

Mapping the status of Women Right of Inheritance in Pakhtun Society: A comparison of Islamic Injunctions & Community Practice

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Abstract

The study aims to map the status of women right of inheritance in Pakhtun society with reference to Islamic injunctions and community practice. For ideal status verses of Holy Quran and traditions of Holy Prophet regarding women right of inheritance are collected. For actual status, a sample size of 100 respondents who (own agricultural land) are contacted through questionnaire. Respondents are selected through convenient sampling method including 50 male and 50 female at village Dheri of tehsil Katlang. The study concludes that respondents in target area are reluctant to follow Islamic principles with reference to women right of inheritance. Majority of Pakhtun families do not give women inheritance rather provide cash or kind in lieu of their actual shares. Even Pakhtun society consider dowry as substitute of women right of inheritance. Economic dependency on men, fear of social breakup and conflicts with family are the reasons that pressurize women not to press for their share.

Religious scholars should be involved to teach the masses to fulfill their religious obligation of providing actual share of inheritance to women.

Keywords: Women right of Inheritance, Pakhtun Society, Islamic teachings

Introduction

Pre-Islamic Arab culture and normative structure was male dominated and did not favor women in almost every field including property rights. Women had no right to inherit property from father or husband. The Arab had a principle that only those will inherit who can ride horse and can fight in the battle field¹. By that time, this principle clearly favored men and disfavored

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with reference to the right of inheritance. Similarly Arabs used to deprive women from the right of inheritance in pre Islamic society.

"In pre Islamic traditions women had no assured right of inheritance, which in many cases was a matter between men, the men of the husband's clan or her own relatives. When a man lost his father, brother or son and that person left a widow, the heirs used to take advantage of the privilege of the dowry paid by the dead man. They used to deprive women of the right to the part of inheritance constituted by dowry²."

In order to realize the status of women, Islam grants her different type of rights like right to life, education, marriage, Mahar, divorce etc. Among these rights one is the right of inheritance. Islam entitles both men and women to inherit from the deceased person. However, the shares of men and women are different in inheritance. These shares are justifiable in Islamic society, keeping in view the status and role of men and women in Islamic society. It is in the Holy Quran that men and women have shares in inheritance.

"To men (of the family) belongs a share of that which parent and near kindred leave and to women a share of that which parents and near kindred leave whether it be little or much- a determinate share³."

It is crystal clear from the above verse of the Holy Quran that Islam entitles women the right of inheritance in the legacy of deceased person. In other verses of Surah Al- Nisa 11, 12, 176, the shares of wife, mother, sister and daughter in different cases are mentioned clearly. There are a number of traditions/ Hadiths of the Holy Prophet Muhammad (PBUH) regarding inheritance, women inheritance, shares of women in inheritance and traditions stressing muslims to give heirs (men and women) their share in legacy.

Islam is a complete code of life which not only provides rather ensures social space to women in Islamic society⁴.

In Islamic society men (father and husband) are responsible to provide food, cloth and shelter to female members of family. Women can earn money and earned money is her right. Likewise economic status of women is safeguarded by providing women right of inheritance and other property rights. Although Islamic injunctions are clearly about women right of inheritance but this is somehow ideal status of women inheritance. We are living in Pukhtun society, Pukhtun have own customs, traditions and practices. Though Pukhtun are Muslims but they practice Pukhtun culture as well. In Pukhtun society some time people prefer their culture or own practices over religion in different matters. If we talk about women inheritance than the real status of women inheritance is much different from the ideal status⁵. Though Islam entitles women the right of inheritance but usually, in Pukhtun society people

are reluctant to give women the right of inheritance⁶. In this case, Pakhtun practice their culture and are reluctant to follow the religious teachings⁷. The issue is having economic aspect well as it is a gendered one. As it involves women and men dominated social structure cannot be ignored in this regard⁸.

In many cases inheritance right of women are either ignored or altered beyond recognition. Fight occurs and families breakoff to form new nuclear kin units which often results in self-perpetuating blood feuds⁹.

