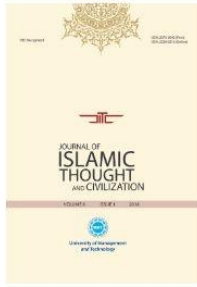


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Iram Rubab  
Ahmed Usman

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# Women's Right of Inheritance: Choices and Challenges in Punjab

**Iram Rubab\***

Department of Gender Studies  
University of Management and Technology, Lahore

**Ahmed Usman**

Institute of Social and Cultural Studies  
University of Punjab, Lahore

## Abstract

Women's right of inheritance is an indispensable right which assures their socio-economic and political empowerment. Although the *Shari'ah* law and the constitution of Pakistan safeguard this right, its denial is pervasive in Punjab. This paper explores the possible choices for women and subsequent challenges they confront in independently exercising these choices. The chosen methodology is qualitative in nature. The ontological stance of interpretive school and epistemological stance of social constructionist school of thought have been followed. Through theoretical sampling technique, thirty women were recruited as sample from Mianwali, Rahim Yar Khan and Lahore. Data was collected through an in-depth interview guide and the results have been derived through thematic analysis. The findings of the study portray the contemporary trend among women in Punjab to surrender their right of inheritance in favor of the male agnatic heirs. Among the socio-cultural determinants influencing the choices of women, patriarchal set-up, misinterpretation of divine commands, lack of awareness, stringent legal procedures and lower educational levels are the most significant. The study recommends effective awareness about inheritance rights both through accessible legal procedures and with the promotion of female education so that females be able to make informed choices.

**Keywords:** inheritance, right, women, surrender, claim, law, practice, Punjab

## Introduction

Pakistan, being an Islamic republic, deals with matters of inheritance according to the *Shari'ah* law, which grants women the right to inherit property. Islam recognized women's right of inheritance at a time when it wasn't the norm and women themselves were often inherited, passed on etc. as property.<sup>1</sup> It is stated in the Qur'an, "O ye who believe! It is not lawful for you to forcibly inherit the women (of your deceased kinsmen)."<sup>2</sup> It also assured women that their property, either inherited or self-acquired

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\*Correspondence concerning this article should be addressed to Iram Rubab, Assistant Professor, Department of Gender Studies, University of Management and Technology, Lahore, iramrasheed@umt.edu.pk.

<sup>1</sup>Asghar Ali, *Islam, Women and Gender Justice* (New Delhi: Gyan Publication House, 2001), 60.

<sup>2</sup>Qur'an: An-Nisā' 4:19.



through personal earnings before or after marriage, is exclusively their own and their male guardians don't have any claim over it.<sup>3</sup>

The Qur'ān is the primary source of guidance for all Muslims. It is combined with actions and sayings of the Holy Prophet (SAW) as well as other methods of Islamic juristic reasoning, e.g., consensus and analogical deduction, where needed. In case of inheritance, the Qur'ān not only declares inheritance to be a right of every human being, it also defines shares in each case.<sup>4</sup> Matters of inheritance have been *thoroughly* dealt with in its different chapters, namely *al-Baqarah*, *al-Maidah* and *An-Nisa*. It is clearly stated in the Qur'ān, "Unto the men (of a family) belongeth a share of that which parents and near kindred leave, and unto the women a share of that which parents and near kindred leave, whether it be little or much - a legal share."<sup>5</sup>

This verse refutes the custom of *Jahiliyya* under which women were just not allowed to inherit and was revealed on the Prophet (SAW) when the widow of one of his companions, Aws bin Thabit came to complain the customary practice in which she and her children had been ruled out from the inheritance of her husband. Since, by the time the 'verse of inheritance' was yet to be revealed, the Prophet (SAW) withheld his response. Thereupon, this verse was revealed and the unjust practice of *Jahiliyya* was removed.<sup>6</sup>

According to an incident narrated by Sa'ad bin Abbi Waqqas (RA), Prophet Muhammad (SAW) advised Sa'ad bin Khaula (RA), who was on his deathbed, to distribute his property among his wife and daughter rather than leaving it for charity. The priority here being leaving one's family well-off:

