

Women's Inheritance Rights: Procedures, Loopholes & Obstacles¹
Written By: Hooria Hayat Khan, Azmeh Khan and Hana Zahir²
Submitted on: 15th May, 2020

¹ Special thanks to Barrister Syed Ali Noman for his valuable help

² With input from Muhammad Zubair Rafique

Contents

- 1. Introduction 3
- 2. The Legal Framework..... 3
 - 2.1 The Constitution: 3
 - 2.2 International Commitments: 4
 - 2.3 National Law: 5
 - 2.4 Policy Framework:..... 9
 - 2.5 Summary Table 12
- 3.Barriers to Enforcement 13
- 4. Inheritance Shares 15
- 5. Acquisition of Property Rights 16
 - 5.1 Revenue Structure: 16
 - 5.2 Hierarchy 17
 - 5.3 Description of Key Terms 18
 - 5.4 Procedure of Transfer: 19
 - 5.5 Flowchart of Process 23
- 6. Changes created by Digitization of Land Records..... 28
- 7. Loopholes identified in the procedure..... 29
- 8. Types of Cases 31
- 9. Problems women can face with the procedure..... 33
- 10. Other Salient Points 34
- Bibliography 35

1. Introduction

Agricultural land is a valued asset in Pakistan primarily because of what it represents. Land ownership not only “guarantees a sustainable livelihood, thereby acting as an important buffer against poverty, it is also a crucial indicator of power and social standing, shaping relationships within both the family and the community”.³

But the control and ownership of land is concentrated in the hands of a few with a small minority owning and controlling the lion’s share of the land. “This distorted ownership pattern is a major factor contributing to rural poverty and skewed social and political power”.⁴

Land distribution has also been disproportionate along gender lines and no-where is the existing inequality with regard to land ownership more apparent than within the family. Statistics generally do not take women into account within the context of land ownership and they are placed in the unenviable position of being deprived across social classes. “Put simply, women from "landless" classes own no land and women from "landed" classes also own no land”.⁵

Ownership and control of land is one of the primary determinants of power. This is why, post partition, the State felt that an intervention was necessary in order to reduce the power of the land holding class and to modify existing rural power structures. There is no doubt that land reform was politically motivated but more than that, it was felt that reform would also significantly impact the social, cultural and economic fabric of society. The redistribution of land through reforms was seen as something that would break the power of the landlords, but this was met with a lot of opposition.

2. The Legal Framework

2.1 The Constitution:

Women’s property rights are governed by both statutory and non-statutory sources and are positioned at the intersection of custom, personal and formal law.

Any discussion around rights should ideally start by looking at the Constitution-a normative document that sets out the core values integral to the functioning of the State. The Constitution not only lays down the powers and duties of the State but also guarantees and safeguards the fundamental rights of citizens. It is within this framework that the legal system anchors the rights of citizens and is a mechanism for effective implementation of the law.

Article 8 of the Constitution of Pakistan states that if any law, custom or usage that has the force of law is inconsistent with the rights conferred by the Constitution, they would be considered void

³Khan, Hooria Hayat. 2013, Where There is Land, There is Hope, ShirkatGah Special Bulletin

⁴ Ibid

⁵ Ibid

to the extent of the inconsistency.⁶ Article 23 states that every citizen shall have the right to acquire, hold, and dispose of property in any part of Pakistan.⁷ Article 24 goes on to state that no person shall be deprived of their property save in accordance with the law.⁸

Article 25 of the Constitution guarantees the equal protection of the law and states that not only are all citizens equal, there shall be no discrimination on the basis of sex and nothing in the Article will prevent the State from making special provisions for the protection of women and children.⁹

Even though the Constitution contains no direct provisions dealing with women's right to inheritance, it does provide guarantees through the Articles stated above that protect this right.

2.2 International Commitments:

There has also been a global push towards ensuring women's property rights but progress has been very slow. Internationally Pakistan is signatory to a number of Conventions that address women's right to own property. Pakistan ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1996 with a declaration making compliance subject to its Constitution and entering a reservation under article 29 para 1.¹⁰

Article 1 of CEDAW defines discrimination against women as distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women. Even though the Convention does not have any explicit provision on inheritance, Article 15 places States under a legal obligation to accord women equality with men before the law including giving them equal rights to administer property. Article 16(h) gives both men and women identical rights with regard to the ownership, acquisition, management, administration, enjoyment and disposition of property.

Moreover the Committee on the Elimination of Discrimination Against Women in its thirteenth session gave a General Recommendation and noted that the laws and practices of many countries discriminated against women with regard to inheritance rights and stated that States should ensure that "men and women in the same degree of relationship to a deceased are entitled to equal shares in the estate and to equal rank in the order of succession".¹¹

⁶ Constitution of the Islamic Republic of Pakistan

⁷ Ibid

⁸ Ibid

⁹ Ibid

¹⁰ A reservation is a statement by a State at the time of becoming a party to a treaty which excludes or modifies the legal effect of certain provisions in their application to that State. Declarations on the other hand are a State's understanding or interpretation of particular provisions. Unlike reservations, they do not exclude or modify the legal effect of treaty provisions.

¹¹ General recommendation No. 21: Equality in marriage and family relations, 1994, Committee on the Elimination of Discrimination Against Women

Even though Article 2 of the Convention makes it obligatory upon States to embody the principle of equality in their national constitutions or other appropriate legislation, Pakistan has not adopted any legal framework for translating CEDAW provisions into its domestic law.

Pakistan signed the 1976 International Covenant on Economic, Social and Cultural Rights (ICESCR) in 2004 and ratified the treaty in 2008. Article 3 of the ICESCR states that both men and women have an equal right to the enjoyment of all economic, social and cultural rights and this Article was further explained by the Committee on Economic, Social and Cultural Rights in General Comment 16. The Committee stated that Article 3 is a cross-cutting obligation applicable to all rights stated in the Covenant. The Committee stated that the implementation of Article 3 with respect to Article 10 of the Covenant required that States ensure that women should have women have equal rights to marital property and inheritance upon their husband's death.¹²

Pakistan has also signed and ratified the 1976 International Covenant on Civil and Political Rights which also states in Article 3 that State parties have to undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set out in the Covenant. Like the Committee on Economic, Social and Cultural Rights, the Human Rights Committee also provided further clarification on this Article in General Comment 28¹³ and interpreted it to include women's equal right of inheritance to those of men where the dissolution of marriage is caused by the death of one of the spouses.

Pakistan is also a signatory to the Beijing Declaration and Platform for Action, adopted at the UN's Fourth World Conference on Women in 1995. The Platform for Action, considered a progressive roadmap for the realization of women's rights, identified 12 critical areas where urgent action was needed to achieve equality and called upon governments to take strategic action to ensure that obstacles to women's active participation in all spheres of public and private life were removed and they had an equal share in economic, social, cultural and political decision-making. The Platform for Action linked women's poverty to an absence of inheritance rights and land ownership amongst other things and called on governments to ensure women's right to inheritance through undertaking legislative and administrative reform and eliminating injustice and obstacles.

2.3 National Law:

It is within this framework that this paper will look at the national law of Pakistan and the starting point of this analysis is the *Muslim Personal Law (Shariat) Application Act 1937*. This legislation was enacted while the sub-continent was still under British rule and regulated matters related to marriage, divorce and succession amongst Muslims.

