

Pakistan Islamicus

An International Journal of Islamic and Social Sciences
(Quarterly)

Trilingual: Urdu, Arabic, and English

pISSN: 2789-9365 eISSN: 2790-4911

<https://pakistanislamicus.com/index.php/home>

Published by:

Muslim Intellectuals Research Center
Multan-Pakistan.

website: www.mircpk.net

Copyright Muslim Intellectuals Research Center

All Rights Reserved © 2021. This work is licensed under a
Creative Commons Attribution 4.0 International License



Quarterly

Vol. 03 No. 03

(October - December 2023)

pISSN: 2789-9365

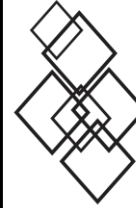
eISSN: 2790-4911



An International Journal of
ISLAMIC AND SOCIAL SCIENCES

پاکستان
ISLAMICUS

www.pakistanislamicus.com



Muslim Intellectuals Research Center
Multan - Pakistan

TOPIC

**PROTECTING WOMEN'S RIGHTS: ANALYZING SECTION 498A OF THE PPC AND
THE LEGAL SAFEGUARDS AGAINST DISINHERITANCE**

AUTHORS

Qadir Ullah

Lecturer

Department of Law, Edwards College Peshawar, KPK, Pakistan.
advqadir50@gmail.com

Faiza Choudhary

Lecturer

Department of Law, University of Sialkot, Punjab, Pakistan
faiza.choudhary@uskt.edu.pk

Tayyaba Yasmin

LLM Scholar

Times Institute Multan, Punjab, Pakistan.
advtayyabayasmin@gmail.com

How to Cite

Ullah, Qadir, Faiza Choudhary, Tayyaba Yasmin. 2023.

"PROTECTING WOMEN'S RIGHTS: ANALYZING SECTION 498A OF THE PPC AND
THE LEGAL SAFEGUARDS AGAINST DISINHERITANCE".

PAKISTAN ISLAMICUS (An International Journal of Islamic & Social Sciences)

3 (3): 568-576.

<https://pakistanislamicus.com/index.php/home/article/view/96>

PROTECTING WOMEN'S RIGHTS: ANALYZING SECTION 498A OF THE PPC AND THE LEGAL SAFEGUARDS AGAINST DISINHERITANCE

Qadir Ullah

Lecturer

Department of Law, Edwards College Peshawar, KPK, Pakistan.
advqadir50@gmail.com

Faiza Choudhary

Lecturer

Department of Law, University of Sialkot, Punjab, Pakistan.
faiza.choudhary@uskt.edu.pk

Tayyaba Yasmin

LLM Scholar

Times Institute Multan, Punjab, Pakistan.
advtayyabayasmin@gmail.com

Abstract

The Pakistan Penal Code addresses the cruelty against women in Section 498A, especially in the context of dowries. In the event that someone dodges your way to have real estate that should rightfully pass to your female heirs, this provision exacts substantial penalties. Offenders face a maximum fine of one million rupees and imprisonment for up to ten years in the case. The section is in line with the commandment of the Most Merciful to protect the property rights of others and highlights the proportionate rights of women to inheritance. However, the usefulness of this section has been questioned, as well as the potential for misuse. Gender inequality is a significant barrier to building inclusiveness in Pakistan. One potential solution may be activating district inheritance committees and increasing the number of women taking part in such processes. The continuation of discriminatory human rights policies points out that, despite constitutional and Islamic injunctions and other forms of law, women are still not able to inherit. This failure makes clear the need for comprehensive measures to protect women's property rights.

Keywords: Women, Rights, Disinheritance, Land Inheritance, Institutional, Legal, Reforms.