In the context of discussion made so far, the present study is designed to

1. Briefly highlight the ideal status of women right of inheritance in Islam
2. Delineate the awareness status of respondents about subject matter
3. Analyze the status of women right of inheritance in Pakhtun society
4. Compare the Islamic ideal and Pakhtun real status of women right of inheritance

The following section presents methodology adopted for carrying out the present study.

Methodology of the study

Mardan is district of Khyber Pakhtunkhwa. Mardan district is having 3 Tehsils. It includes Mardan, Takhtbhai and Katlang. The current study is carried out in Dheri, a big populated village of Tehsil Katlang. The reason behind the selection of target area was due to low ratio/practice of giving shares to women in inherited land. All land owner families are potential respondents for the purpose of data collection. Majority people of the locality own agricultural land in the region. Data was collected from those whose families are in possession of agricultural land. 50 male respondents and 50 female respondents are selected for data through convenient sampling method. Thus the total sample size of male and female respondents becomes 100. Respondents ages were between 20 years to 45 years. Majority i.e. 69 percent of the respondents are married, 25 percent of the respondents are unmarried while the remaining 6 percent are widowed. Moreover 80 percent own agriculture land and remaining the 20 percent do not own land. Male respondents are directly approached at their residences for the sake of early receipt of filled copies of questionnaire, whereas female respondents are interviewed through trained female investigators. Questionnaire was utilized as a tool of data collection from the literate respondents, whereas illiterate or less literate respondents are asked through interview schedule. Interview schedule remained a more effective tool as the researcher reasoned at any contradictory answer from respondents and so ensured more accurate data. For ideal status Quranic verses and Traditions of the Holy Prophet are collected and presented in

articulated manner. The collected data is analyzed through descriptive method and tables are generated.

Discussion on the Ideal Status of Women Right of Inheritance in Islam

Islam grants both men and women the right of property inheritance. The shares of both men and women in different relations and cases are clearly mentioned in the Holy Quran and traditions of the Holy Prophet Muhammad Peace Be Upon Him. The regulation set in the Holy Book is used as the basis of distribution of the deceased properties in Islam.

Verses of Holy Quran Regarding Inheritance/The Status of Women Property Inheritance In Islam

Islam grants both men and women for right of property inheritance. It is stated in Holy Quran that:

"From what is left by parents and those nearest related there is a share for men and a share for women, whether the property be small or large, a determinate share¹⁰."

In Islam, the share of a man is equal to the share of two women. It is stated clearly in the Holy Quran,

"Allah (thus) directs you as regards your children's (inheritance): to the male, a portion equal to that of two females. If only daughters, two or more, their share is two-thirds of the inheritance. If only one, her share is a half. For parents, a sixth share of the inheritance to each, if the deceased left children. If no children and the parents are the (only) heirs, the mother has a third. If the deceased has brothers (or sisters) the mother has a sixth. After payment of legacy and debts. Ye know not whether the parents or your children are nearest to you in benefit. These are settled portions ordained by Allah, and Allah is All Knowing, All Wise¹¹."

In Islam the shares of different relatives are specified in the following verse of the Holy Quran,

"In what your wives leave, your share is a half, if they leave no child. But if they leave a child, ye get a fourth, after payment of legacies and debt. In what ye leave, their share is a fourth, if ye leave no child. But if ye leave a child, they get an eighth, after payment of legacies and debts. If the man or woman whose inheritance is in question, has left neither ascendants nor descendants, but has left a brother or a sister, each one of the two gets a sixth. But if more than two, they share in a third, after payment of legacies and debts, so that no loss is caused. Thus is it ordained by Allah, and Allah is All-knowing, Most Forbearing¹²."

The inheritance of a person who leaves no descendants or ascendants as heirs is dealt in the light of below verse of the Holy Quran.

"They ask thee for a legal decision. Say: Allah directs (thus) about those who leave no descendants or ascendants as heirs. If it is a man that dies, leaving a sister but no child, she shall have half the inheritance. If (such a deceased was) a woman, who left no child, her brother takes her inheritance. If there are two sisters, they shall have two thirds of the inheritance (between them). If there are brothers and sisters, (they share), the men having twice the share of the female. Thus doth Allah make clear to you (His Law)¹³"

Another verse of the Holy Quran regarding women inheritance is as under

"O ye who believe! Ye are forbidden to inherit women against their will¹⁴."