I was stricken by an ailment that led me to the verge of death. The prophet (SAW) came to pay me a visit. I said, "O Allah's apostle! I have much property and no heir except my single daughter. Shall I give two-thirds of my property in charity?" He said, "No." I said, "Half of it?" He (SAW) said, "No." I said, "One-third of it?" He (SAW) said, "You may do so though one-third is also too much, for it is better for you to leave your off-spring wealthy than to leave them poor, asking others for help. And whatever you spend (for Allah's sake) you will be rewarded for it, even for a morsel of food which you may put in the mouth of your wife." I said, "O Allah's apostle! Will I remain behind and fail to complete my emigration?" The prophet (SAW) said, "If you are left behind after me, whatever good deeds you will do for Allah's sake, that will upgrade you and raise you high. May be you will have a long life so that some people may benefit by you and others (the enemies) be harmed by you." But Allah's apostle (SAW) felt sorry for Sa'd bin Khaula as he died in Mecca (Sufyan, a sub-narrator said that Sa'd bin Khaula was a man from the tribe of Bani 'Amir bin Lu'ai).<sup>7</sup>

<sup>3</sup>Samar Fatima, *Study of The Status of Women in Islamic Law and Society with Special Reference to Pakistan* (Durham: University of Durham, 1986), 10.

<sup>4</sup>John L. Esposito, *Women in Muslim Family Law* (New York: Syracuse University Press, 2001).

<sup>5</sup>an-Nisā' 04:7.

<sup>6</sup>Muhammad Shafi, *Mariful Quran*, Vol. 2. 327-328, online version available at <http://kalamullah.com>

<sup>7</sup>Muhammad bin Ismail Bukhari, *Shahih Bukhari*, "Book of Inheritance Laws," vol. 8, book 80, Hadith No 725

The aforementioned incident highlights the importance of giving women their due share of inheritance in Islam. Particulars of the shares have been discussed in detail in different chapters of the Holy Qur'ān. According to the Islamic law of inheritance, there is no distinction between movable and immovable property or between familial and self-acquired property. For claiming inheritance, the only requirement is kinship with the deceased person. Moreover, the right of an heir, either apparent or presumptive, comes into existence for the first time on the death of kin.<sup>8</sup>

However, the situation in Pakistan is far from ideal.<sup>9</sup> Dominant cultural practices, norms and taboos pose numerous hurdles for women.<sup>10</sup> Many times dowry is given to compensate for the legal share of the bride in the heritable family property resulting in a tactful denial of the right of female inheritance. Although dowry was legally banned almost four decades ago, it had little impact on curtailing the practice. Customary practices encourage cousin marriages to ensure that property stays within the family and in extreme cases among feudal families, marriage to the Holy Qur'ān is a way to safeguard property. In other situations, women surrender their own right due to the fear that their families might disown them.<sup>11</sup>

Owing to widespread denial of this right, the GOP<sup>12</sup> passed a criminal law amendment in 2011 that declared forcible denial of women's inheritance to be a criminal offense. Nevertheless, the interplay of cultural practices and patriarchal intent still creates numerous hurdles for women. The current study is an attempt to explore the challenges faced by women in Punjab when it comes to their choices with regard to their right to inherit ancestral property; a major concern being the element of informed consent and free-will governing these choices along with the social engineering of these decisions. The objectives of the study are as follows:

- (a) Explore the choices of women regarding their right of inheritance
- (b) Identification of the socio-cultural determinants which shape the choices of women in claiming or surrendering their right to inherit
- (c) Investigate the challenges faced by women in claiming their inheritance

## 2. Methodology

### 2.1. Ontological and Epistemological Stance of the Study

This research followed the philosophical stance of the interpretive school of thought and the researcher adopted qualitative methods to determine the findings. Generally, qualitative researches intend to focus on discovery, insight and understanding from the perspective of those being studied. Merriam (2009) defined qualitative research as "Qualitative researchers are interested in understanding the meaning people have

<sup>8</sup> Dinshan Faridunji Mulla, *Mohamendan Law* (Lahore: Mansoor Book House, 2010), 38.

<sup>9</sup> Nausheen Ahmed, *Land Rights for Muslim Women: Review of Law and Policy* (Islamabad: SDPI Policy Brief Series, 2010), 6.

<sup>10</sup> Aftab Hussain, *Status of Women in Islam* (Lahore: Pakistan Educational Press, 1987), 11.

<sup>11</sup> Rubya Mehdi, *Gender and Property Law in Pakistan: Resources and Discourses* (Lahore: Vanguard Publication House, 2002), 136.

<sup>12</sup> Government of Pakistan



constructed, that is, how people make sense of their world and the experiences they have in the world.”<sup>13</sup> Keeping the aforementioned definition in mind, the researcher felt that the qualitative approach was best suited to answer the research question of this study. It allowed her to focus on the participants' abundant narratives with an open mind and assisted her in reaping a wealth of information from their individual experiences. Moreover, it also ensured that the experiences of the participants were not reduced to mere numbers which were mathematically accurate but remained at a distance from reality.<sup>14</sup>

The current research also followed the ontological stance of interpretive school of thought and the epistemological stance of the social constructionists. Epistemology as defined by Crotty is “a way of understanding and explaining how we know what we know.”<sup>15</sup> Hence, epistemology deals with the nature of knowledge, its possibility, scope and general basis.<sup>16</sup> This study was carried out on the basis of an extensive literature review which showed that the role of culture and customary practices is very powerful in shaping women's choices and practices regarding inheritance in Punjab.