The women's movement began emerging in India in the 1920s with the formation of the Women's Indian Organization and the All India Women's Conference (AIWC) which was formed by the

¹²General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights, 2005, UN Committee on Economic, Social and Cultural Rights

¹³ General Comment No. 28: The Equality of Rights between Men and Women, 2000, Human Rights Committee

Congress party. Both these organizations started focusing on “issues specific to women and their social and legal disabilities”¹⁴ and started advocating on matters of inheritance and control of property, marriage, divorce and the guardianship of children. It was the AIWC which called for a “removal of customary law of the Muslims, particularly in the North -West province, which had denied Muslim women of their Islamic rights related to inheritance and urged for the implementation of the Shariat law”.¹⁵

The enactment of the *Muslim Personal Law (Shariat) Application Act* was in response to the repeated demand to replace customary law with Muslim Personal Law. According to Sabiha Hussain women started relying on Sharia in order to demand property rights which they felt they were being denied under customary law. “Muslim women felt that if the Shariat were in force instead of customary law, their rights to property, inheritance, and choice in marriage would be affirmed. In a way they felt that the Islamic patriarchy would be a better option than the customary patriarchy where they had no rights. And this desire to reclaim their rights could be seen as one of the reasons for Muslim women recognizing the application of Sharai law”.¹⁶

This is also reflected in the Statement of Object of the Act which states that “[T]he status of Muslim women under the so-called Customary Law is simply disgraceful. All the Muslim Women Organisations have therefore condemned the Customary Law as it adversely affects their rights. They demand that the Muslim Personal Law (Shariat) should be made applicable to them”.¹⁷

This Act, which was considered an important step forward, provided for inheritance rights for women but interestingly excluded agricultural land from its purview. Section 2 of the Act stated that “[N]otwithstanding any customs or usage to the contrary, in all questions (save questions relating to agricultural land) regarding intestate succession, special property of females, including personal property inherited or obtained under contract or gift or any other provision of Personal Law, marriage, dissolution of marriage, including talaq, ila, zihar, lian, khula and mubaraat, maintenance, dower, guardianship, gifts, trusts and trust properties, and wakfs (other than charities and charitable institutions and charitable and religious endowments) the rule of decision in cases where the parties are Muslims shall be the Muslim Personal Law (Shariat)”.¹⁸

The *Muslim Personal Law (Shariat) Application Act 1937* was repealed by the *West Pakistan Muslim Personal Law (Shariat) Application Act 1962*. This Act included agricultural land and entitled Muslim women to inherit all property, including agricultural land, according to the prescribed shares depending on her relationship with the deceased.

¹⁴Hussain, Sabiha. 2015, A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women’s Rights or Community Identity: (Special reference to 1937 and 1939 Acts), *Journal of International Women’s Studies*, Vol.16, Issue.2, pp. 1-14

¹⁵ ibid

¹⁶ Ibid

¹⁷ Muslim Personal Law (Shariat) Application Act 1937

¹⁸ Ibid

In 1961 Ayub Khan's government introduced the *Muslim Family Law Ordinance* (MFLO) which came about as a result of the establishment of a Commission in 1955 tasked with considering the application of personal status laws and possible areas of reform. The Commission submitted its report in 1956, suggesting a number of reforms, including, for example, the consideration of all triple talaqs (except for the third of three) as single, revocable repudiations. This report led to much debate with the religious right opposing many of its recommendations but the Ordinance adopted some of the suggestions of the report and aimed to reform divorce law and the law of inheritance relating to orphaned grandchildren.

Section 4 of the MFLO deals with question of succession and states that the children of a pre-deceased son or daughter can inherit the share their parent would have received from the grandfather's property had they been alive. This section is controversial because it is felt that it goes against the injunctions of Islam and its application by the Courts has not been consistent.

It is argued that under classical Islamic law grandchildren do not stand to inherit in case their parents pre-decease the grandparents but the operation of this rule negatively impacts the interests of orphaned grandchildren and the enactment of Section 4 was intended to provide some protection.

This section was challenged as being repugnant to the injunctions of Islam in the case of *Farishta v Federation of Pakistan*¹⁹ before the Shariat Bench of the Peshawar High Court which declared Section 4 to be repugnant and even though this decision was overturned by the Shariat Bench of the Supreme Court this was not the end of the matter.

Section 4 was challenged again in *Allah Rakha v Federation of Pakistan*²⁰ and the Federal Shariat Court held that Section 4 was contrary to the injunctions of Islam and directed the President of Pakistan to take steps to amend the law in order for this provision to conform to the injunctions of Islam. An appeal against this decision is still pending before the Shariat Appellate Bench.

As has been mentioned, the Courts have not been consistent in their interpretation and application of this section. There have been cases where the Courts have said that the grandchild should be given his/her share as per Section 4 but there have also been cases where it has been held that the share of the deceased would devolve not only on his/her children but on all of the legal heirs of the pre-deceased. The Lahore High Court in the case of *Kamal Khan v Mst. Zainab*²¹ held that the grandchild would not be given more than his/her due if the parent in question was actually alive at the time of the grandparent's death. In this case Zainab was the only surviving child of the pre-deceased but she could not get more than one half of the estate with the rest going to the other legal heirs. This decision of the Lahore High Court was upheld by the Supreme Court.

¹⁹ PLD 80 Pesh 47

²⁰ PLD 2000 FSC 1

²¹ PLD 1983 Lahore 546

There have also been amendments in the law that have not only recognized women's right to inheritance but also broadened its scope. The *Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011* was enacted with the intent to overcome women's marginalization in terms of inheritance and added three new offences against women in the Pakistan Penal Code. This Act criminalized depriving women of their inheritance through the introduction of sections 498 A and 498 C.

Section 498A makes it unlawful to deprive a woman of her rightful inheritance through deceitful or illegal means at the time of opening of succession; such an action being punishable by imprisonment or a fine or both. Section 498C prohibits marriage with the Holy Quran and prescribes punishment and a fine for whoever arranges or facilitates such a marriage. The Act goes on to state that an oath taken by a woman on the Holy Quran to remain unmarried for the rest of her life or to not claim her share of the inheritance would be deemed to be marriage with the Holy Quran.

The *Punjab Partition of Immovable Property Act 2012* was passed by the Provincial Assembly under the Punjab Women Empowerment Package 2012 and provides for "curtailing delays in the disposal of partition cases and suggests mechanism to alleviate the problems being faced by joint owners due to protracted litigation".²² Before the introduction of this amendment the Act provided for the appointment of a referee for partitioning jointly owned property at the request of one of the co-owners. This provision has now been omitted to ensure that a referee is only appointed with the consent of all the co-owners. This amendment will ensure that jointly held property is not partitioned without the knowledge of women co-owners.

The *Punjab Land Revenue (Amendment) Act 2012* makes it binding on the Revenue officer to serve notice to all joint land owners immediately after the sanctioning of the inheritance mutation and without any application to submit a scheme of private partition which is agreed upon by all the joint land owners within thirty days.

If such a scheme is not submitted within the prescribed time period, the Revenue officer will commence proceedings for the partition of the joint holding.²³

Moreover through a 2012 amendment in the *Punjab Land Revenue Rules 1968*, it is now mandatory for the Revenue Officer to "record the statements of at least two respectable persons, preferably Lambardars or members of the local government, in respect of the legal heirs of the deceased; and, obtain their signatures or thumb impressions on the Register of Mutation and copies of Computerized National Identity Card and Form B or other similar documents of the deceased and

²² 2012 Punjab Women Empowerment Package

²³ Section 135 A The Punjab Land Revenue Amendment Act 2012

his legal heirs in order to ensure that all the legal heirs of the deceased are correctly reflected in the mutation of inheritance”.²⁴

In order to prevent any abuse of authority by the Revenue officials, the amendment goes on to state that if during the course of dealing with a mutation of inheritance, an appellate or revisional authority or court finds that any of the legal heirs of the deceased have not been entered in the mutation of inheritance by the Revenue Officer, it shall send its decision to the District Enforcement of Inheritance Rights Committee²⁵ which have been constituted in every district of Punjab.

This Committee has been tasked with scrutinizing the order of the appellate/revision authority or court and if it finds that a legal heir was deprived due to the negligence of malafide²⁶ intent of the Revenue Officer it shall recommend the initiation of criminal prosecution or disciplinary action against the Revenue officer or any other person responsible.²⁷

As far as judicial attitudes are concerned, the Courts are sympathetic towards women that have been denied their share in the family property and more often than not the Courts strive to actively protect this right. In a recent Supreme Court judgment²⁸ the Court stated that the right of inheritance is rooted in Muslim Personal Law and has been actively protected by the Courts. The Court went on to state that a heavy onus is placed on the claimant who is alleging that a female heir parted with her entitlement by choice especially without any coercion. The Court went also reiterated that limitation does not run in matters involving the inheritance rights of females.

In the case of *Ghulam Ali v Mst Ghulam Sarwar Naqvi*²⁹ the male members of the family claimed that they had spent a lot of money on both marriages of their sister and made the argument that she should not be given her share as a result. The judge rejected this entirely and said that giving a woman dowry or maintenance does not replace her right to inherit.

Even in cases of voluntary relinquishment the court has allowed women to challenge the deed even if a significant amount of time has passed between when the shares were given up and when the woman challenged it.