Traditions/ Hadiths of the Holy Prophet Muhammad(SAW) Regarding Women Right of Inheritance

Islam bestows both men and women for right of property inheritance. The shares of both men and women in different relations and cases are clearly mentioned in the Holy Quran and traditions of the Holy Prophet Muhammad peace be upon him. Following are some traditions of the Holy Prophet Muhammad Peace Be Upon Him regarding women right of inheritance.

It is narrated by Hazrath Abu Huraira R.A that the Holy Prophet said that;

"Sometimes it happens that a man or a woman spends his sixty years life in the obedience of Allah but whenever death approaches them. So in making will, they deprive their heirs. These people will be put into hell¹⁵."

Similarly another tradition narrated by Hazrath Anas R.A. that the Holy Prophet said:

"Those who deprive their heirs from their shares in inheritance, Almighty Allah will deprive them from paradise¹⁶"

Another tradition reported by Hazrath Abu Imam states that Holy Prophet said on the eve of hujathul_widha.

"Verily Allah has specified share of each heir in legacy, so it is not legitimate for a person to increase the share of a person in legacy¹⁷"

Hazrath Jabir bin Abdullah reported that widow of Hazrath Saad bin Rabi along with his daughters visited the Holy Prophet and said these are the daughters of Saad bin Rabi who was martyred in the battle of Uhud. Their uncle has taken away all the property and nothing is left for them. These girls are unmarried. The Holy Prophet said that:

"Allah will make a decision on it and then verses of Surah al Nisa are revealed. The Holy Prophet sent a message to their uncle and ordered to give one third of property to the daughters of Saad bin Rabi and one eighth to the widow and the remaining is yours¹⁸"

Likewise Hazrath Saad reported that the Holy Prophet came to enquire about my health when I was ill. I asked the Holy Prophet that I have only one

daughter can I make a will of all the property in favor of my daughter, HolyProphet said no, then I asked can I make a will of half of the property in favor of my daughter the HolyProphet said no, then I asked one third of property the HolyProphet said yes you can give one third of your property to your daughter¹⁹.

An incident occurred during the lifetime of the HolyProphet. A person named AOs bin sabith died and left three minors children and one widow it was generally practiced at that time to deprive minors and widow from inheritance. Nephews of the deceased person came and took the possession of all the property. The widow approached the HolyProphet and complained about it. The HolyProphet waited because till that time verses regarding inheritance are not revealed. Later on the verses revealed and HolyProphet distributed the property in such a manner that one eighth of property was given to the widow and remaining property was divided into two parts. One part was given to son and other part was given to two daughters as in Islam the share of a son is equal to the shares of two daughters²⁰.

Results and discussion on real status

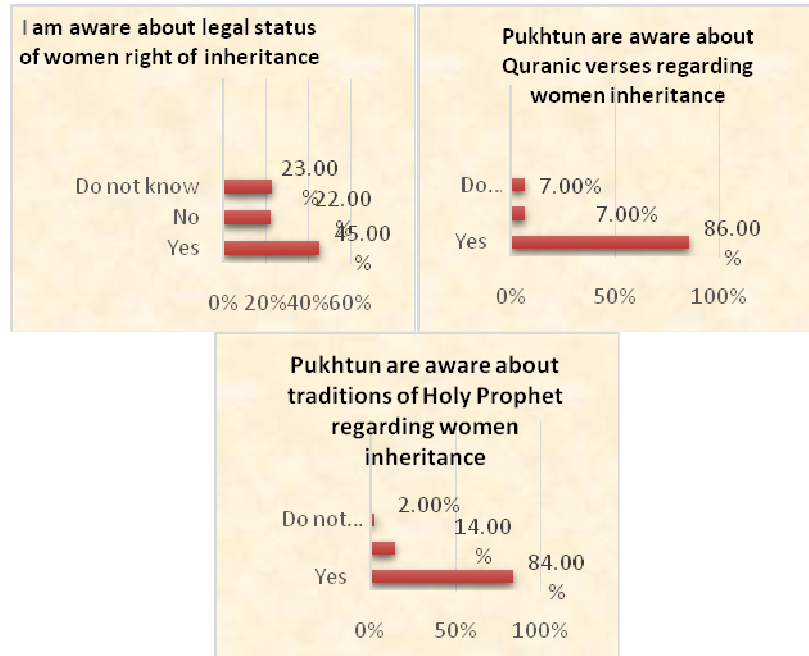
The following section deals with analysis of data collected through questionnaire.

