

## Reforming Gift-Giving Traditions to Promote Women's Inheritance in Pakistan: Legal and Islamic Insights

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### Abstract

Women's right to inheritance is established and protected by Islam. Pakistan, as an Islamic country, expects its citizens to obey all of the principles enshrined in the Holy Quran and Sunnah. However, in case of inheritance to women, people often deviate from these guidelines. Although many efforts are in progress to augment the social and economic status of women in this country, despite that malafide practice persists in this society where Pakistani women, before or at the time of marriage, are compelled, due to undue influence, to surrender their inheritance in favor of their brothers. This systemic exclusion of women from inheritance happens through the transfer of property using the guise of gift. Even though courts in the country are cognizant of this practice and are actively trying to tackle it through their judgments, yet their efforts alone are insufficient. In these circumstances, what this society needs are amendments in both criminal and civil laws to unambiguously prohibit the deprivation of women from their rightful inheritance. Additionally, it is also the legal as well as moral duty of every

Muslim citizen in this country to uphold the injunctions of Islam, especially regarding the women's right to inheritance.

**Keywords:** Inheritance, Women empowerment, Gift of Property, Women's Right to Inheritance in Islam, Women's Right to Inheritance in Pakistan

### **Introduction**

Islam provides a comprehensive way of life.<sup>1</sup> It encompasses not only divine matters but also every side of societal dealings.<sup>2</sup> It is not merely a religion which is confined to private beliefs but rather a deen,<sup>3</sup> which deals with every aspect of human existence and its progress.<sup>4</sup> It values human life.<sup>5</sup> It also guards women's rights.<sup>6</sup> Before Islam, women were not living an independent life:<sup>7</sup> their rights were not recognized, their status was not more than that of slaves,<sup>8</sup> and they were buried alive. Islam came and protected them;<sup>9</sup> it gives them recognition as a mother,<sup>10</sup> a sister, and a wife.<sup>11</sup> Each has her own status, role and established rights<sup>12</sup> in Islam. It values the dignity of every human being, whether women or men, equally.<sup>13</sup> Islam is the only religion that establishes, maintains, and believes in equality and justice for all, especially in the case of women.<sup>14</sup> Islam is the only religion that believes in women's empowerment.<sup>15</sup> It empowers them by recognizing their worth and by emphasizing on their progressive role in the society.<sup>16</sup> In addition, Islam urges women's active participation in political life through recognizing voting rights.<sup>17</sup>

Islam comprehensively deals with all human rights.<sup>18</sup> Before the advent of Islam, humanity was subjected to unwarranted treatment and arbitrary practices, and there was no regard for fundamental human values. However, after the arrival of Islam, the Quran and Sunnah focused particularly on upholding human rights, which were ignored before. Islam intends to elevate the dignity of mankind and it aim to establish a just and compassionate society.<sup>19</sup> However, there is a fundamental distinction that lies between the Islamic and Western concepts of human rights. In the Islamic perspective, human rights are divinely bestowed, whereas, in Western philosophy human rights have emerged through a long-drawn-out process of human struggle and

activism. Moreover, the Islamic notion of human rights finds its source in divine revelation (Wahi), while the Western from human intellect and experience.<sup>20</sup>

The last sermon of the holy Prophet (ﷺ) exhaustively covers every vital human right that a living and progressive society requires.<sup>21</sup> Western nations, such as Britain, France, and America, have proclaimed as pioneers in promoting and enforcing human rights, whereas, the Farewell Sermon, delivered by the holy Prophet (ﷺ) 1400 years ago, stands alone as the original international declaration of human rights. This historical Address emphasizes precedence of Islam over other religions within the human rights framework.<sup>22</sup> Furthermore, Islam also provides a comprehensive framework that offers specific ethical and legal guidelines for acquisition, ownership, and transfer of property, along with mechanisms to ensure their protection.<sup>23</sup> These property rights are not only for men but also for women.<sup>24</sup> Prior to the arrival of Islam, women were denied of their major civil rights, including the right to possess property. At that time, in the main, women were disqualified for inheritance, then Islam came and it started to acknowledged women not only as human beings by uplifting their dignity but also elevated and improved their economic situations by providing them appropriate property rights, including inheritance. For this purpose, the Quran and the Sunnah lay down the foundational principles. These principles eradicate all unjust customary practices related to women's inheritance rights. And now a woman can inherit the property of the deceased, to the extent of her inheritance, which is based on her role in the family, whether as a wife, mother, daughter, grandmother, son's daughter, etc. Now women are recognized as autonomous legal entities and they have the right to inherit property from the deceased.<sup>25</sup>

