

## A Comparative Analysis of Women's Inheritance Rights in Urban and Rural Areas in Sindh

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### Abstract

*The suppression of women's inheritance rights, particularly prevalent in rural areas of Pakistan, reflects a societal dominance by males. Often framed as an emblem of gender inequality within Islam, the practice of women receiving half the inheritance share compared to men is a subject of controversy. This study aims to provide nuanced arguments and rationale supporting the practice within the context of Islamic law. Contrary to perceptions of discrimination, the study contends that the apparent gender bias stems from a failure to effectively implement Islamic inheritance laws in the community. Emphasizing women's inheritance rights as crucial for their socioeconomic and political empowerment, the research explores the range of choices available to women and the challenges they encounter in exercising these options autonomously. The study particularly delves into the urban and rural areas of Sindh, shedding light on the prevalent lack of awareness among women regarding their inherited rights as per Islamic principles and Pakistani law. Taking an ontological stance in its interpretive faculty and adopting an epistemological perspective aligned with social constructionism, the study identifies several socio-cultural factors influencing women's choices. These factors include the patriarchal system, misinterpretation of religious teachings, lack of awareness, restrictive legal systems, and limited educational opportunities. In response to these challenges, the study recommends initiatives to promote awareness of the legal avenues available to women for asserting their inheritance rights. It also underscores the critical role of female education in empowering women to make informed choices. By addressing these issues, the study advocates for a more equitable implementation of Islamic*

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*inheritance laws, aligning societal practices with the intended principles of gender equality inherent in both Shariah law and the Constitution of Pakistan.*

**Keywords:** Inheritance Law, Women's Rights, Comparative Analysis, Rural Area, Sindh

## Introduction

Each culture and society concurred with ladies with a specific status and position. It is common for women to be oppressed in all aspects of their lives, and Women are often subjected to poor treatment within the family, as evidenced by studies conducted by Cornwall (2016); Ali, et al. (2018); Haque (2018), especially with regards to the right of inheritance. Notwithstanding, women's rights and the rights of women regarding inheritance in the family are extensively outlined in the Qur'an and Sunnah. Although women may not possess identical rights as men in all aspects, it is important to recognize that they have specific rights to inheritance, dignity, and custody of children within the family because Islam guarantees their financial rights, requiring their lawful guardian (father, brother, husband, etc.) to care for them in all circumstances. An illustration of this is evident in the financial obligations towards women within the family.

As mentioned in Surah Al-Baqarah: 233, the financial requirements of a woman in her role as a daughter are the responsibility of her father. In the case of being an orphan, it becomes the duty of her guardian, who can be her paternal grandfather or uncle, to provide her with the necessary financial support. Furthermore, after marriage, it becomes the obligatory duty of the husband, according to his financial capacity, to assume all the financial responsibilities that the wife is entitled to. It is emphasized in Surah Al-Baqarah, verse 233, where Allah (SWT) highlights the husband's responsibility to provide for his wife's financial needs. The child's father is responsible for providing the mother with reasonable financial support for her food and clothing. According to Al-Hilali and Khan (2023), this obligation of the husband to provide for his is what the Holy Qur'an supports, Verse 34 of Surah Al-Nisā' and verses 6-7 of Surah Al-Talaq highlight the husband's duty to provide his wife with essential provisions, including food, clothing, shelter, medical care, and other necessary support. Al-Zuhayli (2008) further explains that, according to Jamhr al Ulam, when a woman gets married, it becomes the husband's duty to fulfill these obligations. A family member has the position of sister, her brother is obligated to take care of all of her finances following his capacities. Finally, she must find her financial resources if she has no male family members to meet her financial needs (Al-Zuhayli, 2008). For her to live her everyday existence with respect and dignity, the nation and the wealthy must find financial resources for her (Jawad, 1998).

Young and middle-aged people benefit greatly from the inheritance of wealth from older generations to younger generations. In poor nations where capital markets are imperfect, given the absence of comprehensive national-level social security networks, the significance of such transfers becomes more pronounced as they serve as a substantial income and retirement security for individuals, primarily in the form of home ownership. Children orphaned at a young age may also be able to invest in

their education through inheritance. According to the theory of the life cycle, it is likely that children will still receive an inheritance even if it is presumed that parents accumulate wealth exclusively for personal use as they age. To transfer wealth from older generations to younger ones, various societies have developed their unique social norms and customs. In specific societies, transferring legal assets from deceased individuals to their relatives is a straightforward process.

In line with traditional customs in Pakistan, it is common for sons to inherit a significant portion of their parent's assets, while women often don't get or are compelled to relinquish their rightful share in inheritance. Frequently, daughters face the expectation of sacrificing their inheritance rights in favor of their brothers based on their gender. Claiming their rightful share in property can lead to daughters being ostracized or facing hostility from their paternal side. It is often justified under the guise of safeguarding inherited land, which holds substantial wealth and symbolizes power dynamics within the family. Dowry is frequently viewed as the daughters' portion of the legacy, even though this is plainly not always the same as legal inheritance and is generally not something that women must agree to. Additionally, women are told that their brothers would look after them and that the gifts they get on certain occasions count as their portion of property.

All of these customs are directly at odds with Islamic law, which establishes explicit rules for both male and female offspring of the deceased, and with state law that is currently in effect. The Qur'an explicitly states: "Men shall have a portion of what parents and relatives leave behind, and women shall have a portion of what parents and relatives leave behind." (Qur'an, 4:7). Although women in Pakistan are legally allowed to inherit their families' wealth, they seldom practice their privileges. Traditionally, women have been denied their rightful portion of inheritance. Especially when it involves land, resulting in their complete exclusion from any claim. It contrasts Islamic law (Shariah) and Pakistan's legal system, which recognize and grant women the right to inherit movable and immovable assets (Mehdi, 2002). It is particularly noticeable in the rural regions of Pakistan, where the social structure influenced by tribal customs poses a threat to inheritance rights. Because men bear greater responsibility for providing for the family, state law bases its inheritance rules on Islamic law, which dictates that women in similar ties to them receive one-half the inheritance of men (for example, a daughter would receive one share for every two shares that a son obtains). According to the Family Laws Ordinance of 1961, Islamic Shariah governs inheritance (Mumtaz, 2006).

However, the prevalence of customary practices in the country has led to the adherence to inheritance rules primarily based on tradition. Real estate distribution, especially in rural areas, often results in women receiving an insufficient portion of their rightful share. In cases where women inherit property, it is often the case that their share is significantly diminished or marginalized. Under the hands of male successors. The attitudes regarding women's issues may be related in several ways (Mehdi, 2002).