Awareness about right of inheritance

The table shows awareness of respondents about womenright of inheritance. The table reflects that out of total respondents (100), 87 percent of the respondents are personally aware about womenright of inheritance, 08 percent of respondents are not aware while the remaining 5 percent of respondentare uncertain. Similarly table further demonstrates that86 percent of the respondents affirm that Pukhtun are aware about the Quranic verses regarding womeninheritance, 07 percent of the respondents negate it while the remaining 07 percent of the respondent are undecided. Likewise 84 percent of the respondents affirm that Pukhtun are aware about traditions of HolyProphet regarding womeninheritance, 14 percent of respondents negate it while the remaining 02percent of the respondent state that they do not know. 45 percent of the respondents affirm that they are aware that inheritance is a legal right of female, 22 percent of the respondents negate it while the remaining 23 percent of the respondent are undecided.

Although majority of the respondents (45%) are aware about the legal status of women however the overall results shows that Islamic influence with reference to awareness is higher than legal influence awareness.

Table No_ 1 Respondent’s Awareness about Women Right of Inheritance



Status of Female Inheritance in Pukhtun Society

The above table demonstrates the status of provision and non-provision of shares in inheritance. Out of total respondent 100 percent, 46 percent give women share in inheritance while 56 percent do not give women share in inheritance. Similarly 26 percent of the respondent affirm that demand of women share in inheritance is fulfilled by relatives, 70 percent of the respondents negate it while 4 percent of the respondents are undecided. Likewise 24 percent of the respondents affirm that women are given full share, 68 percent of the respondents negated while 8 percent of the respondents state that they do not know. The data shows that 81 percent of the respondents affirm that women get their right through litigation, 12 percent of the respondents negate it while 7 percent of respondents are uncertain about the statement. It is also reported that 85 percent of the respondents affirm that women are persuaded, 10 percent of the respondents negate while 5 percent of the respondents stated that we do not know. Similarly 88 percent of

therespondents affirm that womenare persuaded in cash, 16 percent of the respondents negated while 6 percent of the respondents are uncertain.

The data exhibits that 77percent of the respondents affirm that after taking shares, women are not supported even in case of emergency or conflicts, 18percent of the respondents negated it while 5 percent of the respondentsare undecided about the statement..As the findings shows that73 percent of the respondents affirm that Pukhtun consider dowry as substitute of womenright of inheritance, 21 percent of the respondents negate it while the remaining 6percent of the respondentsare uncertain. It is evident from results that 92percent of the respondents affirmthat parents exclude daughters 4 percent of the respondents negate it while 2 percent of the respondents were undecided. Findings suggest that 92 percent of the respondents affirm that disinheriting women is general practice of Pukhtun society, 4 percent of the respondents negate it while the remaining 4 percent of the respondents are undecided.

Table No_ 2 Status of Female Inheritance in Pakhtun Society

STATEMENT	Yes	No	Do not know	Total
Women are given share in inheritance by their relatives	44(44)	56(56)	(0)	100(100)
Women demand their share in inheritance	53(53)	47(47)	0(0)	100(100)
Demand of share in inheritance is fulfilled by relatives	26(26)	70(70)	4(4)	100(100)
Women are given full share	24(24)	68(68)	8(8)	100(100)
Women get their right through litigation in court	81(81)	12(12)	7(7)	100(100)
Women are persuaded to relinquish their right of inheritance	85(85)	10(10)	5(5)	100(100)
Women are persuaded in cash or kind in lieu of their share in inheritance	88(88)	6(6)	6(6)	100(100)
Those female who have taken shares are not supported even in case of emergency and conflicts	77(77)	18(18)	5 (5)	100(100)
Pukhtun consider dowry as substitute of women share in inheritance	73(73)	21(21)	6(6)	100(100)
Parents exclude women from inheritance by transferring property to sons during their life time.	92(92)	4(4)	4(4)	100(100)
Pukhtun consider disinheriting women as general practice of society	92(92)	4(4)	4(4)	100(100)