However, it is regrettable that despite the aforementioned efforts of Islam to safeguard women's right to inheritance, in Pakistan, women are still not receiving their rightful shares in inheritance after the demise of the deceased.<sup>26</sup> Several factors contribute to the deprivation of women in this regard. Such as the deeply rooted patriarchal norms of this society which give preference to male over female in inheritance rights. This gender-based

inequality in inheritance practices is deeply embedded in cultural beliefs and societal expectations which work for the concept of male superiority and the subordination of women.<sup>27</sup> Moreover, there are other cultural, sociopolitical, and legal obstacles that influence women's inheritance, especially for those in rural areas. These obstacles reinforce traditional beliefs of male superiority complexes and result in women being deprived of inheriting and owning land.<sup>28</sup> In Pakistan, where agriculture plays a dominant role in the economy, inheritance of such land holds substantial significance in lives of rural class because of their main financial source. However, the denial of women's right to inheritance has been made a persistent and deeply entrenched norm in our society. Despite that the government had criminalized the denial of inheritance in 2011 which was followed by various other legal and institutional reforms in the province of Punjab; it is still astonishing to note that there has been minimal improvement in women's inheritance. Still the deeply embedded patriarchal norms and the prevalence of customary practices that favor male over female in inheritance pose significant challenges for women empowerment.<sup>29</sup> One of the prevalent methods of depriving women of their inheritance is through the use of gifts. Courts in Pakistan are aware of this fact, and they are making earnest efforts to tackle this method of deprivation by issuing judgments and imposing fines on those involved in fraudulent practices.<sup>30</sup> The history of women's inheritance is vast and well-documented by scholars; yet this paper delves into a contemporary concern specific to Pakistan: the misuse of parental gifts to deprive women of their rightful inheritance. This paper aims to shed light on this manipulative practice and advocate for upholding women's inheritance rights in the face of such tactics.

To tackle this issue effectively, there is an urgent need for sustained and comprehensive efforts. These efforts should not only focus on legal amendments and institutional reforms but these must also address the fundamental cultural and societal barriers that hinder women inheritance. What this society needs are amendments in both criminal and civil laws to unequivocally prohibit the deprivation of women from their rightful

inheritance. Additionally, every Muslim citizen in this country has a legal and moral duty to uphold the injunctions of Islam, particularly concerning women's right to inheritance.

### **Guidelines in Quran and Sunnah regarding inheritance**

Before Islam status of women was not more than a maid.<sup>31</sup> Their husbands use them as their properties.<sup>32</sup> Women were regarded as epitomes of misfortune and shame. They were denuded of basic rights and social status, even their existence shrouded in doubt. This omission deprived them of many opportunities to develop their personalities and to contribute meaningfully in the society. Moreover, women were stripped of inheritance and ownership rights. They were not seen as independent legal entities.<sup>33</sup> However, Islam changed it. It prohibited the killing of children because of poverty.<sup>34</sup> It raised their status and dignity.<sup>35</sup> In fact, in the eyes of Allah SWT, nobility is not determined by gender but rather by one's deeds.<sup>36</sup> Both genders are equally subject to reward,<sup>37</sup> and punishment as provided in the Holy Quran.<sup>38</sup> In Islam, men are obliged with responsibility of taking care of women,<sup>39</sup> both physically and financially. Allah SWT, in the Holy Quran, has ordained and defined the shares of each individual and has declared them as obligatory:<sup>40</sup>

