



LEGAL MECHANISM AND CHALLENGES IN THE INHERITANCE RIGHTS OF MUSLIM WOMEN: A REFLECTION ON SOCIETY OF KASHMIR

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ABSTRACT

The property rights of women have always been a matter of prestige as well as challenge for their upliftment. The right to inherit the property is one of the main forms of receiving property rights for women. However, so many challenges are attributed to this very right in the context of social, legal and familial paradigm. In spite of the legislative intervention, the women suffer on account of various familial and social disparities vis-à-vis securing property rights in the form of inheritance. The present research paper is an attempt to assess the different dimensions involved in the inheritance law and the challenges which are faced by Muslim women in different parts of Kashmir Valley.

I. Introduction

The Law of Inheritance deals with the distribution of estate among the legal heirs as per the rules prescribed. Inheritance laws are known as *ilm-ul-Farai* in Islam. Characterized as divinely ordained, the Islamic law of inheritance defines women's right to property of the deceased with specific roles and responsibilities for each individual. Women are considered as important legal heirs in different capacities like mother, daughter, wife, sister etc. In the Pre-Quranic Arab, all the estates were devolved into the male successors as a customary practice. There was complete deprivation of property rights of women. Women were recognized not more than as mere chattel. The basic law of inheritance is laid down in the Holy Quran in Surah Al-Nisa.¹ This law deals with the division of estate of a deceased person among his or her legal heirs. In Madina, various familial and social issues confronted the Prophet like remarriage of widows, property rights of orphans, issues pertaining to guardianship, rights of heirs, after the battle of Uhud. It is reported that a widow of one *Sayeed-ibn-rabi*, who had three daughters complained before Prophet of Allah that the brother of Sayeed ibn Rabi has usurped the whole property (date orchards) of sayedd ibn rabi, and has left nothing for the orphans. In this backdrop the verses of surah Al-Nisa regarding

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¹ The *Holy Quran*: Chapter 4.

inheritance were revealed.² The Prophet of Allah also emphasized forcefully the great need for acquiring the knowledge of the (*ilm-ul-Faraiz*) law of inheritance and transmitting it to others.

“Learn the laws of inheritance and teach them to the people, for they are one half of useful knowledge”³

“Learn the laws of inheritance with the same sincerity as you learn the Holy Quran.”⁴

“Allah instructs you concerning your children: for the male is equal to the share of two females. But if there are only daughters, two or more, for them is two thirds of one’s estate. And if there is only one daughter, for her is half. And for one’s parents, to each one of them is a sixth of his (deceased’s) estate if he left children. But if he had no children and the parents alone inherit from him, then for his mother is one third. And if he had brothers or sisters, for his mother is a sixth, after any bequest he may have made or debt. Your parents or your children, you know not which of them are nearest to you in benefit. These shares are an obligation imposed by Allah. Indeed, Allah is ever Knowing and Wise”.⁵

II. Rules for Women as a Legal Heir under Islamic Law of Inheritance

Wife

The Quran fixes share of the Wife of the deceased as: one-eighth (1/8) in case of presence of child/children of deceased. One-fourth (1/4) in case of no child /children of deceased. 1/8th or 1/4th mutually in case of being more than one at the time of death of husband.

Daughter

The Quran awards the share of the daughter of the deceased as: one-half (1/2) of share in the property in case there is no son of deceased and daughter is only child of deceased. 2/3rd mutually in case a deceased person has two or more than two daughters and does not have a son. In case there is/are son(s) of such person, then such daughter(s) is/are entitled to share in the ratio of 2:1 i.e two shares to son and one share to daughter.

Mother

A deceased person’s mother gets one-third (1/3) of the share in the net estate provided the deceased had no children. The general rule is that mother is gets one-sixth (1/6) of share in the net estate of deceased when there is a child of deceased or son’s child (h.l.s) or two or more brothers or sisters of deceased or there is a brother, a sister and the father of deceased.

² Syed Abul A’la Maududi I, *Tafheemul Quran* 235 (Markaza Maktaba Islami, New Delhi, 2011).

³ Narration of Hazrat Abu Huraira reported by Bahiqi and Hakim in *Durri Mansoor*

⁴ Darmi reports the narration of Hazrat Umar.