2.4 Policy Framework:

The Beijing Platform for Action emphasized the creation of strong dedicated national machinery as the central policy-coordinating unit inside the government for the advancement of women. It

²⁴ Rule 9, Sub-rule 2, Clause a

²⁵ Rule 9, Sub-rule 3

²⁶ In bad faith

²⁷ Rule 9, Sub-rule 5

²⁸ 2020 SCMR 352

²⁹ PLJ, SC 1990: 139

also stressed an active and visible policy of mainstreaming a gender perspective in all policies and programmes.

The Ministry of Women Development (MoWD) was the principal institutional structure established to promote the integration of women in policy making, planning and development. The Ministry, through a consultative process, prepared the 1998 National Plan of Action for Women's Advancement (NPA) as a follow up to the Fourth World Conference on Women and this was the domestic framework for implementing the Beijing Platform for Action.

Further, in response to a long-standing concern the 2002 National Policy for the Development and Empowerment of Women (NPDEW) was launched which clearly stated that the State would work towards "upholding and ensuring women's right to inheritance and share in all kinds of joint property and financial rights in marriage".³⁰

The NPA, which outlined specific measures and clear responsibilities, was never fully operationalized and following the 18th Constitutional Amendment political power was decentralized and resources and responsibilities for women were transferred to the Provinces with the result that the Federal Ministry of Women ceased to exist. Moreover, the NPDEW fell short of expectations and was never really fully implemented.

In 2012, the Government of Punjab launched the Punjab Women Empowerment Package (PWEPP) which declared that women's empower and women empowerment and gender equality "commanded a place of prominence among the priorities of Government of the Punjab".³¹ In order to address issues as regards women's inheritance and land ownership this policy announced reforms and amendments in the law that have already been discussed in Section 3.3. The Policy also announced that State land would be distributed in a manner that ensures that the land is jointly held by both spouses. The policy went on to state that as a result of this reform "260,169 plots have been allotted in Katchi Abadies in favour of both spouses at Lahore and in other cities in Punjab".³²

2014 saw the introduction of the Punjab Women Empowerment Initiatives which reiterated the commitment of the Government of Punjab to women's empowerment and protecting their social and economic rights. Although no new reforms/amendments were introduced in the area of women's inheritance and property rights the policy stated that the Government of Punjab would continue to "strive for alleviating the sufferings of women on account of land ownership issues. In this respect appraisal of land revenue laws shall be undertaken periodically to ensure that women do not face any hurdles in acquiring land".³³

³⁰ National Policy for the Development and Empowerment of Women, 2002

³¹ 2012 Punjab Women Empowerment Package

³² 2012 Punjab Women Empowerment Package

³³ 2014 Punjab Women Empowerment Initiatives

The 2016 Punjab Women Empowerment Package listed the introduction of the Land Record Management Information System (LRMI) as an accomplishment of the Provincial Government aimed at facilitating women to acquire title to inherited property. This will be discussed in greater detail below.

Lastly the Punjab Women Development Policy of 2018 should be mentioned. This policy, formulated by the Women Development Department, is envisaged as an “overarching strategic document”³⁴ which will improve women’s development and empowerment in the province and pursue the goal of gender mainstreaming. Even though there is no direct reference to inheritance rights, the policy seeks to ensure that Constitutional guarantees are honoured and legal rights are complied with.

All of these provisions however have been unable to guarantee a woman’s right to inherit, own and control agricultural land. A 2010 study conducted by the Awaz Foundation stated that 70% of the female respondents that had been interviewed had not demanded this right from their families and a majority of the women felt that such a demand was not acceptable.³⁵

A 2014 Shirkat Gah-Women’s Resource Center study assessed the impact of the Sindh Land Distribution Program under which state land was allotted to landless hari women and this same mind-set is reflected in interviews conducted with women beneficiaries who felt that even though owning an asset placed them in a stronger position within the family they would never demand that they be given complete control of that asset because that would be the equivalent of challenging the authority of the men.³⁶

When we speak of a woman’s right to land, it is not enough to say that this right is protected under the legal system. It must be understood that even though the legal system plays an important role in the regulation of behaviour, it is not the only center of power within society and behaviour is just as effectively controlled by the community, family and other social structures that rely on culture, custom and tradition. This plurality of systems that govern and control the lives of women means that even though her claim may be considered legally valid, it may still be denied and that denial may enjoy socio-cultural legitimacy.

Moreover, recognition of a valid claim does not necessarily mean it will get enforced. There are procedural and administrative gaps that effectively discourage women from approaching the legal system and demanding this right. There is also a trust deficit as far as State institutions are concerned and there is a widely held perception that State officials are either corrupt or that they

³⁴ 2018 Punjab Women Development Policy

³⁵Rehman, Saeed-ur. 2010, Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic & Societal Violence- Research Study on Customs and Practices Prevailing in South Punjab Regarding Women's Right of Inheritance, Awaz Foundation Pakistan: Centre for Development Services

³⁶ Khan, Hooria Hayat. 2013, Where There is Land, There is Hope, Shirkat Gah Special Bulletin

side with the more powerful party which inevitably means that women do not have the support of the State in order to ensure that their rights are enforced.

2.5 Summary Table

Time Period	Reform	Key Features
1937	<i>Muslim Personal Law (Shariat) Application Act 1937</i>	In response to the repeated demand to replace customary law with Muslim Personal Law
1962	<i>West Pakistan Muslim Personal Law (Shariat) Application Act 1962</i>	This Act included agricultural land and entitled Muslim women to inherit all property, including agricultural land, according to the prescribed shares depending on her relationship with the deceased.
1961	<i>Muslim Family Law Ordinance (MFLO)</i>	Section 4 of the MFLO deals with question of succession and states that the children of a pre-deceased son or daughter can inherit the share their parent would have received from the grandfather's property had they been alive.
2011	<i>Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011</i>	Was enacted with the intent to overcome women's marginalization in terms of inheritance
2012	<i>Punjab Partition of Immovable Property Act 2012</i>	To ensure that jointly held property is not partitioned without the knowledge of women co-owners.
2012	<i>Punjab Land Revenue (Amendment) Act 2012</i>	Makes it binding on the Revenue officer to serve notice to all joint land owners immediately after the sanctioning of the inheritance mutation and without any application to submit a scheme of private

		partition which is agreed upon by all the joint land owners within thirty days.
--	--	---

3.Barriers to Enforcement

Rights in land originate in different ways – by purchasing land, by receiving it as a gift or through the operation of the rules of succession. The main method through which women in Pakistan traditionally acquire land is inheritance. Unfortunately, however, this is a right closely bound to ties of kinship and does not operate independently of family.

Agricultural land in Pakistan is primarily privately held. It is the men that own, cultivate, manage and ultimately inherit land; women being conspicuous by their absence. One can point to a hierarchy that exists within the family structure where family members that wield more power (primarily male members) are able to monopolize control over the land holding and individuals lower down the rung as it were are not even recognize as legitimate claim holders. This reduced status acts as a bar to any meaningful participation in decision making with regard to family assets and contributes to the disparity between men and women’s access to and control over resources.

This unopposed control that men within families and communities exert over land has been one of the ways in which dominance over women is maintained with matters of succession routinely excluding them because it is the male members who decide the division of the family property.

These distorted patterns of land ownership create and contribute to this existing inequality and it is critical that this right is secured not only because it will ensure ownership but also because access to land will significantly impact women’s social and economic status and they would be better able to negotiate power structures that exist within the family. That being said however, the biases and barriers to realizing this right are substantial and have endured.

There is no denying the fact that Islam gives women the right to inherit property. The fact that this right was given to women at a time when no other law, code or way of life recognized it is popularly quoted during any debate centered on women’s rights but practically speaking there are many mechanisms that deny women this right.

Inheritance falls within the purview of personal law and is recognized as a legal right but legal guarantees can ultimately only be assessed against their effect. Saying that women have a legal right to inherit property means she has a legally recognized claim enforceable through the legal system. But a legally recognized claim does not necessarily also enjoy social and cultural legitimacy and it is important to identify obstacles –both socio-cultural and administrative- that allow male dominant patters of land ownership to be retained.

Women's ownership and control of land has always been problematic and controversial. This is just as true on the State level as it is on the level of the family and community. Even though women have the right to own property, this concern did not manifest itself in all of the attempts made by the State to implement re-distributive land reforms.

