over a daughter’s daughter’s son. It should also be noted that a daughter’s children are included within the category of distant kindred whereas a son’s children are not.

**Distribution of the Estate**

If the intermediate ancestors do not differ in their sexes, the estate is divided according to the rule of “the double share of the male.” If they do so differ in sex, share is apportioned as follows:

**Firstly between two claimants,** the rule is to stop at the first line of descendant in which the sexes of the ancestors differ and the male ancestor is assigned a double portion to that of the female. Their share then descends to the claimant beneath them, irrespective of sex.

**Secondly, in the case of there being three claimants,** again the rule regarding stopping at the first line of descendants in which the sex of the ancestors differs, is applicable and each male ancestor is again assigned a double portion to that of his female counterpart. Here there is no individual share of inheritance for the claimants, but a collective one and again the males in the group receive a double portion.

**Lastly, where a claim is made by two or more persons,** through the same ancestor, if the ancestor is male, then all male claimants under him will be satisfied first. Yet if the ancestor is female, claims apply irrespective of sex.
If there be no distant claimants in the first class, the estate devolves upon the mother’s father. If there is no mother’s father then the estate devolves upon the false ancestors in the third degree as are connected with the deceased. Firstly the father’s mother’s father, who takes 2/3rd portion owing to the fact that he is from the paternal side and the mother’s mother’s father who will receive 1/3rd portion owing to the fact that he belongs to the maternal side. If there be none of the above in existence, then the estate devolves upon the remaining false ancestors in the third degree, again with the male ancestors taking 2/3rd portion and the females take the lesser 1/3rd portion.

The order for succession among distant kindred is to be determined by applying the three rules in order. Firstly the nearer in degree excludes the more remote. Secondly, among the children in the same degree of relationship, the children or residuaries are preferred to those of distant kindred. Thirdly, if there be no distant kindred in the first or second class, the estate devolves upon the kindred of the third class. The rules of succession with respect to this class are disproportionate to females as the descendants of full sisters do not exclude the descendants of consanguine brothers or sisters, whereas descendants of full brothers do.

Shia law

Wife

Like the husband she is never excluded from succession but inherits 1/8th whether she is the only wife of her husband or not, in the presence of a lineal descendant. Her portion of the share will however be raised to ¼ in the absence of a lineal descendant.

If the deceased left only one heir, the whole property would devolve upon that heir, except in the case of a wife as she will get only ¼ and the residue ¾ will escheat to the Government.

Mother

Her share is 1/6th in the absence of a lineal descendant, or when there is a father along with two or more brothers (full or consanguine) or one such brother and two such sisters or four such sisters. In default of these heirs, the share of the mother increases to 1/3. The mother, being a principal heir, is never excluded from inheritance.

Daughter

If only one, she is entitled to ½. While, two or more daughters take 2/3rd collectively. Daughter(s) inherit as sharer only in the absence of male sibling otherwise as residuary, with the male taking double the portion of the female.

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165 Khan, Hamid; p. 93.
166 Ibid.
Uterine Sister
She is entitled to 1/6th share in the absence of her female sibling (like uterine brother), otherwise 1/3rd, provided there is no parent, or lineal descendant. However, no such condition is attached in the case of a uterine brother.

Full Sister
Her share is ½, if she is the only sister otherwise 2/3rd, provided there is no parent or lineal descendant, or full brother, or father’s father, in the presence whereof, she inherits as a residuary.

Consanguine Sister
She is also entitled to ½ or 2/3rd, if she is the only one or has sister(s), respectively, as the case may be, provided there is no parent, or lineal descendant, or full brother or sister or consanguine brother, or father’s father. In the presence whereof, she inherits as a residuary with the consanguine brothers and also with the father’s father.

The Shi’i scheme of inheritance may result in a greater amount being inherited by female relatives. For example, if a decedant is survived by a grandfather (father’s father), his wife and his daughter, the Sunni system would divide the estate as follows: 3/8th to the grandfather, 1/8th to the wife, and 1/2 to the daughter. Under the Shi’i system, on the other hand, the wife and daughter, as the closer relatives, would share the estate equally to the exclusion of the grandfather.167

Further, under Islamic Law, an individual is allowed to bequeath up to one-third of his/her estate. The Sunni system prohibits this one-third from being bequeathed to any family member who is named in the Qur’anic framework. The Shi’i system, on the other hand, allows this amount to be distributed to family members, thus potentially increasing the share that will pass to female relatives.168

Under the Shia Law if a propositus leaves behind daughters only they will inherit fully sharing if the mother is present. While under the Sunni Law such daughters will inherit only their share and the remaining will go to other male / female ascendants / descendants as per their relationship.

4.5.2. Christian Law
In Pakistan, inheritance and succession under Christian law are governed by the Succession Act of 1925. The Act, consisting of 391 Sections with XI Parts and IX Schedules, provides laws applicable to intestate169 and testamentary170 succession in Pakistan.

167 Radford, Mary F., “The Inheritance Rights of Women under Jewish and Islamic Law.” See http://www.bc.edu/bc_org/avp/law/lwsch/journals/bciclr/23_2/01_FMS.htm
169 Ibid.
169 Intestate means not having made a will before one dies.
By virtue of the aforesaid law, in the cases of intestate succession, the heirs and
distribution of shares amongst the heirs is to be regulated according to the personal law of
each of the religious groups. The rules for determination of heirs and volume of share for
“Pakistan Christians” have been provided in Sections 31 to 49, except Section 33A.

The term “Pakistan Christian” has been defined in clause (d) Section 2 of the Succession
Act. It says, “Pakistan Christian means a citizen of Pakistan who is, or in good faith
claims to be, of unmixed Asiatic descent and who professes any form of the Christian
religion.” By virtue of the aforesaid law, the Christian women in Pakistan are entitled to
inheritance as follows:

Widow

“The property of an intestate devolves upon the widow in the same manner as upon
husband…”171

Where the intestate has left a widow and lineal descendant(s), 1/3rd of the property shall
belong to the widow. However, in the absence of children and in the presence of the
kindred only, she will inherit ½ of the estate. Where the deceased has left neither lineal
descendant(s) nor kindred, the whole property will devolve upon the widow.172 This
provision has, however, been qualified by Sec.33A,173 as the widow will be entitled to the
whole of the property provided the value of inheritance does not exceed rupees five
thousand (Rs. 5,000/=). In case the value exceeds the said value, the widow shall be
entitled to five thousand rupees thereof and shall have a charge upon the whole of such
property for such sum of five thousand rupees with interest thereon from the date of the
death of the intestate at 4 per cent per annum until payment. This provision is, however,
in addition and without prejudice to her share in the residue of the estate of such intestate.
However, she will not be entitled to the aforesaid provisions made for her if, by a valid
contract made before her marriage, she has been excluded from her distributive share of
her husband’s estate.174

Daughter

No distinction is made between son and daughter as the law provides that “…the property
shall belong to the surviving child, if there is only one, or shall be equally divided among
all his surviving children.”175

Share of Predeceased Child’s Descendants

Where the intestate has not left any child(ren) but grandchild(ren), the property shall be
divided among all his surviving grandchildren.176 In case the intestate’s father is dead but
his mother, brother or sister, and child(ren) of the propositus’ child(ren), each one of

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170 Testamentary means bequeathed or appointment through will.
171 Sec.32 & 35
172 Sec.33
173 Sec. 33A had been inserted via Indian Succession (Amdt.) Act, 1926 (10 of 1926)
174 Explanation to Section 33
175 Sec.37
176 Sec.38
them will be entitled to property in equal shares. The child(ren) of the propositus’ child(ren) will, however, be entitled to the shares which their respective parents would have taken if living at the time of the intestate’s death.\textsuperscript{177}

**Mother’s & Sister’s Share**

Where the intestate has left no children but a mother, brother(s) or sister(s) and no child of any deceased brother or sister, the mother and each living brother or sister shall succeed to the property in equal shares.\textsuperscript{178}

### 4.5.2.1. Christian Women’s Right to Inheritance

Pursuant to the aforesaid relevant provisions of the Succession Act, the Supreme Court of Pakistan in the case of Inayat Bibi,\textsuperscript{179} allowed inheritance to the Christian female on a contest between the widow and two daughters on the one side and a son and his nephew on the other. The relevant paragraph of the judgment reads as:

“…the Privy Council judgment in the present case is fully attracted. Even if we are not otherwise bound to accept the Privy Council view today as binding on this Court; yet there is nothing therein not to commend itself as a correctly laid down legal proposition. The Christian females, similarly as in the present case, were allowed to inherit in presence of the male heirs. It is thus a case of the application of the Succession Act, which by statutory dispensation having determined the mode of succession when Christian male dies, neither the question of custom nor any other law quoted by the learned Council would be applicable.”

This judgment had been criticized by some quarters of the Christian community on the ground that women cannot succeed to inheritance in Christianity. It was also taken as interference into the religious matters of the minorities in Pakistan,\textsuperscript{180} by some quarters.

However, most of the senior Christian clergies\textsuperscript{181} do recognize the women’s right to inheritance on the basis of the Holy Bible, discussed in the preceding chapter. In the opinion of Naeem Shakir Advocate\textsuperscript{182} in his opinion to the NCSW on “Succession Act and Christian Law of Inheritance” not only writes that the Supreme Court of Pakistan in its judgment in the case of Mst. Inayat Bibi has not only clarified the law, but that “this judgment is in the background of the Customary law on the basis of which it maintains gender justice and thus its provisions are in consonance with the spirit of justice as ordained in the Old Testament.” He further states that, “the judgment of the apex court referred to above was based on the gender justice as provided by the provisions of

\begin{footnotesize}
\begin{enumerate}
\item[177] Sec.44
\item[178] Sec.43
\item[179] Mst. Inayat Bibi versus Isaac Nazirullah, reported in 1992 PSC 794
\item[180] Nazeer, Eldreen K., ‘Christian Law of Inheritance Az-ro-e-Muqadas Bible,’ Sialkot, Pakistan
\item[182] Advocate in Lahore, Pakistan
\end{enumerate}
\end{footnotesize}
Succession Act. It should have set at rest all confusions and ambiguities created by the promoters of status quo that promotes patriarchal and feudal culture and norms.”

If we look at the inheritance laws of the other countries, women are given equal right of inheritance. One example is the Netherlands. According to Sebastiaan Van Zwaan, the Dutch legal system does not make, in any way, a distinction between the right to inheritance on the basis of religion or sex nor is any exception laid down in their laws. However, in a country where majority of the population is Christian or not religious at all, and one of the minority groups is Muslim, the right of any woman to inheritance is equal (preconditions and laws concerning inheritance and ownership of property apply to all men and women in the same way).

But unfortunately, the deep rooted patriarchal and feudal social order is adversely affecting the status and rights of Christian women also in Pakistan. According to a survey conducted by ASR Resource Centre and YMCA, the female inheritance is generally not practiced in Christian families in Pakistan.

4.5.3. Hindu Law

The Hindus in Pakistan are also governed by the Succession Act, 1925. The provisions of sections 31 to 49 of the said Act, in respect of Christian women’s right to inheritance, discussed herein above, are also applicable to Hindu female legal heirs.

Apart from the provisions of the Succession Act, women’s right to inheritance has been strengthened further by the provision of Article 2 of the Hindu Law of Inheritance (Amendment) (Act II of 1929), which reads:

“The...a son’s daughter’s daughter, sister, and sister’s son shall in the order so specified be entitled to rank in the order of succession next after a father’s father and before a father’s brother.”

The aforesaid statute is overriding for it cannot be superseded by any special family or local custom having the force of law.

4.5.4. Parsi Law

The Parsi law of succession has been codified in a separate chapter of the Indian Succession Act, 1925, whereby the children of the intestate inherit equally.

The notable provisions of the law with reference to women’s right to inheritance are as follows:

Widow

The share of the widow is in the same position as that of a widower. However, where a widow of any relative of an intestate has married again in the lifetime of the intestate, she

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183 Sebastiaan Van Zwaan, Member Commission of Justice and Peace, Netherlands communicated his views to NCSW through e-mail
184 Report of IDARA’s Consultation of 7th January 2005, shared with NCSW.
185 Sec.3, the Hindu Law of Inheritance (Amendment) (Act II of 1929)
shall not be entitled to receive any share of the property from such deceased, and shall be
deemed not to be existing at the time of the intestate’s death.\footnote{Rule 50(c)}
The share of a widow (like that of a son) is double the share of each daughter.

The division of the property in the case where the intestate leaves no lineal
descendant, but a widow/widower of any lineal descendant, shall be in
accordance with the following rules, namely:-

(a) If the intestate leaves a widow/widower but no widow of a lineal
descendant, such widow/widower shall take half the said property.

(b) If the intestate leaves a widow/widower and also a widow of any lineal
descendant, such widow/widower shall receive one-third of the said
property, and the widow of any lineal descendant shall receive another
one-third, if there is more than one such widow/widower, the last
mentioned one-third \textit{shall be} divided equally among them.

(c) If the intestate leaves no widow/widower but one widow of a lineal
descendant, she shall receive one-third of the said property or, if the intestate
leaves no widow/widower but more than one widow of a lineal descendant,
two-third of the said property shall be divided among such widows in equal
shares.

(d) The residue after the division specified in clause (a), (b) or (c) shall be
distributed among the relatives of the intestate in the order specified in Part I
of Schedule II. The next-of-kin standing first in Part I of that schedule shall
be preferred to those standing second, the second to the third, and so on in
succession provided that the property shall be so distributed that each male
shall take double the share of each female standing in the same degree of
propinquity.\footnote{Rule 54}

\textbf{Mother}

She (like the father) will receive a share equal to half the share of a son.\footnote{Rule 51(2)}

\textbf{Daughter}

Her share in the male intestate’s property, leaving widow, children and parents is \textit{half the}
share of a son and of a widow,\footnote{Rule 51} while it is \textit{equal to that of a son} in the property of a
female intestate leaving a widower and children.\footnote{Rule 52}

\textbf{Share of Predeceased Child’s Descendants}

In all cases where a Parsi child has died in the lifetime of the intestate, the division of the
share of the property of such deceased would be divided in such manner that the children

\footnotesize{\textsuperscript{186} Rule 52\textsuperscript{187} Rule 50(c)\textsuperscript{188} Rule 54\textsuperscript{189} Rule 51(2)\textsuperscript{190} Rule 51\textsuperscript{191} Rule 52}
of such predeceased child would have taken if living at the time of the intestate’s death, in accordance with the following rules:

(a) If such deceased child was a son, his widow and children shall take shares in accordance with the provisions of this chapter as if he had died immediately after the intestate’s death, provided that where such deceased son has left a widow of a lineal descendant but no lineal descendant, the residue of his share after such distribution has been made shall be divided in accordance with the property of which the intestate has died intestate, and in making the division of such residue the said diseased son of the intestate shall not be taken into account.

(b) If such deceased child was a daughter, her share shall be divided equally among her children.

(c) If any child of such deceased child has also died during the lifetime of the intestate, the share which he or she would have taken if living at the time of the intestate’s death shall be divided in like manner in accordance with clause (a) or clause (b) as the case may be.

(d) Where a remoter lineal descendant of the intestate has died during the lifetime of the intestate, the provisions of clause (c) shall apply mutatis mutandis (with all necessary changes) to the division of any share to which he or she would have been entitled if living at the time of the intestate’s death, by reason of the predeceased of all the intestate’s lineal descendants directly between him or her and the intestate.

A female Parsi, however, cannot succeed in intestate succession to the property of her parents or kindred if she marries a non-Parsi, though no such restriction has been observed in vice versa case. This reflects gender bias towards women’s right to choose spouse.

The Division of the Property where the Intestate leaves neither Lineal Descendants nor a Widow or Widower nor a Widow of any Lineal Descendant

When a Parsi dies leaving neither lineal descendants nor a widow/widower, any lineal descendant, his or her next-of-kin, in the order set forth in Part I of Schedule II, shall be entitled to succeed to the whole of the property of which he or she dies intestate. In succession, the next-of-kin standing first in Part II of that schedule shall be preferred to those standing second, the second to the third, and so on; provided that the property shall be so distributed in a manner that each male shall take double the share of each female standing in the same degree of propinquity.

Prevailing Customary Practices

The above laws are explicit on women’s right to inheritance, though some gender biases have been observed for multiple reasons extended by various schools of thought. However, since the scope of this study is restricted to a limited number of questions on gender biases hence restrain from entering into debate on all the gender issues as observed in the divine and the established principles. The major reason for this limited approach is to focus on the non-implementation of even the explicit laws giving women their due rights.
The patriarchal customary practices are so deep rooted that it is difficult to find any significant improvement in the status and rights of women in the contemporary world. Some of such practices, as explored during the course of qualitative and quantitative national field research conducted by NCSW, are shared as follows:

4.6.1. Discriminatory Attitudes towards Women

The gender biases begin from the very first institution, i.e., the home. Usually the male member of the family is vested with the exclusive right to be the head/guardian of family. Consequently men are given preferential treatment in all respects including health and educational facilities.

4.6.2. Lack of Decision Making Power

Since male members of the family, mostly irrespective of age and relation, are considered to be the head of the family, they are exclusively vested with the authority to take all decisions, while, on the other hand, women as daughters, sisters, wives and mothers remain under the male’s guardianship. Therefore, strategically girls are doomed to remain submissive and to silently follow the rules framed by male members of the household.

4.6.3. Family System

Patriarchal values are strengthened by the customary family system which is mostly cohesive and community based.

The joint family system is more prevalent as compared to the nucleus family system. However, in urban settings of the country, after the death of their father, mostly brothers separate and opt for the nucleus family system. In most of the cases they keep on living in the same housing premises but have separate cooking arrangements, keeping title of ownership of their land and house intact even after the father’s death.

4.6.4. Marriage System

Normally, customary practices define the mode of mate selection and entry into the marriage bond. But these customs vary from region to region and even caste/tribe to caste/tribe. Marriage is not simply a matter of marrying a woman or man; rather it provides socially and legally approved foundations for sharing/transferring the immovable/movable property from one family/tribe to the other by virtue of rights to inheritance of women. Therefore, the socio-economic background of both the bride and bridegroom plays a decisive role in mate selection. However, customarily approved caste/tribal affinity also has a significant bearing on mate selection.

4.6.5. Modes of Marriage

Following are the most common modes of marriage in Pakistan:

4.6.5.1. Arranged Marriages

Overwhelming majority of marriages in Pakistan are endogamous, while exogamous is an exception to the rule, particularly in rural areas of the country. Generally, marriages
outside the family/clan/tribe are considered mostly on the non-availability of a suitable mate within the community.

Whether the marriage is endogamous or exogamous, generally guardians (mostly father, brothers and uncles) have the exclusive right to select a mate for their children, particularly girls. However, it is their own discretion to consult their daughter/son in this context. But the decision of the guardian, particularly of the father, is considered final and binding on the children.

It is quite usual that nikah forms are filled by nikah khuwan or the guardians of the bride and bridgroom and most of the columns pertaining to the bride’s rights, as for instance, maintenance, delegated right of divorce, etc., are deliberately omitted. Customarily, nikah/marriage takes place through a wali of a woman, and the dower amount, ‘mehr’, is also fixed at the discretion of the bridegroom.

It has also been commonly observed that the widow and her orphan daughters remain under the guardianship of the male family member of her deceased husband. Neither she nor her daughters have the right to get married without the consent of their guardian.