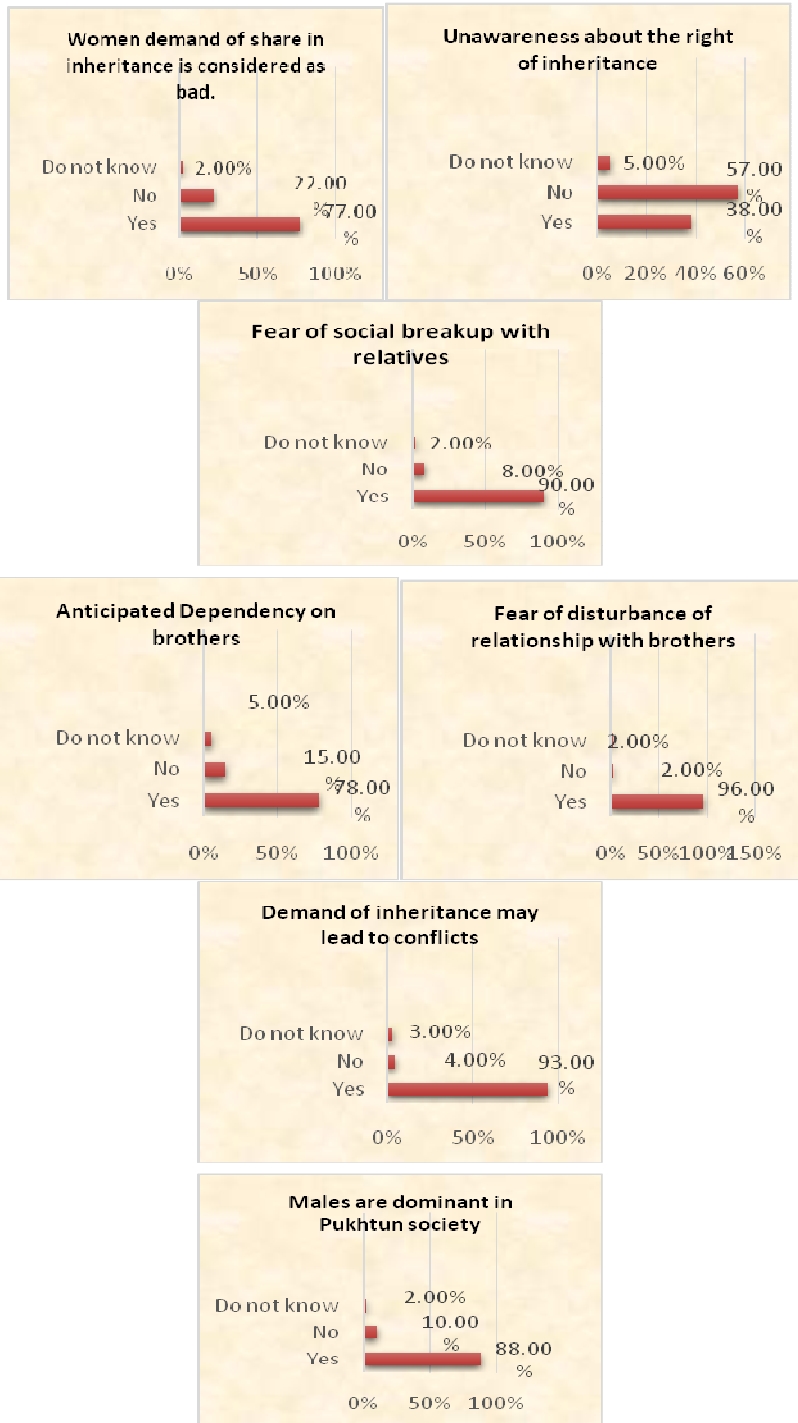
Reason for non-demand of inheritance by Women

The table reflects that 77 percent of the respondents affirm that demand of share in inheritance is considered as bad, 22 percent of the respondents negate it while remaining 2 percent of the respondents are undecided. Likewise table further shows that 38 percent of the respondents affirm that unawareness may be a reason due to which womendo not demand their right of inheritance, 57percent of the respondents negate it while 5 percent of the respondents are undecided.

