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**PATERNAL INHERITANCE OF DAUGHTER- AN ANALYSIS
BASED ON ISLAM AND LAWS PREVALENT IN PAKISTAN**

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Abstract: : Islam is that perfect religion among all which recognized the rights of inheritance of daughter’s many centuries ago. With the passage of time, research and enactments of laws became core reason among different schools of thoughts to have their diverse opinion regarding inheritance being more strength in Pakistan. Under qualitative approach, literature examines inheritance rights of daughters, their hypothetical, applied and legal exemplars and variance in modern Muslim jurisprudence. This article also intends to analyses the germane state laws in force, reconnoitering the hitches and providing portentous rational solutions and commendations for fair execution and execution of Woman inheritance in Pakistan.

Key words: inheritance, paternal right of daughter, equality of women,

PRE-ISLAMIC INHERITANCE AND QURAN:

Islam has provided no. of shares to female even at time when Arab was sinking in boat of darkness and drinking.¹ Two practices were prevailing in pre Arab Era, one were following codes of Ur-Nammu's and others were following tribal norms respectively first were in urban and last was prevailing in Badu Arabs. The chief motive of such practices was to confine estate within restricted community. Hence from denying female from their right of inheritance was to restrict and prevent her to transfer such property in favor of other community.² Along with other greater perspectives of Islam, one of the greatest aspects is to make sure the right of inheritance for every Muslim irrespective of their caste, creed, status or gender. Daughter's shares have been specified under holy Quran as per few conditions.³

Conditions	Share Allotted
Sons and daughters both are legal heirs	Daughters will get one-half of a son's share
Only daughters are legal heirs	Daughter will get two-thirds of assets distributed amongst themselves
Only one daughter is legal heir	Daughter will get one-half of the total estate
Shares allotted to the Quranic legal heirs exceeds unity	Share reduced according to the estate available
Shares allotted to the Quranic heirs does not use up the estate	Share increased according to estate available

Holy Quran is that strong law giver book of Muslims which defines how Muslims have to spend their life according to principles of Quran and Sunnah.

The respective shares of legal heirs as per Holy QURAN are mentioned as sons have double shares as compare to daughters. If there are only daughters, they are entitled to have 2/3 of respective estate and if there is only one daughter than half of shares she is entitled off. When parents are alive, each is entitled to one-sixth of the inheritance if they have children. But when the parents are sole heirs and they have no children, the mother receives one-third while the father takes the residue. The mother receives one-sixth in case there are no children, however, the deceased has siblings. These respective shares are conditional upon payments of cost of funeral expenditures, debts and will. It widely revolves around compact family system with well-defined structure of shares distribution among heirs.⁴

Differences in Shia and Sunni Schools: Enlisted above are those proportions where there is an agreement between the two schools of thoughts. So far as different school of thoughts are concerned, the inheritance of a person will be determined according to their school of thought.⁵ Hereafter, Shia and Sunni school of thoughts would be discussing here like how they proceed and the ways their estate should get divided. Such differences are existing on basis in the division of categories of heirs, equal or male dominated heirship status, principle of Distant Kindred, share of paternal and maternal grandfathers, residuary heirship, degree of closeness of relationship to deceased, inheritance of spouses, share of heirs of one predeceased to the deceased, importance of residuary heirs and solutions to differences of supposed and actual shares.⁶**Categories:** The Principal Modules of heirs in Shia school of thought are Sharers and residuary while placing daughters and other descendants in category of Sharers.⁷ On the other hand, Sunni school of thought travels around three categories of heirs respectively sharers, residuary and distant kindred while placing daughters in sharers and deceased daughter's descendants amongst distant kindred.⁸ They will get their right only in case of absence of initial two types by way of distant kindred.⁹The following types of heirs mentioned below may be termed as principal classes of legal heirs. All such types are interlinked due to blood except husband and widow who are only linked due to marriage.

Sharers or Quranic Heirs: Sharers are considered as legal heirs whose right has been established by Quran (ALLAH) in verses and this law of inheritance cannot be amending and altered and such heirs are entitled to have their part of share from inbred property.¹⁰ The Sharers and their respective shares in the property of a deceased are given in Quran. As they are called Quranic heirs as well, this is the reason they get preference over others and they are the one who get their shares on preference basis.¹¹ Moreover, their shares and respective part cannot be altered and amended by any human act or law.