“Allah instructs you concerning your children: for the male, what is equal to the share of two females. But if there are [only] daughters, two or more, for them is two thirds of one's estate. And if there is only one, for her is half. And for one's parents, to each one of them is a sixth of his estate if he left children. But if he had no children and the parents [alone] inherit from him, then for his mother is one third. And if he had brothers [or sisters], for his mother is a sixth, after any bequest he [may have] made or debt. Your parents or your children - you know not which of them are nearest to you in benefit. [These shares are] an obligation [imposed] by Allah. Indeed, Allah is ever Knowing and Wise.”<sup>41</sup>

However, the purpose of this paper is not to highlight which gender has which share in Islam. Instead, the focus is on the emphasis that it is

obligatory to give everyone their due share in inheritance, including women. It is the duty of every Muslim to adhere to the divine verses of the Holy Quran in all aspects of their life.<sup>42</sup> Allah SWT strictly orders not to consume one another's wealth unjustly, nor to deliberately bribe authorities in order to seize a portion of others' property, while recognizing that such actions are sinful.<sup>43</sup> It is forbidden to commit fraud with anyone to seize property;<sup>44</sup> how can one expect committing fraud against their own sisters and daughters to usurp their rightful inheritance? The Sunnah also emphasizes the importance of giving everyone, including women, their due inheritance. It was narrated from Anas bin Malik that the holy Prophet (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."<sup>45</sup> The hadith warns against unjustly depriving anyone from his or her rightful share in inheritance. This severe consequence highlights the importance of respecting inheritance rights and safeguarding that each heir receives their rightful share. Furthermore, the holy Prophet (ﷺ) placed immense emphasis on the importance of understanding and teaching inheritance. He declared it as "half of knowledge," and also highlight its vital role within Islamic law and its impact on progress of society. But the holy Prophet (ﷺ) also predicted that its knowledge would be among the first things lost by his Ummah.<sup>46</sup> This is a reminder for all of us about the vital role of preserving and transmitting knowledge regarding inheritance. Inheritance is automatic; when someone dies, their property will pass on to their heir.<sup>47</sup> But it can be seen that people in this country are not following these hadiths. They are usurping the inheritance of their sisters, daughters, wives, and mothers, etc. whereas, the holy Prophet (ﷺ) cautioned that if someone swear falsely regarding their property with the aim of wrongfully acquiring it, they would surely face their Lord in a manner where Allah SWT would turn away from them.<sup>48</sup>

### **Questioning Gift-Giving Practices in Pakistan**

A Muslim has the option to transfer their property through various means, one of which is called Gift (Hiba). It is a form of property transfer, and it is regulated according to Muslim Law.<sup>49</sup> Though the Transfer of Property Act,

1882,<sup>50</sup> governs the transfer of gifts, yet it is subject to Muslim Personal Law<sup>51</sup> in Pakistan. This law is not codified,<sup>52</sup> yet they are applied and followed by the courts in Islamic states. In Islamic law, a Muslim has control over their property during their lifetime, and even at the time of death, they have the freedom to make a will, but with certain limitations. However, it is important to note that a will is distinct form of transfer of property from a gift in Islamic law. The extent to which a will can be made is limited, whereas the position of a gift is different.<sup>53</sup> They can gift both moveable and immovable property.<sup>54</sup> Because now in our society, everyone knows that the transfer of property by will is not possible beyond a certain limited extent.<sup>55</sup> As a result, they are now using gifts as a means of depriving daughters of their rightful share. Bequests, or instructions for distributing property after death, are a legitimate act in Islam. The principles on a bequest vary according to the relationship between the giver and receiver, and it may be obligatory or prohibited.<sup>56</sup> But no individual possesses the right to create a will for the total property.<sup>57</sup> The features governing inheritance in Islamic law are unique,<sup>58</sup> and Muslims are obligated to adhere to the aforementioned declarations of Allah SWT regarding inheritance, and also of Sunnah, because it holds a significant position in Islam due to the high status of the holy Prophet (ﷺ): Sunnah is an integral part of the revelation, preserved to elucidate the Quran and provide guidance to Muslims.<sup>59</sup> Moreover, as per the Demographic and Health Survey 2017-18, 97 percent of women across Pakistan did not inherit land or a house, with only 1 percent each inheriting agricultural land and a house. Additionally, less than 1 percent of women inherited non-agricultural or residential plots. This information is further established by a survey conducted at the KP Revenue Department's service delivery center in Shangla, which recorded 30 incidents of tamleek, the practice of gifting property to legal heirs during one's lifetime. Among these cases, only two considered daughters, while the majority neglected women. People are questioning why, despite it being their right, they still have to fight for it.<sup>60</sup>