4.6.5.2. Court Marriage

Though this is legal, its frequency is negligible. Such marriages in most parts of the country, particularly in interior areas, are taken as a violation of Shar’iat and local customs.

4.6.5.3. Exchange Marriage (watta satta)

This is a very common practice in both rural and urban families of all strata. In such marriages the path of convenience is followed among the marrying families which are usually closely related or members of the same clan/tribe/caste.

4.6.5.4. Valvar

The custom of valwar (bride price), i.e., giving a woman into marriage by taking a price from the bridegroom or his family is common in the entire region of Balochistan, NWFP, FATA and interior Sind.

4.6.6. Non-registration of Marriage and Birth

Marriages and divorces are often not registered in most of the cases, particularly in rural areas. The tribal clan/caste/biradari (kinship group) adhere to the customs of their respective ethnic group, while well-knit joint families which are not tribal in nature, follow the religious or cultural patterns of their respective communities.

Likewise, registration of birth is negligible in the interior districts of Balochistan, NWFP, FATA and even in interior Sindh. In such regions, people also do not realize any immediate utility of the registration of births and deaths of their women.
4.6.7. Observance of Inheritance Law
Customarily, people value the common tribal and family ownership of land, by virtue of which inheritance is essentially confined to the male members of the family.

4.6.8. Women’s Rights of Inheritance
Though different tribes have both inter and intra familial networks of matrimonial relationships, they do not allow the transfer of their property to one another by denying the women’s rights to inheritance.

4.6.8.1. Denial of Right
Daughters are frequently denied their right to inheritance on the ground, *inter alia*, that they are given dowry and gifts at the time of their marriage.

4.6.8.2. Voluntary Withdrawal of Right
Since girls are mostly groomed to give up their right to strengthen the honour of the family, hence they voluntarily withdraw from their rights to inheritance.

4.6.8.3. Withdrawal / Relinquishment of Right under Compulsion
Customarily, some tribes in Balochistan, NWFP and interior Sind, which do not give women a right to inheritance, require the bride to formally pronounce her withdrawal from her right to inheritance in the presence of the entire family before her marriage ceremony. This custom in local language is termed as “*Haq Bukhshwana*”. Some of the female respondents expressed, though hesitantly, that if they ever dared to claim their right to inheritance, they would be killed as ‘kari’. This is the prevalent custom in Sindh however, in the Punjab the males of the family usually get the thumb impression of the female inheritors on blank stamp papers and subsequently they misappropriate the females’ share.

*If I demand my share in inheritance, I will lose the love and affection of my brothers.*
*Female respondent*

In a few other cases, married female respondents disclosed that silence concerning their right to inheritance is the only way to keep cordial relations with their brothers.

In some remote parts of the country even orphan daughters who are without real brothers, are often not given the right to inherit the property of their deceased father. In fact, they themselves are considered part of the property of the deceased’s family.

Similarly, in majority of the cases in tribal areas, including Balochistan and NWFP, the widow is not given a share in her husband’s property.
If they are at all given a share in inheritance, they are often compelled to remarry with the brother or an immediate relative of the deceased’s husband so that the property does not go outside the family. In case a widow refuses to marry within the family of her deceased husband, most commonly, she has to give up her right to inheritance upon remarriage. And if not legally permissible, such women are asked to relinquish their right ‘voluntarily’. Consequently, all the property of their deceased husband goes to husband’s brothers, paternal uncles and nephews, as the case may be. Further, in some cases, they cannot rejoin their parents or brothers; rather they are made to stay with their deceased husband’s family.

Women’s claim to inheritance from their father’s property is considered an act of dishonouring their paternal family. Similarly, the husband’s demand for getting his wife’s share to inheritance is customarily condemned. The well-off brothers are expected to offer some compensation to their sisters in recognition of their withdrawal from their right to inheritance.

In some cases, though women are given a share in inheritance, the possession and control thereon is denied. They, however, get a share in the produce of their commonly owned land.

Contrary to the above practices, the relinquishment of right to inheritance is not recognized under Islamic law and law of the land. Accordingly, it has been clearly held in Ghulam Ali’s case that, the so called “relinquishment” of her inheritance by a female as has taken place in this case, is undoubtedly opposed to “public policy” as understood in the Islamic sense with reference to Islamic Jurisprudence. 192

4.6.8.4. Marriage to Qur’an

During survey we did not come across any case of marriage with the Holy Qur’an. 193 However, according to HRCP report, 194 there are currently over 5,000 women in Sindh married to the Holy Qur’an.

4.6.8.5. Women’s access to Court of Law/Litigation and out-door activities

Since women in most parts of the country are socially and economically less empowered, if they are driven to a situation of getting into any sort of litigation to seek justice, they have to solicit the support of other male members outside their families, and for that mostly they have to pay a heavy price in the form of social boycott and stigma for having brought dishonour to the family.

192 Ghulam Ali v. Ghulam Sarwar Naqvi (Mst.), PLD 1990 SC 1
193 Marriage with the Holy Qur’an: It is a form of forced marriage apparently specific to interior Sindh of Pakistan. Generally it is motivated by property issues so that the property may remain within the family.
The implications of the above practices on women’s right to inheritance are discussed in Chapter 5.

In order to address the above issues of denial or forced waiver of women’s right to inheritance following policy proposal has been formulated:

1. When the proposed Inheritance Monitoring and Resource Centre (see Chapter 6) receives an application for determination of heirs with respect to inheritance from the Union Council, it shall be required, as a mandatory regulation, to make a more detailed inquiry into applications where there are, prima facie, less than a minimum number of female heirs. For instance, it is recommended that there should be a presumption of mala fide where there is no surviving female lineal descendant of the deceased and less than two other female heirs. This presumption of mala fide should only be rebutted after detailed inquiry into the individual application by the Inheritance Monitoring and Resource Centre.

Appropriate penal provisions should be introduced for a person who deliberately omits to declare the existence of a legal heir. Any person who knowingly omits to declare the existence of a rightful heir in the application to the Inheritance Monitoring and Resource Centre, shall be punishable with imprisonment for up to one (1) year or a maximum fine of 30% of the value of the property of such defaulting rightful heir or both.

2. The law must stipulate that all property transactions for any kind of property (tangible or intangible) lawfully belonging to a female must be carried out with her consent, and the document containing the terms and conditions of the transaction in question must be legibly signed by her (or must have her thumb impression(s), as the case may be).

Any person who purports to transfer, dispose off, gift, or alienate in any other way, or diminish the value of, any kind of property (tangible or intangible) lawfully belonging to a female without her knowledge and full consent and proper signature(s) (thumb impression(s)), shall be liable to imprisonment of up to one (1) year or a maximum fine of 30% of the value of the property in question or both.

3. For the purpose of obliterating the inhuman custom of women’s marriage to the Holy Qur’an, in particular, the law should explicitly declare the practice of marriage to the Holy Qur’an a punishable offence. In June 2005, the Islamic Ideology Council (IIC) drafted a new law, known as the Pakistan Penal Code (Amendment) Act, 2005, abolishing this custom and recommended life imprisonment for the perpetrators of this practice.195

195 The proposed amendment to Section 295-B of the Pakistan Penal Code reads as follows: “Defiling of and marriage with the Holy Quran; whosoever wilfully defiles, damages or desecrates a copy of the Holy Qur’an or an extract there from or directly or indirectly allows the Holy Qur’an to be used for the purpose of its marriage with a female or fraudulently or dishonestly induces any person to swear on the Holy Qur’an never to marry anyone in her lifetime or knowingly uses it in any derogatory manner or for any unlawful purpose shall be punishable with imprisonment for life.”
Advantages
This new law has strengthened the broad consensus on the point that the custom of marriage of women to the Holy Qur’an is highly inhuman and unislamic and must be severely penalized.

Disadvantages
The disadvantage of a purely legal solution is that it ignores the social barriers that exist in bringing such customs to the Court for adjudication. Any legal sanction/penalty with respect to obliterating inhuman customary practices must be supplemented by social pressure for change and a mechanism for uncovering individual instances of marriage to the Holy Qur’an. Otherwise, it is unlikely that such cases will be brought to the Court on the initiative of women who are already in a state of extreme subjugation and isolation. In view of this, the following policy proposal is recommended to supplement the proposed amendment to the law by the IIC.

Under the circumstances, it is proposed that a collective task force should be established in the provinces where such practice is prevalent. This should comprise of staff from the proposed Inheritance Monitoring and Resource Centre (see chapter 6) and various relevant human and women’s rights organizations, such as the Human Rights Commission of Pakistan (HRCP). This task force should have, as its primary aim, the joint inquiry of individual cases of the custom of marriage to the Holy Qur’an. The task force should be enabled to initiate criminal proceedings in Court on behalf of the aggrieved women.

To review the prevailing laws for the purpose of initiating reforms, a task force of each religious community comprising of scholars, retired judges, lawyers, representatives of concerned public sector officials and Civil Society Organizations must be formed at national level. Their recommendations must be widely disseminated and thoroughly discussed to avoid any error.
Chapter 5

Prevailing Mechanism for the Implementation / Enforcement of the Law of Inheritance in Pakistan

5.1. Legal Framework

After the formulation of proper policies and laws, the most important task is their implementation in true spirit, in the absence whereof violation of fundamental human rights become certain. The consequences of such violation is the non-effectiveness of laws, the very purpose of which is to provide justice to all its citizens.

By virtue of the following Divine directives, Constitutional guarantees and international commitments, the Government of Pakistan is under obligation to ensure the implementation of the laws of inheritance through appropriate measures:

“Allah doth command you to render back your Trusts to those to whom they are due” 196

The review of the policy/legal framework in this context reveals that procedure for the determination of the rights of legal heirs (both the Muslims as well as the minorities in Pakistan) is mainly provided in the West Pakistan Land Revenue Act, 1967. The relevant provisions of the said law are attached as appendix ‘C’ for ready reference.

Under section 42 of the aforesaid Act a person (in the case of a minor, his/her guardian) acquiring the right to inheritance himself/herself has to report to a Patwari within three (3) months from the date of such acquisition, otherwise under section 48 of the said Act, he shall be liable, at the discretion of the Collector, to a fine not exceeding twenty-five rupees (Rs. 25/=). In Punjab, the amount of such penalty is rupees two hundred (Rs. 200/=) The Patwari then records the acquisition in the Roznamcha, gives a copy to the concerned reporters, and sends a copy to the Union Committee or Union Council within which the estate is situated.

Once the mutation affecting the shajra nasb (genealogy197) has been made, the Patwari shall note in pencil the number of the mutation against the entry affected. If and when the mutation is sanctioned, he shall amend the shajra-e-nasb in red ink in accordance with the mutation order.

By virtue of section 7.26-A, the record of mutation is entered by the Patwari suo moto on the basis of his personal knowledge by taking the following procedural measures:198

1. A summary inquiry in title;

196 Surah Al Nisa verse 58
197 Line of descendant from an ancestor
2. The Patwari (which also includes a Tapedar) draws the shajra nasb on foil and counterfoil, showing the names of all heirs of the deceased, and writes the report in column 14 of the foil of mutation briefly stating the fact and the result of inquiry, regarding heirs;

3. If the Revenue Officer, as a result of his/her inquiry, finds that the Patwari has not prepared the shajra-e-nasb or the shajra nasb prepared by the Patwari is not correct, he/she should prepare or correct the same, as the case may be, and initial it on both the foil and the counterfoil;

4. In the case of a claim that the property devolved by reason of a ‘Will’, this should be treated as a case of succession by inheritance and be dealt with in accordance with the relevant law governing the parties;

5. In order to secure women’s right to inheritance, the law has provided that mutation of inheritance must first be recorded and sanctioned showing the correct shares of each heir in accordance with the instructions contained in subpara (infra) after the death of parents or other relatives. If the female heirs wish to gift the lands thereafter to their brothers, etc., this should take place in a separate mutation, which should not, however, be recorded until a week after the 40 days of mourning so as to save them from undue influence and enable them to decide in a calm and cool atmosphere that such action on their part would deprive them and their own children of their rights in the inheritance of the deceased forever.

In NWFP, the law has been changed further to the effect that only a written statement by a female to the effect that she has consented to relinquish her right to inherit from the estate will not be accepted, unless the male legal heirs prove that she was not forced into such an agreement and that she was compensated with a value equivalent to that of the property she had forfeited.199

6. For transfer / mutation of immovable property other than land, e.g., houses, shops, etc., a Letter of Administration under the Succession Act, 1925 is the legal requirement.

7. Movable property like debts or securities, and succession certificates (for limited purposes), are dealt under section 370 of the Succession Act, 1925.

8. Further, section 17 of the Registration Act, 1908 deals with matters of registration but only to the extent of non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upward, to or in immovable property.

5.1.1. Lacunae in the Legal Framework and Proposed Policy Alternatives

Though inheritance is a key factor causing direct impact on the socio-economic set-up of the whole country, there is no exclusive policy to that effect. The current National Policy for the Development & Empowerment of Women, 2002 is general in nature and does not address the specific issues on the subject.

As clarified by the Supreme Court of Pakistan, the “Inheritance under Muslim Personal Law takes place automatically and each legal heir is entitled to get his respective share irrespective of any claim or demand therefor.” But, unfortunately there is no uniform mechanism to ensure that each of the legal heirs gets his/her right to inheritance.

The entire process for the transfer of inheritance is very complicated and cumbersome, involving multiple laws and functionaries with no coherence in the entire setup. For legal instance, the initial reporting of the acquisition of the right of inheritance to the preparation of shajra-e-nashb, only in respect of lands and for the purpose of mutation in the Revenue Record, is dealt under the Land Revenue Act, 1967. But there is no provision for mutation of record in respect of properties other than land, such as houses, shops, etc. However, for the purpose of immovable property, a Letter of Administration is granted under Succession Act, 1925, but that is again for a limited purpose.

Under the Succession Act, 1925, a succession certificate may be issued under section 370 of the said Act, but that is restricted to debts or securities i.e. only for all movable properties. The aforesaid laws also have the following lacunae:

5.1.1.1. Land Revenue Act

1. Lack of Title

The procedure does not create any title but it is only for the purpose of realizing the land revenue. As such mutation confers no right in the property but is meant for ensuring realization of land revenue and correctness of revenue record.

2. Nominal Penalty on Default of Registration or on Furnishing Wrong Information

The procedure provides for the mandatory reporting to the patwari of the right of inheritance acquired by a person (in case of a minor, his/her guardian) within three months. But, in case of such person’s failure with respect to reporting, or providing wrong information, the penalty he/she will face is in the form of a fine not exceeding twenty-five rupees (in Punjab, the amount of such penalty is rupees two hundred), and that too, at the discretion of the Collector is not at all deterrent.

3. Lack of Mandatory Provision for the Production of Birth, Death and Marriage Registration Certificates of the Legal Heirs

The law does not call for the compulsory production of the death and birth certificates and nikah nama (marriage registration deed) of legal heirs. As a result, as observed during the survey, some of the surviving female legal heirs are not given their share in inheritance by male legal heirs, who falsely notify their death to the concerned authorities.

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217 Section 42 of the West Pakistan Land Revenue Act
4. **Absence of Mandatory Provision for the Publication of Notice after Shajra-e-Nasb and Waiting Period for Receiving Claims**

The public notice of declared shares in inheritance must be given in at least two (2) newspapers, one in Urdu and one in English, to ensure that none of the legal heirs have been ignored. The transfer must be effected after two to three weeks of public notice.

5. **Transfer of Female’s Right to Inheritance in Favour of Male Legal Heirs**

To ensure the giving of women their right to inheritance, the law requires that the mutation of inheritance must first be recorded and sanctioned, showing correct shares of each heir in accordance with the instructions contained, after the death of parents or other relatives. However, a female heirs are permitted to gift the lands thereafter to their brothers, etc., through separate mutation, a week after the 40 days of mourning.

The logic behind this provision is to save them from undue influence and enable them to decide in a calm and cool atmosphere that such action on their part would deprive them and their own children of their rights in the inheritance of the deceased forever.

In NWFP the law has been reformed further to the extent that only a written statement by a female to the effect that she has consented to be disinherited will not be accepted unless the male legal heirs prove that she was not forced into such an agreement and that she was compensated with a value equivalent to that of the property she had forfeited. But in NWFP and some other parts of the country, this provision is more or less inefficient, the reason being that the patriarchal system is so strong that women’s right to inheritance is considered too sensitive an issue to be talked of even. In most of the areas, as for instance in Dir, women as a matter of customary practice are not given any share in inheritance. Thus, this provision has a direct bearing on the overall enforcement of law and needs to be addressed by taking into consideration the overall setup in each province and other areas of the country.

By looking at the gravity of the situation, the question arises whether females should be allowed to relinquish their share of inheritance to male members of their family at all.

**Proposed Policy Alternatives**

Two main alternatives can be proposed in this respect:

1. Completely prohibit women from relinquishing their right to inheritance in favour of male members of the family, and consider any such relinquishment to be of no legal effect. This proposal could be made viable when coupled with increase in the awareness of legal rights amongst female population particularly and males in general.

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Advantages
As held by the Supreme Court of Pakistan,203 and in various other case law on the subject,204 the “public policy” standpoint appears to be that relinquishment of women’s right to inheritance in favour of male members of the family is prohibited. The advantage of this standpoint is that it establishes certainty in the law by assuring that women cannot, in any circumstances, be deprived of their property rights through inheritance.

Disadvantages
The main disadvantage of this policy option is the underlying presumption that women are incapable of serious decision making. In the process of protecting women’s right to inheritance, this patronizing attitude is likely to strengthen patriarchy in the long-term.205

2. Subject relinquishment of women’s rights to inheritance to Court intervention and lay down strict conditions and limitations for any such relinquishment.

Advantages
By laying down specific conditions for relinquishment, such as minimum time periods during which relinquishment cannot have legal effect, and introducing Court intervention, women’s decision making power and awareness regarding their right to inheritance are likely to be enhanced, simultaneously affording them adequate protection.

Disadvantages
The main disadvantage of this option is that it is likely to result in an increase in litigation. It may also lead to further violence against and subjugation of women.

Policy Proposal
The above contrast of advantages and disadvantages leads us to make the following Policy Proposal.

The law should stipulate that the relinquishment of the right to inheritance by female is void. However, gift deeds by female legal heir may be allowed only through intervention of the Court and after fulfilling strict conditions. For instance, the Court should be satisfied that the concerned female has other property in her name which could reasonably and adequately sustain her for her remaining lifetime, in accordance with her current standard of living, were she to be living independently of anyone. If this test is satisfied, the next question for the Court should be to assess whether there is an element of duress or undue influence in the particular circumstances of the case. If the Court determines that both these hurdles have been crossed, it may, at its discretion, allow full or part relinquishment, depending on the facts. The law should stipulate that the proposed Inheritance Monitoring and Resource Centre (see below) should automatically be made a

party to all proceedings concerning relinquishment/gift/transfer of property from females in favour of the male members of their family, and should be given the mandate to challenge the verdict of the Court on behalf of the concerned female heir, as and when the circumstances require, in order to secure her rights to inheritance. The contention that such measures may lead to increased violence against, and subjugation of women by the male members of their family, is dealt with by policy proposals for support mechanisms (see below).

When deaths are registered it can be made mandatory that “B” form of the deceased be attached with the death report along with an inventory of the property (immovable and moveable) owned by the deceased and all possible steps be taken to ensure that the woman gets her share of the inheritance and the same be immediately registered in her name.