⁵ *Supra* note 1 at *Surah Al Nisa* : 11

If the deceased leaves behind spouse and father, then mother of such deceased is entitled to 1/3 of residue. If the deceased leaves only father and mother behind, then mother is entitled to 1/3 of share in the net estate of deceased.

True Grand-Mother

True Grand Mother is entitled to 1/6 of share if there is no mother and no nearer true grandmother. If there is no mother of deceased but father's mother and mother's mother is alive, then both these grandmothers shall get 1/6 mutually. Father's mother is otherwise excluded by father.

Son's Daughter

Son's Daughter is entitled to one-half (1/2) of share in the property of deceased if such son's daughter is alone and when there is no son or daughter of deceased. If there are more than two or more son's daughters and no son or daughter of deceased, then such son's daughters are entitled to 2/3 mutually. If there is a daughter or higher son's daughter, but no son or son's son of deceased then such SD is entitled to 1/6 whether one or more. If there is an equal son's son then such son's daughter becomes residuary.

Full Sister

Sister of the deceased is entitled to 1/2 (one-half) of the share (if alone) and 2/3 (if two are more) when there is no child, child of a son, father, true grandfather, or full brother of the deceased. In case of brother, such sister is converted into residuary i.e 2:1 rule. In case of father of deceased, sister of deceased is excluded. In the presence of mother of deceased, sister is not excluded, provided there is no child of deceased.

III. Laws of Inheritance in Kashmir Valley

Customary laws

Customary Law of Jammu and Kashmir incorporate inheritance matters on large scale as compared to other matters of personal law. These customs mainly outweigh the lengthy rules of Muslim law regarding inheritance, wills and legacies and these customs were primarily based on male chauvinism and agnatic relationships. The customs perpetuated inequality regarding females and obstructed the socio-economic empowerment of women. These customary practices were based on old feudalistic practices. Agriculture accounted for most of income. The land owning class or landlords exploited the labour class or serfs and land tillers by paying them very less. All rights in the lands and other property were vested in the landlords and the laws were formulated to serve their interests. In this scenario men were in a dominant position to take over property rights of women. In the year 1872 A.D. the Dogra

Rulers of the State promulgated Jammu and Kashmir Laws Consolidation Regulations, 1872 which was later enacted as Sri Pratap Jammu and Kashmir Laws Consolidation Act, (1977 Samvat Vikrami) 1920 A.D. It provides that the Law of Shariah, will apply to Muslims only in the following matters:⁶

- i. “Marriage, divorce, dower, adoption, guardianship, minority, bastardy, and female relation
- ii. Succession, inheritance and special property of females and partitions,
- iii. Gifts, waqfs, wills, legacies and;
- iv. Caste or religious usages.”

However, the above rule laid down in sec. 4(d) was subject to two exceptions regarding the application of Personal law i.e. “the Courts cannot apply such personal law where:

- i. Any enactment has altered or abolished the Personal law;
- ii. Any valid custom had modified the Personal law.”

Jammu and Kashmir Shariat Act, 2007

After the enactment of Jammu and Kashmir Shariat Act, 2007 (hereinafter J&K Shariat Act, 2007), any customs that were not in conformity with the new law were abrogated.⁷ As per Section 2, “the personal law of the Muslims (which is based on Shariat) shall have overriding effect on the customary law and parties shall be governed by Muslim Law and not by Customary Law in the matters of 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, illa, zihar, lain, khula and mubarat, dower, guardianship, gifts, trusts, and trust properties”.

Section 3 of the Act states that “the provisions of the Sri Pratab Jammu and Kashmir Laws Consolidation Act, Samvat 1977(1920A.D.) shall be repealed in so far as they are inconsistent with the provisions of this Act. This means by this enactment the customs which were being followed by the Muslims particularly the agriculturist class in the State, were abrogated in so far as they are inconsistent with the provisions of this Act”.