Residuaries or Agnatic Heirs: Once sharers get their respective shares and property is still remaining then residuaries are the heirs can get their part of rights.¹² Noticeably, residuaries don't have any prescribed share in inheritance as mentioned for Quranic heirs/ sharers of their personal. The situation of residue is different from situation to situation, conditionally when there is no sharer then whole of the property can be inherited by residuaries this is the reason they are also termed as Agnatic heirs as they succeed from male side relatives.

Distant Kindred or Uterine Heirs: these are people who neither fall under category of sharers nor residuaries, such persons are called as blood relatives. Distant kindred are can only inherent property if sharers and

residuiaries are absent. The legal heirs in this category also termed as uterine heirs.¹³

The classification suggests that Sunni law delights to give sons and daughters equal right of inheritance so far as category of sharers are concerned, but on the other hand shares are not equal not when heirs demanding under departed daughters. However, Shai laws are quite different in this perspective they treat son and daughter in same footing.¹⁴

Doctrine of *Aul* talks about increase of share, if at any stage the concrete digit of shares surpasses the fictional number of shares, counting daughters, the shares of every legal/ qur'anic heir will be condensed in equivalent amounts underneath Sunni law. Yet Shia school of thought has different perspective to forestall issue by plummeting the portions of daughters and sisters only however remaining shares keep on intact.¹⁵ Nevertheless,

Doctrine of (*Rad*) disclose that if at any stage the concrete digits of shares remains trifling and lower as compare to hypothetical quantity of shares, the lingering shares are augmented equitably to be prearranged to the heirs. This principle has much acceptability in both schools of thought but much more accepted in Shai school and the reason is sometimes estate never entirely used to that fewer significance of residuiaries.¹⁶

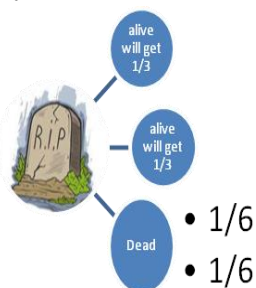
1. CONTEXTUAL LEGAL BACKGROUND AT INTERNATIONAL AND PAKISTAN LEVEL:

There are many customary, religious and statutory sources through which the laws related to women's parental rights of inheritance can be drawn at international level and in Pakistan.¹⁷ Constitution 1973 have does not cover any article for guard of woman's paternalistic legacy rights. Article 8 reflects that laws are considered to be erratic with fundamental rights (hereinafter FR) of any inhabitant void.¹⁸ Article 23 talks about disposing, holding and acquiring of any property in and to hold it in accordance with law as per article 24.¹⁹ Additionally, so far as article 25 is considered its ensures the equality before law and non-discrimination especially discourse about women. Consequently, al such laws talks about the protection of property rights of women whatever it is initially acquired by women or it get transferred to daughter through inheritance.²⁰ West Pakistan Muslim Personal Law (Shariat) Application Act 1962 hereinafter WPMPLSAA²¹: This act under section 2 discloses the application of Muslim personal law in matters and cases related to "special property of females "and their verdicts according to their school of thought. Muslim Family Law Ordinance 1961 hereinafter MFLO: The purpose of section 4 in Pakistani perspective is to address the suffering which is faced by grandchild.²²

Section 4 of MFLO talks inheritance right of that child who can step into shoe of his grandfather (propositus) whose father/ mother if would be alive can get whole of his share as per Islamic law and shares would be per

stirpes accepts a share corresponding to the portion which such child, would have established if father/mother would alive.²³ However, Peshawar High Court hereinafter PHC declared this law repugnant to Islam and declared it null and void.²⁴ Added more same section also avowed against injunctions of Islam by Federal Shariat Court hereinafter FSC under case.²⁵

2. MFLO 1961 SECTION 4 PER STIPS SHARES OF GRANDCHILD:



Criminal Law (Third Amendment) Act, 2011 (hereinafter CLA): CLA 2011²⁶ delivered on 28th December 2011 and given amendments in PPC 1860²⁷ and CrPC 1898,²⁸ the special amendments which have been provided in chapter XXA of offences which are against women U/S 498A while depriving her from her property in illegal ways and deceitful manners at time of primary succession shall be penalized with term extended to 10 years which should not be less than 5 years with fine of 1 lac rupees or may be both.