The epistemological underpinning of this study recognizes the importance of the influence of cultural and social values as a process embedded in the social system in which women shape their choices to practice their right of inheritance. Thus, the current study adopted a social constructionist epistemology. The social constructionist theory, which is included in the interpretive paradigm of understanding reality, is comprehensively described by Posits who states that “truth, or meaning, comes into existence in and out of our engagement with the realities in our world.”<sup>17</sup> Further describing reality in a constructive way, Crotty states that “all knowledge, and therefore all meaningful reality as such, is contingent upon human practices, being constructed in and out of interaction between human beings and their world, and transmitted with an essentially social context.”<sup>18</sup>

## 2.2. Sample Size and Participant Recruitment

Thirty assorted women were selected as sample for this study; ten women from each of the three geographical and cultural strata of Pakistani Punjab, that is central Punjab, northern Punjab and south Punjab, were interviewed. For the recruitment of the participants of this study, an initial identification process was carried out through the revenue department of the respective region. Once the families of women were identified, the researcher contacted those families. However, due to the sensitive and personal nature of the research topic, it was difficult to recruit women participants without any personal links. In Mianwali, participants were recruited by exhausting family relations; while in

<sup>13</sup>Sharan B. Merriam, *Qualitative Research: A Guide to Design and Implementation* (San Francisco: John Wiley and Sons, 2009), 13.

<sup>14</sup>C. Wright Mills, *The Sociological Imagination* (Oxford: Oxford University Press, 2001), 125.

<sup>15</sup>Michael Crotty, *The Foundations of Social Research* (London: Sage Publishers, 1998), 3.

<sup>16</sup>Norman K. Denzin and Lincoln Yvonna, *Handbook of Qualitative Research* (Thousand Oaks: Sage Publishers, 2002), 15.

<sup>17</sup>Crotty, *The Foundations of Social Research*, 8.

<sup>18</sup>*Ibid.*, 42.

Rahim Yar Khan, participants were chosen with the assistance of Lady Health Visitors who were involved with the researcher in a previous project.

Similarly, participants from Lahore were enlisted through personal relations and with the assistance of *Dastak* Charitable Trust, where the researcher had worked as an interne and is still listed as a resource person. Even though in all cases the revenue department served as an initial gatekeeper, gatekeepers varied in each case; in some situations, family patriarch assumed this role while in others, it took the form of pressure from mother-in-laws.

### 2.3. Tools of Data Collection

To acquire a holistic view, the researcher opted for both empirical data and extensive literature. The semi-structured interview guide was used as a tool for data collection. Data was collected through in-depth interviews as it is the best method to gauge individual voices and personal experiences.<sup>19</sup> The in-depth interview guide was designed according to the research rule. The first part was based on demographics aimed not only to collect general information but also to make the respondents feel at ease and to develop a friendly environment for sharing personal information necessary to make the in-depth interview fruitful.

The second part of the in-depth interview consisted of general questions about the topic to prepare the respondents for further investigation. The third portion comprised semi-structured key questions which fulfilled the actual purpose of this research. The last portion of the interview was based on general recommendations to gather the valuable views of the respondents. Furthermore, the recommendations were aimed to make the detachment process easier and to leave the respondent with the peace of mind. The questions of the in-depth interview were mostly indirect. The guide was designed logically in such a manner that maximum information was gathered without any harm to the respondent's interests. As English was an alien language for most of the respondents, the tool was also translated into Urdu and communicated in regional languages where required.

### 2.4. Analysis Strategy

At first, the in-depth interviews were transcribed carefully and verbatim transcripts were made. The transcripts were then used in the analysis to understand the emic perspective of the study (the point of view of the study participants in their own words). Later, the data was made anonymous by giving fictitious names to participants in order to fulfil the ethical considerations and to ensure their safety. Then, the data was categorized after coding based on themes which rose from the responses, similar phrases and concepts to identify the challenges and choices of women to practice their right of inheritance.<sup>20</sup> To further ensure the trustworthiness of the research, triangulation method was used so that the findings from the in-depth interviews, personal observations and the data from union council and revenue office were fused to draw valid conclusions.

<sup>19</sup>Tom Wengraf, *Qualitative Research Interviewing* (London: Sage, 2001), 72.