Repeal of J&K Shariat Act, 2007 and Extension of Shariat Act, 1937

With the abrogation of Article 370⁸ by Parliament of India and enactment of Jammu and Kashmir Reorganization Act, 2019 the erstwhile J and K stands bifurcated into two union

⁶ Sri Pratap Jammu and Kashmir Laws (Consolidation) Act, 1977, s.4(d)

⁷ The Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007, s.2.

⁸ By Virtue of Article 370 Jammu and Kashmir had special status within the Constitution of India i.e. Parliament of India was competent to frame laws for Jammu and Kashmir regarding three matters: Defence,

territories i.e. J&K UT and Ladakh UT. With the result many local laws applicable to Jammu and Kashmir stand repealed now by virtue of Reorganization Act, and the Central laws are extended to Jammu and Kashmir. The Shairat (Application) Act, 1937 is one such legislation which is extended and applicable to Jammu and Kashmir⁹ and has replaced Jammu and Kashmir Muslim Personal Law (Shariat) Application Act, 2007.

IV. Women in Kashmir and Inheritance Rights: An Empirical Study

One needs to understand varied factors while evaluating the position of women in Kashmir vis-à-vis inheritance rights. Above all customary norms and patriarchal mindset which makes its presence felt in all periods and phases of Kashmir's society. Despite the legislative intervention vis-à-vis inheritance rights, the challenges and denials are enormous for women to get their due share of property by way of right to inheritance. The multistage random sampling (purposive and simple random) was adopted for this study given as under:

- I. Four Districts by purposive sampling.
- II. Two taluka/tehsil from each district by random sampling by lottery method.
- III. 08 tehsils as ultimate sample units.
- IV. 15 samples from each Tehsil (8) are equal to 120 respondents.

The respondents numbering **120** were accessed by the author to know the present status of inheritance rights of women and the challenges involved. The detailed profile is as follows:

District Wise

District	Tehsil	Tehsil	No. of Respondents
Srinagar	A: 15	B:15	30
Budgam	A:15	B:15	30
Baramulla	A:15	B:15	30
Anantnag	A:15	B:15	30
Kashmir Valley			120

Age Group

Foreign Affairs and Communication. Rest all the matters were within the competence of Jammu and Kashmir Legislative Assembly.

⁹ Act 34 of 2019, s. 95 and the fifth schedule (w.e.f. 31-10-2019).

Age group	No. of Women	Percentage
18-40	87	72.5%
41-60	27	22.5%
61-80	06	05%
Above 80	Nil	Nil

Marital Status

Marital Status	No. of Women	Percentage
Married	45	37%
Unmarried	70	58%
Widow	03	02%
Divorced	02	0.01%

Educational Status

Education	No. of Women	Percentage
10 th Pass	10	8.33%
12 th Pass	15	12.5%
Graduates	30	25%
Masters	35	29.6%
Ph.D.	10	8.33%
No Education	20	16.6%

Employment Status

Status	No. of Women	Percentage
Employed	55	45.8%
Unemployed	50	41.6%
House Wives	15	12.5%

Income Group

Income Status	No. of Women	Percentage
Lower Income	11	9.1%
Middle Income	97	80.8%

Higher Income	08	6.6%
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Findings of the Empirical Study

Denial

It is believed by 63% of total respondents that inheritance rights are denied to women in Kashmir. On the other hand, 24% did not agree with the proposition of denial. While as 13% preferred to stay neutral.

Category

It is believed by 39% of women that working women (employed) are mostly not given their share of inheritance. While as 29% believe that Widows are deprived of of inheritance. Unmarried daughters are deprived of share according to 17% of women while as 15% believe that Divorced Women are deprived of right to inheritance.

Reason

34% of respondents believe that lack of knowledge amongst women about their inheritance rights primarily accounts for women not getting their share. While 26% blame family norms and practices for such denial. Customary law is the reason of denial according to 14.5% of women. According to 7% of total respondents, it is the expenditure incurred on the marriage of women due to which women are later on denied the share of inheritance in the property. 14.5% women blame themselves for not looking for their share and being so much reluctant.

Role of Family

Family members play a very important role in terms of granting share to fellow female co-sharers. However, the position seems very dismal. 73% of total respondents are of this opinion that sons /brothers play the major role in denying the women (daughter/sister) the share of inheritance from the property of their deceased father or mother. On the other hand, 16.5% blame even fathers for denying the share of daughters directly or indirectly. 6% respondents blame daughters and sisters who deny it to fellow women while as 4% even blame mothers that they deny share of inheritance.