The economic condition, composition, and gender dynamics within the family play a significant role. The registration of births, the type of marriage, the relationship with the prospective spouse before marriage, educational background, religious beliefs,

and knowledge about the rights of women's inheritance, are all potential Indicators reflecting attitudes towards women's rights to inheritance. It is anticipated that these correlates will directly or indirectly impact; how society views women's inheritance rights. What issues do women face in urban and rural areas?

To comprehend the difficulties faced by women's inheritance. We are going to analyze and compare the urban and rural areas in Pakistan women's awareness of their inherited rights in property that are guaranteed under Islamic and conventional law. Mainly we discuss the women of rural areas of Sindh and their unawareness of their inherited rights compared to urban areas.

## **Literature Review**

The literature review examines the main concepts discussed in female inheritance in Pakistan, particularly in rural areas (Mehdi, 2002; Rubab, 2019; Naik, 2021; Khawar & Meher, 2021; Rubab, et al., 2023). It also analyzes that the impact of religion and culture on the legal heritage is evident (Tirmazi, 1999; Mary, 2000; Ishak, 2005; Hussain, 2005; Ali, et al., 2018). Additionally, this chapter explores the legal and institutional framework that safeguards women's inheritance rights in Pakistan (Khawar & Noshirwani, 2007; Ali, et al., 2018; Enakireru & Igbineveka, 2022; Sezgin, 2023). Despite global efforts to advance women's property rights, the pace of advancement of women's property rights has been sluggish. Pakistan became a signatory to various international conventions concerning women's property ownership, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), ratified in 1996. However, Pakistan, upon ratifying CEDAW, made a declaration stating that its compliance with the convention complies with its Constitution and made a reservation under Article 29, paragraph 1. According to CEDAW's Article 1, discrimination against women is defined as any distinction, exclusion, or restriction based on sex that impairs or nullifies women's recognition, enjoyment, or exercise of rights. While the Convention does not explicitly address inheritance, Article 15 obliges states to provide women with equal rights to administer property and grants both men and women the same rights regarding property ownership, acquisition, disposition, management, administration, and enjoyment under Article 16(h). During its thirteenth session, the Committee on the Elimination of Discrimination against Women issued a General Recommendation, highlighting that many countries' laws and practices discriminate against women concerning inheritance rights. The Recommendation called for states to ensure that individuals of the same degree of relationship to a deceased person, regardless of gender, are entitled to equal shares in the estate and rank in the order of succession. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) encourages states to incorporate the principle of equality into their national constitutions or relevant legislative frameworks. Pakistan has yet to establish a comprehensive legal framework to incorporate the provisions of CEDAW into its domestic legislation effectively incorporating the provisions of CEDAW into its domestic legislation. The women in Pakistan are typically denied their rightful inheritance. They are not allowed to exercise their religiously guaranteed right to inherit property. In certain regions, they

are even coerced into marriage with the Qur'an. The underlying motive behind these actions appears to be to retain family property without dividing it. This situation is profoundly distressing and requires immediate attention. The reasons behind these immoral and illegal practices can be attributed to factors such as illiteracy, lack of awareness regarding women's dignity, an unfriendly and repressive socio-political environment, and the government's failure to protect and promote women's rights. The existing laws are ineffective in compensating women who fall victim to these injustices (Ansari, et al., 2012).

In South Asia, particularly in Pakistan, the legal system is commonly regarded as pluralistic, wherein multiple legal systems coexist. Certain norms and regulations in Pakistan are not explicitly written or formalized, while others are codified as official laws or legislation. Regarding conflict resolution and dispute mediation, Pakistani citizens have a range of options available to them. These options can vary from informal methods to formal processes, depending on secular, customary, religious, communal, or tribal norms. Although there have been notable advancements in legal reforms and the implementation of pro-women legislation regarding land ownership and inheritance in Pakistan, there is still a need to strengthen the mechanisms that guarantee the translation of these legal rights into tangible ownership and substantial control over land for women. This limitation constitutes an obstacle to the effectiveness of pro-women l, which legal reforms, depend on overcoming numerous social and procedural barriers that impede women from asserting their rights to inherited property. To address challenges, several amendments have been made.

Over the years, there have been notable changes to the inheritance law for women, with the Punjab government recently implementing modifications to streamline the procedural aspects. These changes aim to simplify the process of claiming inheritance rights and ensure their guarantee for women. The 1973 Constitution of Pakistan firmly upholds women's rights in both public and private spheres. It guarantees equality and fundamental rights for women, aligning with international human rights instruments ratified by the United Nations. The Constitution includes provisions emphasizing non-discrimination and equal protection under the law in its fundamental rights and policy principles, in the chapter fundamental rights and policy principles. Article 25 serves as the primary constitutional provision guaranteeing equality before the law and equal protection under the law. However, while Article 25 has been effectively utilized in matters of the public domain, significant strides have been made in securing women's rights in areas such as education and employment and achieving equality within the private sphere presents more significant challenges. In the realm of land access and ownership, which falls under the influence of customary laws and practices persists, leading to an inequitable and legally diverse situation. From a legal standpoint, the Constitution and civil laws do ensure gender equality when it comes to the ability to access and own land and property. For instance, Article 23 of the Pakistani Constitution guarantees equal rights for both men and women regarding holding, owning, using, and disposing of property nationwide. As per the Constitution, adult women possess the right to own, utilize, sell, transfer or dispose of their property, through transactions as gifts, and they can engage in the contracts on an equal basis with men. Additionally, Article 24 of the

Constitution confers upon the state the power to intervene in individual property rights if it is determined that such rights may adversely affect the rights of disadvantaged groups within a specific region.

In Pakistan, inheritance is governed by Islamic Shariah as outlined in the Family Laws Ordinance 1961, which serves as the principal legislation in this regard, along with the West Pakistan Muslim Personal Law (Shariat) Application Act (V of 1962). Before the implementation of the Shariat Acts in the early 20th century, inheritance in Pakistan was primarily governed by customary practices, regarding personal laws only in the absence of local customs. The introduction of the Family Laws Ordinance (MFLO) in 1961 brought about significant changes by consolidating and modifying various Muslim laws. The MFLO established a comprehensive framework for the distribution of movable and immovable property, taking into account the familial relationships and the number of surviving family members. The legal framework in Pakistan recognizes the personal laws of various religious communities, including Christians and Parsis. In Islamic inheritance law, the fundamental principle is that succession rights are based on blood relationships. The distribution of inheritance shares is determined by the relationship with the deceased and by the Sunni and Shia sects. These variations are outlined in the works of (Noreen, et al., 2021).