<sup>20</sup>Amada Coffey and Paul Atkinson, *Making Sense of Qualitative Data* (Thousand Oaks, California: Sage Publishers, 2013), 46.



Essentially, the purely qualitative technique of thematic analysis was used to draw the conclusions.

### 3. Findings

The study investigated how the challenges confronted by women shaped their choices of claiming or surrendering ancestral property. The data revealed that the respondents of the study made either one of these two choices. Thus, the choices of women were categorized into two sub-themes; reasons which compelled women to claim their inheritance and causes behind the surrender of their right of inheritance. Since the cases of surrendering the right vastly outnumbered those of claiming it, the researcher has dedicated a major portion of this paper to exploring the reasons behind this fact. Over the course of data collection, the researcher observed that women usually surrender their inheritance in favor of their natal families, sometimes with their free will and only out of love. At the same time, in many cases they are forced to surrender their inheritance.

#### 3.1. Reasons for Claiming the Right of Inheritance

The data derived from the in-depth interviews showed that women usually claimed their inheritance only when they faced a financial crisis and know no other way out. One of the interviewees claimed her inheritance since her husband was out of job and it was becoming difficult for her to make both ends meet. She made her decision independently of her own will. The respondent was from Mianwali and had eight children. She voiced that, "I claimed my share in abject poverty. I don't have money to send my children to school and can't even provide them with proper nutrition. What's worse than hearing your children cry due to hunger and disease?" As a result, though she got her inheritance, she had to breakup from her natal family. Other circumstances when women asserted their claim were either when they were widowed, divorced or faced excessive pressure from their husbands or in-laws. In cases of joint family system, women mostly claimed inheritance due to pressure put on them by their in-laws.

Two of the respondents of this research were forced by their husbands and in-laws to claim their inheritance. Such situations are very painful for women as they lose in either case; if they claim their inheritance they risk detachment from their natal families and if they don't then their relations with their husbands and in-laws deteriorate. One of the participants of this study narrated her story, "After the death of my brother, who didn't have any male heir, I was unwilling to claim my share of inheritance. However, my husband forced me to do so. When I told him that I didn't want to claim due to my love for my nieces, he said are your nieces dearer to you than your own children?" Another respondent of this research said, "When inheritance opened in my natal family, my mother-in-law asked me to claim my share; since according to her my dowry was very small. As a result, I was forced to claim my share. Even though this dispute is still going on, I have been badmouthed by my brothers on several occasions." Then she woefully added, "I am no more respected by my natal family."

These incidents have made it obvious that there is no social acceptance of claims made by women over their rightful share of inheritance. Even if these claims have been made due to adverse social circumstances, women are deemed as bad and greedy. No heed is paid to the fact that these women have rightfully inherited their shares. Moreover, in most cases widowed women were seen to claim their inheritance. As one of the

respondents of this research from Rahim Yar Khan said, "At first I didn't claim my inheritance from my natal family. However, following the death of my husband, my brothers didn't even contact me on the deceased's first Eid. So I decided to claim my share in inheritance." This statement reveals that even if women claim their legal right they tend to justify their actions due to the lack of social acceptance of their claims.

A very small number of women have been reported to claim their inheritance on the basis of their personal will. Only one of the respondents of this research claimed her inheritance by her own will and she was facing no financial crisis and or pressure from her in-laws. She belonged to Lahore. She made her decision independently and stated that, "I claimed my share due to my own will and had no other causes pertaining to it. I did so because I wanted to do charity in the name of my parents who bought me up with utmost love and care."

All of the aforementioned cases reveal that claims made by women on the basis of their own will are very rare. Often, they make claims due to adverse circumstances ranging from financial crisis to pressure from in-laws.

### 3.2. Reasons for Surrendering and Challenges Faced by Women in Claiming their Inheritance

Through extensive fieldwork, the researcher identified a number of socio-economic factors which determined the choices of women regarding their inheritance. These factors comprised a lack of awareness among women, social pressure put on women, emotional attachment of women with their brothers, etc. The data identified that a majority of women renounced their right of inheritance in favor of their male relatives in order to conform to social norms and values. The reasons that compel women to forgo their shares are discussed in detail in the following paragraphs.

One of the most significant reasons found behind the surrendering of property by women was lack of awareness; a theme which will be expounded upon later in this article. In nearly all the selected areas of Punjab, it was felt that women were made to believe that if they asked for their share in the inheritance, they were in fact overriding the rights of their brothers. When asked why women surrender their inheritance from natal families in favor of their brothers, one respondent replied that, "Those women aren't good who ask for sharers from their brothers' property." This statement revealed that the concept of inheritance was completely misunderstood by many women residing in remote areas and they were unaware that inheritance from the property of their ancestors or other members of family was their fundamental human right. This misconception had led women to believe that they could not inherit property.