Moreover, inheritance as a means of gaining access to land is often side stepped by using cultural and customary practices as a justification. As has been mentioned, a woman's access to land is generally determined and controlled by the men in her family. This dependence is used as leverage when pressuring women into relinquishing their share. This practice is also encouraged as something 'respectable' women do because it ensures the continued support of the natal family, particularly the brothers. The natal family is considered an important safety net, especially for married women, because it is an immediate source of protection and support and women ensure the availability of this network by bargaining their rights away.

Asking for one's share is the equivalent of rejecting everything the natal family has done and is seen as causing a rupture in that relationship resulting in the woman being ostracized from the family and unable to rely on their support in case her relationship with her husband or in-laws deteriorates.

Women also agree to this compromise in order to not appear selfish and give up their share because they feel it is the honourable thing to do. "This is symptomatic of how deeply ingrained patriarchal structures and notions of respectability are. Women who do not demand land...are 'respectable' and held up as the standard that all women with integrity should conform to."³⁷ Whichever way one looks at it, there is an expectation that women will forgo their right in return for something that will monetarily never be the equivalent of what has been given up.

Giving daughters a dowry is also seen as something that off-sets their claim to their inheritance. As is customary in South Asia, daughters are normally given a dowry at the time of their marriage and this is seen as being given in lieu of whatever inheritance she has in the family property even though the monetary value of her share may far surpass the value of the dowry given to her.

Another factor that explains this resistance is the reluctance to reduce the land holding through fragmentation. Giving women their share would decrease the land holding and reduce the land available to male members of the family. Not getting female members of the family married, forcing them to marry within the family or marrying them to the Quran are also socially acceptable practices that ensure that land stays within the family. Giving a married sister/daughter her share essentially means handing over property to the son-in-law or to another family altogether which will not only impact the size of the land holding but will also diminish their social standing and the influence they exert in the community.

³⁷Khan, Hooria Hayat. 2013, Where There is Land, There is Hope, ShirkatGah Special Bulletin

Other causes stem from women's illiteracy, little legal consciousness and poor access to State institutions and Courts. Women generally shy away from initiating legal action not only because of a lack of understanding as regards how the system works but also because this is a resource intensive exercise and women may not have resources at their disposal to pursue their case over a long period of time.

Where women do go against these cultural constructions and demand their share in the land, they risk becoming outcasts. They are threatened with and in extreme cases face violence where such a demand has been made along with having to deal with the family resorting to illegal means to keep land within the family.

One must also consider the gap that exists between owning property and effectively controlling it. Women move away from the natal family after they get married and find it impossible to exert their control over land even if it has been given to them. They could be owners on paper but it is very difficult for them to dislodge the possession of male members of the family who continue to cultivate the land and effectively treat it as their own.

Ensuring women's land ownership also presupposes that the institutions and officials responsible for transferring ownership are easily accessible by women. Public spaces are culturally perceived as belonging to men. This gendering of spaces means that women do not know how to engage with the system in terms of what State institutions to approach, who to speak to and even basic things like how to locate the relevant office. This weak relationship with the State proves to be a major hurdle in the realization of this right.

4. Inheritance Shares

Not only does the Quran say that inheritance is obligatory, it also specifies the shares of those that enjoy this right. No distinction is drawn between moveable and immovable property or between ancestral or self-acquired property and kinship with the deceased is the only pre-requisite in order to inherit.

Property left at the time of a person's death devolves automatically and is distributed amongst the legal heirs once all debts and expenses of the deceased are settled.

As far as Sunni law is concerned, there are three classes of heirs:

1. Sharers also known as Quranic Heirs: parents, children spouses fall within this category and are entitled to a prescribed share in the inheritance.
2. Residuaries also known as Agnatic Heirs: people falling within this category do not have prescribed shares but they become entitled to what is left of the estate once the claim of the sharers is satisfied. Grandfather, paternal uncle etc. fall within this category.
3. Distant Kin also known as Uterine Heirs: this is a category of people that are neither sharers nor Residuaries but are related to the deceased through blood.

The Quranic heirs cannot be excluded and include the father, mother, son, daughter, husband and wife. This section is going to focus on the different shares that women acquire in the capacity of a daughter, wife and mother. It must be remembered that what they receive will vary according to both sect (covered in personal law) and the structure of the family (under Islamic law).

Common Cases	Expected Share
Mother (if the deceased has children and other siblings)	1/6 th of estate
Mother (if deceased left no living children or siblings)	1/3 rd of estate
Wife (if has children)	1/8 th of estate
Wife (if no living children)	1/4 th of estate
Daughter (if only child)	½ of estate
Daughter (if two or more and no brothers)	2/3 rd of estate collectively to be divided equally among all daughters
Daughter (if has 1 male sibling)	1/3 rd of estate

5. Acquisition of Property Rights

This section will look at the system of revenue and land administration with a focus on the procedure as regards inheritance mutations.

5.1 Revenue Structure:

Matters pertaining to the administration of land are looked after by the Revenue Department of each of the Provinces. An up to date land record is therefore an essential pre-requisite for determining private ownership and also for the purposes of taxation. This means that a detailed land survey is important in order to determine how much land is owned by a particular individual, its exact location in a village and what percentage of it is cultivated etc. In order to achieve this a Record of Rights is prepared which is a result of extensive surveys carried out in each District where all parcels of land, both private and state owned, are mapped and measured. This Record of Rights is prepared every 5 years and takes about 3 to 4 years to complete. This Record of Right includes a Jamabandi (which is a revised record of rights), a Register of Mutations and other relevant information.

For the purposes of land administration each Province is divided into Divisions, headed by Commissioners who are senior civil servants and are appointed by the Provincial Government.

Divisions are further divided into Districts and each Division has two or more Districts. Districts are headed by the Deputy Commissioner or the District Coordination Officer and these appointments are also made by the Provincial Government.

The Government can through a notification declare as many Districts as it deems appropriate.

Districts are divided into Sub-Divisions or Tehsils and a Sub-Division may consist of one or more Tehsils. These are managed by the Assistant Commissioner and the Tehsildar with the Assistant Commissioner being answerable to Additional Deputy Commissioner (Revenue).

The Tehsil is divided into a Mauza which is a Revenue Estate or a village. The Mauza or a village is the basic unit of the system of land administration and a group of villages forms what is known as a Patwar Circle which is headed by the Patwari.

5.2 Hierarchy³⁸:

The Patwari is appointed by the Assistant Commissioner and even though he is the lowest rung of the Revenue hierarchy, he is considered the most important as he is responsible for the maintenance of the land record. This means that the Patwari, amongst other functions, is the one recording any changes in land ownership within his area and is responsible for keeping the land record up-to-date. He is the one who is approached if someone requires a copy of the record for sale or taking a loan against that property etc. In some Provinces the Patwari is also responsible for collecting land related taxes.

The Qanoongo work with the Patwari and their function includes double checking the Patwari's record as part of a mechanism to ensure nothing is overlooked.

The Tehsildaar is in-charge of the Tehsil and supervises the Patwari and the Gridawar/Qanoongo. Moreover, as part of his own duties, he is responsible for sanctioning mutations. He can also adjudicate on disputes.

The Tehsildaar is answerable to the Assistant Commissioner and he is answerable to the Additional Deputy Commissioner (Revenue). The Tehsildaar and the Assistant Commissioner head the sub-division within the District (there can be more than one Tehsil within a sub-division) and supervise all the revenue work within the sub-division. The Additional Deputy Commissioner (Revenue) also hears appeals against the orders of the Revenue Officers or the Tehsildaars.

The Deputy Commissioner or the District Officer heads the revenue and land administration within the District and has appellate and revisional powers.

The Commissioner is in-charge of revenue and land matters at the Division level. He supervises and controls all of the subordinate revenue officials and also acts as an appellate and revisional court.

The Board of Revenue is a Provincial body and heads the system of land administration in the Province. It consists of members and is headed by the Senior Member Board of Revenue (SMBR).

³⁸ Interview with Barrister Syed Ali Nouman, Advocate High Court

The Board advises the Provincial Government on matters relating to land and revenue. It is also the highest Revenue Court in the Province and hears appeals and revisions.

Position	Sits at	Appointed By	Transfer timings
Patwari	Patwar khana	Deputy Commissioner	No fixed tenure
Qanoongo	Girwadari revenue office	Deputy Commissioner	No fixed Tenure
Tehsildar	Tehsil HQ	Commissioner	No fixed Tenure
Deputy Commissioner	District HQ	Government of Punjab i.e. chief minister through secretary	No fixed Tenure
Commissioner	District HQ	Government of Punjab i.e. chief minister through secretary	No fixed Tenure

5.3 Description of Key Terms

Succession: Process to establish who the heirs are.