Research data revealed that none of the participants demonstrated a comprehensive understanding of female inheritance rights based on a reliable source. Findings showed that respondents from religious backgrounds or with some education knew the Islamic perspective on female inheritance. However, women from Rahim Yar Khan and Mianwali exhibited limited familiarity with Islamic teachings and often held misconceptions about female inheritance rights under Shariah law. The study also found that only a few participants were aware of the legal obligations related to inheritance, and their knowledge was limited to significant legislations like the Law of Inheritance following Islamic principles. Most of these interviewees were residents of Lahore and had a higher level of education. However, awareness of recent legislation concerning women's inheritance rights was lacking. Women in Lahore demonstrated a better awareness level than those from Mianwali and Rahim Yar Khan (Rubab, 2019).

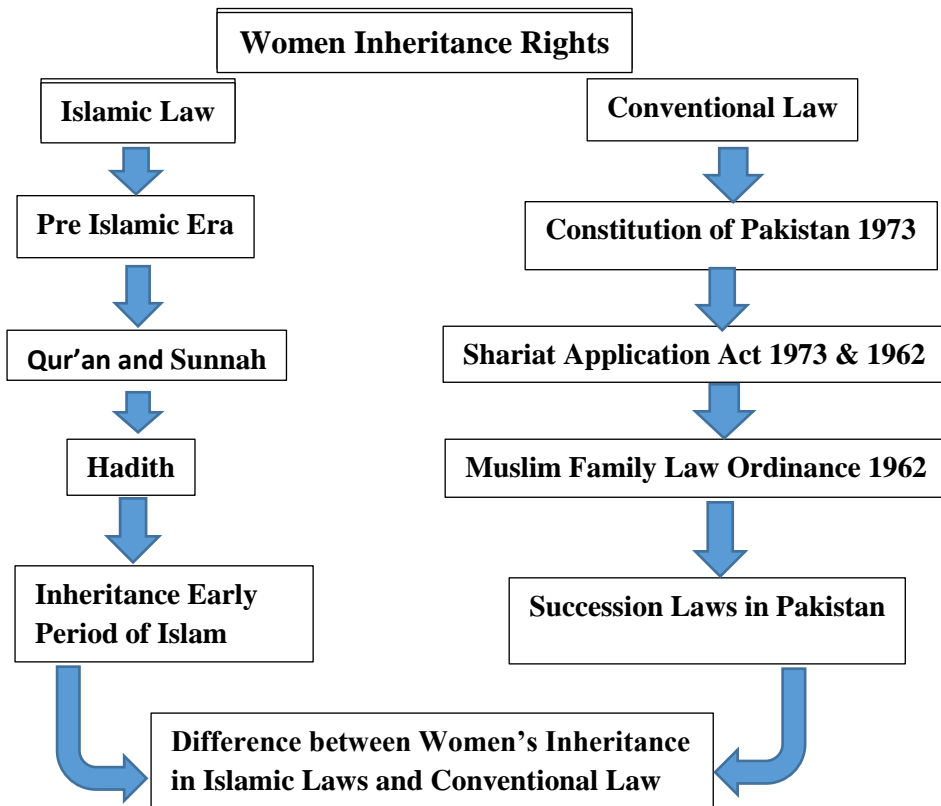
In rural Pakistan, land is widely recognized as a fundamental physical resource that serves as a source of sustenance, employment, housing, economic stability, and social standing. Ownership of agricultural land is limited to less than half of rural households, with a striking disparity evident as a mere 2.5 percent of households possess 40 percent of the land. The issue of landlessness is especially acute in rural Sindh, where approximately two-thirds of households lack ownership of any land, while a minuscule 0.4 % of households exert control over almost a quarter of the entire territorial extent (Mumtaz, 2006.).

As per Tirmazi (1999), the limited mobility of women hinders their ability to obtain property and exercise control over it, particularly in cases where they are the rightful owners. In specific areas like South Punjab, a common justification is that women are restricted by purdah (seclusion) norms, which impose limitations on their mobility and consequently hampers their capacity to possess and administer property. Ironically, despite the expectations for women to leave their homes and fetch water



from remote locations for household needs, they are still constrained when it comes to owning and managing property or making significant related discussions. Tirmazi (1999) contends that women tend to be confined to the role of providers of services while being deemed insufficiently responsible to be entrusted with property ownership and control. This pattern of behavior is not limited to Pakistan alone. (Bennett, 1981) discovered that women own less than 2 % of the land with legal titles globally, exposing the widespread gender-based inequality that impacts women's economic empowerment. In its most severe manifestation, this form of discrimination can deprive women of even the fundamental resources necessary for their survival. After reviewing the literature, we analyzed that there is a considerable information gap regarding the inheritance law among rural and urban women. Therefore, we are going to analyze and compare to the urban and rural areas in Pakistan women's awareness problems of their inherited rights in property that are guaranteed under Islamic and conventional law. Mainly we will discuss the women of rural areas of Sindh and their unawareness of their inherited rights compared to urban areas.

### Conceptual Model



## Methodology

This study employed a qualitative approach, collecting comprehensive data concerning women's inheritance rights following the death of their parents and the obstacles they encountered in obtaining their rightful share. This project utilizes analytical approaches to examine the significant issue at hand. Through this methodology, the study examines pertinent materials derived from the Qur'an and Sunnah, case studies encompassing both rural and urban areas of Pakistan and Sindh, as well as Jurisprudential perspectives. The aim is to identify and propose potential solutions to address the challenges surrounding Muslim women's inheritance rights within the family. Ultimately, the collected data was thoroughly analyzed and presented comprehensively using an argumentative approach to existing literature.

