

Principles of Transactions with a *Pardanashin* or Illiterate Lady: A Comprehensive Examination of Legal and Islamic Perspectives

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Abstract

Women, especially those who are illiterate or *pardanashin*, are often fall victim to fraudulent practices in property transactions in Pakistan. Despite the Islamic obligations to protect rights of women, they continue to struggle to safeguard their rights and interests. When illiterate or *pardanashin* women are defrauded, they may turn to the courts for help. However, it is often argued in court that, due to the principle of *caveat emptor* (let the buyer beware), women should have taken more care during the transactions. Nevertheless, the courts have recognized that Pakistani women still rely on the bonafide of the men around them, such as their brothers, guardians, and husbands. This makes it difficult for women to defend their rights in property transactions. Therefore, it is important to highlight the principles of transactions with *pardanashin* or illiterate ladies that have been developed by the courts. This research aims to highlight the legal principles and safeguards developed by courts that protect the rights and property of *pardanashin* or illiterate women. It will also develop recommendations to enhance the protection of their rights and interests in property transactions.

Keywords: Women's rights in Pakistan, illiterate women, *pardanashin* lady, transaction with *pardanashin* lady, rights of women in Islam

I. Introduction

Women are important for a country to progress. No one denies this fact. Yet, they often face unfair treatment and limitations. It is important to empower women with equal opportunities in every sphere of life, including social, political, and economic, not only for their advancement but also for the betterment of our society as a whole¹. Women in Pakistan face a multitude of challenges, that includes domestic issues and working-class issues². Muslim women in developing countries, like Pakistan, are dealing with multifaceted issues; they are struggling to survive in our male-dominated society. Their living standards are suboptimal, their problems are numerous, and they come across in routine with plentiful hurdles in their pursuit of employment or the establishment and exercise of their rights³. Their struggle has been continuous since the birth of this country⁴.

Statistics are showing a dismal picture. Pakistan is the fifth most populated country in the world, with almost 227 million people, where almost 49.2% are female and 50.8% are male. A big part, 64%, of its population is under 30 years old; therefore, this country is in the list of the countries with largest young population. However, gender inequality in Pakistan, is a serious issue⁵. It is not doing well in global gender equality rankings. It is at 145th out of 146 countries in the World Economic Forum's report of 2022, Global Gender Gap Index, and at 161st out of 191 countries in the Human Development Report of 2022, Gender Inequality Index⁶. And now it ranks at 142 out of 146 countries in the World Economic Forum's Global Gender Gap Report of 2023⁷. Additionally, Pakistan is also not doing good in two important rankings: it fell seven places in the Human Development Index (HDI) for 2021-2022, landing at 161 out of 192 countries, and it's ranked 129 out of 140 on the Rule of Law Index⁸. This shows a significant gap between men and women in Pakistan in almost every area such as jobs, education, health, and political power.

Many things in Pakistan make it hard for women and girls to progress without any hinderances. The society is mostly run by men, and old-fashioned beliefs lead to unfair treatment with women. In Pakistan, there are

efforts in progress to give women more power and place nearly every sphere of life. However, in our rural and backward areas, women still have to deal with difficult living conditions⁹. There are arguments that despite ongoing efforts integrate women into practical progress of our society, the male-dominated culture in is hindering progress towards meaningful women empowerment¹⁰. Though they are facing various problems such as education¹¹, employment¹², political participation¹³, health¹⁴, violence¹⁵, honor killings¹⁶, forced and child marriages¹⁷, and more, however, their most significant issue is related to inheritance¹⁸ and transactions in property¹⁹.

2. Protection of property and status of women in Islam:

The status of women improved significantly with the advent of Islam. In the past, women were thought of as less important, treated like servants, and prisoners in wars, and they are not included in social and political matters. But when Islam came, it recognized women's rights in almost every area, like financial, social life, politics, and public life²⁰.