Majority of the respondents i.e. 78percent of the respondents affirm that dependency on brothers is a reason due to which womenavoiddemanding their share in inheritance, 15 percent of the respondents negate it while 5percent of the respondents are undecided. ance. The data further show that 90 percent of the respondents affirm that due to fear of quitting relationship, womendo not demand their share in inheritance, 8 percent of the respondents negate it while 2 percent of the respondents are undecided.

Results show that 96 percent of the respondents affirm that due to fear of disturbance of relations women avoid share in inheritance, 2percent of the respondents negate it while the remaining 2percent of the respondentsare undecided. Similarly 93 percent of the respondents affirm demand of share results in conflict, 4percent of the respondents negate it while the remaining 3percent of the respondentsare undecided. Likewise 88 percent affirm that male dominancy as a reason due to which womenavoid demanding their share in inheritance, 10 percent of the respondents negate it while 2percent of the respondents are undecided.

Table No_3 Reasons for non-Demand of inheritance by Women



Comparison of Real and Ideal Status of Women Right of Inheritance

Islam grants women the right of inheritance in property of deceased relatives. Their shares in different capacities and different cases are clearly mentioned in the Holy Quran and Hadiths of the Holy Prophet. However when it comes to provision of this right, there is a gap between status given by Islam and what is practiced by Pakhtun society. Data shows that majority of the respondents i.e. 86 % are aware about Islamic status and legal status of women right of inheritance so unawareness is not responsible factor of this deprivation. Demand of share is not usually welcomed therefore women do not demand it because 68 percent of the respondents state that demand of share is not fulfilled. Similarly majority of the respondents are of the view that women are persuaded to relinquish their due right by various tactics. Islamic teachings are clear that women must be given their full share but 68 percent of the respondent affirmed that women are not given their due and full shares by relatives.

Similarly women are persuaded to relinquish their due right by various tactics. The study findings also reveal that instead of giving share, women are given some cash or kind in lieu of actual share ordained by Allah. The reason behind this practice could be the high value of land. In some cases, women ask for the help of law court as 85 percent the respondents state that women get their share in inheritance through litigation. It is obvious that litigation results in disturbance of social relations and do not support each other even in case of emergency as reflected in findings. The study findings indicate that 92 percent affirm that to avoid the tension and future demand by daughters, parent (father) transfer property to their sons during their lifetime. This act is against the very teaching of Islam. As in one Hadith of the Holy Prophet it is stated that those who disinherit their children will be put into hell (*dozakh*).

Another major reason for non-provision of inheritance is considering dowry as its substitute. It is observed that in many cases the male members argue that women are given dowry at the time of marriage. Money is spent on purchase of dowry items like clothes, jewelry, crockery, furniture and other home related articles. Although right of dowry can be a reason for half shares of women in property but considering it as a substitute is wrong and against Islamic commandments. It is to be noted that in Pakhtun society women are deprived on the bases of this false mala fide justification. Economic gains and customary practices are given more importance and preference over Islamic injunctions as findings confirmed that 73 consider dowry as substitute of inheritance.

The above section reflects somehow general and masculine outlook of the issue. When the issue is analyzed from feminine outlook, we come to know that feeling of fear among women, lack of awareness, male hegemony, dependence on male and patriarchal setup are some of the key reasons for non-demand and non-provision of this right. Most of the respondents asserted that people consider demand of share as bad and hence this demand may not only result strain in familial relationships but in most cases lead to social exclusion of women from families. Disturbance of these social relationships are more harmful in terms of emotional and psychological wellbeing. It also sometimes lowers their status in in-laws. Majority of the respondent's i.e. 78 percent affirm that anticipated dependence on brothers is the main cause due to which women avoid demand of this right. Women are not independent in Pakhtun society and in many tasks and cases they have to solely rely upon their brothers. The findings also confirm that patriarchy is also an important factor in this regard. The decision making power lies in the hand of male members and usually female say is given no or less importance. So like other affairs, right of inheritance is dealt and decided in such a manner that is beneficial for men and harmful for women. Islam entitles women for half shares as compared to men but men folk enjoy the dominant position and are not ready to provide even the half share in property.