The pre-Islamic period is known in Arabic and Islamic Literature as the “Jāhiliyyah” period, literally meaning the “era of ignorance”. The evolution of Islamic inheritance law was driven by the deficiencies and inequities observed in the distribution of the deceased's estate among heirs in various societies before the emergence of Islam. In pre-Islamic Arabia, for example, as well as in pagan African customs and Hebrew traditions, the prevailing norms dictated that only the eldest male child of the deceased would inherit, excluding all other heirs. According to Qadri A. In his book "Islamic Jurisprudence In The Modern World, in the era before Islam, it was a common practice among the Arabs to exclude women and young males from inheriting, as they would often state: “Only those who could fight (in wars) and collect the booty are to be given inheritance” (Dr Ishak Aliyu, *Inheritance in Islamic Law*). Before the emergence of Islam, succession among the peoples of Arabs was limited to capable male relatives. Women, including widows, mothers, daughters, minors, and individuals with in-capacities, were not included in inheritance. They were regarded as assets that were eligible for inheritance. The key determinant for inheritance was the capacity to safeguard the family's honor. Hallaq (2009) in the book "An Introduction to the Islamic Law" discusses the principles and concepts related to the Islamic law of succession. The Islamic law of succession explicitly prohibits all forms of brutal and inhumane practices that prevailed before its successive revelations. It also introduces new categories of heirs beyond the traditional heirs. It is important to highlight that before the introduction of this divine law, women endured severe mistreatment, occupying a position even lower than that of enslaved people and often being regarded as mere possessions. The book "Succession under Islamic Law" by Rashid and Okoh (1979) explores the topic at hand. The primary objective of the traditional customary inheritance system among the Arabs aimed to safeguard the family's assets. Inheritance among the early Arabs was determined based on blood relations, adoption, or contractual agreements. Similar to other ancient societies, the ancient Arab society granted complete freedom when it came to testamentary dispositions. A person is free to make personal arrangements to confer the right of inheritance on others outside the family cycle Hussain (2005). Uterine relations, including uterine siblings, were entirely excluded from the inheritance system. It is plausible that the rules of priority followed within the 'Asabah (agnates) in Shariah laws are influenced by the traditional agnatic system. Because: The Sunni jurists take the view that the intention of the Quranic injunctions



was not to replace the old customary agnatic system entirely but merely to modify it to improve the position of female relatives. The rights of women have been acknowledged and ensured by allocating specific shares for them, as stated in the work "An Introduction to the Islamic Law of Succession" by Hallaq (2009). Allah abolished the above rule, which was based on ignorance and injustice, and made women become partners of men in inheritance according to the amount that can fulfill their demand.

### **Women's Rights of Inheritance in the Quran and Sunnah**

In the aftermath of the advent of Islam, it was proclaimed that inheritance should be granted to all individuals, regardless of their gender, strength, health, orphanhood, or parental status, after the passing of their parents. The Quran, specifically in Surah Al-Nisā', verses seven and 33, addresses this issue and provides guidelines for distributing inherited wealth. It states that both men and women are eligible to receive a portion of the property left behind by parents and close relatives, regardless of the size of the estate. Additionally, the verses mention the appointment of heirs from among parents, relatives, and those with whom one has pledged brotherhood. Allah is acknowledged as a witness to these arrangements. According to Qatādah and Sa'īd bin Zubayer, these verses were revealed to the Prophet (SAW) due to the lack of recognition by the people of Quraish the rights of women and children to inherit. Al-Rāzī, in his explanation, also mentions the context in which the revelation regarding inheritance distribution occurred when Sa'd bin Al Rabi, After being martyred in the Battle of Uhud, left behind his wife, two daughters, and one brother. Regrettably, the brother unjustly seized the whole property of Sa'ad, depriving his wife and daughters of their rightful share. In response to this injustice, Sa'ad's wife approached the Prophet (SAW) to seek redress and express her grievance. The Prophet (SAW) assured her that Allah (SWT) would be the ultimate judge in the matter and advised her to return and await the divine decision. Upon returning to the Prophet (SAW) after some time, she raised the issue once again. As a result, verses 11 and 12 of Surah Al-Nisā' were revealed, explicitly addressing the issue at hand. Following these verses, the Prophet (SAW) instructed Sa'ad's brother to return two-thirds of the inheritance to Sa'ad's daughters and one-eighth to his wife, allowing the brother to keep the remaining portion. The verses mentioned above not only establish to safeguard women's rights but also provide detailed guidelines for the allocation of inheritance for both males and females.

Furthermore, Surah AL-Nisā' verses 11-12 provide more detailed instructions on the distribution of inheritance. The first verse addresses explicitly the distribution of wealth among offspring, stating that a male should receive the equivalent of the portion of two females. If there are more than two females, they collectively inherit two-thirds of the deceased's wealth, while a single female receives half. The verse also outlines the distribution of inheritance to parents, stating that each parent receives one-sixth of the deceased's wealth if the deceased had a child. However, if the deceased had no children and only the parents inherited, the mother is entitled to one-third. If the deceased had siblings, the mother receives one-sixth after paying any bequests or debts. The verse emphasizes that one's parents and children are both

beneficiaries and should not prioritize either without due consideration. It is a decree as ordained by Allah SWT (Surah Al-Nisa 4:11, Ali, et al., 2018).

Following the principles of the Qur'an, females are granted inheritance rights both as daughters after their parent's death and as mothers after the death of their sons. Similarly, women are entitled to inherit as wives after the passing of their husbands, as stated in the Quran. Allah (SWT) addresses this matter in Surah Al-Nisa, specifying that wives are entitled to one-fourth of their husband's estate if there are no children, and one-eighth if there are children, after fulfilling other financial obligations. It is important to note that the verses mentioned above were revealed during the Jahiliyyah era, a period before Islam when women had no inheritance rights upon the demise of their father, brother, or husband. Imam Al-Tabari's Tafsir explains that during that era, females and minors were denied the right to be deprived of any share of the inheritance. Inheritance distribution lacked proper regulations, and women were generally considered subordinate to men, without any social standing to receive financial resources after their relatives' deaths. To address this perceived discrimination, the Quran explicitly establishes women's rightful share in inheritance as daughters, wives, and mothers, as mentioned in verses 11-12 of Surah Al-Nisa. A common misconception, particularly in the Muslim world, is that men are granted a greater portion of inheritance in comparison to women, leading to the implication of women's inferiority. Men receiving a double share compared to women in inheritance has indeed been justified by Muslim scholars because men have greater economic responsibilities in supporting the family and fulfilling the needs of their dependents, including mothers, wives so that sisters and children are not left without receiving any inheritance in case of man's demise., Muhammad Qutb asserts that it is the obligatory duty of men to provide for their wives, children, and other relatives, whereas women are generally not obligated to contribute financially to family expenses. The additional share granted to men is based on their social and economic responsibilities as the guardians of the family after their parent's death. Islamic teachings emphasize that men are financially responsible for providing for their wives and offspring (Surah Al-Baqarah, chapter 2, verses 233). In the view of Imam Al-Shafi'i, men are responsible for nafaqah (financial expenditure) on their wives and children, which includes providing food, clothing, housing, and other necessities. Men are also expected to pay mahar (dowry) during marriage and care for themselves, their wives, children, aging parents, and close relatives based on their capabilities, as stated by Muhammad Zuhayli. Receiving a double share of inheritance does not imply any additional privilege for men or indicate their superiority over women regarding inheritance. Some individuals argue that the Mahar (bridal gift) received by the wife is not considered adequate compensation for her receiving a reduced inheritance share of only half in comparison to her male counterpart.