The Holy Quran emphasized the equality of men and women; both are essential for survival and progress of society. Islam introduced and protected women's rights, especially the right of inheritance, and property rights of women. Islam upholds the dignity of women and give full independent ownership rights. In the Holy Qur'an, Allah says: "They are a clothing for you and you are a clothing for them..."²¹. Islam brought in the idea of treating men and women equally. This equality is different from the Western idea because it focuses on the inherent values and dignities of both men and women as human beings²². As it is written: "So their Lord responded to them: "I will never deny any of you—male or female—the reward of your deeds. Both are equal in reward..."²³. In Islam, men are entrusted with the responsibility of caring for women. "Men are the caretakers of women,..."²⁴. Allah Almighty has commanded for the fair treatment of women, as it has been provided in Surah Al-Nissa "and if you fear you will not deal justly, then marry only one or what your right hands possess. That is the nearest way for you to avoid injustice"²⁵.

However, over time, people are forgetting the right teachings and injunctions of Islam; eventually, rights of women began to be eroded. Today, many Muslim women are unaware of their rights and are still treated as inferior to men. Whereas, in Quran Allah Almighty has said, "O ye who believe! it is not lawful for you to inherit women against their will; nor should you detain them wrongfully that you may take away part of that which you have given them, except that they be guilty of a flagrant evil; and consort with them in kindness; and if you dislike them, it may be that you dislike a thing wherein Allah has placed much good"²⁶, and He also said, "and forbidden to you are married women, except such as your right hands possess. This has Allah enjoined on you. And allowed to you are those beyond that, that you seek them by means of your property, marrying them properly and not committing fornication. And for the benefit you receive from them, give them their dowries, as fixed, and there shall be no sin for you in anything you mutually agree upon, after the fixing of the dowry. Surely, Allah is All-Knowing, Wise"²⁷. These verses show the importance and status of women in our society. Moreover, in Islam, no one is allowed to keep the properties of others, unlawfully or to usurp it. Allah Almighty said in Quran, "And come not near the property of the orphan, except in the best way, until he attains his maturity, and fulfil the covenant; for the covenant shall be questioned about"²⁸. In this regard, it is narrated in a hadith that Ibn 'Abbas said: "When these Verses were revealed - 'And come not near to the orphan's property, except to improve it,' and 'Verily, those who unjustly eat up the property of orphans' - the people avoided the property and food of the orphans. That caused hardship to the Muslims and they complained about that to the Prophet. Then Allah revealed: 'And they ask you concerning orphans. Say: The best thing is to work honestly in their property, and if you mix your affairs with theirs, then they are your brothers. And Allah knows him who means mischief (e.g. to swallow their property) from him who means good (e.g. to save their property). And if Allah had wished, He could have put you into difficulties.'"²⁹

Moreover, as described above, in Islam, it is strictly forbidden to usurp other properties unlawfully. It is ordained by Allah Almighty that “O ye who believe! devour not your property among yourselves by unlawful means, except that you earn by trade with mutual consent...”³⁰. Khaulah bint 'Thamir (May Allah be pleased with her) reported that Messenger of Allah (ﷺ) said, "Many people misappropriate (acquire wrongfully) Allah's Property (meaning Muslims' property). These people will be cast in Hell on the Day of Resurrection"³¹. These commandments show the intensity of the prohibition in taking each other's properties, illegally and unlawfully.

Furthermore, the inheritance for daughters and women is also an established right in Islam. Allah Almighty said, “Allah thus commands you concerning your children: the share of the male 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”^{32,33}. Furthermore, the teachings of the Prophet Muhammad (ﷺ) also emphasize upon the importance of treating women and daughters fairly and justly, including provision to them with their rightful inheritance. It was narrated from Anas bin Malik that the Messenger of Allah (ﷺ) said: “Whoever tries to avoid giving the inheritance to his heirs, Allah (SWT) will deprive him of his inheritance in Paradise on the Day of Resurrection.”³⁴. But it is unfortunate that despite the Quranic teachings, women are still being denied their inheritance rights and are falling victim to fraudulent practices in property transactions³⁵. However, in this regard, it was by Narrated Ibn Mas`ud: The Prophet (ﷺ) said, "Whoever takes a (false) oath in order to grab (others) property, then Allah will be angry with him when he will meet Him.”³⁶