INTRODUCTION

To appreciate today's legal environment, it's necessary first to know something about the history of women's rights to property in Pakistan. Women were barred from inheriting with systematic discrimination in the past and were often denied their share of family assets. For this state of affairs, social norms were largely to blame. Since this made them dependent and economically exploited, women were easy pickings for discrimination of any kind. Throughout the evolution of Pakistan's legislation, there have been efforts to address gender-based discrimination. A series of legal reforms have progressively recognised and protected women's inheritance rights. Still, real problems remain. Part and parcel of the opposite situation is that Section 498A of the PPC is crucial in combating licentiousness and mistreatment of women, especially oppression by

withholding inherited property. The problem is further complicated by the failure of women to get what is due to them. Women frequently encounter difficulties in seeking their heritage due to social mores and patriarchal customs. The legal system should make adequate provisions to protect women from such injustice and ensure that their property rights are upheld. Under Article 23 of the Pakistani Constitution and Law, Pakistani citizens enjoy equal rights to acquire, hold, own or dispose of property. However, the government reserves the right to intervene in property rights cases where the ownership or disposal of property is deemed to be at odds with the wider public interest. The State bears the additional responsibility of safeguarding its populace. Therefore, the State may intervene with a person's property rights under Article 24 of the Pakistani Constitution in order to defend the rights of people who are less fortunate in terms of ownership and devolution, such as women and children. However, neither the analysed case laws nor the codified laws provide any indication of this proactive involvement (Rubab, 2019).

LAWS OF INHERITANCE IN ISLAM

The West Pakistan Muslim Personal Law (Sharia Application) Act 1962 governs inheritance rights in Pakistan, with Muslim women having separate standing in succession and inheritance. The Islamic Law of Succession requires blood relations for inheritance, with predetermined "Quranic Shares" determining inheritance development. Under Hanafi law, there are twelve sharers, while Shia law has four male and eight female sharers. Under Hanafi law, sharers include wives, mothers, grandmothers, daughters, son's daughters, uterine sisters, and full sisters. Female shareholders receive half of a male shareholder's stake, with the mother receiving 1/3 and the father 1/6th. Shia law may only allow female heirs. Quranic Shares are fixed and unchangeable, allowing individuals to manage their property as they see fit. Wills and gifts are the most common tools in Pakistani inheritance law, with oral gifts acceptable for wives and daughters. Marz ul Maut can be used to contest gifts. Only one-third of the testator's assets can be left in a will, and dower is typically expressed as a monetary amount. Tanazul, or relinquishment, is a widespread practice (Khan, J., Khalid, A., & Rehman, 2022).

Review of Law

Article 23 of the Pakistani Constitution and Law grants equal rights to citizens of Pakistan to acquire, hold, own, and dispose of property. However, the right to intervene in property rights is reserved in cases where the ownership or disposal of property is thought to conflict with the perceived wider public interest. It is also the duty of the State to safeguard its people. Accordingly, the State may infringe upon an individual's property rights under Article 24 of the Pakistani Constitution in order to defend the rights of those who are less fortunate in terms of ownership and devolution, such as women and children. However, neither the analysed case laws nor the codified laws provide any indication of this proactive engagement. (Ahmad, N., & Malik, M. E. 2020).

Relevant Civil Law

Legally speaking, adult women in Pakistan have the right to own, obtain, transfer, sell, or otherwise dispose of property, whether in exchange for money or as a gift. Like men, they are likewise allowed to sign contracts with any terms or conditions. It is possible for women who own property to mortgage it in order to obtain money. The law recognises a married woman's independent property rights if she has a formal title to her assets. The courts thus recognise that the husband and wife have distinct property rights. The civil laws governing property transactions, such as the Contract Act 1872, the Transfer of Property Act 1882, or the Registration Act 1908, do not distinguish between genders for adults (over the age of 18). (Kar, D. S. 2023).

THE PRINCIPLE OF COMPENSATORY PROPERTY

In all actuality, Muslim women's inheritance rights under Islamic law are discriminatory and significantly worsen their already precarious position-The National Commission of Inquiry in 1997 made it clear that women have half the inheritance rights of males and that even these rights are ignored. The justifications for the inheritance framework, however, vary. There is a common misconception—one that the courts have upheld in several instances—that women were granted a portion of property proportionate to their lack of financial responsibility. It is also mentioned that Islam is credited with granting women their initial share of property rights Khan, A., Amjad, S., & Usman, M. 2021). In addition to the fact that Islamic belief interacted with and was informed by various cultures, John Esposito states that "the primary interpreters of Islamic Law and Tradition (Hadith) were men (religious scholars or Ulema) from those cultures." These factors together had a profound impact on women's status in Islam. The argument advanced by academics is that Islam offers women a "compensatory property regime," according to which they are expected to acquire property through other means, including gifts, dowries, and maintenance after marriage. However, in reality, women are not granted access to the compensating property regime. For instance, dowries are typically deferred—that is, not paid at the time of entering into a marriage contract—and thereafter revoked by the wife (Tuppurainen, A. J. 2010).