Another proposal is that in the mutation paper from the onset the names of all the legal heirs should be entered. This must be a mandatory provision. It will save litigation and the matter can be referred to Revenue Courts which will then make out new mutation papers in favour of the legal heirs according to their shares.

Penal Provisions

Any person who purports to oust women from their share of inheritance during the stipulated period of three years and/or deals with their property (whether movable or immovable) in such a way so as to decrease its value or dispose it off, or in any other manner alienate the same or part thereof, should be made liable to imprisonment of up to two (2) years or maximum fine equivalent to 30% of the value of the said property or both.

5.1.1.2. Succession Act

Lack of Detailed Determination of Right to Inheritance

The Succession Act provides a summary procedure which does not lead to the detailed determination of the right to inheritance, as also held in Rukhsana Kausar’s case.206 The relevant para of the judgment reads:

“from the plain reading of section 373 of the Succession Act, it is crystal clear that the Act has provided only summary procedure, and if any person wants that there should be detailed determination of rights, remedy lies in shape of suit filed under S.37, Succession Act, and if a person is dissatisfied or aggrieved by issuance of a Succession Certificate he would prefer an appeal under section 384 of the Act against the order of granting or refusing the certificate.”

But the question is how many people, particularly women, can afford litigation in our patriarchal set-up, where women are either denied their right to inheritance straight away or are emotionally compelled to withdraw their right to inheritance? If a woman asserts

206 Rukhsana Kausar vs. Additional District & Session Judge Khanewal & 11 others, 2000 CLC 585
her right she has to face the consequences in the form of violence, the extreme form of which is honour killing.

5.1.1.3. Registration of Births, Deaths & Marriages Act, 1886

The law of the Birth, Deaths and Marriages Registration is directly linked to the subject. But unfortunately, it has the following drawbacks:

1. **Lack of Compulsory Registration of the Births, Deaths and Marriages**
   
   Though u/s.11 of the aforesaid statute the registration of births and deaths has been made mandatory by using the word “shall”, the statute itself has weakened the said provision by virtue of section 20 (relating to the registration of births) and section 21 (relating to the registration of deaths) with the use of words “any of the following persons may give a notice of ..” rather than using the words “anyone of the following shall give a notice of…”

2. **Lack of legal sanction**
   
   The law does not provide any penal action against the persons who are authorized to cause the registration of births and deaths and they have either overlooked or wilfully avoided it.

   In Pakistan, now the local governments have started the promotion of registration of births by entrusting this task to the schools wherein the births of students is registered. But that would certainly not include the registration of out-of-school children.

   A step forward is taken by NADRA in the process of collecting and computerizing the countrywide record of deaths and births. But its comprehensiveness needs to be assured in addition to its integration with the inheritance record.

   This law no longer provides for the registration of Marriages as Chapter IV ‘Amendment of Marriage Act’ has been repealed by Repealing Act, 1938, I of 1983 and Schedule.

The registration of marriages is dealt under the **Muslim Family Laws Ordinance, 1961**.

5.1.1.4. Registration Act, 1908

Section 5 of the said Ordinance provides a procedure for the registration of marriages, appointment of Nikah Registrars and punishment for contravention of the prescribed provisions, but there is no penal provision for the bride or for the bridegroom for non-registration of nikah.
The learned Justice Dr. Tanzilur Rahman has rightly pointed out\(^{207}\) that the non-registration of marriage does not invalidate the marriage and he suggested that in view of illiteracy in Pakistan or any other Muslim country, default to get registration of marriage should not be made an offence. His opinion is realistic, no doubt, but in the context of women’s rights to inheritance, the findings of our countrywide survey revealed that non-registration of nikah and non-registration of birth of baby girls facilitates evasion of women’s right to inheritance. Hence, the balance of convenience would lie in enforcing the registration of nikah and its non-registration should be made an offence and should be dealt with strictly. The parents, wali/guardian or even the witnesses can be made responsible to such registration.

In the opinion of Dr. Tanzil-ur-Rehman; “According to section 5 every marriage solemnised under Muslim Law shall be registered with Nikah Registrar appointed by the Union Council of the Ward in which the marriage takes place. If the marriage is solemnised by a person other than the Nikah Registrar, this shall have to be reported to the official Nikah Registrar. Anyone contravening this provision shall be punishable with simple imprisonment for a term which may extend to three months or with fine which may extend to Rs.1,000/= or both.”\(^{208}\)

### 5.1.2. Practical Aspect of Implementation Mechanism

The implementation mechanism, in practice (as observed during qualitative and quantitative survey at national level) is even more complicated than what is elucidated in the policy, laws, rules and regulations. The ground realities as revealed during our national survey reflected the importance of the following institutions in the implementation of the laws relating to inheritance:

- 5.1.2.1. Union Council and its functionaries
- 5.1.2.2. Nikah (Marriage) Registrar
- 5.1.2.3. Educational Institutions
- 5.1.2.4. Health Department (BHUs/RHCs etc.)
- 5.1.2.5. National Database Registration Authority (NADRA)
- 5.1.2.6. Revenue Department
- 5.1.2.7. Subordinate Judiciary

#### 5.1.2.1. Local Union Councils

They are primarily responsible for the registration of births, deaths, marriages and divorces and for maintaining records at grass root level.

However, births and deaths are not immediately registered in many areas, especially in rural settings, because a number of alternative options are available that serve as a substitute to its basic registration in the office of the Union Council. The actual practices

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\(^{207}\) Justice Dr. Tanzilur-Rahman, Muslim Family Laws Ordinance, Islamic and Social Survey, Royal Book Company

\(^{208}\) Quoted from ‘Muslim Family Laws Ordinance, Islamic and Social Survey,’ by Justice Dr. Tanzilur-Rahman
recorded during the field survey portray poor performance of the office of the Secretary Union Councils. Consequently, people are not encouraged to report the events of births and deaths to the Secretary Union Council on their own.

5.1.2.2. Nikah (Marriage) Registrar

At Union Council level the system of registering marriage/nikah exists in almost all parts of the country. Marriage/Nikah is registered with the Nikah Registrar, belonging to the residential area of the bride. By virtue of Family Law, Nikah Registrar, mostly the Imam/Khateeb of the local jamia mosque (a mosque where grand collective prayer is offered on Friday) performs the job of registering marriage/nikah.

The Nikah Registrars receive the Books of Nikah Registration Forms from the office of the Secretary Local Union Council and are required to resubmit the record of registered marriages to his/her office. The appointment of Nikah(marriage) Registrar is honorary without provision of any remuneration and office paraphernalia. However, the Nikah Registrar is entitled to charge a nominal marriage registration fee plus other marriage taxes which are customarily paid by the bridegroom.

Four (4) copies of the nikah nama (Nikah Form) are filled in. One copy of Nikah Forms is provided to the bride and bridegroom each, whereas two copies are retained as part of the office record of the Secretary Union Council of the area where Nikah/Marriage has been registered. Usually, the bridegroom obtains his copy of Nikah Form, but the bride and her parents seldom bother to retain their copy of the Nikah Form as a record. Normally, they do not foresee any utility of retaining the Nikah Form of their daughter with them.

Similarly, due to the poor coordination between the Nikah Registrar and the Secretary Union Council, the instances of mismanagement of the official record of nikah forms of registered marriages (nikah nama) have been reported by the respondents of our survey.

Marriages are registered in almost all the areas of the province of Punjab, AJK and urban centres of the rest of the provinces with some exceptions. In rural areas, however, the registration of marriage is not commonly practised.

According to NADRA officials\textsuperscript{209} one of the major drawbacks in the nikahnama is that the National Identity Cards (NIC) numbers are not reflected in the nikahnama. This leads to many problems including the filing of fake nikahnama. In case the bride and/or bridegroom are underage which is not lawful under the Child Marriage Restraint Act (XIX of 1929) but since not prohibited or void under Shariah the child registration certificate number can be written to avoid fabricated documentation.

\textsuperscript{209} NCSW Research Officer’s meeting with Brig. Bartarhashan Naqvi, D.G. (Operations) NADRA Head Quarters was held on 11th July 2006.
5.1.2.3. Educational Institutions

School leaving certificate not only authenticates the level of educational attainments of the students but also certifies their date of birth that was officially acceptable for any official purpose. It is legally acceptable evidence about the age and parenthood of the people who had ever been registered in schools, hence it provides a legal foundation for determining the legal heirship of the deceased person.

However, generally, at the time of first admission of a child in primary school, the teachers do not press upon the production of birth certificates for determining the authenticity of the date of birth of the children for admitting them in school. A verbal statement of the parent/guardian of the child regarding the date of birth of the child is considered reliable. Admissions are granted accordingly. This state of affairs undermines the importance of the birth certificate obtainable from the office of the Secretary, Union Council. In this way, registering the date of birth in the school record permanently replaces the need for mandatory registration of birth in the Union Councils. Therefore, people rarely bother to register the birth of their children because admission in school is possible without the evidence of a Union Council birth certificate. However, the utility of a school certificate is also limited to only those who had ever been admitted in school.

Since the schooling of girls is low as compared to boys, girls/women have meagre chances to get certification of their birth. Consequently, the women whose name neither appears in the official record of the Union Councils nor in any other registration offices are most vulnerable in this regard. This tendency provides ample reasons for the evasion of women’s right to inheritance.

5.1.2.4. Health Department (BHUs/RHCs etc.)

Normally, Basic Health Units and Rural Health Centres are the health care services delivering entities. People seldom have any idea of the role of doctors and midwives in registering events of births and deaths in their areas of jurisdiction. The births and deaths taking place in hospitals/BHUs/RHCs are registered only by the medical officers/doctors concerned. Usually, in rural areas deliveries of babies that take place at home are rarely registered with the concerned Government departments. The role of medical officers/doctors and the midwives for registering the births of the children at local level is almost invisible at public level.

A regular and periodical liaison between the Secretary of Union Councils, medical officers and the midwives working at Basic Health Units/Rural Health Centres, though most important, is unfortunately absent.

5.1.2.5. National Database Registration Authority (NADRA)

National Database Registration Authority issues very vital document – the National Identity Card. This institution, however, needs to expand its scope to the database of birth, death and marriage registration, issuance of certificates in this regard and close
coordination with the concerned functionaries. When the Authority\textsuperscript{210} was contacted we learnt that NADRA has already started training of Union Council personnel in computerized child birth registration. As on 11\textsuperscript{th} July 2006 about 37 out of 129 Union Councils in Multan Division were issuing computerized birth certificates on payment of prescribed fees. Likewise, in Lahore Division 600 personnel have been trained and now 284 out of 1000 Union Councils are operating on these lines.

In NWFP also 64 personnel have been trained that enables the functioning of 27 Union Councils to carry out issuance of the above certificates. According to the Authority’s plan all Union Councils of Frontier will be functional by the end of year. However, the Authorities are facing financial constraints in meeting the requirement of this mega project.

The Authority also suggested the issuance of photo Identity Card of child upon registration with relevant information about the child, his/her parents and whereabouts. Such a document will be of great help to a child.

Further, though NADRA has a vigilance team but their task is to conduct inspection in respect of individual for National Identity Card purpose only, hence, the other functionaries must be allocated the task to get verified information regarding birth, death, marriage and dissolution of marriage so as to ensure authenticity of data.

5.1.2.6. Revenue Department

This department is of vital importance for protecting women’s rights to inheritance in the capacity of custodian of the record of immovable property of people at tehsil and district levels. It also executes the transfer of property among the parties concerned under the relevant law as it deems fit. Therefore, given this context, the process of transferring the property of the deceased person to his/her legal heirs is the core issue and is responsible for maintaining revenue record.

All the actions regarding land transfer/mutation are taken by the functionaries of this department. Patwari, Qanoongo and Tehsildar are required to act according to the prevailing law and procedures. Whenever inheritance issues emerge, the role of these functionaries becomes very critical in order to judge the evidence. For instance, personal appearance of all the legal heirs is mandatory before the Tehsildar accompanied by the Numberdar of the area where property is situated, and the owners of the neighbouring land/immovable property. The verbal statement of the Numberdar and owners of neighbouring land/immovable property is taken as conclusive evidence for identifying the legal heirs of the deceased person. In the absence of any documentary evidence, such lacuna in law and procedure enables officials of the Revenue Department as well as male heirs to manipulate women’s right to inheritance with mutual connivance.

\textsuperscript{210} NCSW Research Officer’s meeting with Brig. Bartar Hashan Naqvi, D.G. (Operations) NADRA Head Quarters was held on 11\textsuperscript{th} July 2006.
In Balochistan, besides following the state laws, officials of the Revenue Department adhere to some customary practices mostly depriving women of their rights to inheritance. For transferring inherited property to the legal heirs of the deceased person, both Patwari and Tehsildar demand not only a Sharia Fatwa issued by a clergyman (Imam of Mosque) for determining the shares of the heirs but also implement the contents of that Sharia Fatwa without questioning the legality of its contents and Sharia Fatwa itself. As per the interviews of Qanoongo, Patwari and Tehsildar, the following documents are considered essential for transferring the inherited property to the legal heirs:

- Application for the transfer of inherited property submitted by one of the legal heirs
- Statement of the applicant on oath.
- Proof of the inherited property from Patwari of the area concerned
- Sharia Fatwa issued by clergyman (Imam of Mosque) for determining the shares of the heirs
- Public Notice published in Newspapers
- Death certificate, if it can be produced, otherwise Sharia Fatwa is considered sufficient

Surprisingly, neither copies of National Identity Cards of the legal heirs nor the succession certificate are demanded for transferring the inherited property to the heirs of the deceased person. Such a procedure for the transfer of inheritance provides ample chances for depriving women of their legal rights to inheritance.

5.1.2.7. Subordinate Judiciary

The Civil Courts have been designated the function of issuing Succession Certificates, but in the absence of any documentary evidence like birth/marriage certificate (nikah nama, etc.) it is not possible for the claimants to get such a certificate. Even otherwise the litigation process is cumbersome, expensive and lengthy and not practically feasible for women to get into.

Litigation for procuring a succession certificate or appointment of guardian of the minor orphans consumes not only a lot of time, effort and resources, but also requires social and legal capacity of the parties concerned. Therefore, people seldom opt for this procedure and look for some short-cuts providing substitutes of decrees of the Civil Courts regarding matters of inheritance.

The accumulative effect of the performance of all the above said Government departments and their functionaries have vital implications on women’s rights to inheritance. But unfortunately, lack of coordination and sharing of information between the above departments causes adverse effects on the implementation of laws of inheritance, particularly with reference to women.

Policy Alternatives in this context are discussed in detail in chapter 7.
Chapter 6

Implications of Policy/Legal Framework and Customary Practices

Religious directives, domestic laws, international human rights standards and increasing literacy reformed the primitive concepts of inheritance, but realistically speaking an overwhelming majority of women are still being denied their right to inheritance owing to lacunae in the prevailing system. The implications thereof were explored by the Commission through a qualitative and quantitative field research at National level. The highlights of survey reflecting impact of socio-cultural traditions and lacunae in the policy/legal framework are shared as follows:

6.1. Discriminatory attitude

Across the country, discriminatory practices usually begin from the very first institution, i.e., the home. Mostly adult males are vested with an exclusive right to be the head/guardian of family, hence they are given preferential treatment in all respects. Generally, girls are underestimated and portrayed as incapable of managing their property as was pointed out by 36.58% men and 27.17% women. About 15.3% and 13.33% of men and women, respectively, were even of the view that women should not possess property at all. This inculcated an inferiority complex in them.

We cannot ask for share in inheritance because it is brother’s right. It is adequate that our parents allowed us to attend the school and later they had given us in marriage.

*Female respondent*

6.2. Type of Family

The countrywide data reveals a common trend of joint family system (71%) as compared to nuclear, system (29%). Regionwise observed trend has been given in table 3.

Table 3. Type of Family

<table>
<thead>
<tr>
<th>Type of Family</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Joint</td>
<td>79</td>
<td>66</td>
<td>87</td>
<td>50</td>
<td>54</td>
<td>90</td>
<td>71</td>
</tr>
<tr>
<td>Nuclea</td>
<td>25</td>
<td>34</td>
<td>13</td>
<td>50</td>
<td>44</td>
<td>8</td>
<td>29</td>
</tr>
<tr>
<td>Total</td>
<td>104</td>
<td>100</td>
<td>100</td>
<td>100</td>
<td>98</td>
<td>98</td>
<td>100</td>
</tr>
</tbody>
</table>

Figures are column percentages

The joint family system provides sufficient reasons to marginalize women in decision-making. Supplementing the quantitative results, the qualitative findings show that the joint family system has had negative impact on women’s right as women are forced to marry within the family so that their share of property remains within the family and in the hands of the male relatives.

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6.3. Lack of decision making power

Since men in their capacity as fathers, sons, husbands, brothers, uncles, etc., irrespective of age, are considered to be the heads of the family, they are normally vested with the authority to take decisions; while women as daughters, sisters, wives and mothers remain under their guardianship. They are, therefore, doomed to remain submissive and silently follow the rules framed by the heads of the family.

Customarily most of the women do not have the liberty to take decisions regarding the selection of job/profession and spouse, independence in travelling and interaction with other people. Across the country about 66.6% of women folk had no right to select the profession of their choice, and 76.1% had no authority to marry the person of their choice.

Thus, those who dared to claim their right to marry with the person of their choice often fell victim to domestic violence, the extreme form of which was ‘honour killing’. The prominent cases in this context were of Samia Sarwar, Dr. Amnat Solangi, Salma Bibi, Shazia Khashkheli, Afsheen, Sher Bano, Shaista Almani, etc.

About 66.1% of the female respondents said that they have no right to travel independently and 64.9% said that they did not have the right to interact with the person(s) whom they wished to. Region-wise variation has been recorded in table 4:

Table 4. Women’s inability to take decisions regarding important aspects of their lives

<table>
<thead>
<tr>
<th>Women’s inability to take decision</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Profession</td>
<td>44</td>
<td>12</td>
<td>96</td>
<td>56</td>
<td>96</td>
<td>96</td>
<td>66.6</td>
</tr>
<tr>
<td>Selection of spouse</td>
<td>83</td>
<td>24</td>
<td>96</td>
<td>65.6</td>
<td>94</td>
<td>94</td>
<td>76.1</td>
</tr>
<tr>
<td>Travelling</td>
<td>18</td>
<td>22</td>
<td>100</td>
<td>60.8</td>
<td>98</td>
<td>98</td>
<td>66.1</td>
</tr>
<tr>
<td>Interaction with others</td>
<td>03</td>
<td>53</td>
<td>100</td>
<td>40.8</td>
<td>98</td>
<td>95</td>
<td>64.9</td>
</tr>
<tr>
<td>Total</td>
<td>148</td>
<td>111</td>
<td>392</td>
<td>223.2</td>
<td>386</td>
<td>383</td>
<td>273.8</td>
</tr>
</tbody>
</table>

The above statistics are self explanatory of the strong patriarchy in Baluchistan followed by FANA, NWFP/ FATA and Punjab. Women’s rights in such regions are mostly regarded as taboos.

211 Muhammad Siddique v. The State, PLD 2002 Lah.444
6.4. Marriage system

Family system is mostly community based. This strengthens and promotes arranged and exchange marriages. Therefore, the ratio of love marriage / courtship is negligible (2.25%).