Additionally, questions may arise in situations where a daughter remains unmarried or is unable to marry, while her father has passed away. Under such circumstances, prominent (scholar Rashid Rida) states that the Quran instructs close relatives to provide a fair inheritance in favor of the daughter, ensuring her well-being, dignity, and respect within the family and society. It should be based on the guidelines outlined in Surah Al-Nisa, verse 8, which emphasizes a fixed share for men and

women from what is left by parents and close relatives, regardless of the property's size. Researchers argue that the man's share is twice that larger share of inheritance given to women in some instances due to the specific responsibilities assigned to men as family guardians, as discussed previously. However, in the distribution system of Islamic inheritance, it is not always the case that men receive double the share compared to women. Under specific scenarios, women may get a larger inheritance share compared to men. For instance, if an individual passes away without any children but leaves behind a sister, she shall inherit half of the estate. However, if the deceased is a woman with no children, her brother will inherit her portion. If there are two sisters, they will collectively inherit two-thirds of the estate. In cases where there are both brothers and sisters, they will share the inheritance, with the male receiving a double share compared to the female. This clear guidance from Allah is provided to prevent any confusion or deviation. Allah possesses complete knowledge about all things. (Verse 176 of Surah Al-Nisa).

### **Inheritance Women in Hadith**

Precise instructions exist about the distribution of inheritance among descendants and male relatives. The Prophet (SAW) stated:

According to Ibn 'Abbas (may Allah be pleased with him), the Prophet (peace be upon him) said: Give the Far'id (the prescribed shares of inheritance in the Qur'an) to those who are entitled to it, and whatever is left should be given to the closest male relative of the deceased. (Al-Bukhari, 1997).

Despite this, the Qur'an and Prophetic traditions GUIDE women's financial support, highlighting that it is the husband's responsibility, regardless of the wife's wealth or ability to support herself (Ali, et al., 2018). A wife has the right to assert her financial entitlements from her husband, and he must meet her financial requirements. As per Al-Farra, the husband has to fulfill this duty according to his means and abilities. (Surah Al-Talaq, 6 and 7). Moreover, the Qur'an and the teachings of the Prophet explicitly guarantee the women's right to inherit alongside male relatives in all circumstances; this principle should be respected when distributing inheritance. The Prophet (peace be upon him) offered counsel, "Provide prescribed shares (Farā'id) to those who are entitled to receive them," and whatever remains should then be given to the closest male relative of the deceased. [Al-Bukhārī] Based on the discussions mentioned above, it is evident that Islam safeguards the rights of both men and women regarding inheritance. Before the advent of Islam, women were deprived of their rightful inheritance. The Qur'an demonstrates impartiality between men and women regarding inheritance. The granting of a double share to men can be attributed to their role as the guardians of the family, responsible for providing for their dependents such as wives, children, elderly parents, and close relatives. Therefore, it can be concluded that the Qur'an empowers both males and females to inherit wealth. Under certain circumstances, women even receive greater inheritance privileges than men.

## **Inheritance and Early Period of Islam**

It was in the midst of the above uncertain and discriminatory system of inheritance that Islam came. Islam felt and realized the need for revolutionary changes in the affairs of humanity, which among other things includes the law of inheritance. The Islamic reform reshaped the principles of succession and established gender equality based on their inherent roles. The reform emphasized that the deceased's property should be inherited by those with the most substantial rightful claim to it, and the distribution should be proportional to the strength of their claims. It resulted in a harmonious distribution of estates among the rightful claimants. (Ajani, et al., 2013) The Islamic inheritance rules were introduced through a divine revelation to remedy the unjust and unequal treatment of entitled heirs. Islam introduced revolutionary changes (Altman & Bowen, 1974). These changes were aimed at achieving fairness and equality, particularly in the distribution of property among heirs. Initially, Islam introduced a temporary system known as "mu'akhah," based on Islamic brotherhood, where fellow believers inherited property in the absence of blood relatives. This system fostered a sense of unity among Muslims.

However, this practice was later replaced by a more equitable system based on blood relationships, as emphasized in the Quran. The Quran introduced new rules that ensured the rights of inheritance for both spouses and extended these rights to female relatives such as mothers, daughters, and sisters. It created a balance by specifying their entitlement through fractional portions of the deceased's estate. The reforms in Islamic inheritance laws ensured that women had the right to inherit from their husbands, just as men had inheritance rights. Moreover, sisters, mothers, daughters, and granddaughters were granted inheritance rights like their male counterparts. It was a significant shift from the pre-Islamic practices that excluded many categories of heirs. In summary, Islam introduced two significant reforms in inheritance practices: granting females equal rights in inheritance and democratizing the distribution of property among heirs, moving away from the previous primogeniture-based system. These changes aimed to establish a fair and equitable inheritance system, ultimately transforming the traditional rules of inheritance.

## **Women's Inheritance under Conventional Law**

According to Article 23 of the Constitution of Pakistan (1973), in any region of Pakistan, every citizen possesses the right to obtain, possess, and transfer property; this right is subject to the provisions of the Constitution and reasonable restrictions that may be imposed by law in the interest of the public. As an Islamic nation, Pakistan tends to adhere to the principles of Islamic Inheritance Jurisprudence, particularly in matters concerning inheritance. Under Sharia law, close blood relatives who are legal heirs possess the right to inherit from the estate of their ancestor or relative following their demise. However, the process of securing property rights for women in Pakistan is far from easy, despite constitutional laws asserting otherwise. Based on a 2017 survey, it was revealed that 80% of women reported not receiving their rightful share of inheritance as prescribed by law.