Conclusion

It can be concluded from present research work that Pakhtunwali is a male dominated and gender biased code of life. The comparison of Islamic injunctions and Pakhtun societal practice with reference to women share of property inheritance show that Pakhtunwali dominates Islamic teachings. Instead of high level of awareness of Islamic teachings about women right of inheritance, Pakhtun do not confer this right which further approves the conclusion we drew from the current study. Pakhtun social and societal and social structure has very limited social space for women in economic and property ownership. It discourages any move that provide space to women to get property ownership through inheritance. Such ownership is stopped either through dowry, transfer of property to sons by father during life time or by social boycott rather social exclusion of women from family. To sum up, traditional thinking, economic gains, male dominancy and dependency of women on men are some key responsible factors for non-provision of right of inheritance.

References

- 1 Aalosi, Shahab ud Din Mehmood, Tafseer Roohul-Manni, p. 210, Darul Kutab Ilmiya, Beirut, 1415h
- 2 Al Thubari, Abu Jafar Muhammad Bin Jareer, Tafseer Al Thubar p. 10, Moassatur Rissala, 1420h/ 2000
- 3 Surah Al Nisa4:7
- 4 Khan, H. (1980). Islamic Law of Inheritance: A Comparative Study with Emphasis on Contemporary Problems. Lahore Law Times Publications; Lahore: p. 44--- Khurshed, A. (1993) Islam its meaning and message, the Islamic foundation. P.141,142
- 5 Ahmad, M. Batool, M & Sophia F. Dziegielewski (2016): State of Inheritance Rights: Women in a Rural District in Pakistan, Journal of Social Service Research, DOI: 10.1080/01488376.2016.1177633
- 6 Khawar, M., Noshirwani, M. (2007) A scoping study on Women's access and rights to land and property In Pakistan. Conducted by international development research centre--- Mashal, F. (2007) A base line research study on Women inheritance rights in district Bannu. Conducted by community development program.
- 7 Aisha, M. (2008). An investigation into women inheritance. M.A. Thesis, Deptt. of Rural Sociology. Agric. Univ. Peshawar, Pakistan--- Wisal, K. and M. Inam. (2006). Gender based socio-cultural constraints in inheritance in Pukhtun society. Deptt. of Anthropology. Univ. of Peshawar, Pakistan.
- 8 Muhammad, 2011; NCSW 2005
- 9 Ahmad, A. Mart, D. (1984), Islam in tribal societies: From the atlas to the Indus. Routledge: P. 269
- 10 Surah Al-Nisa 4: 7
- 11 Surah Al-Nisa4: 11
- 12 Surah Al-Nisa4: 12
- 13 Surah al-Nisa 4:176
- 14 Surah Al-Nisa4: 19
- 15 Al Tibrizi, Abu Abdul Ullah Muhammad Bin Abdul Ullah, Mishkatul Masabeeh P.26, Al Muktabul Islami, Beirut, 1985
- 16 Mishkat, p. 266
- 17 Mishkat, Babul wasaya
- 18 Al Tarmizi, Abu Esa Muhammad Bin Esa, Sunan Al Tarmizi p. 322, Halb, Misar, 1395h/ 1975
- 19 Al-Darimi, Abu Muhammad Abdul Ullah Bin Abdul Rahman, Sunnan Darimi, Babul wasaya, Darul Mughni, Makkah, Saudi Arab, 1412h/ 2000
- 20 Khandihlive, Mufti Sahbeer Ahmad Usamin Tafseer Maareful Quran. P. 309.310, Al Ilm Publications, Karachi, 1980