Mutation: Process through which land is transferred into the names of ALL the legal heirs.

Partition: Process through which each individual heir is transferred their individual portion to their own name.

Patwari: An individual in the local authority who maintains the ownership records for a specific area as well as to undertake the collection of land taxes

Tehsildar: a tax Officer accompanied with Revenue inspectors. They are in charge of obtaining taxes from a tehsil with regard to Land Revenue. A Tahsildar also known as Executive Magistrate of the tehsil concerned.

LRO: Land Record Officers which have been hired after the digitization of land record system. They are civil servants and have the same grade as a Tehsildar.

ADLR: Assistant Director Land Records

Khaata: Strip number (patti number) of the land parcel

Gardwari: a document, in which the patwari enters the name of owner, name of cultivator, land/khasra number, area, kind of land, cultivated and non-cultivated area, source of irrigation,

name of crop and its conditions, revenue and rate of revenue, minimum twice in a year. It is also taken as proof of ownership.

Lumberdar: The registered representative of a village community for the payment of the government dues.

Patwar khana: Revenue official office/headquarters

Pattidar: Landowner who owns land on same strip number (see Khaata above) as you.

Gridawar/Qnanqoh: For administrative convenience, a group of approximately ten **Patwar Circles** are combined to make a new unit called **Gridawar Circle** which is headed by Qanoongo. Two to three Gridawar Circles constitutes a Revenue Officer's Circle and it is headed by Naib Tehsildaar (Deputy Tehsildaar).

Death certificate: To establish that the deceased is deceased.

Succession certificate: To establish the legal heirs of the deceased.

Family Registration certificate: To establish the family tree of the deceased.

Fard: Record of land ownership

5.4 Procedure of Transfer:

This section will detail the procedure in place before the digitization of land records and will highlight the changes made by its introduction.

The *Land Revenue Act 1967* regulates the transfer of property rights with respect to rural lands acquired through inheritance, purchase, state grant, allotment, mortgage or gift etc.

Property rights acquired through inheritance become available upon the death of the owner of the property even though the formalities for transferring these rights are completed later.

X dies.

Step 1:

In order to initiate the process of inheritance mutation, the legal heirs need the death certificate of the deceased. Initially death certificates used to be made manually and one would have to go to the Union Council or the Municipal Corporation in order for the death to be registered in their records and for a certificate to be issued. In 2007 death certificates were computerized and are issued by the Secretary of the relevant Union Council after he has been informed of the death of a person and this has been verified.

Step 2:

After acquiring the death certificate, the legal heirs will have to get a copy of the record of land ownership (also known as a Fard) showing the ownership of the deceased from the Patwari. Once these two pre-requisites are obtained, the legal heirs submit an application before the concerned Tehsildaar stating the passing of the deceased and requesting that the inheritance mutation be passed in favour of the legal heirs. The death certificate and the Fard have to be attached to this application along with an affidavit that states how much land the deceased was owner of, where that land is situated and how many legal heirs there are. This affidavit is signed by one or all legal heirs. All of their names have to be listed in this affidavit. If an applicant is in possession of the Family Registration Certificate (FRC) they can attach that to their application but this was not compulsory PRIOR to digitization. After digitization of land records, it is now compulsory to attach it. The Family Registration Certificate is auto generated by NADRA. If a woman does not have a CNIC, she will be left out. B form holders are shown as head of household's children if he has mentioned them in his form.

This process can be initiated by any one person of the family who is a legal heir of the deceased. All the legal heirs are not required in order to initiate proceedings. The application was previously submitted in the patwar khana but now must be submitted in the ARC Every ARC contains separate seating for women and a designated service counter for female customers, staffed by female officials which has made it easier for women to go for the process also. Biometric verification of all heirs is also required at this point for the process to be initiated with the introduction of digitization of land records.

This submitted application was previously marked (to show that he has seen it) by the Tehsildaar or the Naib-Tehsildaar and then sent to the relevant Patwari. Alternatively, the legal heir(s) could approach the Patwari directly and submit all of this to him. After digitization, the application is submitted to the LRO and he forwards it to the patwari for verification.

Step 3 and First step of verification:

The Patwari will check the application along with the documents that have been submitted against his own record and will make an entry of the application in his daily diary (Roznamcha Waqiyati).

Step 4:

The application will be sent to Niab Tehsildar to confirm that the deceased actually owned the land that the legal heirs have mentioned. He will also verify the authenticity of the witnesses that the legal heir has chosen. The witnesses will state before the revenue officials that the applicant is in fact the real heir of the deceased who owned land in the village. The witnesses are normally the Lumberdaar and the Patidaar (who is a neighboring land owner in the same strip where the deceased's parcel of land is located).

Step 5:

The Patwari makes the family tree which contains the details of all the surviving heirs and this is a function that the Patwaris have retained even though documents like the FRC and succession certificates issued by the Courts are available.

Step 6:

The Patwari registers the death in his register and transfers the title of the land parcel(s) in the name of all the legal heirs (also known as Warasat Inteqaal). All the legal heirs do not have to be present before the Patwari and as has already been mentioned, it is enough for one of the heirs to get the process started and get the property transferred.

Step 7 and Second stage of verification:

Once the Warasat Inteqaal is registered, the concerned Revenue officer (Patwari, Naib-Tehsildaar or Tehsildaar) goes to the village where the land is located and verifies the facts at the site. The legal heir that submitted the application is present along with the Lumberdaar and the Patidaar and the legal heir records his statement again in the presence of the Tehsildar and his two witnesses with the Lumberdaar being asked to confirm whether what the legal heir is saying is true.

This step can have some variation between districts. In more urban districts, it is important for all the heirs to be presented before the patwari whereas in rural areas, it is less of an issue since the patwari already knows how many heirs the deceased has. The Patwari knows mostly everybody living in a particular mauza and can also ask the local inhabitants for verification along with the Lumberdaar. The Lumberdaar is someone who is appointed by the government to collect land revenue on behalf of the government and so his presence is crucial in the verification process to ensure that no legal heir is missed- especially daughters that are married and no longer live in the concerned mauza. It is very rare for the Lumberdaar and Pattidaar to lie because they can get caught and have an FIR for fraud registered against them.

The affidavit that is attached with the application is one of the sources of verification because it is a statement sworn on oath with regard to the identity of all of the legal heirs of the deceased. The testimonies of the two witnesses are also considered an important source of verification.

After the digitization of land records, the LRO must also be present at this on-site verification.

Step 8:

After this second step of verification there is a proclamation. This means that an advertisement is placed in two leading newspaper stating the name of the deceased along with the legal heirs that are claiming their inheritance rights. The ad only runs once. A period of 7 days is given for anyone to raise an objection.

Step 9 and Third step of verification:

If no objections are raised within 7 days, the third step of verification is initiated. In this step, the application is forwarded to the qnangoh who verifies it with his own records.

Step 10:

All the verifications are then sent back to the Tehsildar. If no objection has been raised by this point, then mutation of inheritance is sanctioned which is signed by the Tehsildaar as a result of which land that belonged to the deceased is transferred in the name of all his legal heirs and all of them hold the property as joint owners.

After digitization, the Tehsildar signs his approval on all the verifications and sends the application back to the LRO at the ARC. The LRO then sanctions the succession and mutation. The land record database is updated at this stage and partition proceedings commence in which each share is transferred to the name of the individual heir.

At this point, the process is considered complete. The entire process till now can take approximately between 4 to 6 weeks.

Step 11:

It is only after this process that a woman can yield her share back to her brother or brothers. She can transfer it to his name or keep it in her name on paper and allow the brother use of it. Even if a woman legally transfers the land into her brother's name, neither party has to show any payment to do so but after digitization she has to submit a signed affidavit at the ARC. She must do this herself physically and the brother cannot submit the affidavit on her behalf.

Step 12:

If a woman wants to claim possession or sell the property, she would have to file a suit for partition proceedings of her share from the joint estate left by the deceased before the Tehsildaar under Section 135 of the Land Revenue Act. Her claim would be that she is one of the legal heirs of the deceased and even though her share according to Sharia has devolved, it should now be separated from the jointly held estate. This process takes a long time and when completed her share will be severed from the joint estate and given to her.

5.5 Flowchart of Process

X dies.