### **Constitution of Pakistan 1973**

Article 8 of the Constitution of Pakistan establishes that any law, custom, or practice that holds legal authority but contradicts the rights granted by the Constitution will be deemed null and void to the extent of the inconsistency. The Constitution of the Islamic Republic of Pakistan, Article 23 stipulates that every citizen is entitled to acquire, possess, and transfer property in any region of Pakistan. Article 24 affirms that no individual shall be unlawfully deprived of their property, except under the provisions of the law. Article 25 of the Constitution ensures equal protection of the law and declares that not only are all citizens equal, but also, there should be no discrimination based on gender, and nothing in the Article shall prohibit the State from enacting special measures for the protection of women and children. Although the Constitution does not explicitly address women's rights to inheritance, it does offer assurances through the Articles mentioned above that safeguard this right.

### **The Muslim Personal Law (Shariat) Act of 1937**

The Muslim Personal Law (Shariat) Act of 1937 is a concise legislation comprising only five provisions. Given the significance of each provision, it remains pertinent to conduct an individual analysis of each of them. The arrangement of the 1937 Act is outlined as follows:

Section 1: Short title and extent

Section 2: Application of Personal Law to Muslims

Section 3: Power to make a declaration

Section 4: Rule-making power

Section 6: Repeals

The applicability of the 1937 Act

Section 2 of the Muslim Personal Law (Shariat) Act of 1937 discusses the implementation of Personal Law specifically for Muslims. By the provision, it is stated that regardless of any opposing customs or practices, in all matters concerning intestate succession (excluding matters related to agricultural land), the specific property owned by females, which encompasses personal property acquired through inheritance, contracts, gifts, or any other provision of Personal Law, matters related to marriage, divorce (including talaq, illa, Zihar, lian, khula, and Mubaraat), maintenance, dower, guardianship, gifts, trusts, trust properties, and wakfs. (Excluding charitable organizations, charitable institutions, and charitable and religious endowments) the Muslim Personal Law (Shariat) shall serve as the governing rule of decision in cases involving Muslim parties.

### **Married Women's Property Act, 1874**

Under the Married Women's Property Act, of 1874, a married woman has the right to separate property and to take legal proceedings in her name. A married woman is also liable for her contracts regarding her property.

Muslim Family Laws Ordinance, 1961 and Muslim Personal Law Shariat Application Act, 1962 provide for the inheritance of property (including agricultural) by Pre-defined shared by the Qur'an.

Muslim Personal Law Shariat Application Act, 1962

### **Prevention of Anti-Women Practices Act, 2011**

The Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, was enacted by the National Assembly of Pakistan on Tuesday, November 15, 2011, following extensive efforts and advocacy by the women's movement and the proponents of the bill, spearheaded by Dr. Donya Aziz (PML-Q). This legislation prohibits various oppressive and discriminatory customs prevalent in Pakistan that not only undermine the dignity of women but also infringe upon their human rights, contravening Islamic principles. The "Prevention of Anti-Women Practices Act, 2011" amended both the Pakistan Penal Code and Criminal Procedure Code, introducing a new chapter in the Pakistan Penal Code to enforce appropriate penalties. Under Section 498A. According to section 498-A, individuals who deprive women of their inheritance through deceptive or unlawful methods shall be imprisoned for up to ten years, with a minimum of five years, and a fine of one million rupees, or both.

### **Succession Laws in Pakistan**

The country's national law becomes relevant when seeking to acquire the inherited property of the propositus. The transfer of movable and immovable property from the deceased to the successors is carried out under both the federal legislation, The Succession Act 1925, and the provincial legislation, Letters of Administration and Succession Certificates Act, 2020. The main objective of the Letters of Administration and Succession Certificates Act is to facilitate the prompt issuance of succession certificates and letters of administration. Under Section 3 of the Act, a Succession Facilitation Unit is established within NADRA offices. This unit is entrusted with the responsibility of receiving applications for issuing letters of administration and succession certificates. It is also authorized to process and evaluate these applications, accepting or rejecting them as appropriate.

Additionally, the unit is responsible for maintaining an online portal for record-keeping. According to Section 6, certain documents need to be submitted when applying for the grant of letters of administration. These include the death certificate of the deceased, a list of the legal heirs along with copies of their national identity cards, authorization from the legal heirs in favor of the applicant, and comprehensive information regarding the immovable and movable property involved. The application is subject to the possibility of receiving an objection claim. In cases where no objection claim is received, NADRA is authorized to issue the letter of administration or succession certificate, which holds the same legal weight as those issued by the District Judge or High Court under the Succession Act of 1925.

### **Discussion**

#### **Issues Problems in Conventional and Islamic Law**

Land is regarded as a fundamental physical resource in Pakistan, particularly in rural regions, where it plays a crucial role in providing sustenance, employment opportunities, living space, economic stability, and social standing. Ownership of agricultural land is held by less than half of rural households, while approximately 40



% of the land is concentrated within the ownership of just 2.5 % of households. In rural areas of Sindh, the issue of landlessness is particularly severe, as around two-thirds of rural households do not possess any land. Surprisingly, a mere 0.4 % of households control almost 24 % of the total land area in that region. As stated by Naik (2021), in situations where women are property owners, it is frequently observed that male relatives retain practical control over the property. Women often require household consent to manage or dispose of their property, and male members of the households typically conduct transactions involving, buying and selling. Both statutory and Islamic laws establish that women possess the right to obtain, possess, and transfer property. The study highlights another prevalent practice where women often forfeit their rightful inheritance share in favor of their brothers or sons. It is frequently observed to occur under duress or societal pressure. In the absence of adequate protective measures, women typically depend on their parental home and brothers for support during times of necessity, such as difficult marriages, illness, or economic pressures. Consequently, they often forego their share in property as insurance for their future well-being.

According to Mehdi (2002), there are multiple instances where women's names are officially registered in property transfer documents as inheritors, but in reality, they cannot obtain or benefit from the property. The prevailing understanding is that brothers would assume ownership of the land, while sisters would receive portions of the harvest or gifts instead. In rural Punjab, it is frequently observed that brothers make agreements with the patwari (land revenue official) to exclude their sisters' names from the owner's list by claiming that the sisters have willingly relinquished their shares. Otherwise, a gift is promptly bestowed upon the brothers when a woman's name is officially registered in the property transfer documents. The study also highlights the extreme practice of haq-bakhshwana, which involves girls either remaining unmarried or being "married to the Qur'an " in certain regions of southern Punjab (Multan and Bahawalpur) and Sindh.