Likewise, dowry also played a crucial role in the surrendering of inheritance by women. Many respondents of this research, especially those from remote areas, believed that dowry acted as an alternative for inheritance. This revealed that in north and south Punjab, where dowry is considered as a power equivalent of inheritance, many women surrendered their right to inheritance due to it. Additionally, in certain cases where the in-laws of women were quite rich, they stopped them from taking inheritance from their natal families. One of my respondents narrated her story in which her in-laws didn't allow her to take the property she inherited from her natal family because they thought that it was an insult for them.



Fieldwork revealed that most women surrendered their right to inheritance due to emotional attachment with their natal families and in rare cases, due to pressure from their in laws. In other cases, where women received their inheritance as widows, the trends were contrary to their attitude towards natal inheritance.

### 3.2.1 Lack of Awareness

The data illustrated that none of the respondents had a comprehensive understanding of the female right of inheritance through an authentic source. The data further revealed the respondents of the current study who belonged to religious backgrounds or were slightly educated and had knowledge about the Islamic view of female inheritance. On the contrary, most of the women from Rahim Yar Khan and Mianwali had insufficient knowledge about Islam, which in many cases was heavily laden with misconceptions about the female right of inheritance in accordance with *Shari'ah* law. The findings identified that only a few participants of the study were aware about the legal bindings related to inheritance but were only aware about two or three major legislations regarding inheritance such as the Muhammadan Law of Inheritance.<sup>21</sup> Most of these interviewees belonged to Lahore and were well educated. However, a general lack of awareness was observed with regard to the recent legislation about women's right of inheritance. It was revealed through data that the level of awareness among women in Lahore was much better than among those from Mianwali and Rahim Yar Khan.

### 3.2.2. Absence of Proper Legal Documentation

In order to claim inheritance various legal documents are required like birth certificates, CNICs, *Nikahnamas*<sup>22</sup> and in case of minors, B-forms. Although the Government of Pakistan has taken many concrete steps to ensure the proper registration of such documents, the findings of the study reflected that the absence of proper legal documentation was still a major obstacle for women in claiming their right of inheritance. It was found that the trend of having no legal documents was still common and very much intact in less educated families, especially in areas of Mianwali and Rahim Yar Khan. Moreover, an incident of the absence of proper documentation was also found in Lahore that had resulted in the female participant losing her rightful share. In general, the situation was found to be a bit better in comparison to the findings of previous researches.

### 3.2.3. Primary Socialization: A Problem

Primary socialization of girls predetermines their decisions as women. Girls are taught about the superiority of their brothers through various tales. A similar phenomenon is found in all selected areas of Punjab. Proverbs such as "*Piyo day puttār praye puttārān nalo chngay honday ne,*"<sup>23</sup> are widely regarded as quotes of wisdom. This particular proverb lays down the foundation of the belief that it is better to give property to your father's son than to someone else's son. This concept is very popular because whenever women inherit property in the form of land from their parents, they have to

<sup>21</sup>The *Shari'ah* law of inheritance, which governs matters of inheritance in Pakistan. It was the first legislation that took place in this regard (modification of the British Law of inheritance after partition).

<sup>22</sup>Marriage contracts

<sup>23</sup>Your father's sons (your brothers) are better than someone else's.

hand it over to male members of the family, e.g., husband or father-in-law due to the lack of women's own social mobility. In either case, it means that they lose control of their land; women prefer to lose it in favor of their own brothers.

### 3.2.4. Emotional Attachment with Brothers - A Social Security Net

The results showed that the primary socialization process of girls further results in their insurmountable emotional attachment with their brothers. Girls, from a very early age, are taught that their brothers are superior to them because they can provide them an unparalleled form of security. Moreover, they are told that brothers are always going to be the *waris*<sup>24</sup> of the family. Thus, to maintain a good relationship with her natal family women should not defy them and try their best to sustain a congenial relationship with their brothers. The findings went on to highlight that many women surrender their inheritance either because they want social security from their brothers or simply out of love for them. It was observed that the trend to surrender property in favor of brothers was common among women from all the selected areas. This practice of surrendering their right out of love was found to be common among some highly educated women as well.