The prevalent customary practice across the country was of ‘arranged marriages’ (63.4%), followed by ‘walvar’ (involving payment of bride price) (14.87%) and exchange marriages’ (watta satta) (10.91%). The following variation has, however, been observed across the country:

Table 5. Marriage system in Pakistan

<table>
<thead>
<tr>
<th>Mode of Marriage</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchange</td>
<td>13.5</td>
<td>1.5</td>
<td>12.5</td>
<td>12</td>
<td>17.5</td>
<td>8.5</td>
<td>10.91</td>
</tr>
<tr>
<td>Bride price (walvar)</td>
<td>-</td>
<td>1.5</td>
<td>81.5</td>
<td>6.25</td>
<td>-</td>
<td>-</td>
<td>14.87</td>
</tr>
<tr>
<td>Arranged</td>
<td>65.5</td>
<td>88.5</td>
<td>-</td>
<td>77.9</td>
<td>59</td>
<td>89</td>
<td>63.3</td>
</tr>
<tr>
<td>Love marriage/courtship</td>
<td>2.5</td>
<td>2</td>
<td>-</td>
<td>3.85</td>
<td>8.5</td>
<td>2.5</td>
<td>3.22</td>
</tr>
<tr>
<td>Total</td>
<td>81.5</td>
<td>93.5</td>
<td>94</td>
<td>100</td>
<td>85</td>
<td>100</td>
<td>92.3</td>
</tr>
</tbody>
</table>

The above figures are the reflection of the clear negation of women’s right to select their life partner. Exchange marriage (watta satta), which is strongly condemned in Islam, is prevalent in almost all parts of the country, though not observed in Sindh during the survey.

Likewise, Walver is common in the entire region of Balochistan, NWFP, FATA and interior Sind. This mode of marriage causes a serious bad socio-economic impact on the bride, as this gives an impression of reducing the bride’s status from a human being to that of a commodity.

6.5. Non-registration of Birth

The registration of birth generally has nothing to do with gender discrimination as according to our survey findings the births of 49.4% female and 50.6% male respondents were unregistered.

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\[214\] Detailed study on ‘Exchange marriages’ which is also termed as ‘watta satta’ and ‘Shigar’ is in NCSW Draft Research Report titled ‘The Concept of Justice in Islam re. Qisas and Diyat as a part of PPC, 1886.’ detail discussion on that
Registration of births is generally practised in Pakistan except in certain areas with strong patriarchy. The least developed registration mechanism was observed in Baluchistan, NWFP/ FATA and Sindh. The survey reflects the following:

Table 6. Non-registration of birth by gender

<table>
<thead>
<tr>
<th>Non-registration of births by gender</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>19</td>
<td>96</td>
<td>97</td>
<td>84.5</td>
<td>-</td>
<td>-</td>
<td>49.4</td>
</tr>
<tr>
<td>Men</td>
<td>13</td>
<td>89</td>
<td>90</td>
<td>93.6</td>
<td>-</td>
<td>18</td>
<td>50.6</td>
</tr>
<tr>
<td>Total</td>
<td>32</td>
<td>185</td>
<td>187</td>
<td>178</td>
<td>18</td>
<td>100</td>
<td>80.66</td>
</tr>
</tbody>
</table>

6.5.1. Reasons

The reasons for the non-registration of births is attributed to the following:

6.5.1.1. Customary practice (40.58%)

Registration of birth is not a general practice in many areas of Pakistan particularly in Baluchistan and Sindh.

6.5.1.2. Lack of system (10%)

The present legal framework in various parts of the country, particularly in remote areas, is either inoperative or so complicated that people generally think that there is no legal system at all in this context. Even otherwise, the prevailing law does not spell out birth registration as mandatory provision.

6.5.1.3. No immediate need (30.08%)

People do not foresee its utility mostly due to lack of awareness and procedural lapses in concerned Government Department

The strength of the above reasons, however, drastically varies region-wise as follows:

Table 7. Challenges in registration of birth

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customary practice</td>
<td>4.5</td>
<td>90</td>
<td>94.5</td>
<td>50</td>
<td>3</td>
<td>1.5</td>
<td>40.58</td>
</tr>
<tr>
<td>Lack of system</td>
<td>-</td>
<td>10</td>
<td>-</td>
<td>50</td>
<td>-</td>
<td>-</td>
<td>10</td>
</tr>
<tr>
<td>No immediate need</td>
<td>11.5</td>
<td>-</td>
<td>90</td>
<td>50</td>
<td>12.5</td>
<td>16.5</td>
<td>30.08</td>
</tr>
<tr>
<td>Other reasons(^{215})</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Total</td>
<td>16</td>
<td>100</td>
<td>184.5</td>
<td>150</td>
<td>15.5</td>
<td>18</td>
<td>80.66</td>
</tr>
</tbody>
</table>

\(^{215}\) The reasons were not clearly explained by the respondents
The major reasons in this regard in Baluchistan and NWFP/FATA are customary practices and lack of awareness of the importance of birth registration among masses. Generally speaking, the people do not realize the importance of the birth registration.

In NWFP, on the other hand, the respondents did not disclose any reason in this regard. But, as is evident from the observance of strong traditional values in such areas, customary practices appeared to be the major cause for avoiding birth registration. The government officials concerned also revealed that they did not have a well developed mechanism for birth registration.

Though, in Punjab, the government functionaries are pretty strong as compared to Baluchistan and NWFP/FATA, yet during qualitative research, unawareness of the registration system has been observed even among the educated people. Respondents even showed lack of trust in the government functionaries concerned and viewed birth registration process as too complicated to be followed. Communication gap between the public sector, officials concerned and masses has also been observed. However, situation in AJK and FANA in this context is very impressive.

6.5.2. Non-Registration of marriages

The registration of marriages is not required in most parts of the country, particularly in rural areas customarily. According to our survey 53.21% of marriages have been found to be unregistered. The region-wise findings are presented in table 8:

Table 8. Non-registration of Marriage by gender

<table>
<thead>
<tr>
<th>Non-registration of marriage</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>8</td>
<td>59</td>
<td>94</td>
<td>91.3</td>
<td>59</td>
<td>8</td>
<td>53.21</td>
</tr>
<tr>
<td>Men</td>
<td>3</td>
<td>39</td>
<td>97</td>
<td>96.1</td>
<td>-</td>
<td>3</td>
<td>39.68</td>
</tr>
<tr>
<td>Total</td>
<td>11</td>
<td>98</td>
<td>191</td>
<td>93.7</td>
<td>29.5</td>
<td>5.5</td>
<td>46.44</td>
</tr>
</tbody>
</table>

As is the case of birth registration, non-registration of marriage is the highest in Baluchistan, followed by NWFP/FATA and Sindh. This has been attributed mostly to customary practice.

6.5.3. Denial of Women’s right to inheritance

Most of the women are denied their right to inheritance owing to patriarchal customary practices both in rural as well as urban areas. At times, such tactics come to the Court for examination. In this context, the Supreme Court in Ghulam Ali’s cases216 made the following observations:

Relinquishment in question even if proved against female, would be against public

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216 Ghulam Ali v Ghulam Sarwar Naqvi, PLD 1990 SC 1
policy and is void. The Court further observed that the status of women in Islam as compared to other, occupies the best position as regards her legal status and no other system of law stands any comparison to the Islamic system in this respect, therefore, desired the need of a new set up to protect the rights of female.

Court’s verdict

Note: [The Court in the same judgment also suggested some mechanism to resolve such situations.

However, our National survey revealed that after the death of relative(s) 40.81% women succeeded in acquiring share in inheritance (45% with moveable and 34.5% with immovable) as compared to 52.52% men (44% with movable and 61% with immovable).

The above figures do not reflect any gender discrimination but realistically speaking, in most cases only the property is transferred in the name of women, nevertheless the right to manage the property remains with the men of the family, as per customary practices. Thus, even the grant of share in property does not really empower the women of the country. However, following region-wise data reveals reluctance in giving a share to women in various parts of the country, particularly in Baluchistan, followed by Punjab, Sindh and NWFP/FATA, as compared to AJK and FANA:

Table 9. Respondents inheriting property by gender province wise.

<table>
<thead>
<tr>
<th>Gender</th>
<th>Type of Property</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Women</td>
<td>Property acquired by Inheritance</td>
<td>21</td>
<td>23</td>
<td>3</td>
<td>30.90</td>
<td>100</td>
<td>67</td>
<td>40.81</td>
</tr>
<tr>
<td></td>
<td>Moveable</td>
<td>4</td>
<td>0</td>
<td>97</td>
<td>100</td>
<td>60</td>
<td>9</td>
<td>45</td>
</tr>
<tr>
<td></td>
<td>Immovable</td>
<td>8</td>
<td>15</td>
<td>3</td>
<td>100</td>
<td>30</td>
<td>51</td>
<td>34.5</td>
</tr>
<tr>
<td>Men</td>
<td>Property acquired by Inheritance</td>
<td>71</td>
<td>19</td>
<td>83</td>
<td>69.10</td>
<td>15</td>
<td>58</td>
<td>52.52</td>
</tr>
<tr>
<td></td>
<td>Movable</td>
<td>30</td>
<td>7</td>
<td>91</td>
<td>100</td>
<td>29</td>
<td>7</td>
<td>44</td>
</tr>
<tr>
<td></td>
<td>Immovable</td>
<td>80</td>
<td>15</td>
<td>85</td>
<td>100</td>
<td>38</td>
<td>48</td>
<td>61</td>
</tr>
</tbody>
</table>

Most of the women face many problems in acquiring their share in inheritance even just on paper.

Challenges: About 42.23% of female respondents have faced challenges in getting their right to inheritance. Most common challenges in this context include customary practices (50.66%), followed by complications in legal system (38.16%) and then procedural problems (28.%). The regional variance has, however, been observed.
Table 10. Challenges faced by women respondents in getting their right to inheritance

<table>
<thead>
<tr>
<th>Challenges</th>
<th>Punjab</th>
<th>Sindh</th>
<th>Baluchistan</th>
<th>NWFP &amp; FATA</th>
<th>FANA (Gilgit)</th>
<th>AJK</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customary</td>
<td>97</td>
<td>2</td>
<td>100</td>
<td>55</td>
<td>50</td>
<td>-</td>
<td>50.66</td>
</tr>
<tr>
<td>Legal</td>
<td>85</td>
<td>7</td>
<td>12</td>
<td>75</td>
<td>50</td>
<td>-</td>
<td>38.16</td>
</tr>
<tr>
<td>Procedural</td>
<td>76</td>
<td>-</td>
<td>17</td>
<td>75</td>
<td>-</td>
<td>-</td>
<td>28</td>
</tr>
<tr>
<td>Others</td>
<td>91</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>15.2</td>
</tr>
</tbody>
</table>

Table No. 10, is reflective of the fact that customs (mostly patriarchal) are the major impediment for women in getting their right. It has been found to be absolute in Baluchistan, followed by Punjab, NWFP/FATA and Gilgit (FANA). Next to customary practices is legal system, which is again a big challenge for women in Punjab, followed by NWFP/FATA and Gilgit (FANA). In Sindh, the customary and legal challenges appear to be negligible (i.e., 2% and 7%, respectively). However, there exist ‘other challenges,’ which most female respondents hesitantly disclosed as practices of emotional blackmailing of women and compulsion on women to withdraw their right of inheritance in favour of their brothers and other male relatives of parental house. Some women respondents appeared even scared to talk about their right to inheritance as if their claim might subject them to be declared a ‘kari’.

5.6. Women’s access to Court of Law/litigation and out-door activities

The process of litigation is so lengthy, cumbersome and expensive that women who are poor and have social constraints mostly in comparison to men are discouraged to get involved in it; hence they suffer in silence.

5.7. Problems in getting justice

Even if some women dare to initiate litigation the delivery of justice is not guaranteed as most of the judges on the original side are not trained and sensitized on gender issues and the religious laws. Thus despite Constitutional and international commitment of the Government of Pakistan, discriminatory customs and traditions are given due weight. As for instance in the judgment in Eda Khan’s case, wherein the learned counsel for the petitioner raised the objection that the parties were governed by customs and under such custom the female could not inherit, the Court held that:

“When once the custom is not proved, the property would devolve in accordance with the normal principle of Islamic inheritance and thus, the daughter of Tagga would automatically become a cosharer in the property.” Court’s verdict.

In the above case, though the daughter of the deceased was granted a share in inheritance, it was only in the absence of the proof of custom denying women’s right to inheritance.

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217 Eda Khan vs. Mst. Ghanwar & others, 2004 SCMR 1524
Here the question arises, should women be denied their right to inheritance on the basis of the custom in the Islamic Republic of Pakistan? In this regard, it was held in India by the Privy Council in Ali Asghar’s case\textsuperscript{218} that evidence of such family custom was held admissible, and in Muhammad Kamil’s case,\textsuperscript{219} that where daughters are excluded by custom they should be treated as non-existent for determining shares of heirs.

5.8. **Lack of monitoring mechanism**

Though women’s right to inheritance is generally recognized but due to multiple factors including lack of any monitoring mechanism, it is often evaded.

> My share in inheritance was eaten-up by my brother and uncles by declaring me dead before the authority: *Female respondent from Sialkot*

The discriminatory customary practices, as for instance harsh attitude towards girls, lack of decision making power, forced marriage by way of watta satta, bride price walver and vani/swara, discussed earlier have caused an adverse affect on women folk psychologically, socially and economically. Women folk being groomed to be submissive to their elders regard themselves sub-human creature, and hence they do not speak for their right of inheritance. Even if they endeavour to do so, the lacunae in the legal and judicial framework handicap them, with the result that they remain weak socially and economically.

**Policy Proposal**

The situation analysis prompts us to devise social mechanisms to encourage women to demand their right to inheritance on their own initiative, and at the same time protect them from physical and psychological abuse and threats of abuse from family members in this regard.

It is pertinent to mention here that legal and institutional mechanisms alone cannot provide an adequate solution to the problem at hand. The evidence brought forth by this research confirms that “the primary hold of custom over the realm of gender relations in Pakistan negates access to any potential benefits provided by law.”\textsuperscript{220} Therefore, legal and institutional reform must be combined with active social and financial support and assistance to women so as to empower them to stand up for their rights.

1. **Social Support Mechanisms**

Social support mechanisms, such as asylums and support groups, must be established as part of a broad national policy on women’s right to inheritance. The asylums would cater to the needs of women who are under threat from their family members for demanding their rights, and would particularly provide them with a secure environment within which they can function. In this way, the asylums could also serve as places for women

\textsuperscript{218} Ali Asghar v. Collector of Bulandshahr 39 All. 574 (1917)
\textsuperscript{219} Muhammad Kamil v. Must. Imtiaz Fatima 36 I.A. 210 (1908)
to discuss their hurdles and create awareness amongst themselves and other women known to them. Support groups, on the other hand, would provide women who have suffered mental or physical trauma, with psychological and medical help. In fact, the support groups are recommended to be located within the asylums for efficiency and security purposes. The concept of social support mechanisms could gradually be expanded to provide such women with employment avenues and independent temporary housing facilities in order to empower them financially and socially.

2. Legal Aid Network

A network of legal aid centres must be established at District level, specifically for issues pertaining to women’s rights and women’s access to Courts. In the present environment, which is desperately lacking in social and financial support mechanisms, even women who choose to exercise an option involving litigation or legal redress are mostly unsuccessful in doing so, since “the actual technical legal assistance required is seldom – if indeed ever – enough to ensure that a woman can sustain this choice.”

It is, therefore, recommended that the Government of Pakistan should establish legal aid centres on a national scale and ensure their liaison with other social support bodies mentioned in (1) above. An example of a successful legal aid cell is AGHS, an organization operating under the auspices of Hina Jilani and Asma Jehangir. Technical support for setting up similar legal aid centres can be sought from such well-established organizations. Further, the Bar Council of Pakistan, including all the regional Bar Councils, should be mobilized to provide regular pro bono legal assistance for this cause.

3. Discretionary powers of Court

With respect to discretionary powers of the Court, the only viable policy proposal under the circumstances is to outlaw all customary practices insofar as they are in conflict with the law. Firstly, it is apparent from the research findings that customs tend to operate against the interests of women. Moreover, the existence of a dual system of justice undermines the authority of both, since those who are dissatisfied with the ruling of one, can then challenge this by approaching the other forum. Therefore, the law should lay down that in the realm of the Law of Inheritance, the formal law should prevail over customary law without exception.

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Chapter 7

Proposed Policy Mechanism for the Implementation of Women’s Right to Inheritance

After careful consideration of the issues owing to socio-cultural practices and lacunae in the policy/legal framework, discussed earlier, a policy framework is suggested to ensure affective implementation of inheritance laws particularly with reference to women.

This proposed mechanism requires reforms in the Union Council Structure as well as the establishment of Inheritance Monitoring Centres as autonomous watchdogs over the Union Council on the following lines:

I. Reform in the Union Council Structure

The Union Council structure is proposed to be streamlined into the following main registries:

1. Birth Registry
2. Death Registry
3. Marriage and Divorce Registry
4. Inheritance Transfer Registry

Each registry must be headed by a registrar to carry out specific functions:

1. Birth Registry

Prompt reporting of the child’s birth is required to be made to this registry by the parents/guardians of the child, BHUs/RHCs, public/private hospitals/maternity homes, private doctors/mid-wives who attended the birth, and schools222 to the Birth Registry. The registration would include the un-registered children of the people living outside the jurisdiction of the local Union Council and migrant to schools, hospitals/private maternity homes.

This registry will, in turn, provide all the necessary information and documents comprising the application for registration of birth to the concerned Inheritance Monitoring and Resource Centre (IMRC) (see below). The IMRC will ascertain the authenticity of the information in the birth certificates and make a demand for any missing information thereof from the Birth Registry within seven (7) working days of the submission of the application. Once authenticated, the IMRC will send the screened application back to the Birth Registry for registration of the birth certificate and release to the relevant person.

The Birth Registrar should be given the authority to inspect hospitals (both public and private) and schools (both public and private) for records of births at his/her own initiative. These records should also be sent by the Birth Registrar to the IMRC for

222 Schools have been included to register the birth of those children who have not been registered at the time of their birth. This is already a practice in quite a few places of Pakistan including interior Sindh.
processing. Penalties should be introduced for hospitals, schools, registering agencies and registrars for omission or negligence.

2. **Marriage and Divorce Registry**

The office of the Marriage (or Nikah) and Divorce Registrar (“MDR”) should be regularized so that he/she attains the position of a full-time Union Council employee, with all the rights and privileges pertaining to that office. Preferably, the MDR should not be a religious imam, so as to distinguish him completely from the clergy that is usually involved in performing nikah ceremonies. Further, the MDR of an area should be given jurisdiction and control over the practising clergy in that particular area. A licensing system for the registrars as per law should be introduced for the purpose of performing nikah ceremonies. Accordingly, all such registrars should be officially licensed. Any of the registrars who contravenes this directive should be liable to a fine not less than Rs. 10,000 and/or imprisonment of up to one (1) year and/or banned from the supervision of any mosque(s) and from performing nikah ceremonies in case of persistent failure to abide by the law. In effect, the aim would be to bring all the registrars under the supervision of the MDR with respect to performance of nikah ceremonies and registration of marriages. The licensed registrar would be required to submit the copies of the nikah nama to the MDR within three (3) working days of the nikah ceremony. The MDR who would then be required to send an application for registration of marriage to the concerned IMRC within fifteen (15) days of the receipt of the nikah-nama from the registrar. The said application should, mandatorily, be accompanied by the computerized National Identity Card (NIC) of both the bride and the bridegroom. If they fail to submit the NIC or an attested copy of the token receipt for an application for an NIC, or if they fail to submit a nominal processing fee at the Marriage and Divorce Registry, within ten (10) days of the date of the nikah nama, the application for registration of marriage will remain pending and the parties will be liable to a fine of not less than Rs. 1,000, which will increase by Rs. 25/= for each day of delay.