This practice aims to prevent the transfer of property outside the family. Likewise, the practice of cousin marriages and exchange marriages, where one set of siblings is married to another, is commonly observed. These practices are intended to safeguard property preservation, as the size of land and assets is closely linked to power and social status. The persistence of such discriminatory practices is often attributed to deep-rooted traditions and cultural norms. Women are frequently portrayed as lacking knowledge about their legal, economic, and political rights. Consequently, they are deemed vulnerable to violence, as they may lack access to protection and justice. Additionally, restricted mobility is often associated with women, further exacerbating their disadvantaged position. A significant obstacle for women is their limited awareness of their property rights and a restricted understanding of land registration systems, transaction processes, and other legal aspects of land ownership.

According to Tirmazi (1999), the limited mobility of women hinders their ability to access property and exercise control over it, particularly if they are the owners. A common justification, particularly in South Punjab, is that women are deemed unfit to physically own and manage property as they are expected to adhere to the practice of purdah (seclusion) and remain within the confines of their homes. However,

despite these restrictions, women are still expected to venture outside their homes to fetch water from distant areas for household use. According to Tirmazi (1999), women are often confined to the role of service providers and are not viewed as capable of shouldering the responsibility of property ownership, exercising control over it, and making significant decisions about it.

This pattern is not limited to Pakistan. Bennett (1981) discovered that globally, less than two percent of titled land is owned by women. It highlights the existence of widespread gender-based inequity practices worldwide, which directly impact the economic well-being of women. In its most extreme manifestation, this kind of discrimination can severely limit women's capacity to attain even the necessities for survival. Property ownership is a safeguard for women, providing them with a means to mitigate risks and uncertainties.

### **Factors Contributing to the Surrendering of Inheritance Rights by Women and the Challenges they Encounter in Asserting their Claims**

Several socioeconomic factors influence the decision-making of women regarding their inheritance. These factors include a lack of awareness among women regarding their rights, societal pressures imposed on women, and the emotional attachment women often have towards their brothers. These factors, among others, collectively shape the choices women make regarding their inheritance. In Pakistan, A significant majority of women choose to forfeit their inheritance rights in favor of their male relatives, aligning with societal norms and values. The subsequent paragraphs delve into a detailed discussion of the reasons that lead women to relinquish their shares. Among the prominent factors contributing to this surrender, a notable reason identified is the lack of awareness among women regarding their property rights. Throughout Pakistan, there was a widespread belief that women were conditioned to think that asserting their inheritance rights amounted to encroaching upon their brothers' entitlements. When asked why they relinquish their inheritance from their paternal families in favor of their brothers, some women responded, "It is not considered respectable for women to demand a share of their brothers' property." This revelation highlighted a widespread misunderstanding among many women residing in remote areas regarding the concept of inheritance. Lacking awareness of their fundamental human right to inherit property from their ancestors or other family members, women fell into the misconception that they had no entitlement to inherit property. Likewise, the custom of dowry also substantially influenced women's decision to waive their rights to inheritance. Many women willingly gave up their rightful inheritance due to emotional ties with their paternal families and, in some rare instances, due to pressure from societal norms. However, when women received inheritance as widows, the dynamics frequently shifted, contradicting their previous perspectives on inheritance from their paternal families.

### **Court's Remarks Regarding Women Inheritance**

Inheritance---Sister, share of---Brother attempting to dis entitle sister from her share in inheritance---Sister-petitioner being one of the legal heirs of the deceased-father became entitled to inherit the legacy of her father from the day her father died and as

such became co-sharer/co-owner in the property---Such entitlement of petitioner was based on operation of Islamic law and the law of inheritance---Amongst her three brothers, only one of them i.e. the respondent was avoiding to give the petitioner her due share---Respondent had also failed to establish the stance taken by him in his written statement that their father died by leaving only the three sons and that the petitioner was not the natural daughter of their father---Petitioner being one of the legal heir of her deceased father was entitled to get her due Shariah share which in the circumstances came to 1/7 share---Petition for leave to appeal was converted into appeal and allowed with the observation that people belonging from the region where the present case originated from typically avoided giving their daughters/sisters i.e. women folk, their due shares in the inheritance of their predecessors which was totally against Sharia and the law of inheritance prevailing in the country, 2020 S C M R 1618.

The appellants brought a legal case for the division of Bungalow No.26-C Gulberg-II, Ch. Zahoor Elahi Road, Lahore, which measures 8 Kanals. They argued that the property belonged to their father, Ch. Ghulam Ullah, who passed away on 08.01.1999. The appellants, Khalida Idrees and Saeeda Mehmood, are the daughters of Ch. Ghulam Ullah, while Anas Farooq is their brother and respondent No.1. As legal heirs, the appellants claim they are entitled to inherit half of the property. The appellants requested partition of the suit property from respondent No.1, but he declined their request, leading to the initiation of the partition lawsuit. In response, the respondent/defendant submitted a written statement arguing that the parties' predecessor in interest executed a Will Deed dated 06-04-1983. According to this Will Deed, the suit property was bequeathed to the respondents. Additionally, it was argued that the suit property was orally gifted by the parties' father to respondent No.1 in 1991, and since then, he has owned the property. Therefore, the appellants' lawsuit is deemed invalid and should be dismissed.

After farming the issues and considering the evidence presented by both parties, the trial court issued a judgment and decree on 23.11.2016, dismissing the appellants' suit. Consequently, the current appeal has been filed. Based on the discussions in the current case, it is acknowledged that the appellants are undisputed owners of a ½ share in the suit property following the death of their father, Ghulam Ullah. Consequently, they possess a valid cause of action to initiate the present lawsuit. However, the learned trial judge erroneously concluded that the appellants' suit lacked a cause of action. Furthermore, the judge primarily dismissed the appellants' case because it was time-barred, overlooking that the appellants are the daughters of Ch. Ghulam Ullah and, upon his demise, became co-owners of the property. It is well-established in law that the statute of limitations does not apply to co-owners in inheritance matters. The cases of Mahmood Shah v. Syed Khalid Hussain Shah (2015 SCMR 869), Mst. Gohar Khanum and others v. Mst. Jamila Jan and others (2014 SCMR 801), Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729), and Arshad Khan v. Mst. Resham Jan and others (2005 SCMR 1859) are relied upon. Consequently, the findings of the learned trial court on issue No.2 are also deemed unsustainable, as they suffer from errors such as misinterpretation, failure to consider

evidence, and misapplication of the law. Therefore, these findings need to be reversed.