### 3.2.5. Common Perception: Dowry as an Alternative to Inheritance

Although many other customary practices came into play in depriving women of their inheritance, data analysis revealed that dowry played the most influential role. The practice of giving dowry is not enforced by Islam and is not even practiced to such a great extent in other Islamic countries other than the South Asian countries, where the custom was already a significant part of the Hindu culture and sustained conversion to Islam. The results of this study revealed that dowry was believed to be a perfect alternative to female inheritance from agnatic families. It was seen that even some women preferred dowry to their inheritance despite the fact that it only brings a short-term benefit and has very little monetary value in contrast to actual inheritance. The findings further revealed that the misconception of dowry as an alternative to female inheritance from natal family was quite prevalent in areas of Mianwali and Rahim Yar Khan. However, due to increased educational levels and awareness, it was observed to play a less significant role in depriving women of their inheritance in Lahore. The research results expounded the fact that unless the government dealt with matters of dowry with an iron fist, it would be almost impossible to abolish this custom.

### 3.2.6. Absence of Female Staff in Revenue Departments

Another problem highlighted by the research results was the absence of female staff in the revenue department. It was revealed that if any woman claimed her inheritance, it became very difficult for her to communicate with the revenue officers due to a rigid form of *pardah*<sup>25</sup> that is still being practiced in areas of Mianwali and Rahim Yar Khan. The problem was exacerbated by the fact that women were uncomfortable while talking to men who were practically strangers to them. Furthermore, the findings of

<sup>24</sup>Heir/successor/inheritor commonly refers to male offspring in Pakistan.

<sup>25</sup>A practice in certain Muslim societies that limits women's interaction with men outside the family. It differs from community to community due to differing interpretations of Qur'ān. It varies from completely isolating women in houses to making them observe certain dress codes (headscarf, *abaya*, etc.) that encourage modesty when outside the house.

the study unveiled the fact that due to this custom, the role of *patwaris*<sup>26</sup> was quite crucial in depriving women of their inheritance since they favored men over women due to their personal relations with the former. Regardless of the recent measures taken by the government to computerize the documents, *patwaris* still manipulated the records and exploited women. The negative role played by *patwaris* was reported by many respondents, especially those from Mianwali and Rahim Yar Khan, who claimed that there was no solution to this problem other than deploying female staff in revenue offices. According to them, it would not only negate the role of *patwaris* but would also make the interaction of women who were seeking aid in matters related to inheritance easier.

### 3.2.7. Stringent Legal Procedures

The legal system was found to be the only effective remedy through which women could have their share of inheritance on a permanent basis. However, the results identified that due to difficult legal procedures women were reluctant to use this remedy to claim their inheritance. The difficulties identified by the researcher through interaction with the respondents mainly included high expenditure on lawyers, courts located very far from small villages in southern and northern Punjab, only male staff in revenue offices and unsteadily slow procedures of the court. Coupled with them, the restricted social mobility of women played a critical role in their choice to rely on decisions made by *jirgah*<sup>27</sup> and consequently being deprived of their inheritance.

Although in the past decade some women friendly legislation was passed in Pakistan to protect their rights, the findings of the study revealed that a vast gap existed between the law and its implementation which remains a major hurdle in meeting the designated goals.

### 3.2.8. Dominant Role of Custom and Culture

Extensive fieldwork revealed that customs and cultural practices in many areas of Punjab associate multiple responsibilities with brothers. Brothers act as protectors for their sisters if they pick a fight with their husbands, are widowed or divorced. This implicates financial help as well. Additionally, brothers of a deceased woman are to perform the rituals of her funeral, which also includes the expenses on coffin and *qul*.<sup>28</sup> If a woman's brother doesn't perform all of these rituals, the deceased woman and her family are no more respected. Another common practice in Punjab is that not only on events of grief but also on occasions of happiness such as Eids, *Shab-e- Barat*<sup>29</sup> etc. brothers have many obligations to fulfil. On such occasions, they are obliged to send gifts to their sisters. On the marriages of the children of their sisters, bothers contribute a lot in

<sup>26</sup>A government revenue official, who keeps records of land ownership and is responsible for making new entries, etc.

<sup>27</sup>Informal institutions of conflict resolution that are presided over by male elders of a locality.

<sup>28</sup>Also known as *soyam*, a prayer is organized two or three days after a person's death in which the whole local community participates. In case of women, their natal families are expected to pay for the expenses.

<sup>29</sup>The night of fifteen *Shabān* (Islamic month), considered religiously important for Muslims.

terms of money, gold etc. In local language, such expenses on the marriage of nieces are known as *nankichakh*.<sup>30</sup> These practices were found to be very common in remote areas, though they are now rarely practiced in the cities. Many respondents of this research revealed that surrendering natal inheritance was a bargain women made in order to keep other options open in case of divorce, widowhood or any unfortunate occurrence. In such instances, good relations with the natal family are important in ensuring that the women don't get insulted by their in-laws and the society. Along with it, other social stigmas prevent women from making claims such as women who claim their property are labeled as 'greedy' by the society.