THE 1961 ISLAMIC FAMILY LAWS ORDINANCE

The Muslim Family Rules Ordinance of 1961 controlled many parts of Muslim personal law, although it did not codify all of the rules related to Islamic inheritance. The Pakistani Constitution's Article 227 declares that religion guides all official law. Consequently, no reform has been proposed, or a legal or constitutional challenge has been made to the statutes that discriminate against women in the inheritance of property. Arguments such as "the compensatory property regime" granted by Islam to women have often been invoked by the formal legal system and religious experts to support the unequal inheritance rights of women. According to this system, women have the right to acquire property through different channels, including bequests, gifts, dowries, and maintenance after marriage. (Ali, S. S. 2002).

Conventional Law

Customary rules, which have been recognised by courts as lawful in settling issues related to the succession of agricultural property, not only discriminate against women but also provide them limited ownership rights only while they are living. A woman's rights are constrained in such a way that she cannot easily gain the rights connected with property ownership, such as having her name appear on the revenue record and seeking access to water, nor is she unable to donate or alienate the land. (Lubna, 2011).

WOMEN'S PROPERTY RIGHTS FOLLOWING MARRIAGE

The legal system in Pakistan does not acknowledge a woman's entitlement to property that she may have obtained through marriage. Co-ownership of marital property is currently not permitted by law. Consequently, even though a woman works on household land and may have helped the family purchase it during the marriage, she would not be entitled to ownership of that land despite her labour (whether paid or unpaid). Even though contributions in kind are not legally recognised, a woman may still be able to claim property if she can demonstrate that she made monetary contributions in accordance with the *benami* (anonymous) transaction principle. Nonetheless, proving this idea is challenging, and in general, a person's name must appear on the title document for it to be recognised by the law. A woman cannot inherit any of her husband's assets in the event of a divorce, nor is she eligible for long-term maintenance. If she has requested a *khula*, her claim to the dowry must likewise be revoked (divorce). In the context of agriculture, a divorced woman would no longer be able to work on her own land or access any common areas that her husband's family might be using as sharecropping or tenant farms (Ahmad, M., Batool, M., & Dziegielewski, 2016).

Interpretation: Law

The instances that the Superior Courts have resolved show that, despite the fact that Pakistani courts have upheld the concept of inheritance based on the Quranic Shares, no inquiry has ever been made as to whether the woman was indeed granted property under a different title. When it comes to making decisions on inheritance, the higher court has often made an effort to back interpretations that benefit women more. This method is not the same as the typically prejudiced stance used in criminal law trials (The Hudood Ordinances) or situations regarding divorce and marriage (Usman, M., Amjad, S., & Khan, A. 2022). This might be the case due to the fact that religious frameworks such as the Quran and Hadith are closely followed when making decisions about inheritance and related property rights for women. To defend their inheritance rights, women must be able to go via the official court system, which is a drawn-out, expensive, and challenging process. In any event, women are typically unable to get official law-generating tools, which are governed by a patriarchal political system. The resolution of property lawsuits might take up to ten years. For example, in isolated places where women may not have their names

registered in the Revenue records, winning litigation does not guarantee that the decision will be followed. Very few women will ever become property owners. In a 1995 survey of over a thousand rural Punjabi homes, just 36 women had land registered in their names, and only 9 of them could sell the property without the male inhabitants' permission. The rare instances in which the courts have ruled in favour of women are not predicated on the idea that women are equal citizens. It is believed that women are helpless, illiterate, and dependent, in need of protection and unsuited to handle property matters. As a result, it seems that their interests are more strongly served by paternalistic worries than by an acceptance of women's equal citizenship. (Lau, 2007).