Based on the considerations mentioned above, this appeal is granted, and the judgment and decree issued by the learned trial court on 23.11.2016 are overturned. The appellants are declared entitled to their 1/2 share in the suit property. As a result, the appellant's suit for partition is granted as requested, Appeal is allowed. P L D 2018 Lahore 819.

Justice Umar Ata Bandial, a judge of the Supreme Court, made the observation, "Laws are in place to safeguard the inheritance rights of women".

However, Justice Bandial emphasized examining whether a woman consciously relinquished her inheritance rights. He highlighted that if a woman willingly forfeited her inheritance rights, her heirs could not assert a claim. Justice Bandial, leading a three-judge bench of the Supreme Court, presided over the hearing of a petition requesting permission to appeal against the verdict of the Peshawar High Court, which dismissed a plea filed by the descendants of two deceased women asserting their right to inheritance.

Based on the information provided, the children from Peshawar asserted their right to a portion of their maternal grandfather's assets. It was revealed that Isa Khan, the grandfather, had transferred his assets to his son without including any portion for his daughters, who did not assert their inheritance rights during their lifetimes. Following the demise of their mothers, the children filed a petition in 2004 with a civil court, seeking their rightful share within their maternal grandfather's assets. In 2017, the court invalidated the previous ruling from 2012 that had favored the grandchildren. The Supreme Court upheld the decision of the High Court and dismissed the petitions for leave to appeal. Justice Bandial, while presiding on the bench, upheld the view that regulation offers safety to girls' proper inheritance. "We ought to study what occurs, girls voluntarily relinquish their rights or do not declare, Justice Bandial made the statement, emphasizing the concerns expressed by the apex court regarding the government's negligence in protecting the rightful inheritance of women.

In a separate case where a sister was being deprived of her inheritance, a division bench consisting of Justice Isa and Justice Yahya Afridi presided over the matter. In his judgment, Justice Isa expressed that the adages "prevention is the best medicine" is equally relevant in safeguarding women's rights from being compromised. The nation needs to ensure the safety of the rights, which is far less complicated, and the ruling stated that it is more cost-effective and less resource-intensive to prevent the violation of rights rather than resorting to the courts for their restoration, which can be arduous, expensive, and unnecessarily wasteful of resources. It is particularly distressing in an Islamic republic that the Constitution itself safeguards property rights and allows for the creation of special provisions to protect women and children. As per the judgment, the court expressed profound regret regarding the persisting practice in the Islamic Republic of Pakistan, where male heirs unjustly deprive female heirs of their rightful inheritance through unfair means and questionable tactics (The Express Tribune: September 2021).

After a prolonged period of 38 years, the Supreme Court (SC) delivered a verdict in favor of the sisters who were unjustly denied their rightful inheritance in their father's property.

While considering a petition filed by their brother challenging a high court order, the apex court delivered its ruling. Justice Qazi Faez Isa expressed deep regret in a concise three-page order, noting that it was unfortunate that the brother failed to adhere to Islamic laws and denied the rightful shares of the legal heirs as prescribed. He expressed his dismay at the appellant's ability to manipulate and maintain possession of the property for an extended duration, emphasizing that only one remains out of the six sisters who filed a lawsuit against the fraud. In its order, a division bench of the apex court consisting of Justice Qazi Faez Isa and Justice Yahya Afridi acknowledged that they examined the mutation record, which did not mention the acceptance of the gift by the appellant. The bench further noted that it was evident from the evidence that Ghulam Haider, the father of the siblings, transferred the gift to his son on the same day of May 3, 1983, when he passed away.

The bench emphasized that the burden of proof to establish the gift rested upon the appellant, which he failed to fulfill. Furthermore, the fact that his father made the gift on the same day as his demise raises significant doubts about its authenticity and reliability. The mutation record of the gift was challenged by six sisters of the appellant, who filed a lawsuit. The initial lawsuit was decreed, but the appeal against it was allowed because it was filed after a considerable delay. However, the reasoned judgment passed by the appellate court was overturned by the high court judge in response to the civil revision filed by the sisters. The order stated that upon the death of a Muslim, his/her legal heirs become the owners of the property left behind, and the possession of any of the co-owners is considered possession by all.

Considering that the sisters themselves had initiated legal proceedings during their lifetime, along with the principle mentioned above, it was sufficient to uphold their claim. The reason provided by the learned judge of the Appellate court to set aside the judgment of the Civil Judge was deemed unsustainable, and the judgment rightly overturned it. Both the judgment of the Civil judge and that of the learned judge of the high court are deemed sound and without fault, as stated in the order. The bench noted that since the appellant currently holds ownership, an execution has been filed. The order expresses deep disappointment. "This is most unfortunate: first, retaining the property through fraudulent means, and then compelling his sisters/their legal heirs to seek their rightful share as prescribed by God by initiating execution proceedings." The court directed the District Collector of Charsadda to enforce the trial court's decision, which was upheld by the Peshawar High Court, and provide names of legal heirs of Ghulam Haider as per their respective shares determined by Islamic law. The apex court ordered the transfer of ownership to the respective parties within three months (The Express Tribune: January 03, 2022).

## **Conclusion**

In summary, the research findings underscore the distinct roles and statuses that Islam assigns to women within families and society. Islam ensures the financial well-being of women, with lawful male members of the family and society responsible for their

support throughout their lives. Importantly, Islamic principles reject discrimination in inheritance rights and even provide circumstances where women may receive a more significant share than men. However, certain factors such as traditional social and cultural norms, male-dominant social structures, and a lack of religious knowledge hinder women's inheritance rights in practice.

The discussion highlights that adherence to Islamic inheritance principles can mitigate mistreatment and injustice in the distribution of inheritance property. Implementing Islamic law in Pakistan, especially in rural areas of Sindh where women lack awareness of their inheritance rights, has the potential to empower women economically and contribute to overall economic growth. The study acknowledges the challenges women face in asserting their inheritance rights due to entrenched cultural norms, issues related to purdah, and limited mobility opportunities.

To address these challenges, the study recommends effective enforcement of anti-dowry laws in rural areas of Sindh to reduce unjust denial of inheritance rights. Gender-responsive legal provisions should facilitate access to justice for all women, extending beyond married women. The existing criminal law amendment of 2011 should be expanded to cover inheritance-related issues arising from forced marriages. Moreover, customary practices violating Islamic and conventional laws should be halted to ensure women's rights are upheld in property matters. Overall, by aligning practices with Islamic principles and enforcing legal provisions, there is potential to empower women economically and foster a more just and equitable society.

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