Step	Changes due to ARC	Duration	Scope for misbehavior(pre ARC)	Scope for misbehavior (post ARC)	Potential for local variation ³⁹
<p>Step 1: Any legal heir has to get a death certificate from the Secretary Union Council even if person died at home. The UC will confirm that the person actually died themselves (such as seeing the dead body or a hospital certificate etc.)</p> <p>They have to show proof of death and CNIC of deceased.</p> <p>It is unlikely that a landowner will not have a CNIC because of taxation purposes.</p>	No change	Takes 2-3 days to obtain death certificate once request has been made	None.	No.	No
<p>Step 2: Any legal heir takes death certificate to patwar khana. Submit:</p> <p>a) proof of ownership of deceased, Typical proof of ownership would include: -khaata / fard number -gardawari → property tax documentation</p>	<p>Have to initiate application at ARC.</p> <p>Family Registration Certificate was used but was not mandatory before.</p> <p>Biometric verification of all heirs is required.</p>	Takes half a day for submission.	Yes. Number of heirs could be changed since their physical presence was not required. Neither was the FRC mandatory.	<p>Minimal due to the introduction of FRC but possible if women does not have CNIC.</p> <p>The only loophole is that if the heirs can establish that the female heir is legitimately living abroad and cannot come for the process herself for an unlimited amount of time, they can submit an affidavit from her giving her approval to go</p>	Possible variation in what is required from the affidavit - e.g. signatures of the other heirs or their physical presence

³⁹ Based on Zubair's interview notes

<p>b) death certificate,</p> <p>c) application to initiate succession which only has to be signed by ONE legal heir</p> <p>d) affidavit by the applicant to state the number of legal heirs and the fact that H has died. Affidavit generated by the applicant on stamp paper - any notary public. # of legal heirs</p> <p>e) Family Registration Certificate. FRC confirms who the legal heirs are.</p> <p>This initiates succession process is initiated by Tehsildar.</p>	<p>Instead of patwari, application is now submitted to ADLR or LRO. The LRO marks it and sends it forward to patwari.</p> <p>Facilities for females are also present at the ARC which are not available at the patwar khana such as female only counters and waiting areas.</p>			<p>ahead with the mutation process. The verification process of the affidavit is quite long also and she needs to get it attested from the notary from her area of residence and send a physical copy.</p> <p>Even in this case, she cannot yield the land to her brothers by not being present. They can just carry out the process without her. She will still get her share transferred in her name in the mutation and partition proceedings.</p>	
<p>Step 3 and First step of verification: Patwari checks application against his record + marks in his daily diary.</p> <p>If the computerized records and the manual records do not match, the patwari is the ultimate authority since he is local to the area</p>	<p>No change.</p>	<p>2 weeks for this step of verification</p>	<p>Possible scope if family and patwari are in collusion in old system.</p>	<p>Due to the introduction of FRC, exclusion of female heirs has become minimal.</p>	<p>No.</p>
<p>Step 4:The sanctioning of mutation of inheritance has to be marked - it is sent to revenue collection official (naib tehsildar) to be checked</p>	<p>No change.</p>		<p>Possible scope if family and patwari are in collusion in old system.</p>	<p>None.</p>	<p>No</p>

<p>whether X actually owned that property so he lists the two accompanying witnesses who can testify that his affidavit is correct</p> <p>Legally witnesses must be: 1 - numberdar 2 - pattidar → neighboring landowner within same khatta</p> <p>They are testifying to the details of the surviving legal heirs & X's landownership</p>					
<p>Step 5:Patwari makes family tree based on his landownership record (which shows plot wise) (even if attach the FRC, that is not sufficient)</p>	No change.		Possible scope if family and patwari are in collusion.	Due to the introduction of FRC, exclusion of female heirs has become minimal.	No
<p>Step 6:Patwari registers inteqaal: in his own office (patwar khana) Property officially gets transferred into the names of legal heirs mentioned in affidavit (mutation) At this stage, land has not been partitioned (right now it's jointly owned by all the heirs in some sense)</p>	No change.		Possible scope if family and patwari are in collusion.	No scope due to FRC	No
<p>Step 7 and Second step of verification (on-site): After inteqaal has been registered, there is a second step of</p>	LRO also goes for on-site verification.	2 weeks for this step of verification	Collusion possible between male heirs, patwari and witnesses	Some scope for collusion between brothers and revenue officials so that brothers get the more fertile parts of the land.	Yes local variation possible

<p>verification where the Tehsildar will go to the village where property is located and verify anything on the ground.</p> <p>Only people who have to be present:</p> <ol style="list-style-type: none"> 1. Legal heir who initiated the process 2. The lumbardar (originally witness) 3. The pattidar (originally witness) <p>They are made to testify again and record statements in presence of tehsildar.</p>			<p>to give false testimony.</p> <p>In the old system, this is where frauds could be caught if the witnesses and/or patwari did not collude with the male heirs</p>	<p>Less likely to have such problems in urban areas.</p>	
<p>Step 8: Ad is given into newspaper of the inteqal process for one day and people have 7 days in which to contest the inteqal.</p> <p>The ad only runs once.</p> <p>Heir pays for ad and patwari words it.</p>	No change.	1 week	None	None	No
<p>Step 9 and Third step of verification: If no objections raised in 7 days, then the application goes to the qanungoh does verification of the heirs and the mutation again.</p>	No change.	2-3 days	None	None	No

<p>Step 10:All verifications go back to Tehsildar and he sanctions the succession as well as the mutation. Order written on mutation. Partition proceedings commence. The land is transferred into each individual's name</p>	<p>After the Tehsildar marks the file, it is sent to the LRO and he sanctions the succession and mutation.</p> <p>The database is updated at this stage</p>	1 week	None	None	No
<p>Step 11: At this point women can yield share to brother or brothers.</p>	<p>Woman has to sign affidavit at ARC to yield share to brother or brothers. But no show of payment is required.</p>	No time limit	Yes because it is considered a family matter which they should resolve amongst themselves.	No scope after digitization since the woman must be physically present at the time of the affidavit	No. Even if she is observing purdah she still has to go before the revenue officer. There is no way around it.
<p>Step 12: Women at a later date can also file a suit for partition proceedings if she wants to sell the land or claim possession and the brothers will not allow her</p>	<p>She would need a fard from ARC to show possession.</p>	No time limit.	None.	None.	None.
<p>Fees:Fee is 500 rupees Patwari takes 100 rupee 200 rupees given to treasury 200 rupees divided amongst others</p>		Can take 4-6 weeks for the succession and mutation process	Yes large amounts were recorded for giving to different revenue officials	<p>After digitization rates are fixed.</p> <p>Note: We did not get a chance to talk to users of the system due to lockdown.</p>	Digitization with fixed fee rates seems to have decreased the corruption in the system. Some LROs have reported that they have heard that in some Service Centres bribes are taken but they said not in theirs.

6. Changes created by Digitization of Land Records

The Government of Punjab recently took the initiative to digitize all the land records in Punjab. Manual records maintained by the patwari were entered into the database. Once the records of an area were digitized, this was re-confirmed with the patwari and also mapped on the settlement area to see if the figures matched. If they did not match, in-person visits were made by both the revenue officials and the digitization team to figure out where the mis-match occurred and who owned which land. Once the land record for each area was finalized then on-going mutations were updated in the digitized system. Once this was complete, then the Service Centre for that tehsil was opened.

The manual land records system consequently brought forth key burdens on the entire legal system as it systematically could be altered by patwaris and field revenue officials. Issues like bribery were rampant under the old manual system which greatly increased the cost of transactions. Women were especially hard hit under the old system facing hurdles in securing their rights to ancestral land. Additionally, under the old system the Patwaris, being the sole custodians of the records, demarked land titles on a sheet of cloth without any backup which resulted in loss of information. Although a backup system existed, its use was not strictly enforced. Pertinent agricultural information was commonly unavailable to various stakeholders—such as women, small farmers, financial institutions, and even high-level provincial officials.⁴⁰The aim of digitization of land records was introduced to bring an end to the old and inept ‘Patwari’ system by making it more secure from fraud and corruption.

The Punjab Land Records Authority (PLRA) was established in early 2017 and the success of the digitization project made land records easily accessible to the public and was converted to law under the Punjab Land Records Authority 2017.

According to data from PLRA, 90 percent of the province’s land records have been computerised. A total of 152 records centers have been working across Punjab, providing services to landowners.