EVALUATION OF THE POLICY

International Accords and Proclamations

Numerous international accords concentrate on land rights issues and women's rights in this domain because of the connection between land ownership and access and poverty. Thus, "Everyone has the right to own property alone as well as in association with others," vide "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration," according to Article 16(h) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Pakistan ratified in 1996. States Parties shall adopt measures to guarantee that women have access to "agricultural credit and loans, marketing facilities, appropriate technology, and equal treatment in land and agrarian reform as well as in land resettlement schemes," as required by Article 14(g). Pakistan accepted this Convention, but only with the proviso stated in Article 2 that it would not do anything that would violate its Constitution or laws, including the rules of Islamic law (Khan, A., Javed, K., Khan, A. S., & Rizwi, 2022). Thus, in Pakistan, the Personal Law of every individual still governs the devolution of land rights through inheritance. International agreements have usually acknowledged the connection between poverty and land access; nonetheless, the focus is on guaranteeing women's equal and complete access to land, not land ownership, and equal inheritance rights are not emphasised in international UN instruments. The Beijing Platform for Action (1995) states that women should have the same rights as men to exercise or assert their inheritance, but it does not mean that their inheritance share must match or be in the same proportion as that of men. It simply states that women should have "an equal right to inheritance." This takes into account the tenet of Islamic inheritance law, which gives women a smaller portion of the Quran. (Rubab, I., Malik, B., & Bakht Aziz, 2023).

Land Rights Issues Are Not Visible in State Policy

The government of Pakistan's policy texts do not particularly address concerns related to women's land ownership and access, even though there is a well-accepted connection between these factors and poverty. This topic is not particularly covered in the National Commission on the Status of

Women's draft report, "Policy Research on Women's Right to Inheritance and its Implementation." This topic is not emphasised as vital in the National Policy for Development and Empowerment of Women (2002). However, it clarifies that the policy's goal is to "ensure women's equal access to all development benefits and social services as well as to remove inequities and imbalances in all sectors of socio-economic development." Only education and skill development are prioritised in its main activity areas (Kanwel, S., Khan, M. I., Usman, M., & Khan, A. 2020). Furthermore, it specifies that "actions must be taken to guarantee impoverished rural women's access to land, extension services for agriculture and livestock, and support mechanisms and facilities, granting women easy access to microcredit." The part pertaining to the establishment of appropriate legislation, which centres on issues of equal compensation and sexual harassment in the workplace, fails to include women's inheritance rights or the difficulties posed by customary laws (Khan, A., Iqbal, N., & Ahmad, 2022). The Beijing Platform (1998) (NPA) National Plan of Action for the Advancement of Women (NPA) addressed several land rights-related concerns, but the 2002 National Policy did not emphasise them as strongly. Pakistan is now working hard to achieve the Millennium Development Goals. The third objective is to "promote gender equality and women's empowerment". The relationship between land ownership and inheritance and female empowerment is acknowledged by the writers of the Millennium Development Goals Strategy, yet government initiatives and programs do not address this problem in any way. It is talked about having access to microcredit, but only in terms of generating income rather than owning assets. (Rubab, I. 2019).

Analysis: Law

Particularly noticeable is the disconnect between the recognition of systemic barriers to women's empowerment and the reduction of poverty and the implementation of specific action plans. Government projects and programs do not effectively address the crucial need for women to have access to, and more crucially, to possess and control over, land, despite the fact that government commissions and policy documents emphasise this requirement. In a similar vein, although the government has accepted or signed international accords, it has not succeeded in converting their terms into local law or policy. Pakistan cannot, according to the Report of the Commission of Inquiry for Women (1997, p. xi), permanently separate itself from international norms. According to the report, "(it) needs to address its domestic issues in a way that is somewhat consistent with the global viewpoint and generally recognised norms." It will have to do it later, after significant harm, if it doesn't do it now (Polok, B. 2022).