3. Pardanashin or Illiterate Lady

In simple terms, a pardahnashin woman is someone who, as per the customs of her country or community, has to stay completely secluded. This means she covers her face with a veil or cloak and avoids being in public. If a woman does not go to court and avoids dealing with men outside her family in business matters, she is considered pardanashin³⁷. Furthermore, Illiterate

village women are also treated with the same level of care and protection as Pardanashin ladies³⁸. This is not just in Pakistan but also in India. Indian courts have also acknowledged these norms of seclusion in society. Basically, she is a lady, in a legal sense, who lives in seclusion. She only communicates with males from behind a pardah or screen, except for a few close relatives. A pardanashin does not have to be of any special social rank. If, due to rules and customs where she lives, and she has to stay among other women, and live a secluded life without contact with the outside world, she is considered pardanashin³⁹. They have received special protection since the time of the Privy Council. It was observed that in India such ladies have been bestowed with a special protection because of their socio-political, financial, and economical, conditions: there is a presumption that such ladies have imperfect understandings and knowledge of the outside world⁴⁰. This is a special development, following the needs of social customs and norms, to the normal applicable principles and rules in law. These principles protect individuals with disabilities that place them at the mercy of others, as the case of women, though there is no deception or any coercion is involved. Basically, this is part of the law about a person's ability or inability to make valid transfers or transaction of any kind of property.

4. Principles of Transactions

It is a grave injustice in our society that instead of protecting and empowering women and daughters, their guardians often exploit their positions of trust and become predators, depriving them of their rightful inheritance. However, the Constitution of Pakistan provides ample provisions to safeguard property, and guarantees the protection, of women and children⁴¹. It outlines the goals set by the people of Pakistan in its policy chapter, that particularly includes in it the protection of the 'mother and the child'⁴². To deprive a woman, especially a pardanashin lady, from their inheritance, or other property rights, by deceitful means, or by using undue influence, is against the Constitution.

Contrary to law, the Constitution, and public policy, often in the shape of gifts and other instruments, documents are used to divest females

from family inheritance, including daughters and widows; they do this even by violating shariah and legal principles. And this an admitted position in our society that, oftentimes, male members deny to their female members from their lawful and legal entitlement to inheritance; moreover, helpless women are also occasionally forced to relinquish their entitlement to inheritance in favor of their brothers⁴³. The protection of Pardanashin and illiterate women's rights stems from their limited exposure to society and their perceived lack of knowledge and experience. This vulnerability makes them susceptible to exploitation, especially in matters involving property. To safeguard their interests, courts have established principles that require independent advice and proof of informed consent for transactions involving these women. This approach aims to empower them to make informed decisions and protect their assets from undue influence⁴⁴. To cope with this issue, the courts developed specific principles of transaction to apply in cases involving pardanshin, illiterate women, or women with limited education, which are as follows:

4.1. Revenue Authorities must exercise due diligence

Firstly, the revenue authorities must act their roles with extra vigilance; when any alleged transactions or gifts with an aim to deprive daughters and widows from their shares in the inheritance, come forward to them, they must be act and react with extra care and cautious behaviour. The concerned officials must completely satisfy themselves as to the distinctiveness of the purported donor/transferee, in addition strict obedience must be certified with the related laws and rules⁴⁵.

4.2. Burden of proof is on beneficiary

The onus of prove regarding the validity of a document that allegedly executed by a Pardanashin woman affecting her property rights lies with the party claiming those rights under the document⁴⁶.

4.3. For Illiterate, verification of informed consent

If the lady is unable to read, the document must be read aloud to them in a language they understand to ensure they fully comprehend its

contents before signing or agreeing to it. This ensures informed consent and protects the rights of illiterate individuals⁴⁷.

4.4. Availability of independent advice

The courts are of the view that that when a document has the potential to negatively impact a woman's interests in favor of someone in a position of close trust, there must be strong evidence that the document was properly executed and that the woman received independent advice⁴⁸.

4.5. Strict proof of execution

When assessing a legal document executed by a Pardanashin lady, the court must rigorously examine three key aspects: the document's authenticity, that it was genuinely executed by the Pardanashin lady herself or an authorized representative, with her full understanding of the transaction's implications. Second, the court must verify that she had a comprehensive understanding of the transaction's nature and potential consequences. Finally, the court must confirm that she received independent and impartial advice regarding the transaction, ensuring her decisions were based on informed consent⁴⁹.

4.6. Verification of awareness and understanding

In cases involving transactions with elderly, illiterate, or village Pardanasheen ladies, the burden of proof rests on the person who is claiming the transaction's legitimacy and freedom from suspicion. To dispel doubts, specific mandatory conditions must be met and fulfilled transparently and with high-quality evidence. Among these conditions, it is crucial to demonstrate the lady's full understanding of the transaction's nature and its potential consequences⁵⁰.