The Punjab Partition of Immovable Property Act 2012 (hereinafter PPIPA): This regulation was constructed for mutually possessed properties. Whoever is holding joint property cannot be partitioned or sale out that property without permission of other co sharer. However, the right of women is save under this act and it benefited woman a lot.²⁹

The Punjab Land Revenue (Amendment) Act 2012 (hereinafter PLRA): After permitting registration accordingly verified in records, Revenue Officer (hereinafter RO) is guaranteed to delivered notice among all co-sharers. Additionally, RO must succumb the arrangements of private partition of land as decided jointly among the co-sharers without any further delay and application along with that scheme should be submitted within 30 days.³⁰ Moreover, amendment also provided and deals with procedure related to documents which are required for this purpose Statement of two noble persons like Lambardars or person who have association with local government, with respect to authorized heirs of the departed soul along with their thumbs and signatures on mutation register. Added more CNIC copies and B Form or other parallel documents of the departed soul would be much needed here too and one last important thing is names, address and CNICs of all legal heirs of deceased are listed and reflected in mutation of inheritance.³¹

Courts being protagonist: Pakistani Courts have interpreted the law of inheritance effectively.³² The right of inheritance is a fundamental part of Muslim Personal Law and courts had been playing their role to actively protect it (Shabla v Ms. Jahan AfrozKhillat, 2020). The fact that male members of a family often deprive the females of their entitlement to inheritance, and so violate shariah and law, cannot be undermined. (Ghulam Ali v Mst. Ghulam Sarwar Naqvi, 1990). The principle of *Ghulam Ali v Ghulam Sarwar* was later solidified in *AbidBaig v Zahid Sabir* in 2020. More emphasis was laid on it by *Atta Mohammad v Mst. Munir Sultan* of 2020, where the policies and roles of Revenue department were also criticized. In a recent development over the daughter's succession rights, a Peshawar Highcourt judgement was overturned by Supreme Court stating that "a woman's inheritance cannot be claimed after her death". The next segment of the paper will examine the procedural framework for execution of laws.

3. PRACTICAL FRAMEWORK:

So far as rights of property of daughters are concerned they can get their inheritance right after death of their father. **LRA 1967** defines rules to transfer property which has been acquired purchase, mortgage and gift. Here is procedure to be followed to transfer estate allowed by way of inheritance. Step one is claiming the death certificate and confirmation of death from Secretary Union Council on the basis of CNIC and proof of death of deceased. Second step is to be followed by daughter who is claiming her right has to visit Patwar Khana and succumb the following documents like copy of tax documentation or khata/fard of deceased father, death certificate, duly signed application through any legal heir for originating succession. No. of legal heirs should be stated via affidavit, NADRA generated family tree certificate. Step three is the domine of patwari to verify the documents online and match it with his register and in case of hurdle the discretion is his to decide the matter accordingly.

Step four is to sanction inheritance mutation marked and send it to Naibtehsildar to squared weather the ownership actually belongs to deceased or not. in form of legal witnesses lamberdar and pattidar. What pattwari needs to do is to make family tree based on record he is possessing. Tehsildar even can visit the site to do physical verification in co-existence of pattidar land owner, applicant heirs and lamberdar. Another important task to do is to advertisement in newspaper for intaqale e jahidat and period to entrain any matters regarding this is seven days. After all process applicant will get third verification from judicature and tehsildar receives verifications and other process to transfer to each individual. In case after all proceedings, daughter can go for filling a suit for partition if brother don't allow her claim or sell off the property. Punjab policy highlighted the basic services desks for protection of rights like public services, women help and inheritance rights. There are

following steps to protect women's right by Punjab police and which are given below; LRA 1967 explained that distribution of property among female of family is be held mandatory one after process of mutation.³³ There are powers of revenue officer to decide matter within 180 days from application date and in case to any delay RO will submit case before district collector 15days before expiry of that period. DC will allow one-time relaxation for period of 60days. in case to decide title in partition additional period of 180 days will be allowed. After all relaxation time, pending and delayed cases, if still RO fails to conclude partition case within stipulated time period, he will be subject to disciplinary action according to prescribed law.³⁴