Social Taboo

A Muslim Women who asks for her share of property from the deceased is seen in negative light and faces rebuke by the society according to 80% of women. Even if the share of inheritance is given to the women it is considered as 'charity rather than a right' by more than 60% women.

Relinquishment

There is another dimension of women not receiving their share of inheritance and thereby jeopardizing their right to inherit. It is revealed that 68.9% of women (in the capacity of sister) relinquish (waive) their share in favor of their brothers because they don't want to spoil their relations with their brothers. They are under this fear that in case their in-laws or husbands may subject them to cruelty at least they have cushion of brothers to save them. So they don't want to spoil their relations with their brothers by taking their share which is otherwise due to them. 21% believe that relinquishment is out of love and affection only while as remaining 10% believe that it is out of social insecurity and social compulsion. Out of total respondents, 71.7% believe that it is married working woman who top in relinquish their share; divorced women constitute 10.6% while as unmarried daughters also constitute 10.6% in relinquishing their share. 7.1% women believe it is widows who relinquish their share.

Consequences

Since inheritance and succession constitutes an essential component of institution of family structure, therefore it needs to be dispute free. However, 45.8% of women strongly agree that denial of inheritance rights to woman is not only a serious threat to the family structure but has also increased family disputes. While as 36% strongly agree that lack of awareness and denial of right results in social and economic backwardness among Muslim women in Kashmir.

Legal Mechanism

The J&K Shariat Act, 2007 governed the inheritance matters in J&K before it was replaced by Shariat (Application) Act, 1937 after the abrogation of Article 370. However, 44.1% of women plead ignorance about the Act of 2007 stating that they don't have any knowledge about the said law. On the other hand, 36.4% have knowledge about the said law. 19.5% claim that they have never heard about this Act. In other words, we can say 63.6% women are unaware about the legal mechanism involved.

Settlement in the Court

Generally, women hesitate to ask for share in property from their brothers. However, if the property dispute vis-à-vis share in property as a result of inheritance reaches court for the settlement it still gets tough for the women to get the speedy settlement of issue. Out of the total number of women who have approached court for the settlement of issue; 43% believe that it takes more than five years to settle the matter; 09% believe the duration is two years.

Possible Measures

According to 63% respondents' inheritance cases should be settled within 12 months in the Court of law, if suit is filed. Moreover, religious platforms, Seminars, and Public Meets shall be used to aware the people regularly about the issue. 8% believe that mutation transfer of a deceased should be done by revenue officials within a month after the persons demise in accordance with rules to be formulated by the appropriate government.

V. Conclusion

From the above study it can be concluded that even though Islam has placed a dignified position for women in family and society at all levels. Particularly the Holy Quran has guaranteed much valued right to inherit the estate of deceased to women fifteen centuries back by clearly stating the principles of inheritance of property. But still Muslim Women in present times continue to be treated as per discriminatory customary laws, traditional prejudices, and patriarchal family norms in the matters of inheritance. It is seen in the Muslim societies that many woman are deprived in terms of inheriting property after the death of their parents. Kashmir valley is one such example. Awareness level at the grass root level both of right to inherit as well as legal mechanism among women in particular is not satisfactory. The female folk in the Valley seem to be reluctant in talking about their shares in the property. Expenditure incurred on the marriage of Muslim Women in the society is also cited as a reason to deprive them of the right to inherit. As a result of the denial of the inheritance rights, a woman has to suffer throughout her life; she struggles for remarrying after being divorced because of the financial crisis. She has to depend on her parents or brother and in such situation, she often surrenders or waives her inherited property to them as a price of her social security. With the non-implementation of inheritance laws and denial of inheritance rights there is serious threat to family structure and family relations. The impression one gets from the above study is that even the women with very good educational and professional status are also victim of this denial. Working women take lead in relinquishing their share, so are widows. The existing discrimination among men and women at the social and economic level will be eradicated if the Muslim families follow the principles of distribution of Inheritance as per their religious norms.