Similarly, the notice of dissolution of marriage under MFLO should be given to the Registrar of the subject registry. Accordingly, the amendment in MFLO is also required.

3. **Death Registry**

Similarly, the Death Registrar (DR) should be given jurisdiction and control over the graveyard keepers in that area as well as hospitals (both public and private) for the purposes of maintaining proper records of deaths. The graveyard keepers and hospital staff should inform the DR of any deaths. The DR should then pass on this information to the concerned IMRC for issuance of certificate to the legal heirs of the deceased. Penal provisions should be introduced for graveyard keepers, hospitals, and registrars for any omission or negligence on this account.

This registry must also be reported of a death by the legal heirs of the deceased, BHUs/RHCs, public/private hospitals, private doctors and the Chairman of the graveyard.

Upon the application of the legal heirs of the deceased, the registry must follow the following procedure:
a. Initiate investigation into the number of legal heirs.
   a. Get all the evidences verified by the relevant persons and functionaries.
   b. Give public notice of the inheritance distribution and invite claims.
   c. Get verified the claim (if any) received after the public notice.
   d. Transfer the case to the Inheritance Transfer Registry (see below) for execution,

which in turn will liaise with the concerned IMRC before finalization of transfer of
inheritance.

All the relevant departments that require screening/approval from the IMRC (see below) should be prohibited from making any formal operational changes in their records until such time that the approval has been acquired from the IMRC. For instance, the Patwari at the Land Revenue Department should not be allowed to enter a mutation in the revenue record until authorized by the concerned IMRC. Penalties should be introduced for any such un-authorized action or omission by the personnel of the Land Revenue Department. The proposed penalty is imprisonment of up to one (1) year or fine of not less than Rs. 10,000 or both and/or expulsion from the relevant Department.

4. Inheritance Transfer Registry

It is proposed to be composed of legal experts to, *inter alia*, perform the following functions:

a. Prepare Shajra-e-Nasb which must be supported by relevant documentary evidences like Birth Certificate, NIC, Nikah nama and ocular evidences.
   b. Initiate legal proceedings for the transfer of shares to the legal heirs, in particular on behalf of aggrieved women, in liaison with the Inheritance Transfer Cell at the concerned IMRC.
   c. Ensure that each legal heir, particularly all female legal heirs, have been given their due share in inheritance.
   d. Issue certificate of transfer of inheritance to the legal heirs as authorized by the concerned IMRC. Report to the Provincial Inheritance Monitoring & Resource Centre (see below) with a request to provide necessary training to female legal heirs for managing their own property.

Beside the above, the Union Councils are required to be well-equipped and logistically sound besides setting standards for appointment of officers on merit and regular check on their performance by the IMRCs at all levels. Otherwise the Union Council functioning is bound to degenerate into inefficiency and nepotism, as is prevalent in the current structural set-up. 223

223 A personal visit of NCSW team member to Union Council No. 95 in Gulberg, Lahore, revealed that there were only two personnel manning the office. Recalling an individual’s death record took about half an hour. Upon detailed inquiry about the cause of the deceased individual’s death, it was discovered that the fact or circumstances surrounding death had never been authenticated. It was, in fact, claimed by one of the Assistants to the Secretary Union Council (whose qualification was a simple “Matric pass”), that the Union Council officers were given “monetary compensation” in return for registering the death without further question and that this was not an uncommon practice.
II. Inheritance Monitoring & Resource Centre (IMRC)

The establishment of an autonomous body is proposed which should serve as an independent watchdog over the process of inheritance, including determination of inheritance rights in accordance with the law and transfer of such rights. This body is particularly important in view of the lack of coordination between the different Government departments dealing with registration of births, deaths and marriages (Union Council), registration of identity (NADRA), as well as registration and transfer of inheritance rights (Revenue Department, etc.).

The aforesaid body is required to work at District level:

District Inheritance Monitoring & Resource Centres (DIMRC)

The DIMRCs shall be headed by the District and Session Judge. Its members will include the legal experts, religious scholars, District Nazims (Mayor), District Coordinating Officer (DCO) and the representatives of Civil Society Organizations (CSOs).

These DIMRCs are proposed to have Cells at District level, each with separate functions but with a horizontal flow of information as and when required. Each Cell corresponds to one of the functions performed by the Union Council. For example, the “Birth Registration Cell” in the DIMRC will correspond to, and directly supervise, the “Birth Registry” at the Union Council. In this way, the Cell in the DIMRC will be in the nature of an independent “parent” organization of the corresponding division at the Union Council, and will ensure the latter’s efficiency and accountability. The proposed Cells of the DIMRC are as follows:

a. **Birth Registration Cell**

This should directly supervise the “Birth Registry” at the Union Council. Its main function is to receive applications for registration of birth certificates from the Birth Registry for screening. The Cell will ascertain the authenticity of the information in the certificates and make a demand for any missing information thereof from the Birth Registry within seven (7) working days of the submission of the application. Once authenticated, the Cell will send the screened application back to the Birth Registry for registration of the birth certificate and release to the relevant person.

b. **Marriage and Divorce Registration Cell**

This will directly supervise the “Marriage and Divorce Registry” at the Union Council. Its main function will be to receive applications for registration of marriages from the Marriage and Divorce Registry for screening. The procedure will be the same as that for the Birth Registration Cell.

c. **Inheritance Transfer Cell**

This will directly supervise the “Death Registry” and the “Inheritance Transfer Registry” at the Union Council, as well as the office of the Patwari (and related personnel) at the Land Revenue Department, responsible for issuance of
succession certificates, and letters of administration. The Cell will, in particular, comprise of qualified legal personnel who are well-versed in the law of inheritance. Its main functions will include: (i) screening of applications for registration of death received from the Death Registry; (ii) determination of the heirs of the deceased’s property and the respective ratios of the property that each heir is entitled to inherit (this would entail ensuring that all the required documentation is available and that, *prima facie*, there is no *mala fide* apparent in each application, i.e., there are a minimum number of females declared as heirs – see above for detailed note on policy proposal in this respect); (iii) screening and approval of applications for transfer/mutation of revenue records received from the Land Revenue Department; (iv) screening and approval of applications for issuance of succession certificates; and (v) screening and approval of applications for issuance of letters of administration. Functions (i) and (ii) will, collectively, be performed within a period of four (4) weeks of the submission of the application for registration of death received from the Death Registry, and the death certificate as well as the finalized list of heirs will be released together. Functions (iii), (iv) and (v) will not be performed until the said two documents have been released to the Death Registry. Each of the functions (iii), (iv) and (v) will be performed within fifteen (15) days of the submission of the applications. Till such time that these applications have been approved and finalized by the Cell, the Cell will be deemed to hold the property on trust for the lawful heirs of the deceased’s property. In other words, who soever purports to alienate such property during this time, shall be liable to fine and/or imprisonment.

The DIMRCs will also comprise of an inspectorate, consisting of mainly field staff, who will be responsible for, *inter alia*, the following functions:

a. Regular field screening to determine the heirs of the deceased in cases for which an application has been received by the Inheritance Transfer Cell.

b. Random and periodic field inspection visits of Union Councils, Land Revenue Departments, and all the other relevant organizations, and authentication of all records.

c. Disposal of complaints through detailed inquiries in collaboration with the concerned Cell within the DIMRC.

This mechanism is diagrammatically represented as follows:
The proposed mechanism can be workable and efficient subject to ensuring institutional coherence, close coordination between the concerned functionaries \textit{inter se}, merit of the officials, transparency, liaison of concerned functionaries with the masses etc. Accordingly following measures are required to be taken:

1. Formulation of rules and regulations for coordination between the Inheritance Monitoring and Resource Centres with Union Councils, NADRA, hospitals, school administration, graveyards administration representatives, etc.
2. Sharing of information between the concerned functionaries.
3. Transparency has to be ensured in all sorts of transaction.
4. Penal provisions should be introduced to counter any mishap or deliberate delay at every level, from submission of an application till its finalization/release.
5. Roles and responsibilities of the functionaries must be clearly defined with emphasis on accountability.
6. The use and acceptance of unauthorized or unofficial or unregistered documents by any of the concerned departments should be strictly prohibited. In particular, the Patwari should be absolutely prohibited from soliciting or accepting a Sharia Fatwa. The Sharia Fatwa is likely to have the effect of overriding the formal law by giving precedence to customary practices. Therefore, in the event that the Patwari and/or his/her subordinates accepts and applies a Sharia Fatwa against the orders of the PIMRC, he/she should be held liable to imprisonment for the period of one year or fine up to Rs.10,000/= or both.
7. Each proposed registry at Union Council level must share its database with NADRA.
8. The identity and other relevant information as required by Inheritance Transfer Registry must be verified from NADRA.

Policy Recommendations

Based on this research study, an integrated approach is proposed to bring policy reforms through the following initiatives in the existing policy and legal framework to secure women’s right to inheritance as much as possible:

I. National Policy

An exclusive national policy on Women’s Right to Inheritance and its Implementation is recommended. The said policy must ensure inheritance rights as enshrined under the personal laws in Pakistan, International Conventions (ratified by Pakistan) and as guaranteed by the Constitution of Pakistan under all circumstances including emergencies natural calamities (e.g., earthquake, flood, etc.) and in case of change in the nationality of the legal heir of the concerned deceased person.

II. Amendments

They are suggested to be made in relevant laws as per following:

a. Succession Act, 1925

i. A provision for mandatory will (wasiyat wajibah) to be added in favour of the following relations of the deceased:

1. Non-Muslim relative(s) (regardless of their religious background or orientation).
2. In the event of the death of any son or daughter of the propositus before the opening of succession, the children of such son or daughter, if any, living at the time the succession opens. Section 4 of Muslim Family Laws, 1961 must be amended accordingly.
ii. It must provide for the registration of inheritance, including movable as well as immovable properties.

iv. Following amendment as proposed by *Law and Justice Commission of Pakistan* is opted:

**370-A. Grant of succession certificate relating to immovable property**

a. If the deceased died intestate and was a citizen of Pakistan, succession certificate relating to immovable property may be granted according to rules for the distribution of the estate applicable in the case of such deceased.

b. Suits involving inheritance must be decided within six (6) months time.

b. **Land Revenue Act, 1967**

i. Following provisions are recommended:

“Relinquishment of share in inheritance by a female in favour of male legal heir shall be void and of no legal effect”.

ii(a). Rule 7.26 (5), is required to be amended on the following lines:

“Transfer of immovable property whether inherited or acquired by a female shall not be valid and not given legal effect unless made by her through a duly executed and registered deed of transfer.”

(b). Any person who deprives or oust women from their share of inheritance and/or deals with their property (whether movable or immovable) in such a way so as to decrease its value or dispose it off, or in any other manner alienates the same or part thereof, should be made liable to imprisonment of up to two (2) years or maximum fine equivalent to 30% of the value the said property or both.

(c). All transactions for any kind of property (movable or immovable) lawfully belonging to a female must be carried out with her consent, and the document containing the terms and conditions of the transaction in question must be legibly signed by her (or must have her thumb impression(s), as the case may be).

(d). Any person who purports to transfer, dispose off, gift, or alienate in any other way, or diminish the value of, any kind of property (moveable or immovable) lawfully belonging to a female without her knowledge and full consent and proper signature(s) (thumb impression(s)), shall be liable to imprisonment of up to one (1) year or a maximum fine of 30% of the value of the property in question or both.

iii. In section 48, the words “twenty-five rupees” be substituted by the words “twenty five thousand rupees.”

iv. Sub section to section 48 to be added:

“Any person who deliberately hides the information or gives wrong information relating to inheritance shall be punished with an imprisonment of either description for a term not less than 1 (one) year or fine not less than Rs.25,000/= (twenty five rupees), or both.”
v. The law must provide a limit of one (1) year without tax for family settlements of the inheritance. In case the property could not be divided it must be sold and proceeds be divided among the legal heirs.

vi. When deaths are registered it can be made mandatory that “B” form of the deceased be attached with the death report along with an inventory of the property (movable and immovable) owned by the deceased and all possible steps be taken to ensure that the woman gets share of the inheritance and the same be immediately registered in her name.

vii. The mutation paper from the onset must contain all the names of legal heirs.

c. Local Government Ordinance, 2000 and the corresponding provisions of the Land Revenue Act, 1967

i. Within present framework of each Union Council, following registries be established:

1. Birth Registry
2. Death Registry
3. Marriage and Divorce Registry
4. Inheritance Transfer Registry

Each registry must be headed by a registrar. 50% of the registrars (of the aforesaid registries) shall be female. The criteria and procedure for the selection of the registrar shall be provided by the Local Government.

The functions of the above registries are defined as follows:

1. Birth Registry

a. To register birth reported by parents/guardians/relatives of a new born, RHCs, National Family Planning and Primary Health project, public/private hospitals/maternity homes, private doctors/mid-wives/ who attended the birth.

In case of non-registration of birth at an earlier stage, the schools at the time of admission of a child must verify that as much as possible.

b. To inspect hospitals (both public and private) and schools (both public and private) for records of births.

c. To communicate the entry and coordinate with NADRA for the purpose of issuance of birth certificate and NIC.

d. Issuance of certificate regarding marriage and dissolution of marriage.

e. Share information of registration with District Registrar as required under section 21 of National Database and Registration Authority Ordinance, 2000.
2. **Marriage & Divorce Registry**
   a. To register the marriage and dissolution of marriage.
   b. To issue licences to persons responsible for registering a marriage after getting due approval from the Chairman Union Council.
   c. The notice of dissolution of marriage under MFLO to be given to the Registrar.
   d. Share information of registration with the District Registrar as required under section 21 of National Database and Registration Authority Ordinance, 2000.
   e. Issue identity card of a child, bearing birth registration number upon registration, as proposed below II©(ii).

3. **Death Registry**
   a. To register report of a death by the legal heirs of the deceased, RHCs, public/private hospitals, private doctors and the Chairman of the graveyard.
   b. Information of registration with the District Registrar as required under section 21 of National Database and Registration Authority Ordinance, 2000.
   c. Upon application of death by the legal heirs of the deceased, the registry must follow the procedure given below:
      i. Initiate investigation about the number of legal heirs.
      ii. Prepare Shajra-e-Nasb which must be supported by relevant documentary evidences like Birth Certificate, NIC, Nikah nama and ocular evidences.
      iii. Get verified all the evidences by the relevant persons and functionaries.
      iv. Give public notice of the inheritance distribution and invite claims.
      v. Get verified the claim (if any) received after the public notice.
      vi. Refer the case for legal proceedings
      vii. Issuance of death certificate and certificate of transfer to the legal heirs.

4. **Inheritance Transfer Registry**
   i. This Registry will receive an application from the legal heirs of the deceased for transfer of inheritance.
   ii. Get verified the information regarding legal heirs of the deceased from NADRA’s databank.
   iii. The Registrar should meet (along with Patwari) the legal heirs and take the details of the inheritance & legal heirs within seven (7) days of the death.
   v. Ensure that Patwari has taken all the necessary documents including birth certificates, nikah nama, property documents and has got them verified from the concerned functionaries and persons.
v. Ensure that the shajra-e-nasb and the inheritance shares determined by Patwari are correct.

vi. Ensure the publication of a notice of the distribution of inheritance in both English and Urdu newspapers (local if any) and call for any claim in that context within fifteen (15) days of the publication thereof.

vii. To initiate legal proceedings for the transfer of shares to the legal heirs.

viii. To ensure that each legal heir, particularly all female legal heirs, have been given their due share in inheritance.

ix. Report to the PIMRC with a request to provide necessary training to female legal heirs for managing their own property.

The Secretary Union Council shall be obligated to perform the following functions:

1. Submit six monthly performance report of all its registries to the PIMRC.
2. Supervise its registries in close coordination with the PIMRC.
3. Photo identity card with relevant information must be issued upon registration of a child.

**d. Registration of Deaths, Births & Marriages Registration Act 1886**

i. Following clause must also be added to section 20:

   - Union Councilors
   - RHCs
   - Public / Private Hospital / Maternity Homes
   - Private Doctor, having independent practice
   - Private Lady Health Visitor (LHV)/midwive

ii. In sections 20 and 21 the word “may” be substituted by the word “shall.”

iii. Section 20 (A) must be inserted as follows:

   In case of deliberate non-registration of the birth of a child, the person(s) having charge of the child, particularly male member(s) of the family, shall be punished with fine, not less than Rs.5,000/= (rupees five thousand).

iv. Section 21(A) must be added as follows:

   “The Chairman of the concerned graveyard, BHUs/RHCs, Public and Private Hospital, where death took place shall be responsible for the registration of death and notification of the same to the Death Registry.

v. The licensed clergy would be required to submit copies of nikah nama to the Marriage and Divorce Registrar within three (3) working days of the nikah ceremony. The Registrar would then be required to send an application for registration of marriage to the DIMRC within fifteen (15) days of receipt of the nikah nama from the Nikkah Registrar. The said
application should, mandatorily, be accompanied by the computerized NIC of the bride and bridegroom both. If they fail to submit the NIC or an attested copy of the token receipt for an application for an NIC, or if they fail to submit a nominal processing fee at the Marriage and Divorce Registry, within ten (10) days of the date of the nikah nama, the application for registration of marriage will remain pending.

e. Amendments in Family Courts Act, 1964
   i. Add to schedule: ‘Inheritance and its enforcement’.
   ii. Sub-section to Section 4 to be added: suit for inheritance and its enforcement may be instituted by a female legal heir or successor-in-interest by presentation of a plaint as aforesaid.

f. Amendments in West Pakistan Family Court Rules 1965
   Add to Rules: 6. suit u/s 7(4) of the Act “may be instituted at a place where the female ordinarily resides”.

g. Amendment in Family Laws Ordinance, 1961
   The Nikahnama must reflect the National Identity Card of the bride and bridegroom and in case the parties do not have that card it must bear the number of child registration card, as proposed in clause c(ii) above.

III. Establishment at district level of Inheritance Monitoring Centres as follows:

   District Inheritance Monitoring & Resource Centres (DIMRCs)
   The DIMRCs shall be headed by the District and Session Judge, while the membership will include the legal experts, religious scholars, District Nazims (Mayor), Lady Councilors, District Coordinating Officer (DCO), District Police Officer (DPO) and representatives of the Civil Society Organizations (CSOs).

   These centres must consist of the following Cells at District level:

   i. Birth Registration Cell
      This will directly supervise the “Birth Registry” at the Union Council.

   ii. Marriage Registration Cell
      This will directly supervise the “Marriage and Divorce Registry” at the Union Council.

   iii. Inheritance Transfer Cell
      This will directly supervise the “Death Registry” and “Inheritance Transfer Registry” at the Union Council, as well as the office of the Patwari (and related personnel) at the Land Revenue Department.
The DIMRCs will also comprise of an inspectorate, consisting of mainly field staff, who will be responsible for, *inter alia*, the following functions:

1. Regular field screening to determine the heirs of the deceased in cases for which an application has been received by the Inheritance Transfer Cell.
2. Random and periodic field inspection visits of Union Councils, Land Revenue Departments, and all the other relevant organizations, and authentication of all records.
3. Disposal of complaints through detailed inquiries in collaboration with the concerned Cell within the DIMRC.
4. Arrange for the appointment of a receiver, through Court, for collecting the produce / rent of land for women legal heirs during transfer of inheritance share.
5. To get the certificates issued to each of the legal heirs through Court.