**Role of Courts in tackling Gift-Giving Practices in Pakistan**

Islamic law safeguards the rights of women,<sup>61</sup> and this truth is also recognized by the courts in Pakistan<sup>62</sup> as depicted in their judgements.<sup>63</sup> The courts are now imposing significant fines on those who commit this fraud.<sup>64</sup> The courts have developed specific principles for handling cases where women are denied of their inheritance. What male siblings often do is make changes in revenue records, specifically mutations, but the courts have ruled that mere mutations are not sufficient evidence of property transfer.<sup>65</sup> They have also established the principle that in such cases, the burden of proof always rests on the beneficiaries.<sup>66</sup> Furthermore, the courts have also determined that when there is a disagreement between the parties regarding an oral gift, it is obligatory for the beneficiary to provide precise details in the pleadings. These details should include the day, date, time, venue, presence of witnesses, as well as the making of the gift, offer, acceptance, and delivery of possession. Subsequently, such asserted facts should be necessarily proven through corroborative, affirmative, and trustworthy evidence.<sup>67</sup> The rationale is that if a document in the form of a memorandum has been executed between the parties as an acknowledgment of a past transaction, of an oral gift, then though its non-registration will not significantly impact its authenticity or validity, however, the vital factors are the three conditions of a lawful gift, namely offer, acceptance, and delivery of possession.<sup>68</sup> Furthermore, it is also obligatory for the beneficiary to present the necessary number of witnesses as stipulated by Articles 17 and 79 of the Qanun-e-Shahadat Order, 1984.<sup>69</sup> Moreover, it is also essential to bring forward the revenue staff that is responsible for entering the gift mutations; failure to do so raises an adverse presumption against that party.<sup>70</sup> The fact that male siblings often attempt to deprive women of their rightful share in their deceased father's estate through fraud has been strongly criticized<sup>71</sup> by the Hon'ble Supreme Court of Pakistan in its landmark judgements.<sup>72</sup>

The present Chief Justice of Pakistan is actively taking notice of these fraudulent practices against women. In various cases, he has stressed that it is a matter of great regret that fraudsters do not abide by the laws of Almighty Allah and the laws of Pakistan. They bring forth fictitious gifts in their favor,

and they deprive other legal heirs of their respective.<sup>73</sup> He expressed that the courts are disheartened to witness the often-repeated practice in Pakistan, where male heirs resort to fraud and other strategies to deny female heirs their rightful inheritance. This not only causes suffering to the deprived persons but also imposes an unnecessary burden on the judicial system of this country.<sup>74</sup> It is high time that the courts should use a pragmatic approach in the interpretation of these cases with an aim to curb the above discussed mischief.<sup>75</sup>