Administration officials have observed a decline in property related disputes and litigation in Punjab owing to the success of the ‘new’ system as it difficult to tamper with.

PLRA data also indicates a steady rise in the yearly total of land record copies issued from 2015 to 2017. The total number of mutations has roughly increased by 300,000 every year during the same period.⁴¹

The changes to the process introduced by the digitization includes:

1. A new post of LRO which is at the same level as Tehsildar. Now the application is given to the ADLR (Assistant Director Land Records) within the ARC or given to the LRO which is a new post that has been created. When an application is submitted to them, they move it along with their own report to the Assistant Commissioner who will move it to the patwari who will carry out the same process as before.

⁴⁰ibid

⁴¹M. Graglia, T. Robustelli, & M. Marcus, *The Punjab Example, Systemic Land Reform in Rural Pakistan*, July 2018 available at https://d1y8sb8igg2f8e.cloudfront.net/documents/The_Punjab_Example_2018-07-05_195103.pdf

2. Biometric verification of all heirs is required to initiate the succession and mutation process. Previously, only one heir could initiate the process.
3. The death is now registered by the LRO (or ADLR) and NOT the patwari. But the patwari will be the one to verify the information.
4. The importance of the Family Registration Certificate (FRC) has increased. Although previously also this document could be attached, now it is compulsory to attach it. The ARC now has an additional step where it verifies the FRC from NADRA. Therefore, the chance of any heir being omitted is low.
5. The computerization of land records is a safeguard that minimizes the chances of it being altered or omitting the names of female heirs. Moreover, the fact that the record is maintained in several places makes it easy to cross check and verify information and identify any discrepancies.
6. If the woman decides to yield her share to her brother or brothers, she has to physically present an affidavit at the ARC and relinquish her share on paper. In some cases, an informal arrangement between siblings can also be created in which the sister yields her share in reality but does not on paper.

7. Loopholes identified in the procedure

In case of any discrepancies or if a legal heir has been excluded there are two forums where the inheritance mutation can be challenged: 1. An application can be filed before the Assistant Commissioner laying down the grounds for the challenge which can include fraud, misrepresentation or the fact that a legal heir has been left out or 2. A civil suit can be filed before a Civil Court

It is felt that civil suits take a long time in order to be decided and it is better to approach the Revenue because these proceedings wrap up quicker on account of being summary proceedings. This means that there is requirement to record evidence (testimonies of the parties). It is also possible to file an application before the Revenue Courts, pursue it all the way to the Board of Revenue and then move it to the Civil Courts.

In analyzing this entire process, one finds that there are gaps that can be exploited in order to deprive women of their right to inherit. One of the biggest problems in mutation proceedings is that the Patwari can leave out legal heirs when passing the mutation. According to Barrister Shah, if one looks at the statistics of the civil suits pending in Punjab, the majority of the cases relate to inheritance issues simply because the Patwari was in a position to collude with the family and leave out the female legal heirs.

Moreover, the fact that a land record or Fard can only be obtained from the Patwari places too much control in his hands.

A key concern is also Patwaris favouring and facilitating families with larger land holdings as opposed to families with smaller land holdings or the poor. Patwaris were also being used to facilitate a gift of the family property to the sons effectively leaving nothing to be inherited by the female members of the family in the event of the father's death. It is not customary within the rural

framework to discuss property matters with the female members of the household. Moreover, daughters move away from the family when they get married. It has been seen that the sons would exert pressure on the father to leave them the property and have the Patwari come to the house and witness the father making an oral ‘gift’ of the property to the sons with the Patwari ensuring that title got transferred in one sitting without the daughters finding out.

This practice was rampant and was possible because of the involvement of the Patwari. This is also in line with rural/feudal culture where it is felt that daughters are not entitled to the father’s property and because giving property to daughters, especially married daughters’ decreases the land holding.

Land would be kept within the family through these oral gifts which were possible because of the involvement of revenue officials.

Another problem with this process that was identified through interviews is that the advertisements are placed in newspapers that no one reads or people haven’t even heard of. These ads are placed in local, obscure papers rather than in national newspapers and an important avenue for identifying any malpractice is lost.

These gaps led the Government to initiate the digitization of land records and establishing Arazi Record Centers under the *Punjab Land Records Authority Act* of 2017. The idea behind digitization was to “reform and modernize the system of land records, to improve the land records service delivery”⁴² and provide a system that is both transparent and accessible.

Under the new system the application is either given to the Assistant Director Land Records (ADLR) within the ARC. Once an application is submitted it is moved to the Tehsildaar or Naib-Tehsildaar by the ADLR who also attaches his own report to the application. The Tehsildaar or Naib-Tehsildaar then moves it to the Patwari who carries out the same process, including verifications but he is no longer responsible for getting the Inteqaal registered. This is now something officials within the ARC do.

Applications made to the ARC also have to have a copy of the death certificate, an affidavit by the applicant, the Family Registration Certificate along with copies of the ID cards of all the legal heirs. It is felt that providing the ID cards of all the legal heirs is a stringent requirement and will prove to be a major obstacle especially if a woman seeking to move an application is not on speaking terms with her siblings. But the other side of this is that not having the ID card of a female family member will be instrumental in preventing fraudulent mutations without the knowledge of female legal heirs.

Moreover, because of the introduction of the Arazi Record Center, if someone wishes to make a gift of the property they have to go to the Center and state on record that he needs the Fard for the

⁴²Punjab Land Records Authority Act 2017

purposes of making a gift. One major advantage of this is that oral gifts are now decreasing because the Patwaris are no longer coming to the house with the record etc. to make sure that the transfer gets done in one sitting. The land owner will have to go to the ARC where his photograph will get taken and his thumb impression will be recorded. As a result of this the incidences of fraudulent gifts have decreased.

The computerization of land records and the establishment of ARCs will not only facilitate women in terms of access to land records⁴³ and related information, it will also act as a safeguard that will protect women's rights by minimizing the chances of land records being altered or omitting the name of female heirs altogether. It would not be possible to transfer land without the presence of the woman who is also mentioned in the record. Moreover, the fact that the record is maintained digitally would make it easy to cross check and verify information and identify any discrepancies.

8. Types of Cases⁴⁴

Barrister Shah feels that even though there is greater awareness amongst women as regards their rights, inheritance rights are by and large still not claimed because it is felt that this would bring shame upon the family.

This is of course not to suggest that women do not go to Court to claim their right.

In his opinion the majority of cases used to stem from women's names either not being included as the legal heirs of the deceased or because male members of the family have relied on illegal means to deprive them of their right.

There have been many instances where fraud is committed to ensure that land stays within the family and there have been cases where fake gift deeds have been produced in Court which state that the sister has 'gifted' her share to her brothers and land is transferred in their name on the strength of that document.

In some cases, the male members of the family defraud the female heirs by getting their signatures and thumb impressions on blank documents saying they will be used for inheritance purposes but in fact those documents are used to prepare deeds that disentitle women from their inheritance. This results in civil suits being filed by the female members which take decades to be decided.

There have also been cases where the male members of the family produce another woman before the revenue officials who claims to be the sister and legal heir and she 'signs' away her rights in the presence of those officials. This fraud is facilitated in a sense by the fact that a woman's ID

⁴³ The Punjab Land Record Authority has signed an agreement with NADRA under which a copy of the Fard can also be obtained from the various NADRA E-Sahulat Centers across Punjab

⁴⁴ This section of the report is based entirely on interviews with Barrister Syed Ali Nouman, an advocate of the High Court, who specializes in matter pertaining to Revenue and has extensive experience dealing with inheritance cases.

card after marriage is changed to show the name of the husband as opposed to retaining the name of the father. If the revenue official does not suspect anything, he would have no reason to cross check the ID card that is being attached and so this fraud will go undetected till the real sister files a claim.

Uncovering the fraud would require a person to go to the Patwari or the ARC to find out in whose name the land has been transferred. But uncovering this fraud is difficult especially if the woman in question is not educated or more importantly does not know how much land her father had or where all it is situated. This will make it almost impossible to find out if she has been fraudulently excluded.

With regard to the latter point, if a woman does not know where the land physically situated she will not be able to get information pertaining to it which will obviously mean she will not know if her brothers have taken it and excluded her or not. The exact location of the property is required if one wants to know whose name it is in and in most cases the women of the family do not have this information. If the deceased owns multiple chunks of land then the actual, physical location of all of them needs to be known so that one can approach the different Patwaris and check if their name has been added to the list of heirs of the deceased.