In reality, as per Demographic and Health Study 2017-18, "more than 97% female didn't get any property from inheritance while all family members used to hold, acquire land and houses across Pakistan. Furthermore, only 1% female are there who get their shares but in form of non-agricultural plots and uptown plots while position in KPK and Gilgat Baltistan is very deteriorating and data is inaccessible.³⁵ Our legislative body and other institutions are not paying proper attention towards this matter as wide gap can be witness in legislation and applied world where both stands in antipathy towards each other in mostly area of Pakistan. FATA is the cases where codified law cannot be accepted empathetically and its application is often overlaid by tribal customs, customary laws, unrecorded and accepted codes/norms and philosophy.³⁶

"Rigid tribal norms severely proscribe the roles of women and prevent them from having secure rights to property. Women are restricted in their mobility; have limited or no access to assets and resources; no influence in decision making, even regarding their own marriage; and are victims of gender-based violence. Women contribute a significant portion of the agricultural labor force through their involvement in a broad range of agricultural activities, but their contribution is not officially recognized"³⁷

Recently Senate Standing Committee on Law and Justice (hereinafter SSCLJ) vetoed two bill to have amendment in constitution including one which was providing inheritance law for women as part of fundamental rights with majority of votes.³⁸ There was division of opinion on this matter when bill was moved by saadiaabbasi being PML-N senator to include inheritance right as FR for female in constitution while adding new article as 24A after of right to hold and acquire property for subjects of state.³⁹ The proposed amended provided by her was to read as

"no women shall be deprived of her share from the inheritance in Pakistan".⁴⁰

However, arguing in her favor she continues to establish the existence of this right by Islam and explanation of this share according to an authorized

handout supplied by the Senate Secretariat.⁴¹ She added more while saying this right to hold, acquire and inherit movable and immovable property is given by Islam and She labelled not to give property to female by males as an unfounded practice that ensured to be norm now in most of areas of Pakistan.⁴² She additionally represented the stance of SC as well not to claim shares by those children whose mother didn't claim her right during her life time.⁴³ Its common practice in south Asian countries to provide dowry to daughter on their weddings instead of right in inheritance.⁴⁴ The major stance was provided by said senator was to make able female to directly approach to SC through way of writs to claim their inheritance rights.⁴⁵ Railways Minister⁴⁶ rejected the proposed bill on grounds of its already existed law while on other hand Mustafa Nawaz.⁴⁷ supported the bill and claimed it to be reinforcement of state's commitment concerning it to be matter of FR. Though, Farooq Naek recognized the minister's belvedere, while saying that more work is to be done for better inheritance laws in Pakistan and their full speedy enforcement through judiciary.⁴⁸ After observing whole scenario, it is more evident that random enactments are not necessary only there is great responsibility of our government to go beyond this. Coercive measures are to be taken in this regard to enforce and implement this law.

Factors involved for hurdles in claiming inheritance by women: Firstly, there are numerous reasons to claim and execute inheritance rights of women in Pakistan and one of foremost reason is to have lack of consciousness develop in people about their legal rights. Secondly Social fetters are also one of major reason for daughters to get their rights as female they use to take shoulder of male family member to get their case contest in courts and usually the so called cold behavior of family male members suffocated the idea of legal right at initial stages being husband/ sons and relative. Dowry and marriage's expenses are also considered to be part of inheritance in many families and they provide it substitute of inheritance rights. Thirdly, deceitful and prejudiced conduct of men divests offspring from their due share in estate. There is typical school of thought which is running in blood of most of zamindar families that to transfer daughter's shares means to decrease one's estate and increase in another's.