### **Conclusion**

There is no disagreement with the fact that women's inheritance in Pakistan is influenced and controlled by customary practices,<sup>76</sup> rather than the injunctions of Islam as laid down by the Quran and Sunnah. Uplifting the status of women is still a burning issue in Pakistan.<sup>77</sup> Denial of inheritance rights is more prevalent in rural areas as compared to urban areas.<sup>78</sup> Marriage in our society revolves around customs and traditions,<sup>79</sup> including the practice of giving dowry to the daughters,<sup>80</sup> in exchange for their relinquishment of the right to inheritance in favor of her brothers. Although Pakistan has applied numerous reforms for women's empowerment,<sup>81</sup> yet they are not producing positive results. There is a call for reforms in this area.<sup>82</sup> We need systematic evolution in this area: improvements are required not only in laws safeguarding the rights of women but also in their education and social development,<sup>83</sup> because they can play a significant role in economic development of our society.<sup>84</sup> We need amendments in laws.<sup>85</sup> The law of inheritance developed by Islam represents the ultimate key for women's empowerment.<sup>86</sup> We must bring changes to our laws in consonance with the principles of Sharia,<sup>87</sup> and we must make it an obligatory requirement to automatically transfer property to women. If reforms are made with due regard to the rights of women established, maintained, and safeguarded in the Quran, then there may be a change.<sup>88</sup>

### **Recommendations**

First and foremost, few fundamental changes are necessary; such as the patriarchal beliefs that are predominant within our society must be changed, and then there is a need for awareness<sup>89</sup> amongst the people.<sup>90</sup> Education brings about change, and it is essential to educate our society.<sup>91</sup> Courts must maintain the pace to curb the outdated customary practices that deprive women of their inheritance.<sup>92</sup> We also need to suppress and reject the current trend among women in Punjab to relinquish their inheritance rights in favour of male beneficiaries.<sup>93</sup> Then another obstacle is the so called legacy and practices within families, which is to a great extent sustained by the elders. Due to sacrifice, respect, and love for their brothers, women voluntarily sacrifice their inherited rights. There is no religious compulsion for such actions. However, the tradition was mistakenly linked to religion in some societies of our country, and eventually it leads local masses to many misconceptions.<sup>94</sup> Subsequently, legal<sup>95</sup> and policy reforms are necessary,<sup>96</sup> however, for the time being, the implementation of existing laws is also an issue.<sup>97</sup> Legislation plays a vital role in the development of any country. Legislation, in particular social legislation, is one of the ways to empower women and guarantee equivalent rights for them. Although in Pakistan there have been constant improvements in social legislation for women, however, its progress is also impeded by inadequate implementation. The gap between benevolent laws and their practical use affects the social legislation in attaining genuine female empowerment in Pakistan.<sup>98</sup>

It is high time that necessary amendments may be made in both civil as well as criminal laws,<sup>99</sup> keeping in due regards to the injunctions of Islam,<sup>100</sup> and international conventions.<sup>101</sup> In 2011, the denial of inheritance was criminalized in Pakistan, and reforms were introduced in Punjab to tackle this problem. These reforms included the digitization of revenue records, and initiatives to fight practices that are harmful to women. Despite the application of these measures, there has been nominal progress in their inheritance issues.<sup>102</sup> The Prevention of Anti-Women Practices Act 2011 criminalizes a variety of oppressive and discriminatory customs affecting women: offering a woman in marriage as a resolution for disputes, depriving

women of inheritance rights, compelling marriages, and marrying a woman to the Quran. The penalties for these offenses include imprisonment, fines, or both. However, these offences are non-cognizable. The deterrence theory of punishment in criminal law always holds significance.<sup>103</sup> Simply designing punishment, subject to technical barriers in implementation, will not bring positive results in curbing the mischief for which the legislation was enacted.<sup>104</sup> Punishments always carry justifications.<sup>105</sup> Therefore, it is recommended that the relevant offences may be made cognizable, so that speedy and in-expeditious justice may be served. Additionally, on the civil side, it is recommended that revenue entries should not be altered solely through gift mutations especially in cases where women are deprived of their inheritance unless their authenticity is verified and confirmed by a court of law.

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