What is needed is a single data base which is streamlined to show the sum total of all the property owned by one person. If this information is found in one place then preventing and detecting fraud would become much easier. This would also enable the inheritance mutation for all of those properties to take place one time.

Even where ownership devolves on the female heir, she may not enjoy actual possession. This may be due to the fact that she doesn't live in the same village anymore and her brothers are still controlling and cultivating the land. If she wants to claim possession or sell the property, she would have to file a suit for partition proceedings of her share from the joint estate left by the deceased before the Tehsildaar under Section 135 of the Land Revenue Act. Her claim would be that she is one of the legal heirs of the deceased and even though her share according to Sharia has devolved, it should now be separated from the jointly held estate. This process takes a long time and when completed her share will be severed from the joint estate and given to her.

According to Barrister Shah a lot of inheritance claims are also filed because in-laws and husbands put pressure on the woman to claim her share from her natal family even though the woman herself seems unwilling.

The timing of some inheritance claims suggests that they are in response to family quarrels as opposed to women feeling this is a legitimate right that should be claimed regardless of how good or bad family relations are. There have been cases where a woman's interest in her inheritance has come about because she is not happy with decisions taken by her natal family or is having disagreements with her brothers.

This would suggest that inheritance claims are also strategically used by women as a means of asserting their own agency and making sure the family accords due weight to their demands. They will settle the claim once their other demands have been met.

9. Problems women can face with the procedure⁴⁵

1. Need a male relative to support them to contest: It has generally been observed that due to cultural reservations the women are almost always accompanied by the men of the family. In case a woman is fighting with her natal family, she will be accompanied by her husband and/or son. Most patwaris interviewed also mentioned that women mainly contested cases when pressurized by their husbands and/or sons or if the husbands/sons were not in a good financial position. This still is the case post digitization also.
2. Mobility issues: Women seemed dependent on the male relative's schedule and would mainly travel on private transport with their male family member. Even on public transport they had to be accompanied by a man to what they felt was a long journey to an administrative office where they would require help in filling out documents etc. This is still the case post digitization even though the ARC has female only facilities. The ARC officials do not recall instances where the woman would come in without a male relative.
3. Impersonation by other women: Some patwaris reported that male members of the family would bring unknown women in purdah (face covered with a cloth) and have her sign an affidavit that she was his sister and would willingly hand over her share to her brother/s. Such fraudulent behaviour will normally be caught by the patwari, lumberdar and/or pattidar because they have local knowledge of the deceased and how many heirs he has. Even if the woman is hiding her face, due to digitization, their biometric verification cannot be altered. Therefore, they feel that even if male members try, they cannot exclude their sisters from the procedure after digitization.
4. Collusion between revenue officials and family: The only scope for collusion between revenue officials and male members of the family seem to stem from the fertility of the land. During the mutation process, when it is decided which heir gets which part of the land, the male members can ensure that they take the more fertile part of the land parcel and give their sisters the less valuable parts in a manner of speaking. The shares are based on value and not on land area. This is still possible after digitization of land records.
5. Lack of documentation: The patwaris did not seem to feel that women suffer from a lack of documentation when presenting their cases. Even lawyers agreed that as long as a woman can produce sufficient evidence that she is the legal heir of the deceased (in one case, a woman

⁴⁵ Based on conversations with patwaris and ARC officials

brought pictures of herself and the deceased over the heirs to prove her claim), the judge will rule in her favour.

10. Other Salient Points

Other points that may be relevant to the study:

1. If the legal heir lies about any of the other legal heirs, they can challenge the mutation at any time.
2. There is no limitation period in inheritance cases. Both civil and revenue (before the assistant commissioner upto the collector) can be the relevant forums that an heir can approach in case his/her name has been left out of the mutation. The patwari is then made party to the case because he has the record and the patwari will carry out whatever the decision of the court is.
3. The revenue courts do allow testimonies to be recorded.
4. The revenue officer was of the opinion that the process of mutation is fairly transparent and there are sufficient checks and balances within the system that ensure transparency. The revenue officers felt that women are facilitated through the entire process.
5. As far as the patwari's own role is concerned, it was observed that they are not as corrupt as they are made out to be. A small percentage may take bribes, but the majority only takes money for the duties that they are performing. Patwaris can also be transferred.
6. The patwari observed that by and large it is the men that initiate the process and women approach them if there is no other male member of the family. It is submitted that this is a reflection of the relationship between the State and women which is actually being mediated by the men because of their dependence on them.
7. If the record between the computerized database and the manual record do not match, the patwari and DC are the ultimate decision makers due to their local knowledge.
8. There does seem to exist some rural/urban divide in women contesting cases. The patwaris interviewed felt that women in urban areas were more likely to contest a case and also win that case as compared to women in rural areas. For example, Research conducted in Multan has shown that women do receive their share of the inheritance which can indirectly be attributed to the land reform which put a ceiling on the amount of land which can be owned. Therefore, indirectly such a cap on the amount of land has seen women being accorded their inheritance rights and/or being given land through *Haq Mehr* (dower) to make sure the land is not redistributed.⁴⁶

⁴⁶Sustainable Development Policy Institute, 'Women's Land Rights in Pakistan: *Consolidated research findings*', July 2008, 18-19.

Bibliography

1. Agarwal, Bina. 2002, Are We Not Peasants too? Land Rights and Women's Claims in India, SEEDS no. 21. New York: Population Council
2. Butt, Beenish Ijaz & Asad, Amir Zada. 2016, Refutation, Relinquishment and Inheritance: Exploring Women's Inheritance Rights in Pakistan, Pakistan Journal of Social Sciences (PJSS), Vol. 36, No. 2, pp. 1001-1009
3. Hannah, H. W. 1971, A Legal View of Land Reform, Illinois Agricultural Economics, Vol. 10/11, Vol. 10, no. 2 - Vol. 11, no. 1, pp. 7-10
4. Hussain, Sabiha. 2015, A Socio-historical and Political Discourse on the Rights of Muslim Women: Concerns for Women's Rights or Community Identity: (Special reference to 1937 and 1939 Acts), Journal of International Women's Studies, Vol.16, Issue.2, pp. 1-14
5. Interview with Barrister Syed Ali Nouman, Advocate High Court
6. Interview with Mr. Masood Shah, Patwari Cantt Katcheri
7. Jejeebhoy, Shireen J, Sathar, Zeba A. 2001, Women's Autonomy in India and Pakistan: The Influence of Religion and Region, Population and Development Review, Vol. 27, No. 4, pp. 687-712
8. Kalshian, Rakesh. 2011, Leveling the Playing Field: A Survey of Pakistan's Land Reforms, A Panos South Asia Study
9. Kelkar, Govind. 2005, Development Effectiveness through Gender Mainstreaming: Gender Equality and Poverty Reduction in South Asia , Economic and Political Weekly, Vol. 40, No. 44/45, pp. 4690-4699
10. Khan, Hooria Hayat. 2013, Where There is Land, There is Hope, Shirkat Gah Special Bulletin
11. Mehdi, R. 2002, Gender and Property Law in Pakistan: Resources and Discourses, Vanguard Books
12. Mumtaz, Khawar, Noshirwani, Mehr M. 2013, Women's Inheritance and Land Rights in Pakistan, Shirkat Gah Special Bulletin
13. Rao, Nitya. 2005, Women's Rights to Land and Assets: Experience of Mainstreaming Gender in Development, Economic and Political Weekly, Vol. 40, No. 44/45, pp. 4701-4708
14. Rehman, Saeed-ur. 2010, Denial of Women's Right of Inheritance Enhancing their Vulnerability to Domestic & Societal Violence- Research Study on Customs and Practices Prevailing in South Punjab Regarding Women's Right of Inheritance, Awaz Foundation Pakistan: Centre for Development Services
15. Rubab, Iram & Usman, Ahmed. 2018, Women's Right of Inheritance: Choices and Challenges in Punjab, Journal of Islamic Thought and Civilization, Vol. 8, Issue. 2
16. 2000, Country Briefing Paper: Women in Pakistan, Asian Development Bank
17. 2009, Women's Inheritance Rights to Land and Property in South Asia: A Study of Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka, A Report by The Rural Development Institute (RDI) for the World Justice Project.
18. 2018, Women's Rights of Inheritance and its implementation, National Commission on the Status of Women