In many cases it has been witnessed that brother's used to occupy the most fertile and agricultural land for themselves for treat to be male member of society and left lesser value property for their sisters. More dramas can be seen in cases where brother/male members used to get fake veil women in courts to submit the consent of their real sisters in favor of brother to hold and acquire all property which is of denial of article 23 of constitution of Pakistan 1973. Fourthly, technical deficits and laxity of Patwaris that lead to deficiency of certification and evidence to have back on woman's claim. Females usually never get direction concerning such documental shortages from Patwaris

which deteriorates their litigation unless they can have enough money to have best lawyer with handsome fee or adequate judiciousness.

4. DODGES IN REGULATIONS AND PROCEDURES:

The following procedures has to be witness in case of illogical similarity and any legal heir got excluded during inheritance mutation, first is about filling application before assistant commissioner on grounds of fraud, factual left out of any legal heir and misrepresentation and second is filing a simple civil suit of partition before civil court.⁴⁹ It has been witness in many cases that civil suits usually take a long period to get dispose of so it is better to reach revenue as such proceedings covering more quickly on its being summary proceedings. Another option which can also be avail is to file before revenue court, chase it all the way to revenue law court and later on move it to civil courts. After witnessing all the facts there are many chances to exploit the right of women as there are many loopholes in system and one of major cause of it when it is in hand of Patwari for mutation proceedings he uses to leave out the right of women. When see the number of petitions in civil courts it is very much evident that all cases related to inheritance are missing with female's right of inheritance and Patwari was in position to collude with family members and provide them unfair advantages. Along with that fard can only be taken from Patwari being his complete control in hands. The constitutional duty conferred to courts are not to settle disputes only but to interpret law as well being common legal system country. Every school of thought has their personal law to decide matter of inheritance but the core issue is to have lack of enactment to deals with all schools of thoughts. As a result, the courts intrude for expounding interpretation of act which diverges the attention of magistrates from sanitizing laws to the settlement of dogmatic disagreements alone.

Subjects of the state has more keen interest to dispose of their matters from revenue courts for summary proceedings as compare to submit them self within the jurisdiction of ordinary courts of the land due to immense work load. Perverse adjournment tactics used by litigants is one of key factor which leads by parties is another factor that leads to indecisive cases in ordinary Courts.⁵⁰ Numerous applicants never get their share in their lives due to long procedure made by statutes.⁵¹ Clerical powers regarding inheritance matters are usually hold by Patwari themselves. They usually provide favor in one party and not allowing to protect rights of others. For example, they in most of cases plot a scheme with others to exclude daughters from inheritance.⁵²

5. SUGGESTIONS AND RECOMMENDATIONS:

- i. CEDAW is that comprehensive law which makes women a solid pillar of society and make them enjoy all those same HR and FR as any other individual can do in its personal capacity. It also avoids discrimination against women and providing same meaning of property rights across borders.

- ii. Not only at international level but at national level there is need to rekindling and assembling of all those strewn statutes in one uniform compact law while grasping legislative intent directed predominantly for sheltering woman's property rights and facilitating them in this inelastic legal system. To incorporate all schools of thought in one comprehensive statute for judiciary that courts can only emphasis on sanitizing the laws rather than acting as the settler of religious disagreements merely.
- iii. To cope up this situation there is need to Increase the number of judges in family courts, analogue data should be converted into digital form regarding all records and decisions, and to guarantee prompt redressal of result for the effectiveness of legal system. Registration of inteqal is to be done by federal and provincial authorities as compare to patwari being local authority. There is a need to select few newspapers with consultation of federal and provincial government in which adds of inteqal can be given so that every concerned person can get the copy of it and can head towards right direction. Remaining inept newspapers should be barred to have any such news/ advertisement.

6. CONCLUSION:

The red-top has explained, defined and expounded so well about the paternal heritage of offspring's specifically daughters in Islam. Majority of group of people believes that idea to empower female is European concept but as to different schools of thoughts this idea is purely can trace back its history from Islam. Many laws whatever those are substantive or procedural has been keenly observed which has its roots in major laws of land. The major issue which is to be face by many female is that substantive law in conformity with Islam is there to support their rights but so far as their procedure is concerned, its execution may be different and courts are there to uphold its sharia law in our hybrid form of legal system. Nevertheless, the effectual application of those codified principles can be done while choking all the procedural inconsistencies and while carrying around more logical and modest ways of demanding inheritance, so that any female is ever renounced her FR to property of her father's demesne.

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