IV. Formulation of Rules for Coordination

To Formulate rules to ensure close coordination of IMRCs, Union Councils, NADRA, Inheritance Transfer Cells as well as BHUs/RHCs, Nikah Registrars, Public/Private Hospital.

V. General

a. Revenue record must be computerized to facilitate women in having access to legal documents.

b. The task force with its members from both public sector as well as Civil Society Organizations, should be constituted in Sindh to investigate cases of marriage to the Holy Qur’an. The task force should be enabled to initiate criminal proceedings in Court on behalf of the aggrieved women.

c. All unIslamic customary practices particularly watta satta and wulvar should be banned and made penal offences.

d. Birth certificate from the Union Council must be mandatory for admission in the primary schools.

e. School administration must be held responsible for verifying the date of birth from the Birth Registry at the Union Council, to possible extent.

f. Marriage and Divorce Registries must be held responsible for verifying the date of birth/age of both the bride and the bridegroom from the Birth Registry, to possible extent.

h. Awareness of women’s right to inheritance, prevailing system / procedures in this context and propagation of moral and ethical values strengthening the family units must be increased through the following means:

   i. Electronic and print media

   ii. Introducing topic of ‘Women’s Right to Inheritance’ in the curriculum at School, College and University levels as a separate subject

   iii. Training and gender sensitization of judicial officers, lady councilors, Patwari, Tehsildar and Nikahkhuwan and utilizing their services for bringing about positive change in the perception of people about the concept of women’s rights to inheritance
iv. Sermons and lectures in Mosques and other religious institutions, respectively

i. Following three layers of jurisprudence must be taken into consideration in our legal education:

   i. Social customs
   ii. Customary law
   iii. Common law

j. Legal documents must be made reader friendly and easily understandable to both men and women. Their legibility and uncluttering to be ensured so that women could easily learn about their legal documents of Revenue Department.

k. Capacity of the government functionaries responsible for registering births, deaths, marriages and divorces and transfer of inheritance may be developed by arranging focused training courses related to their specific roles.

l. Government departments influencing women’s rights to inheritance directly or indirectly should be revitalized by utilizing information and communication technology.

m. Women should be inducted at all the tiers of Revenue Department for dealing with the matters of inheritance.

n. Family laws must be extended to Federally Administered Northern Areas (FANA) of Pakistan.

o. Judicial reforms to ensure inter alia conducive environment for public in general and females in particular and affordable speedy delivery of justice must be initiated.

p. Strength of Family judges must be increased.

q. Consultative meetings on the law of inheritance relating to Muslims and non-Muslims must be held periodically to discuss the gender issues with the objective to initiate reforms in the prevailing laws of the land on the basis of justice and equity.

r. Inheritance laws relating to Hindu community in Pakistan must be codified to spell out women’s share in inheritance as per its religious belief and laws.

s. Legal documents should be in Urdu language.

t. Parliament should have a committee on women’s right in inheritance and its implementation.

u. After marriage, the father’s name of a female must also be displayed on the National Identity Card besides her husband’s name.

v. All laws adversely affecting the status and rights of women in Pakistan, as enacted and enforced in Pakistan must be prioritized for review.

w. There must be close coordination between Council of Islamic Ideology, Pakistan Law Commission and NCSW, for periodical review of laws, mentioned above (v).
Glossary

Ahl    people
Ahl-e-kitab people of the book
Akhi    brother
Allah   God
Aurat   woman
Baba Bathra the third order tractate of Mishna (codex of jewish law) which deals with inheritance.
Baloch Iranian people inhabiting the region of Balochistan in Iran and Pakistan as well as neighbouring areas of Afghanistan and the southeast corner of the Iranian plateau in Southwest Asia.
Bandhu relation or binding which according to the Vedas link the outer and the inner worlds.
Baudhayana an Indian mathematician, who is noted as the author of the earliest appendices to the Vedas giving rules for the construction of altars which contained several important mathematical results.
Benares also known as Varanasi is a famous Hindu holy city situated on the banks of the river Ganges in the Indian state of Uttar Pradesh
Biradari kinship group
Dayabhaga a legal treatise dealing with various aspects of Hindu law
Diyat it is money paid as a fine to the next of kin of somebody who was killed.
Faman it is an Arabic word meaning ‘victim’
Fatwa fatwa is a legal pronouncement in Islam made by a mufti, a scholar capable of issuing judgments on Sharia
Fiqa-e-Jafriah it is one of the largest denominations of Islam
Fiqah Jurisprudence
Gotraja sapindas great son of a great grandfather of a deceased
Hadith hadith is oral traditions recounting events in the life of the Prophet Muhammad (P.B.U.H) relating to this words and deeds
Halakhaha Halakha is the collective corpus of Jewish religious law, including biblical law and later talmudic and rabbinic law as well as customs and traditions.
Hanafi one of the four schools of thought within Sunni Islam.
Haq Bukhshwana it is a customary practice compelling an unmarried woman to get married to the Holy Qur’an and give up all her rights.
Hiba gift
Hindu a Hindu is an adherent of the philosophies and scriptures of Hinduism the religious, philosophical and cultural system that originated in the Indian subcontinent
Hujb Hirman total Exclusion
Hujb Nuqsan partial Exclusion
Hujb the doctrine of exclusion
Idara-e-Amn-o-Insaf committee for Justice and Peace
Ijma consensus of jurists
Ijtihad: It is a technical term of Islamic law that describes the process of making a legal decision by independent interpretation of the legal sources, the Qur'an and the Sunnah.

Imam: Clergyman in Muslims.

Jaina: They are the believers or followers of Jainism. [Hindi jaina, from Sanskrit jaina-, relating to the saints, from jinah, saint, victor, from jayati, he conquers.]

Jamia: A mosque where grand collective prayer is offered on Friday.

Jirgas: A customary judicial institution in which cases are tried and rewards and punishments are inflicted.

Kari: Literally means ‘black woman’. This term is used for a woman who has been alleged to have committed adultery/fornication.

Khateeb: A person who delivers the khutba, or sermon, during the Friday prayer and/or Eid prayers.

Khoonsa: Hermaphrodite.

Mehr: Dower.

Midrash: Midrash is a Hebrew word referring to a method of exegesis of a Biblical text. The term "midrash" also can refer to a compilation of Midrashic teachings, in the form of legal, exegetical or homiletical commentaries on the Tanakh (Jewish Bible).

Mishnah: The Mishnah is a major source of rabbinic Judaism's religious texts. It is the first recording of the oral law of the Jewish people, as championed by the Pharisees, and is considered the first work of Rabbinic Judaism.

Mitakshara: The Mitakshara is a legal treatise on inheritance. It became one of the most influential texts in Hindu law, and its principles regarding property distribution, property rights, and succession are still in practice across most of India.

Mithila: Mithila was a kingdom in ancient India.

Mushriqeen: Non believers who ascribe partner to God.

Nazim: Mayor.

Nikah: Contract of marriage.

Nikah Khuwan: The person who performs Nikah (marriage contract).

Nikah nama: A document for the contract of marriage.

Numberdar: Prior to the local government system, he used to deal with the matters of village and was responsible for the registration of births and deaths.

Pagan: Pagan may refer to:

- One who does not follow any religion formed by Abraham or his sons, including the three basic foundations: Islam, Judaism, or Christianity, as well as its subreligions.
- One who follows a religion of European, North African, West Asian or Pre-Columban American origin and who is not Christian, Muslim or Jewish, or who does not worship the God of Abraham. Such usage, while traditional in the above three religions, may be considered derogatory. There is some disagreement about the application of the word to
the religions of Southern and Eastern Asian origin (eg. Hinduism, Buddhism, Jainism and Shintoism).

- While Jews, Muslims and Christians traditionally consider them to be pagan on the basis of worshipping gods other than the God of Abraham, followers of these religions sometimes eschew the designation.
- A believer in Paganism or Neopaganism

**Parsis**
Parsis are descended from Persian Zoroastrians who emigrated to the Indian subcontinent over 1,000 years ago to escape religious persecution after the Islamic conquest

**Patwari**
he deals with the matters relating to land revenue and inheritance.

**Pukhtoon**
an ethno-linguistic group primarily in eastern and southern Afghanistan and in the North West Frontier Province, Federally Administered Tribal Areas and Balochistan

**Qadiani**
Qadianis belong to the Ahmadiyya Community. They divide prophets between law-bearing and subservient prophets.

**Qanoongo**
this designation is equivalent to Naib Tehsildar

**Qiyas**
the process of analogical reasoning from a known injunction (nass) to a new injunction.

**Quran**
the central religious book of Islam.

**Rabbi Judah**
Rabbi Judah haNasi, also referred to as Rabbeinu HaKadosh (Our holy rabbi), and Rebbi ([My] rabbi or teacher)) was a key leader of the Jewish community of Judea toward the end of the 2nd century CE, during its occupation by the Roman Empire. He is best known in Judaism as the chief "editor" or "redactor" of the Mishnah, the first part of the written compendium of Jewish religious law known as the Oral Law or Torah SheBe'al Peh upon which the Talmud is based and from which classical Jewish law Halakha is derived.

**Roznamcha**
Daily Register

**Sahih Bukhari**
the authentic collection is one of the Sunni six major Hadith collections.

**Sahih Muslim**
Sahih Muslim is one of the Sunni Six Major Hadith collections, collected by Imam Muslim.

**Sapinda**
persons of common origin

**Satan**
devil

**Shafi-i-Jurists**
Jurists belonging to Shafi school of thought

**Shajra nasb**
genealogy

**Sharia/Shari’at**
refers to the body of Islamic laws.

**Shia**
one of the two main sects of Islam.

**Sikh**
an adherent of Sikhism, a religion that began with the teachings of Guru Nanak and nine successive human gurus.

**Stridhan**
the property held absolutely by a female

**Sunan Ibn-e-Majah**
one of the Six Authentic Compilations of Hadith

**Sunan Nisai**
one of the Six Authentic Compilations of Hadith

**Sunnah**
literally means “trodden path”, and therefore, the Sunnah of the prophet means “the way of the prophet”.

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<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sunnis</td>
<td>they represent the sect of Islam that came through the caliphate, which started with Abu Bakr. Sunni means follower of the sunnah of the Prophet, with some details.</td>
</tr>
<tr>
<td>Surah</td>
<td>an Arabic term literally meaning &quot;evidence&quot; or &quot;proof&quot;. The term is often taken to mean a chapter of the Holy Qur’an.</td>
</tr>
<tr>
<td>Swara/vani</td>
<td>giving of girl in marriage by way of compensation</td>
</tr>
<tr>
<td>Takhayu</td>
<td>eclectic choice out of divergent legal principles within the Islamic law</td>
</tr>
<tr>
<td>Talfiq</td>
<td>combination of two or more parallel legal rules to evolve a new one.</td>
</tr>
<tr>
<td>Talmud</td>
<td>the Talmud is a record of rabbinic discussions pertaining to Jewish law, ethics, customs and history.</td>
</tr>
<tr>
<td>Tapedar</td>
<td>this designation is similar to Numberdar.</td>
</tr>
<tr>
<td>Tehsil</td>
<td>a tehsil consists of a city or a town that serves as its headquarters, possibly additional towns, and a number of villages.</td>
</tr>
<tr>
<td>Tehsildar</td>
<td>a revenue administrative officer.</td>
</tr>
<tr>
<td>Torah</td>
<td>it is the central and most important document of Judaism revered by Jews through the ages.</td>
</tr>
<tr>
<td>Ulema</td>
<td>religious scholars</td>
</tr>
<tr>
<td>Vasishtha</td>
<td>he was the chief of the seven venerated sages in Hindu mythology. He had in his possession the divine cow (Kamadhenu) and her child (Nandini), who could grant anything to their owners.</td>
</tr>
<tr>
<td>Wali</td>
<td>master (or boss or owner), trusted one, or friend</td>
</tr>
<tr>
<td>Walvar</td>
<td>payment of bride price</td>
</tr>
<tr>
<td>Wasiyat wajibah</td>
<td>mandatory will</td>
</tr>
<tr>
<td>Wasiyat</td>
<td>will</td>
</tr>
<tr>
<td>Watta satta</td>
<td>exchange marriage</td>
</tr>
<tr>
<td>Wursa</td>
<td>legal heirs</td>
</tr>
<tr>
<td>Zaboor</td>
<td>one of the holy books revealed by Allah to Dawud (David), king of Israel prior to the Quran. Often it is called the Psalms of David.</td>
</tr>
<tr>
<td>Zila</td>
<td>district</td>
</tr>
</tbody>
</table>
## Appendix A

### Law of Inheritance

#### Table of shares under Sunni Law

<table>
<thead>
<tr>
<th>Mother</th>
<th>Conditions under which the share is inherited</th>
<th>Father</th>
<th>Conditions under which the share is inherited</th>
</tr>
</thead>
</table>
| 1/6    | When there is child or child of a son, or when there are two or more brothers or sisters or even one brother and one sister, whether full consanguine or uterine | 1/6    | a) When there is child or child of a son besides other heirs  
       |                                               |        | b) When there is no child or child of a son, but there are husband, mother and son’s daughter |
| 1/3    | When there is no child or child of a son and not more than one brother or sister (if any). | 1/3    | a) When there is no child or child of son, or son’s son’s daughter, but there are husband and mother;  
       |                                               |        | b) When there is no child or child of a son or son’s daughter, but there are husband and maternal true grandmother;  
       |                                               |        | c) When there is no son, but there are more than one daughter.  
       |                                               |        | d) When there is no son, no daughter or son’s son, but there is son’s daughter or son’s son’s daughter. |
| 1/4    | When there are also wife and father in addition to not more than one brother and one sister (if any). | 1/2    | a) When there is no child or child of a son or son’s daughter, but there is husband;  
       |                                               |        | b) When there is no child or child of a son or son’s daughter, but there is a daughter;  
       |                                               |        | c) When there is no child or child of a son or son’s son’s daughter, but there are wife and mother;  
<pre><code>   |                                               |        | d) When there is no child of a son or son’s daughter, but there are wife and maternal true grandmother; |
</code></pre>
<p>| 1/6    | When there are also husband and father in addition to not more than one brother and one sister (if any). | 2/3    | When there is no child or child of a son or son’s daughter, but there is mother or, maternal true grand – mother. |</p>
<table>
<thead>
<tr>
<th>Condition</th>
<th>Share</th>
</tr>
</thead>
<tbody>
<tr>
<td>When there is no child or child of a son or son’s daughter, but there is widow</td>
<td>2/4</td>
</tr>
<tr>
<td>When there is no son, no daughter, no son’s son, no son’s daughter, no husband, no daughter, no wife, but there are mother and more than one brother or sister</td>
<td>5/6</td>
</tr>
<tr>
<td>When there is no son, no daughter, no son’s son’s, no son’s daughter, no husband, no wife, but there are mother and more than one brother or sister</td>
<td>Whole</td>
</tr>
<tr>
<td>Maternal true grand-mother</td>
<td></td>
</tr>
<tr>
<td>Maternal true grand-mother</td>
<td></td>
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<tr>
<td>Maternal true grand-mother</td>
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<tr>
<td>Paternal true grand-mother</td>
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<tr>
<td>True grand father</td>
<td></td>
</tr>
<tr>
<td>True grand father</td>
<td></td>
</tr>
<tr>
<td>He does not inherit when the father is alive. If the father is dead, then the true grand-father takes the position of father and inherits like the father.</td>
<td></td>
</tr>
<tr>
<td>1/6 When there is no mother, and no near true grand-mother, either paternal or maternal</td>
<td></td>
</tr>
<tr>
<td>1/6 When there is no mother, and no near true grand-mother, either paternal or maternal, and no intermediate true grand-father</td>
<td></td>
</tr>
<tr>
<td>Wife</td>
<td></td>
</tr>
<tr>
<td>Husband</td>
<td></td>
</tr>
<tr>
<td>1/8 When there is child or child of a son</td>
<td>1/4</td>
</tr>
<tr>
<td>1/8 When there is child or child of a son</td>
<td>1/4</td>
</tr>
<tr>
<td>Wives</td>
<td></td>
</tr>
<tr>
<td>Wives</td>
<td></td>
</tr>
<tr>
<td>1/8 Jointly</td>
<td></td>
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<tr>
<td>Daughter</td>
<td></td>
</tr>
<tr>
<td>Daughter</td>
<td></td>
</tr>
<tr>
<td>1/2 When only one and no son</td>
<td></td>
</tr>
<tr>
<td>Daughters</td>
<td></td>
</tr>
<tr>
<td>Daughters</td>
<td></td>
</tr>
<tr>
<td>2/3 When there is no son</td>
<td></td>
</tr>
<tr>
<td>If son, she will become residuary with the son &amp; take a double portion. For instance if 2/3 remains after deducting the shares, of the sharers, a son will get 4/9 and daughter will get 2/9. If sharers are three sons and two daughters, each son will get 1/6, and each daughter will get 1/12</td>
<td></td>
</tr>
<tr>
<td><strong>Son’s daughter</strong></td>
<td>Will inherit only when there is no son, no daughter, or no son’s son</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------</td>
</tr>
<tr>
<td>1/2</td>
<td>If only one</td>
</tr>
<tr>
<td>2/3</td>
<td>If more than one</td>
</tr>
<tr>
<td></td>
<td>If there is son’s son and no heirs as mentioned above she will inherit with him as residuary and her share will be like a daughter</td>
</tr>
<tr>
<td></td>
<td>If there is no equal son’s son but there is a lower son’s son, she takes as a residuary with him, provided she cannot inherit as a sharer. In either case each son’s son takes double the share of each son’s daughter. When the son’s daughter becomes a residuary with a lower son’s son she shares equally with them as if they were all of the same grade</td>
</tr>
<tr>
<td><strong>Son’s son’s daughter</strong></td>
<td></td>
</tr>
<tr>
<td>1/2</td>
<td>When one, provided there is no son, daughter, son’s son, son’s daughter, or son’s son’s son.</td>
</tr>
<tr>
<td>2/3 jointly</td>
<td>When they are two</td>
</tr>
<tr>
<td>1/6</td>
<td>When there is only one daughter or son’s daughter, provided there is no son, no son’s son, no son’s son’s son.</td>
</tr>
<tr>
<td>Like son’s daughter</td>
<td>If there is son’s son’s sons. She will inherit them as residuary</td>
</tr>
<tr>
<td><strong>Uterine sister</strong></td>
<td>Same as uterine brother</td>
</tr>
<tr>
<td><strong>Uterine brother</strong></td>
<td></td>
</tr>
<tr>
<td>1/6</td>
<td>When one, provided there is no child, no child of a son, no father, no true grand father</td>
</tr>
<tr>
<td>1/3</td>
<td>When more than one</td>
</tr>
<tr>
<td><strong>Full sister</strong></td>
<td></td>
</tr>
<tr>
<td>Fraction</td>
<td>Description</td>
</tr>
<tr>
<td>----------</td>
<td>-------------</td>
</tr>
<tr>
<td>1/2</td>
<td>When only one and no child, child of son, father, true grand-father or full brother</td>
</tr>
<tr>
<td>2/3 jointly</td>
<td>When more than one sister</td>
</tr>
<tr>
<td></td>
<td>When brother she will not inherit as sharer but as residuary with the full brother. But brother will take the double share</td>
</tr>
<tr>
<td></td>
<td>In default of full brother, son, son’s son, son’s daughter, daughter, father and true grand-father, the full sister takes the residue if any, if there by a daughter or daughters or a son’s daughter or daughters or even if there be one daughter and a son’s daughter or daughters</td>
</tr>
<tr>
<td>Consanguine sister</td>
<td>Consanguine brother</td>
</tr>
<tr>
<td>1/2</td>
<td>When only one provided there is no child of a son, father, true grand-father, full brother, father, true grand-father, full brother, full sister or consanguine brother</td>
</tr>
<tr>
<td>3 jointly sharing equally</td>
<td>When more than one</td>
</tr>
<tr>
<td>1/6</td>
<td>When more than one, provided there is only one full sister and she succeeds as a sharer, provided she is otherwise not excluded from inheritance</td>
</tr>
<tr>
<td>As residuary with consanguine brother</td>
<td>Double portion, as residuary with consanguine sister.</td>
</tr>
<tr>
<td>Daughter</td>
<td>Son</td>
</tr>
<tr>
<td>Not sharer but Class I</td>
<td>Not sharer but Class I residuary</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Consanguine brother</th>
<th>Consanguine sister</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/2</td>
<td>Consanguine brother</td>
</tr>
<tr>
<td>3 jointly sharing equally</td>
<td>Consanguine sister</td>
</tr>
<tr>
<td>1/6</td>
<td>Consanguine brother</td>
</tr>
<tr>
<td>As residuary with consanguine brother</td>
<td>Consanguine sister</td>
</tr>
<tr>
<td>Daughter</td>
<td>Son</td>
</tr>
<tr>
<td>Not sharer but Class I</td>
<td>Not sharer but Class I residuary</td>
</tr>
<tr>
<td>residuary</td>
<td>Double of sister’s share</td>
</tr>
<tr>
<td>----------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td><strong>Son’s daughter</strong></td>
<td>Sons’s son</td>
</tr>
<tr>
<td>Half to that of sister</td>
<td>Double share</td>
</tr>
<tr>
<td></td>
<td>When there is no son or no son’s son nearer in degree</td>
</tr>
<tr>
<td></td>
<td><strong>Full brother</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Full brother’s son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Consanguine brother’s son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Consanguine brother’s son’s son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Full paternal uncle</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Consanguine paternal uncle</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Full paternal uncle’s son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Consanguine paternal uncle son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Full paternal uncle’s son</strong></td>
</tr>
<tr>
<td></td>
<td>In the absence of above heirs</td>
</tr>
<tr>
<td></td>
<td><strong>Male descendants</strong></td>
</tr>
<tr>
<td></td>
<td>of more remote true grandfathers in order and manner as the deceased’s paternal uncles</td>
</tr>
<tr>
<td></td>
<td>and their sons and son’s sons.</td>
</tr>
</tbody>
</table>
## Appendix B