### 3.2.9. Fragmentation of Land

The Islamic concept of inheritance is based on the devolution of property among the rightful heirs rather than the accumulation of wealth in the hands of a few. On the contrary, the findings of the research unveiled a totally different situation in all areas selected for the research. It was found that the fear of fragmentation of landed property was a major cause behind the denial of women's right of inheritance. Field research revealed that low productivity of land was used as an excuse by the patriarchy to support their practice of forceful denial. Moreover, it was observed that to prevent the fragmentation of land, in some rare cases women were given an amount of money equal to their share in landed property or were completely denied their share.

### 3.2.10. Misinterpretation of Religion: A Patriarchal Reading

Data collected from the field revealed that misinterpretation of Islamic teachings also played a crucial role in depriving women of their right of inheritance. Extensive fieldwork highlighted that a lack of awareness and patriarchal motives were the major reasons behind the misinterpretation of divine teachings. Islam orders women to observe *pardah* but doesn't restrict them from engaging in social activities. Furthermore, Islam doesn't inhibit women from taking part in economic activities. Conversely, *pardah* was discovered to be practiced in a very rigid form and women were restricted to their homes. The misconception that women were ordered by Islam to necessarily stay inside and perform domestic duties only resulted in their exclusion from development and progress. This phenomenon was found to be quite prevalent in the areas of Mianwali and Rahim Yar Khan. Moreover, it was observed during fieldwork that men's role in Islam as protectors and maintainers of women had been misconstrued and men were even believed to be superior to women in some areas of Punjab. Even a large number of the respondents of this study belonging to Mianwali and Rahim Yar Khan believed that men were better than women. Such misinterpretations of religion made an easy way for the perpetrators to deny women's right to inherit without any resistance from the other side.

### 3.2.11. Role of Language: Reiterating the Gender Bias

According to the researcher's observation during the in-depth interviews and focus group discussions, local languages were contributing a lot in strengthening gender bias in the society. The induced gender bias then acted as an influential factor behind the

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<sup>30</sup> Special gifts given in dowry to girls mainly in the form of gold or other expensive things by maternal uncles or grandfathers. These are mostly given in cases where women surrender their natal inheritance in favor of their brothers.

denial of the women's right of inheritance. Concepts like *waris*, *janna*<sup>31</sup> and *paraya dhan*<sup>32</sup> all were endorsed by the society through language and eventually became an essential part of socialization.

#### 4. Discussion

The objectives behind the research question posed were the following:

- (a) Explore the choices of women regarding their right of inheritance
- (b) Identification of the socio-cultural determinants which shape the choices of women in claiming or surrendering their right to inherit
- (c) Investigate the challenges faced by women in claiming their inheritance

It was unveiled by the findings that it was not a single factor but a combination of many socio-cultural aspects that resulted in the denial of female inheritance, such as lack of awareness, unsupportive legal system, the absence of female staff in the revenue department, restricted social mobility of women etc. It was also realized during data analysis that women were reluctant to even claim their rightful share of inheritance due to a general lack of awareness about their right and how they could opt for legal aid in this regard.

Their hesitation also stemmed from the fact that the legal system in Pakistan is perilously slow and due to the restrictive movement of women they could not access courts without the support of male family members. During the in-depth interviews with the participants, it was noted that they preferred to capitulate their property because in a patriarchal society women don't have tangible control over their lands. In this context, women generally prefer to surrender their inheritance in favor of their brothers due to the security which comes with it. This idea is further supported by the bargain theory and was substantiated in the field, proving that a woman's choice of yielding her property in favor of her brothers rose more from the need to cement her relations with them as compared to her attachment with her brothers.

The findings of the current research also reiterated the fact which had been bought up previously in NCWS' research on female inheritance in Pakistan; which is the largest research conducted on the issue. The NCWS study found that a lack of proper documentation and the negative role of *patwaris* were the most detrimental factors which prevented women from claiming their inheritance.<sup>33</sup>

Moreover, the study highlighted that a lot needs to be done in this context, even after extensive work done by the government, like the introduction of databases and computerized registration system in some areas of Punjab. NCWS's research also considered patriarchy to be one of the most harmful features of the society; it played the main role in preventing women from gaining their inheritance. However, the current

<sup>31</sup> Male member of a family, this phrase embodies patriarchal notions of masculinity.

<sup>32</sup> A phrase used to refer to daughters. Although *dhan* roughly translates to money or wealth, in this case it refers to daughters. It means how in actuality daughters don't belong to their natal families as they'll get married one day and leave.