4.7. Selection of unbiased witnesses

When engaging in transactions with Pardanasheen ladies, careful selection of witnesses is paramount. These individuals should have a close relationship with the lady or be well-acquainted with her. Moreover, witnesses must have no conflict of interest with the lady.

4.8. Verification of sale payment and receipt

When a transaction involves the sale of property or assets belonging to a Pardanasheen lady, it is vital to establish that the agreed-upon sale consideration is accordingly paid to and established by the lady⁵¹.

5. Conclusion and Recommendations

Whether a woman is considered Pardanashin, or cloistered, is a matter of fact. The onus of proving that a document allegedly signed by a such woman, affecting her property rights, was genuinely understood and voluntarily executed lies with the party claiming rights under it⁵². This principle extends to illiterate, ignorant women, regardless of their status. This protective measure aims to safeguard these women from undue influence, mistreatment, manipulation, coercion, fraud, and falsification in their representation in transactions with them. However, if the woman involved is educated and cultured, and if she does not observe Parda, and has executed the document with a full thoughtful mind of its consequences, then the above referred principles regarding Pardanashin and illiterate women is unlikely to apply⁵³. And it is also important to note that the special protection afforded to these ladies in legal transactions should not be mixed with other legal doctrines like deception, coercion, or undue influence, which apply to all individuals regardless of their status. This distinction stems from the unique vulnerability of these ladies, who are shielded by a "special cloak of protection" under the law. In such cases, the burden of proof rests solely on the person claiming rights under the deed, and they must provide compelling evidence that the such a lady not only executed the document but also fully comprehended its contents and implications⁵⁴.

Furthermore, the above referred legal guidelines governing transactions involving Pardanashin ladies have also been extend to illiterate women, regardless of their strict adherence to Pardanashin practices. It has now been settled that when a document jeopardizes the interests of an illiterate or Pardanashin lady, in favor of someone, there stringent proof and authentication of execution are required, along with independent and unbiased advice. The lady must be reassured that the transaction's

implications have been entirely clarified and understood by her. The burden of proof continuously rests on the party seeking to maintain such transaction. Whether a woman is *Pardanashin* or illiterate or not, is at all times a question of fact; the burden lies with the party claiming rights under any deed or paper signed or thumbprinted by a such lady of her own accord and willfully. And now, it is the Court's firm responsibility to ensure that any document executed by such lady is supported by clear evidence that she executed it with full understanding and intelligence. This time-honored protection granted to these ladies stems from social conditions: limits of their exposure to the outside world. This rule of prudence and caution aims to safeguard them from deception, coercion, and misrepresentation⁵⁵.

And it is recommended that 'relinquishment of Inheritance' by our daughters in this country must be declared invalid: the relinquishment of inheritance by a female is against public policy and therefore must be declared as public policy void under Islamic law and law of this country. Islamic law emphasizes the importance of fair inheritance practices and considers the strict enforcement of inheritance laws to be an essential mechanism for achieving the circulation of wealth. Therefore, any agreement or contract that violates a woman's inheritance rights must be considered invalid and unenforceable⁵⁶, and necessary amendments must be introduced in the law. Furthermore, it is also recommended that strict adherence to the aforementioned principles be ensured, because it is paramount to safeguard these women from the hardships of protracted legal proceedings. It is also crucial to enhance Pakistan's standing in the Women and Gender Parity Index, encompassing rule of law and other pertinent indicators. It is also recommended that courts must exercise extreme caution when dealing with cases involving such ladies⁵⁷. Lastly, it is recommended that as Muslims, we must remember that we are accountable to Allah Almighty and cannot unjustly claim the property of others, including our women and daughters, as Abu Hurairah (May Allah be pleased with him) reported: The Messenger of Allah (ﷺ) said: "The blood, honour and property of a Muslim is inviolable for another Muslim."⁵⁸. It is pertinent to mention here narration by Abu

Wail: "Abdullah bin Masud said, "Allah's Messenger (ﷺ) said, 'Whoever takes an oath when asked to do so, in which he may deprive a Muslim of his property unlawfully, will meet Allah Who will be angry with him'"⁵⁹.

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