### Table of Inheritance Shares under Shia Law

<table>
<thead>
<tr>
<th>Shares</th>
<th>Normal share of two</th>
<th>Condition under which the share is inherited</th>
<th>Share as varied by special circumstances</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Of one</td>
<td>Of more collectively</td>
<td></td>
</tr>
<tr>
<td>1. Husband</td>
<td>1/4</td>
<td>.....</td>
<td>When there is lineal descendant.</td>
</tr>
<tr>
<td>2. Wife</td>
<td>1/8</td>
<td>1/8</td>
<td>When there is a lineal descendant.</td>
</tr>
<tr>
<td>3. Father</td>
<td>1/6</td>
<td>.....</td>
<td>When there is a lineal descendant.</td>
</tr>
<tr>
<td>4. Mother</td>
<td>1/6</td>
<td>.....</td>
<td>(a) When there is lineal descendant a: or</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(b) When there are two or more full or consanguine brothers, or one such brother and two such sisters, or four such sisters, with the father.</td>
</tr>
<tr>
<td>5. Daughter</td>
<td>1/2</td>
<td>2/3</td>
<td>When no son</td>
</tr>
<tr>
<td>6. Uterine brothers or sister</td>
<td>1/6</td>
<td>1/3</td>
<td>When no parent, or lineal descendant, [once s. 88]</td>
</tr>
<tr>
<td>7. Full sister</td>
<td>1/2</td>
<td>2/3</td>
<td>When no parent, or lineal descendant, or full brother, or father’s father [see as 88,101].</td>
</tr>
<tr>
<td>8. Consanguine sister</td>
<td>1/2</td>
<td>2/3</td>
<td>When no parent, or lineal</td>
</tr>
</tbody>
</table>
descendant, or full brother, or sister of consanguine brother, or father’s father [sec. ss. 88, 101]

| descendant, or full brother, or sister of consanguine brother, or father’s father [sec. ss. 88, 101] | consanguine brothers and also with the father’s father: sec s. 101]. |
Appendix C

Land Revenue Act, 1967

Section 42 (1): A person acquiring by inheritance, purchase, mortgage, gift or otherwise, any right in estate as a land owner of estate shall within three months from the date of such acquisition, report his acquisition of right to the Patwari who shall:

(a) record such report in the Roznamcha to be maintained in the prescribed manner;

(b) furnish a copy of the report so recorded, free of cost, to the person making the report; and

(c) Send a copy of the report within a week of its receipt by him, to the Union Committee or Town Committee or Union Council within which the estate is situated.

(2) If the person acquiring the right is a minor, or is otherwise unable to report, his guardian or other person having charge of his property shall make the report to the patwari.

(3) The patwari shall enter in his register of mutations every report made to him under subsection (1) or subsection (2), and shall also make an entry in the Roznamcha and in the register of mutations respecting the acquisition of any such right as aforesaid which he has reason to believe to have taken place, and of which report should have been to him under either of those subsections and has not been so made.

(4) The report made to the patwari under subsection (1) or subsection (2) or recorded by him under subsection (3) shall be displayed in such manner as may be prescribed.

(5) If the patwari fails to record or to display a report made to him under subsection (1) or subsection (2); the person making the report may make the report, in writing, to the Revenue Officer concerned and the [Union Nazi m of the Union] in which the estate is situated, by registered post acknowledgement due and the Revenue Officer shall thereupon cause such report to be entered in the register of mutations.

(6) The Revenue Officer shall, from time to time, inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing subsections, report should have been made to the patwari and entries made in that register, and shall in each case make such order as he thinks fit with respect to any entry in the periodical record of the right acquired.

(7) Except in cases of inheritance or where the acquisition of the right is by a registered deed or by or under an order of decree of a Court, the Revenue Office shall make the order under subsection (6) in the presence of the person whose right has been acquired, after such person has been identified by two respectable persons, preferably from Lambardars or members of [Zila Council, Tehsil Council or Town Council] or Union council concerned, whose signatures or thumb-impressions shall be obtained by the Revenue Officer on the register of mutations.

(8) An inquiry or an order under subsection (6) shall be made in the common assembly in the estate to which the mutation, which is the subject-matter of the inquiry, relates.

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224 The West Pakistan Land Revenue Act, 1967
Record of rights & Periodical Records

Part A: Record of Mutations

7.1. Entry of Mutation: The mutation register is prescribed in [sec.33(3) & 34 of the Land Revenue Act] for the entry of [every acquisition of any right or interest in an estate as a landowner and under [sec.35] for disputed acquisition of other rights. The mutation register is not a part of the record-of-rights and its entries do not share in the presumption of truth attached to that record. All mutations of rights of ownership or occupancy, including voluntary partitions, shall be entered by the Patwari in the register when they are reported to him by the Patwari in the register when they are reported to him by the transferee as required by [section 34 of the Land Revenue Act], and if not so reported, then so soon as they appear to have been acted upon. When he enters a mutation affecting the shajra nasb the Patwari shall note in pencil the number of the mutation against the entry affected. If and when mutation is sanctioned, he shall amend the shajra nasb in red ink in accordance with the mutation order.

(V) It should not be difficult for a Patwari (resident official) to learn in normal course of the occurrence of death of land-owner in his small circle. Mutation of inheritance in such cases can, therefore, be entered by the Patwari suo moto on the basis of his personal knowledge without waiting for any formal intimation from any quarter. In further failure to enter a mutation of inheritance on the death of a resident land-owner shall be construed to reflect adversely on the vigilance and awareness of a Patwari and shall be taken due notice of.

7.26-A. Inheritance:

(1) In case of inheritance a summary inquiry into title is necessary.
(2) The Patwari (which also includes a Tapedar) should draw the shajra nasb on foil and counterfoil showing the names of all heirs the deceased and write the report in column 14 of the foil of mutation briefly stating the fact and the result of inquiry, regarding heirs.
(3) If the Revenue Officer, as a result of his inquiry, finds that the Patwari has not prepared the shajra nasb or the shajra nasb prepared by the Patwari is not correct, he should prepare or correct the same, as the case may be, and initial it in both the foil and counterfoil.
(4) Where it is claimed that property devolves by reason of a ‘Will’ this should be treated as a case of succession by inheritance and dealt with in accordance with the law on this subject governing the parties.
(5) It has been observed that while deciding the mutation of inheritance the females are, in most cases, deprived of their rights by recording in the mutation orders that they are not willing to accept their shares and that they gift their shares to their brothers or other male relatives. In fact this process comprises of two distinct and separate transactions and as such should not be confused into one. Besides, not only there is an implied circumvention of the West Pakistan Land Forms Regulation, 1959, by the transactions being made into one the mutation fees are also lost to Government.

The correct procedure for the disposal of such cases is that after the death of parents or other relatives a mutation of inheritance must first be recorded and sanctioned showing the correct shares of each heir in
accordance with the instructions contained in subpara (infra). If the female heirs wish to gift the lands thereafter to their brothers, etc., this should take place in a separate mutation, which should not, however, be recorded until a week after the 40 days of mourning so as to save them from undue influence and enable them to appreciate in a calm and cool atmosphere that such action on their part would deprive them and their own children of their rights in the inheritance of the deceased for ever.

(6) Section 2 of the West Pakistan Personal Law (Sharī‘at) Application Act, 1962 provides that in all questions regarding succession, (whether testate or intestate) the rule of decision, shall be the Muslim Personal Law (Sharī‘at), in cases where the parties are Muslims. The following instructions should be meticulously observed by the Revenue Officers while deciding the mutations of inheritance:

(i) The order of the Revenue Officer must show whether the deceased was a Muslim following Hanafi or Shia Fiqh or a non-Muslim.

(ii) In cases where the parties are Muslims, the provisions laid down in Section 4 of the Muslim Family Laws Ordinance, 1961, shall be followed.225

(iii) In cases where the parties are non-Muslim, the Law or Customs of Inheritance governing the parties shall be followed.”

225 In this connection instructions given at pages 359 & 360 of this Manual on Land Revenue should also be consulted.
Appendix D

<table>
<thead>
<tr>
<th>Name/ Designation/ Institution</th>
<th>Comments</th>
<th>Suggestions</th>
<th>Errors</th>
<th>Response of PRU</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr. Muhammad Aslam Saleeemi Naib Amir Jamat-e-Islami on behalf of Qazi Hussain Ahmed, Ameer Jamat-e-Islami, Pakistan</td>
<td>This policy research has been conducted with due diligence. However, we have certain reservations and difference of opinion on certain matters discussed in the report. We agree on some other points. 1. My answer to the question on page 19, “Is daughter entitled to share more than the prescribed limit?” is that daughter’s share has been prescribed in Quran by Allah Subhanahu Wa Ta’ala in verse no.11 of Surah Al Nisa. This verse reads as, “Allah thus commands you concerning your children: the share of the female is like that of two females. If (the heirs of the deceased are) more than two daughters, they shall have two-thirds of the inheritance; and if there is only one daughter, then she shall have half the inheritance.” This is the first general rule in connection with inheritance, viz. that the share of the male should be double that of the female. Since Islamic law imposes greater financial obligations on men in respect of family life and relieves women of a number of such obligations, justice demands that a woman’s share in inheritance should be less than that of a man. 2. On page 21, it has been mentioned that, “But here another question arises as to...”</td>
<td>Scholars may have difference of opinion. Views expressed in point (1) &amp; (2) are incorporated in the draft report.</td>
<td>Comments (3) incorporated in the draft report.</td>
<td></td>
</tr>
</tbody>
</table>
whether Ijtihad (may) be allowed on the point that has been explicitly defined in the Holy Quran?” In this connection, Dr. Fathi Osman’s opinion has been quoted in the draft report. In his views, the matter of inheritance falls under the category of ‘affairs’, which can be itered in view of changing circumstances. Thus the State has a legitimate right to initiate amendments in the legislation in this context through Ijtihad to ensure justice. In my humble opinion this is an erroneous view and is not acceptable. Let me explain the meaning of the term Ijtihad. The literal meaning of Ijtihad is the expending of maximum effort in the performance of an act. Technically, it is the effort made by the Mujtahid in seeking knowledge of rules of the Shariah through interpretation. It is important that the method of discovery of the rules should be through interpretation of the texts with the help of other sources. Ijtihad is not a source of Islamic law. It is interpretation of law. There are certain texts that are not subject to Ijtihad, so the Mujtahid should not spend any effort in the interpretation of those texts. The reason is that these texts are the most authentic and the meaning found in them is most clear. The meaning of such texts can be discovered by anyone by just reading these texts. Most of the verses of the Quran containing commands are definitive with respect to their meanings and authenticity. Verse no. 11 of Surah Al-Nisa is definitive with respect to transmission as well as meaning, and is not subject to Ijtihad. It is important to
mention that the Shafi-i Jurists who think that door of Ijtihad is open, hold the view that, “There is no Ijtihad with the ‘nass’.” Nass is the theme. Now I come to question no. 2 raised in the report: “Whether the descendants of a propositus child (ren) entitled to share in the inheritance (of their grandfather)?” The answer to this question is that verses no: 7 to 11 of Surah Al-Nisa should be read together. These verses embody important legal injunctions of inheritance. They are as follows:

- First, that women as well as men are entitled to inheritance.
- Second, that inheritance, however meagre it might be, should be distributed among the heirs; even if the deceased has left a small piece of cloth and has ten heirs, that piece of cloth should be distributed among them all.
- Third, that the law of inheritance is applicable to all kinds of property-movable and immovable, agricultural, industrial etc.
- Fourth, that the law of inheritance comes into force as soon as a person dies leaving some property.
- Fifth, that basic rule of inheritance is that nearer or immediate blood-relative of the deceased excludes the remote relatives. According to this rule, the descendants of a propositus child of the deceased are excluded by the living children of the deceased. But the directive contained in verse no. 8 of Surah Al-Nisa is addressed to the heirs of the deceased that they should not be niggardly towards their relatives.
whether they may be close or distant. Nor should they be niggardly towards either poor and needy members of the family or towards orphans who are present when the inheritance is distributed. Although they are not legally entitled to any share, it’s seemly for people to act magnanimously and give them something out of their inheritance, and especially to desist. It’s also pertinent to mention here, that verse no. 11 of Surah Al-Nisa narrates that, “All these shares are to be given after payment of the bequest he (deceased) might have made or any debts outstanding against him (deceased).” The mention of bequest precedes the mention of debt, for although not everyone need be encumbered with debt; it is necessary that everyone should make a bequest in favour of especially the descendants of his propositus child. In Islamic law, a person has the right to bequeath up to a maximum of one-third of his property. The principle laid down in regard to bequest is that a person can allot a portion of his inheritance either to a relative who is not legally entitled to any prescribed share in the inheritance or to others whom he considers deserving of help, e.g. either an orphaned grandson or grand-daughter or the widow of a son in financial distress, brother’s wife, nephew, or niece and other relative who seem to be in need of support. In short, the law has fixed regulations for the distribution of two-third or more of one’s inheritance, out of which the legal heirs are entitled to receive their shares
according to the regulation laid down by the law. A maximum of one-third of the inheritance has been left to the discretion of the person concerned, who can dispose of it by means of bequest in light of his particular family circumstances. If anyone makes either an equitable bequest or misuses his discretion so as to hurt the legitimate rights of others, it is permissible for the members of the family to rectify the situation either by mutual agreement or by requesting a court of law to intervene in the matter. Here I may mention that in case a person does not make a bequest in favour of orphaned children of his pre-deceased son or daughter, a law can be enacted regarding Mandatory Will (Wasiyah Wajibah) to the extent of one third of property, as laws have been made in other Muslim countries like Egypt, Jordan and Kuwait etc. This law can be enacted on the authority of verse no. 180 of Surah Al-Baqarah quoted by you on page 28 of the report. I agree with your suggestions of obligatory bequest (page 29 of the report).

3. As regards the third question, “Whether in Islam relative is excluded from inheritance on the ground of difference in religion?”, my answer is that I do not agree with the view that this is contradictory to the constitutional provision contained in article 25 of the Constitution of Pakistan viz. equality before law. This provision has nothing to do with the law of inheritance.

4. According to an authentic Hadith quoted by you on page 29 of the report, a disbeliever cannot be the heir of a
<table>
<thead>
<tr>
<th>Mir Abdur Rehman Jamali</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minister for S&amp;GAD, Balochistan</td>
</tr>
</tbody>
</table>

Muslim and a Muslim cannot be heir of a disbeliever. We should act upon this Hadith. Hadith or Sunnah is the second source of Islamic law after the Quran.

5. I do not agree with your opinion or suggestion that amendments in law should be made to benefit non-Muslim relatives to inherit their Muslim ancestor.

6. In the end I may say that I agree with you that lacunas in the legal framework of inheritance should be removed (page 62). I also agree with proposed Policy Mechanism for the implementation of women’s right in inheritance (page 71).

It’s a wonderful effort, which covers almost all the important aspects of the subject i.e. historical background, Constitutional guarantees, international commitments, prevailing policies, legal framework, prevailing mechanism and above all recommending an implementation mechanism, involving different quarters from superior to grass root level so that women’s right to inheritance could be ensured.

Although there is always room for betterment, yet it is a worth carrying milestone in the march of 52% population towards their socio-economic prosperity, which is in fact our national prosperity.

With reference to NWFP only Northern part of the province is focused in survey, while Southern part is neglected.

Northern part was included in the original research design but at the time of orientation according to the team Survey Team leader from NWFP, Inheritance is not a big issue in Southern part of NWFP due to high poverty rate as compared to Northern part. Therefore, with the approval of the then Chairperson NCSW, the scheme was...
As Quetta and Pishin fall in the same Socio-Cultural Region therefore instead of Pishin any area from Mekran could be opted.

According to canons of research, a research is supposed to be objective, but on a few issues there is slight subjectivity on the part of researchers, as in comments on “Ijtehad” and referring to Turkey (pertaining to equal right to inheritance for male

<table>
<thead>
<tr>
<th>District</th>
<th>Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peshawar</td>
<td>High literacy &amp; land holding</td>
</tr>
<tr>
<td>Swabi</td>
<td>literacy &amp; land holdings</td>
</tr>
<tr>
<td>Dir upper</td>
<td>Low literacy</td>
</tr>
<tr>
<td>Charsada</td>
<td>Low literacy &amp; high income</td>
</tr>
</tbody>
</table>

Similarly, in Baluchistan, Markra belt was very much in the original research design but later in view of the advice of the Survey Team leader from Baluchistan, the scheme was changed with the approval of the then Chairperson NCSW.
The rationale for the selection of the district was as follows:

Peshin: Business community & land holdings, medium literacy

Quetta: High literacy, land holding, urban centre

Loralai: Low literacy & land holding, equal representation in Pashtun & Baluch areas & tribal community

Kalat: Land holding, low literacy, Baluch area.