RECOMMENDATIONS

The government would be able to enact laws that are gender-neutral and grant women equal inheritance rights after Pakistan implements a Civil Code that removes inheritance from the purview of Muslim personal law (Hussain, N., Khan, A., & Chandio, 2023). For example,

Morocco automatically grants joint ownership of all property acquired while a valid marriage is pending, or the Shia Law, which allows a woman to inherit the entirety of a deceased person's estate without any remaining portion passing to a male heir, may inspire legislators to adopt a more progressive interpretation of Muslim personal law. Immovable property should be given to women as dowry if both parties can afford it, and the designated property should be transferred during the Nikkah (formal marriage ceremony). In addition to maintenance payments for a set period of time (e.g., five years), there should be an equal division of immovable property acquired during the marriage in the event of a divorce. (Javed, K., Jianxin, L., & Khan, A. 2021). Given that dowry is a condition of entering into a marriage contract and ought to have been transmitted at that point, women need to be permitted to retain their dowry even in the event that khula (a request for divorce) is made. Furthermore, in order to reduce the amount of time that the regular court procedure is delayed, it is essential that Special Courts make decisions in specific instances. In addition to making determinations about the rights of applicants, courts should also make implementing orders. For example, they should order the addition of a woman's name to the Record of Rights within a certain amount of time. It is necessary to complement this with initiatives to raise awareness. Women need to know that in order to obtain title to the property, they must formally register and that this is only possible if they have a National Identity Card. A female infant's birth registration is important since it may have an impact on her inheritance claim (Khan, M. I., & Riaz, 2024). The government should encourage registration by lowering the stamp tax and registration fee for women. Furthermore, women should be able to receive concessional credit by using land as collateral for loans. Again, this would encourage women to purchase real estate. This concept might be used to require land ownership documentation or even access to land for cultivation in order to award microcredit. Landowners and women should support contracts in order to guarantee that, in the case of a divorce, women will still be able to work on shared land. These deeds may also quietly encourage women to assume certain land-related duties. Since it is not evident in official government plans and programs, the real problem is getting this acknowledged as a significant contributing factor to women's subordinate status so that it may be given priority for practical change. Even though Pakistani courts have repeatedly taken a supporting stance, if the policy isn't backed, this move won't have a permanent impact. (Khalil, B., Ahmed, K., & Shah, S. S. A. 2023).

Difficulties and Debates

Literature research on this topic would be incomplete without addressing the arguments over the interpretation of Section 498A and the more general problem of women's property rights. Scholars and activists have expressed concerns about the potential misuse of the legal option to settle personal scores rather than addressing serious acts of cruelty. Finding a balance between protecting women from violence and preventing the misuse of legal measures is still a very challenging endeavour. (Faisal, S. M., Usman, M., & Khan, A. 2023).

CONCLUSION

Finally, the analysis of PPC Section 498A and the ban on taking away inherited property from women emphasises the crucial point at which laws safeguarding women's rights inside families and society converge. The Pakistan Penal Code's Section 498A, which focuses on the abuse of married women, is a powerful deterrent against harassment and other forms of mistreatment. Concurrently, the proscription against depriving women of their inheritance upholds the dedication to economic emancipation and gender parity. This legal framework emphasises how women's rights are increasingly recognised and how important it is to address problems with property rights and domestic abuse. Stakeholders—lawmakers, judges, and members of the public—must never stop promoting an atmosphere that protects women's economic security, autonomy, and dignity. A more just and equitable environment for all members of society can be created by upholding and executing these legislative rules.