<sup>33</sup> Viqar-ul-Nisa, *Women Right of Inheritance and its Implementation* (Islamabad: NCSW, 2006), 67.

study found that patriarchy is gradually weakening, as in rare cases male family members are taking steps to support the females in their family by giving them their legal shares of inheritance. Moreover, 2011's amendment is also having a positive effect on the society and three respondents of this research also benefited from it. This showed that awareness about the female right of inheritance should not only be created among women but should also be created among the male members of the society.

Previous researches highlighted that the discussion of women's rights was considered a taboo topic, but fieldwork during this study illustrated that women have gradually started to open up and discuss their issues. In most of the situations, dowry was considered to be an alternative of inheritance and had led to an imminent denial of inheritance from the natal families; a problem which was first explained by Rubia Mehdi in her book *Gender and Property Law in Pakistan*.<sup>34</sup>

Similarly, Prem Chowdhry (2009) in his book *Understanding Women's Land Rights: Gender discrimination in Land Ownership* emphasized that dowry in South Asia is considered to be the equivalent of inheritance and so women are expected to never claim their inheritance.<sup>35</sup> At the same time, the findings of the study revealed that fragmentation of agricultural land was the fear which compelled many landlords to deny the inheritance of females in their family. Agarwal linked the idea of denial of female inheritance with fragmentation in a comprehensive manner.<sup>36</sup> The concept was later endorsed by many researches and is still found to be one of the most predominant factors influencing the denial of female inheritance.

Awāz Foundation's research highlighted that the incidences of violence remain directly proportional to the denial of the female inheritance of landed property.<sup>37</sup> Fieldwork showed that violence coupled with the denial of female inheritance had an adverse effect on women's status in society. In the light of existing literature and the current study, future researches should focus on south Punjab, where patriarchy is at its peak along with the role of language in determining women's choices.

## 5. Conclusion

The primary aim of the paper was to explore the choices that women in Punjab have when they practice their right to inherit as well as the challenges they confront in independently exercising their right. Data analysis highlighted the lack of awareness among women of their legal rights, low level of female education and the misinterpretation of religion as the key obstacles hindering women in claiming their right of inheritance. It was also realized that surrendering property in favor of brothers is a bargain on a woman's behalf as it strengthens her relationship with her brothers that consequently brings her social security and is not primarily due to any emotional

<sup>34</sup>Rubia Mehdi, *Gender and Property Law in Pakistan: Resources and Discourses* (Lahore: Vanguard Books, 2002), 12.

<sup>35</sup>Prem Chowdhry, *Understanding Women's Land Rights: Gender Discrimination in Land Ownership* (New Delhi: SAGE, 2009); *Land Reforms in India*, Vol. 13

<sup>36</sup>Bina Agarwal, *A Field of One's Own: Gender and Land Rights in South Asia* (Cambridge: Cambridge University Press, 1994), 34.

<sup>37</sup>Saeed ur Rehman, *Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic and Societal Violence* (Islamabad: AWAZ Foundation: Centre for Development Services, 2010), 16.



attachments which are a part of her primary socialization. Extensive measures taken by the government have to a certain extent reduced the negative role of *patwāris* through the introduction of the Land Revenue Management Information System (LRMIS) but the playing field is still unequal for women. 2011's amendment in law has given a lot of hope to women and it was felt that steps like these will surely empower them. Prohibition of dowry and strict implementation of the law by the government will surely reduce the number of women deprived of their right of inheritance.

Women friendly laws focusing on the ease of access (to courts) of all women and not just married ones, as is the case with 2011's criminal law amendment, should be made. Inheritance deprivation often occurs through forced marriages, however, reporting such cases remains rare in Pakistan. Similarly, deceitful deprivation can't account for cases in which women are unfairly persuaded to relinquish their shares.<sup>38</sup> Moreover, concerted efforts should be made to create awareness of these laws among the masses. The process of mass awareness can be made more effective by popularizing *ahādith*<sup>39</sup> on the importance of inheritance law; a very significant one on this subject is given below, "O Abu Hurairah. Learn about the inheritance and teach it, for it is half of knowledge, but it will be forgotten. This is the first thing that will be taken away from my nation."<sup>40</sup> If the recommended measures are strictly implemented, the denial of female inheritance will surely decrease.

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<sup>38</sup> Sarah Zaman, *Forced Marriages and Inheritance Deprivation in Pakistan* (Lahore: Aurat Publication and Information Service Foundation, 2014), 115.

<sup>39</sup> Sayings of Prophet Muhammad (SAW)

<sup>40</sup> Ibn Majah, *Sunan Ibn Majah: Chapters on Shares of Inheritance*, Vol. 4, Book 23, Hadith no. 2719.

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