Turkey has been quoted as an example where progressive innovations in
<p>| Faisal Jamal |</p>
<table>
<thead>
<tr>
<th>Secretary Balochistan Local Govt. Board</th>
</tr>
</thead>
<tbody>
<tr>
<td>The historical perspective of the document is very elaborative and contains a rich source of information. The appraisal of religious practices and details of the Islamic and other religious laws is indeed a source of enlightenment and reflection of dedication and hard work of the researcher as studies of this types have sufficient potential to provide an insight in the prevailing interventions.</td>
</tr>
<tr>
<td>Balochistan’s perspective need to be emphasized that the sample undertaken is confined to a limited area in terms of the cultural diversity and is more focused on the Pashtoon tribal areas.</td>
</tr>
<tr>
<td>The prevalence of bride price has been viewed in a totally pessimistic manner based on hypothetical assumption and projected as a mode of marriage which is not so, the custom entails with it some optimistic aspect which cannot be over looked</td>
</tr>
<tr>
<td>The revision in selection criteria was made on the basis of expert opinion of the provincial Field Research Team Leader and approved by the Chairperson.</td>
</tr>
<tr>
<td>Local Govt. Ord. 2001 has</td>
</tr>
<tr>
<td>Mr. Ali Juma</td>
</tr>
<tr>
<td>---------------</td>
</tr>
<tr>
<td>Mr. Altaf Hussain Bhatti</td>
</tr>
</tbody>
</table>
rights of men and women.
2. One way is to include material regarding women’s inheritance and other social rights in the syllabus of high schools and colleges.
3. Birth and marriage registration may be made compulsory through promulgation of laws to safeguard the rights of women.
4. Traditional attitude in rural areas to perform Nikah with the Holy Qur’an should be strictly abandoned, those found guilty should be punished severely with a view to avoid usurping the rights of women.
5. Legal support should be provided to the women denied of their inheritance rights by their parents/brothers and other relatives.

Suggestion (2) is in line with Policy Recommendation (h)
Suggestion (3) is in line with Policy Recommendation d(iv) & (v)
Suggestion (4) is in line with Policy Recommendation d(i)
Suggestion (5) is
Mr. G.N. Marri  
AEO/Section Officer Social Welfare and Women Development Department, Balochistan

<table>
<thead>
<tr>
<th>The historical perspective of the document is very detailed and is a rich source of information. The various contexts of religious practices and details of the Islamic and other religious laws is indeed a source of great inspiration and reflects the intensity of the in-depth research undertaken by the researcher.</th>
</tr>
</thead>
<tbody>
<tr>
<td>As such most of the findings generalized for Balochistan need to be seen in context of both the Baloch and Pashtoon Cultures. Ex-Makran Division has a very established mechanism where women are given their right to inheritance and this is widely practiced. Study of these kinds of setups has sufficient potential to provide an insight into the interventions likely to be adopted.</td>
</tr>
</tbody>
</table>
| 1. With specific focus to Balochistan it needs to be emphasized that the sample undertaken is focusing very limited areas in terms of the cultural diversity and is more focused of the Pushtoon tribal areas.  
2. The prevalence of the bride price has been viewed in a totally negative manner in terms of its widespread applicability in the entire province and is based on a general assumption of being a mode of marriage which is not the case. |
| 1. A management information system be also part of the proposed cell so as to provide for exact data  

| in line with Policy Recommendation for the establishment of Inheritance and Monitoring Mechanism and the suggested procedure to ensure women’s right to inheritance |
| Suggestion (1) relates to internal system |
on the status of inheritance rights of women so that future recommendations derive their strength from a realistic assessment of the exact situation.

2. The Inquiry Commission Report August 2007 has solid recommendations in this regard and may be considered.

3. The current Local Government Ordinance has to be amended to cater for a detailed mechanism. It has provisions for the registration of birth, death and marriages but bye-laws are required to elaborate the mechanism.

4. The mechanism is focusing direct coordination of union council with the province. The framework needs to acknowledge the role of District government and Local Government Commission. In the light of new amendments in LGO 2001 in Balochistan the DCO is empowered to nominate an official to meet the objectives defined in the Policy Recommendations

Suggestion (3) is in line with Policy Recommendation c(v)

Suggestion (4) is very much taken care as Local Govts are involved at all levels through inclusion of Zila
for provision of information on request to any tier and as such the involvement of the district government becomes important.

5. The framework needs to be dovetailed with other mechanisms as the gender MIS, Participatory Information System in Balochistan developed by SDRB-UNDP providing data on the status of property in the name of male and female rather than working in isolation.

Mr. M. Abbas Jaffery MPA Sind (General Comment) Woman in our Islamic society should be treated as equal to men and her rights to inheritance should be given as described by the Holy Quran and Sunnah.

The high ranking officials/officers of the National Commission on the status, Government of Pakistan should make a proper arrangement for the programme to educate as well as their implementation and tell

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<tr>
<th>Mr. M. Abbas Jaffery</th>
<th>(General Comment) Woman in our Islamic society should be treated as equal to men and her rights to inheritance should be given as described by the Holy Quran and Sunnah.</th>
<th>The high ranking officials/officers of the National Commission on the status, Government of Pakistan should make a proper arrangement for the programme to educate as well as their implementation and tell</th>
<th>The suggestions are for advocacy and not on the draft reports. Therefore the same will be shared with the</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nazim and other concerned representatives of public sector functionaries.</td>
<td>However, in view of the suggestion D.C.O. is explicitly included in the scheme (Plz. See part 4.1.3. of the draft report)</td>
<td>With ref. to suggestion (5) SDDRD-UNDP falls under CSOs, which are very much included in the scheme in part 4.1.3.</td>
<td>The suggestions are for advocacy and not on the draft reports. Therefore the same will be shared with the</td>
</tr>
</tbody>
</table>
them the status of the women and their right to inheritance and its implementation on grass root level on countrywide basis and also explain all the rights of a women as described in ‘the Holy Qur’an and Sunnah” by using the following latest and sophisticated techniques in order to absorb the same knowledge in their families as well as others,

1. to use multimedia mohalla to mohalla
2. to use autoslide projectors
3. to use overhead projector
4. to use film projectors on large screen
5. to use panaflex screen to expose the women’s right described in the Holy Quran, in brief.
6. in public transports moving screen should be launched to educate the women's right accordingly.
7. In a small sentence of women’s right should be written on large sign holding advertisement board without this no person is allowed to launch their advertisement

Policy Advocacy Unit for consideration
Ms. Erum S. Gul  
Advocate High Court  
Lahore

I read the draft report of research on ‘Women’s Rights to Inheritance and its Implementation’ and found it very beneficial for the women in Pakistan.

1. There should be a specific section of law debarring women to forgo their rights in inherited property in favour of their male family members and if any women still forgoes her inherited rights in her property, it should be specifically declared null and void by law.

2. As women are entitled to only half inheritance as compared to the male family members this situation can be supplemented by a specific section in law that fathers/brothers are to maintain their daughters/sisters according to their financial status till the daughters/sisters are married or become financially independent.

3. The other way to strengthen the woman financially is to make specific provision in law that a has to give a certain minimum amount of dower and maintenance allowance to the wife which is to be

<p>| Suggestion (1) has been carried out in Policy Recommendation IV(b) |
| Suggestion (3) is not directly relevant to the subject. But it will be considered in our policy |
| calculated according to the financial status of the husband and incorporated in the Nikahnama and if the husband becomes financially stronger with time the amount of dower and maintenance calculated at the time of the nikah should be revised and recalculated accordingly by the Courts. There should be a certain method of calculation such as income tax returns etc. because mostly courts grant very meagre maintenance allowance to the wives who are eventually forced to come to court to demand their maintenance from their husbands. The Courts should be empowered by a specified Section in law to increase the dower amount in the Nikahnama if the court feels the husband is for no fault of the wife mistreating her, this will ensure that in case of divorce under these research on “The Impact of Family Laws on the Rights of Divorced Women in Pakistan” |</p>
<table>
<thead>
<tr>
<th>Name</th>
<th>Statement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hafiz Mohammad Idrees&lt;br&gt;Idara Ma’arif-e-Islami, Lahore</td>
<td>I have gone through the aforesaid “Report” that has been prepared with such great labour and trial to ascertain some facts through survey about women’s rights to inheritance and its implementation. It’s however commendable that the survey in context of religious perspective puts Islamic Divine laws as “explicit” and “elaborate” system of rules for devolution of property. Now there is no need of any oscillation when we have such a refined set of laws.</td>
</tr>
<tr>
<td>Qari Abd-u-Rashid Member&lt;br&gt;MarkazeRuat-e-Hilal Committee, Queta</td>
<td>I thank Allah that struggles are going on for the development, policy, rules and creation of position of women in society, which is an admirable process.</td>
</tr>
<tr>
<td>Ms. Yasmin Karim&lt;br&gt;NRSP Gilgit</td>
<td>This kind of research is a good initiative and an eye opener; and is well conceived.</td>
</tr>
<tr>
<td></td>
<td>In this report, Sunnah has been reviewed with skeptical approach. A meticulously prepared “Report” in its final chapter abruptly changes its tone and castigates the so called poor “Mullah” as if he is the only one that breeds all sorts of wrongs. “Mullah” is a misnomer. He is rather a full-fledged scholar, though leading a simple life.</td>
</tr>
<tr>
<td></td>
<td>It is probably misunderstood. However, we have replaced the word “(Mullah) with clergyman (Imamof Mosque instead of “Mullah (religious scholar)”.</td>
</tr>
<tr>
<td></td>
<td>1. Customary laws and practices are needed to be studied critically. 2. In 2.3 religious perspectives have been explained but there needs a clarification about the Isamalia. Isamalia is not a religion; it is a sub-sect of Shia sect. Shia and Sunni are the two</td>
</tr>
<tr>
<td></td>
<td>1. There is no clear distinction between Legal policy framework and Customary Laws. 2. As far as the inheritance practices are concerned in Isamiali, it has been generalized in this report. 3. The inheritance practices are not uniform in Isamiali throughout the country. The information in this report is</td>
</tr>
<tr>
<td></td>
<td>As repeatedly clarified by the critic that Ismailis are a sub-sect of Shia hence in this report there is no need to</td>
</tr>
</tbody>
</table>
main sects of Islam and further there are sub-sects. In Sunni, it’s Shafi, Hanafi, Bokhari and Wahabi whereas in Shia it is Shia Imami and Shia Asna Ashari. Shia Imami is also called Ismaili. Therefore please edit this otherwise it can create a misunderstanding.

3. The information in this report reflects the practices of immigrants from India after partition, who were converted from Hinduism to Isamilia. They are based in Karachi only and are called Khawaj community. They might not have understood, the basic principles of Islam in the beginning therefore they were following their old culture that was Hinduism. In the Northern Pakistan Ismailis have true Islamic practices in conjunction to Shia faith for the past centuries. The generalization of any information can create not reflecting the true Ismaili practices. In principle Ismaili community follows the Shia inheritance law of Islam.

4. 5.2 Women’s inability to take decision in FANA

<table>
<thead>
<tr>
<th>Profession</th>
<th>Selection of Spouse</th>
<th>Modes of marriage in FANA</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>96%</td>
<td></td>
</tr>
<tr>
<td>Bride Price</td>
<td>--</td>
<td>Exchange 35%</td>
</tr>
<tr>
<td>Arranged</td>
<td>05%</td>
<td>Bride Price --</td>
</tr>
<tr>
<td>Love/Courtship</td>
<td>14%</td>
<td>Arranged 05%</td>
</tr>
</tbody>
</table>

There is contradiction in the last figures. If 94% women are not able to choose the spouse, then this shows that 94% marriages are arranged not 05% and then the love marriage figure should be 6% not 14%.

As far as the real situation is concerned, Bride price is commonly practiced in some valleys of Northern Areas, but exchange system (watta satta) has not been seen any where in the North and been practiced in any of the valleys. Arranged marriage is very common as a homogeneous practice. Courtship marriage is registered in one or two cases in a two to three years period among 1.1 million’s population, therefore it’s less than 1%.

Data was re-checked. Slight discrepancy was noted, corrections made accordingly.
<table>
<thead>
<tr>
<th></th>
<th>Chaos. Keeping in view all this debate editing is needed in 3.5.5.</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.</td>
<td>A proper survey should be conducted in FANA and document the realistic figures, otherwise, the existing information is based on assumptions.</td>
</tr>
<tr>
<td>5.</td>
<td>Share under Sunni law has been elaborated very well; it's recommended that if a table 2 is also created for Share under Shia law. This will show a comparison of the two major sects. Otherwise it shows biases that effort has not been made to document about the second major sect of Muslims in the country.</td>
</tr>
<tr>
<td>6.</td>
<td>Though it was very important to have the consultative workshop in the Northern part to avoid the confusions. It's not too late still you should think of having the consultation with the people of this area.</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th></th>
<th>We appreciate the good efforts of the National Commission in conducting such an in-depth research study on the subject issue. However, there are some confusions regarding information and data on</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>A consultation may be carried out with stockholders of Northern Areas to remove any</td>
</tr>
<tr>
<td>1.</td>
<td>In chapter 3 under the heading “Prevailing Laws”, Ismailies laws are mentioned with the Hindu laws. In the same chapter, under the</td>
</tr>
<tr>
<td></td>
<td>As repeatedly clarified by the critic that Ismailis are a</td>
</tr>
</tbody>
</table>
Ms. Najma Farman  
Research Officer, Govt of Pak, Northern Areas Secretariat, Planning and Dev Dept. (Women Development)

| Northern Areas which need to be clarified before finalization of the draft report. | misunderstandings and contradictions before finalizing the draft report. In this connection, a consultation workshop may be held at Gilgit with collaboration of Women Development Section, Planning and Development Department, Gilgit. | paragraph 3.5.4, it is also stated, “Ismailies followed Hindu customs of inheritance until 1962 when they adopted shia laws of inheritance”. This statement is totally wrong and not based on facts and true information, which could lead to conflicts and controversies. In fact, the Ismailies being one of the major sects of Shia school; of thought follow Fiqqa-e-Jafferia laws since its separation.  
2. In the executive summary and also on page # 75, it's mentioned that the prevalence of exchange marriages (Watta Satta) has been observed to be highest in FANA as compared with other parts of the country.(details are also provided at page 75). On the same page # 75, the prevalence of courtship/love marriages is shown as highest in Northern Areas which again is a wrong statement and contradictory to another finding of the research mentioned on the same page where it says inability of women in selection of spouse is 94% in NAs. These two findings are contradictory and need clarification with source/reference.  
3. The information on Northern | sub-sect of Shia hence in this report there is no need to discuss them under separate heading. |

| | | | |
Areas is not supported with data, at the same time no reference has been provided against any statement. The information regarding Northern Areas seems to be just assumptions or opinion of few individuals, or guess of the respondents and not based on ground acts/realities. The unauthentic data will not only lead to mis-projection of the area and its people but also create confusion for planners and decision makers.

Data was re-checked. Slight discrepancy was noted corrections made accordingly

| Mr. Abdur Rauf |
| Director (Coord) Wafaqi Mohtasib (Ombudsman)’s Secretariat, Islamabad. |
| This does not fall within the purview of establishment of Wafaqi Mohtasib (Ombudsman) Order 1983 (P.O.No. 1 of 1983) hence, this Secretariat is not in a position to offer its input/comments on the draft report as such. However, this Secretariat appreciates the work done by the commission in connection with the women’s rights to inheritance in Pakistan. |

| Dr. Muhammad Zakria Zakr |
| Chairman Department of Sociology, University of the Punjab, Lahore |
| It is an excellent document based on empirical data and very strong reasoning. This is an important document, which would be very useful for policy makers, academicians as well as for the general public. |

| Mr. Umer Ali |
| Assistant Legal Drafter-IV Govt. of the NWFP Law, Parliamentary Affairs & Human Rights |
| The step taken by the Commission for the implementation & making of some laws for ensuring the Women’s Rights of Inheritance is worthy of appreciation |

**Action taken:** This province has taken cognizance of the matter and prepared a draft law

| |
| In the draft report it has been stated on the topic of widow’s share that Qur’an is silent on her right in her husband’s inheritance. It is incorrect as |

**Error was rightly pointed out. Corrections have been made**
| Department | In the prevailing laws of Pakistan the women’s rights to inheritance are in consonance with the Islamic principles but there is a little bit of complication in the delivery of its physical possession to the women.

On the examination of the draft report it is found that the steps taken by the Commission for the implementation in making of some laws for ensuring the women’s rights of inheritance, are worthy of appreciation.

Response to issues:
Answer to the first query is that daughter is not entitled more than her prescribed limit. The daughter will get her share as sharer if she is alone or more than one while she becomes residuary. When there is son of the deceased then she gets half portion of the share of her brother as is clear from the verse of the Holy Quran. Hence the daughter is not entitled to more the limit prescribed by the holy Quran and Sunnah.

Answer to the second query is that the descendents of the propositus children is not entitled to share in inheritance. The basic principle of the Islamic law of inheritance is that the nearer excludes the remoter. Thus in the presence of the father the grand-father and child in presence of child a grand-child of the deceased cannot be his heir. In hadith narrated by Zaid bin Sabit that grand-child cannot be heir in the presence of the child of the deceased. Zaid bin Sabit is the person about whom the Prophet Hazrat Muhammad (PBUH) said  |
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<tbody>
<tr>
<td>On the same issue copy of which is enclosed. It is desirable that if it is recommended by the Commission to the Federal Government for the enactment and promulgation it would solve the problems which the women are facing in getting their share in inheritance from their deceased ones. Surah Al Nisa verse 12 is quite explicit and clear. accordingly.</td>
<td>Response to issue (2) is in line with NCSW policy recommendation s</td>
<td>Response to issue (4) is confusing.</td>
<td></td>
</tr>
</tbody>
</table>
that he knows more about the problems of inheritance than others. Hence we have no authority to prescribe share for the grand-child where the Quran and Sunnah remain silent on it. Although Government may make law to the extent that a grand-father shall be bound to bequeath up to the limit of 1/3rd of his property in favour of his grand-child.

Answer to the third query is that an infidel will not inherit from a Muslim while a Muslim can inherit from an infidel if he is his relative. This argument is supported by a hadith the Islam dominates and is not dominated.

It would not be out of place to mention that being Muslim we are not expected to be influenced by the followers of other religion. We should not pave the way to confrontation between the opposite sex. Need of the hour is to create harmony between both the sexes as they are complementary to each other. It is stated that no law against the injunctions of Islam can be enacted under the Constitution.

Lastly, the suggestions made by the Commission in the implementation for the legal framework are worthy of appreciation and its promulgation in true spirit would lessen the hardships of the women folk.

<table>
<thead>
<tr>
<th>Prof. Dr. Anis Ahmad</th>
<th>(Comment on Concept Paper)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Vice Chancellor Riphah International University</td>
<td>I am glad to see that the commission is trying to address one of the genuine issues faced by women in Pakistan.</td>
</tr>
</tbody>
</table>
seminar or workshop in which scholars of Shari’ah and practitioners of law may be invited to interact and help the commission