REFERENCES

- Ahmad, M., Batool, M., & Dziegielewski, S. F. (2016). State of inheritance rights: Women in a rural district in Pakistan. *Journal of Social Service Research*, 42(5), 622-629.
- Ahmad, N., & Malik, M. E. (2020). Freedom Of Speech And Expression In The Contemporary World: A Case Study Of Pakistan And Limitations Of Article 19 Of The Constitution Of Pakistan, 1973. *Journal of the Punjab University Historical Society*, 33(02).
- Ali, S. S. (2002). Testing the limits of family law reform in Pakistan: a critical analysis of the Muslim family laws ordinance 1961. *Int'l Surv. Fam. L.*, 317.
- Faisal, S. M., Usman, M., & Khan, A. (2023). Unravelling the Constitutional Quandary: The Status of FATA Pre-Merger in the 1973 Constitution. *Pakistan Journal of Law, Analysis and Wisdom*, 2(02), 591-599.
- Hussain, N., Khan, A., & Chandio, L. A. (2023). Legal Safeguards against Mob Justice: An Analysis of Blasphemy Laws in Pakistan and International Human Rights Norms. *Al-Qamar*, 13-26.
- Javed, K., Jianxin, L., & Khan, A. (2021). Constitutional exceptions of right to speech: Evidence from the apex courts of Pakistan. *Journal of Humanities, Social and Management Sciences (JHSMS)*, 2(1), 72-84.
- Kanwel, S., KHAN, M. I., Usman, M., & Khan, A. (2020). Navigating Constitutional Challenges: An In-depth Exploration of Pakistan's Constitutional Landscape. *International Review of Social Sciences (IRSS)*, 8(11), 273-279.
- Kar, D. S. (2023). Execution of deed of transfer without having good title with the transferor-A practical study in West Bengal in the light of Transfer Property Act, 1882 & West Bengal Land Reforms Act, 1955. Available at SSRN 4419469.
- Khaleel, B., Ahmed, K., & Shah, S. S. A. (2023). Critical Discourse Analysis of Pakistani

- Inheritance Law and Justice System for Women. *Pakistan Social Sciences Review*, 7(3), 87-100.
- Khan, A., Amjad, S., & Usman, M. (2020). The Evolution of Human Rights Law in the Age of Globalization.
- Khan, A., Iqbal, N., & Ahmad, I. (2022). Human Trafficking in Pakistan: A Qualitative Analysis. *Journal of Social Sciences Review*, 2(3), 257-268.
- Khan, A., Javed, K., Khan, A. S., & Rizwi, A. (2022). Aggression and individual criminal responsibility in the perspective of Islamic law. *Competitive Social Science Research Journal*, 3(1), 35-48.
- Khan, J., Khalid, A., & Rehman, A. (2022). Women's Inheritance Rights in the West Pakistan Muslim Personal Law, Shariat Act 1962: An Analysis of Practices. *Journal of Gender and Social Issues*.
- Khan, M. I., & Riaz, N. (2024). Blasphemy Laws in Pakistan: A Legal Analysis and Contemporary Discourse. *International Journal of Social Science Archives (IJSSA)*, 7(1), 67-71.
- Lau, M. (2007). Twenty-five years of Hudood Ordinances-A review. *Wash. & Lee L. Rev.*, 64, 1291.
- Lubna, H. (2011). Rule of law, legal development and economic growth: Perspectives for Pakistan. *Journal of Advanced Research in Law and Economics (JARLE)*, 2(03), 48-59.
- Polok, B. (2022). Influence of Islamic Law, Social Customs and Practices on the Women's Inheritance Rights in Pakistan. *Manchester Journal of Transnational Islamic Law & Practice*, 18(2).
- Riaz, N., & Usman, M. (2024). Blasphemy Laws in Contemporary Legal Systems. *International Journal of Human and Society*, 4(1), 164-171.
- Rubab, I. (2019). Women's rights of inheritance: practices and challenges in Punjab. *PhD unpublished thesis University of the Punjab*.
- Rubab, I., Malik, B., & Bakht Aziz, Z. (2023). Do Legal and Institutional Reforms in Punjab, Pakistan Protect Women's Inherited Land Rights? *Journal of International Women's Studies*, 25(4), 5.
- Tuppurainen, A. J. (2010). *Challenges faced by Muslim women: an evaluation of the writings of Leila Ahmed, Elizabeth Fernea, Fatima Mernissi and Amina Wadud* (Doctoral dissertation).
- Usman, M., Amjad, S., & Khan, A. (2021). Human Trafficking and Smuggling: Intersection with Maritime Law and International Cooperation.