

Does Effective Legal System Will Abolish Disputes of Inherited Land in Pakhtoon Society

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Abstract- The main theme of this study is to ascertain legal aspect regarding family inheritance share transformation with relation to family feud settlement. The Pakistani Constitution give assurance of equality under the law and give guarantees the “rights to property and equality to all citizen apart from their gender but generally poor segment especially females of the study area believe that judiciary of the Pakistan mostly favor men. A sample size of 182 respondents out of 319 was randomly selected for data collection in district Mardan. The collected data was interpreted in Frequencies to explore the opined of selected sample regarding legal laws and family disputes over the family inheritance. Furthermore, Chi square (χ^2) statistics was used to discover the relation between dependent variable i.e. feud settlement with the independent variables (Legal Practices of inheritance). Study concluded that Jirga as judiciary body (informal institution of dispute settlement) in Pkhtoon culture had a vital role in dispute settlement pertaining to inheritance. This clearly indicated for dysfunctional characteristics of the legal system in the country. Although, transformation of inheritance fulfilled the legal obligations but had led to the dominance of male. That’s why women of the area were found ill-treated in terms of their access to inheritance shares. The study recommends the abolishment of dual laws pirating to inheritance, lengthy and costly dispute settlement procedure should be replace with effective and speedy justice of inheritance.

Key Words: Legal practices, inheritance share, family feuds, settlement

I. INTRODUCTION

The transformation of property either movable or immovable from the deceased person to the living decedents is called inheritance. This practice is taking place throughout the globe although with degree of variance from society to society. It is the legal right of individuals to transfer the right of ownership to his heirs in a lawful way commendable by the state through a defined way of ancestral hierarchies and lineage. It must be noted that transferring the property to legal heirs in a line of decent is justified in every society. However, this is a common fact that the inheritance system

basically controlled and justified by the cultural norms in the shape of some specific roles of family bonds that are quite delicate to the social differentiation among the members of different social structures, within the promo of relative socio-cultural explanation of the inheritance. This practice of transformation includes the physical/material assets i.e. land, jewelry, cattle and cash money etc. This act of property transformation is important for the family cohesion through generations. Similarly, this bond of inheritance as explained and legalized by the blood relation pave the way toward paternal affection. This act is therefore considered a continuous base for permanent communication at the micro level, for example family identification through birth along income and the rest of cultural associations [1; 6; 15; 18]

The Constitution of Pakistan guarantees equality under the law, equal protection by the law and non-discrimination on the basis of sex alone, as it explained in the Constitution of Pakistan that in Pakistan Every citizen is free to buy ,hold, and dispose property in any part of Pakistan”. It further guarantees the “rights to property and equality of citizen as fundamental rights” and against also to strike down any custom having the force of law as far as it is inconsistent with the fundamental rights [1].

Pakistan, which is culturally following patriarchal family system since generations. But at the same time the country is following the Muslim notion which embodies some necessary characteristics for structural and functional integration of society. Like majority of the societies, Pakistani society too has enormous examples of unequal distribution of property rights, where the male children enjoy the right to inheritance while it is denied to the female children. The customs and traditions under strong patriarchic system give dominancy to males in the structural and functional aspects of the social system. It has been noted in the tribal built that the women have been killed to

withdraw from the property rights in the disguise of honor killing [16]. Reference [12] has reflect in his studies on honor killing that one of the main reason behind honor killing is on the basis of proprietorship to money, property and inheritance to which only the male have claims. This practice is done on the pretext that land is an important determinant of power and is commonly considered a scared object for the honor of the family [10]. Pakistani society although quite religious in ideological context but deny the transmission of property to women including wives and daughters. This is why; a famous negative concept of Tarbor Wali has taken place in Pakhtun societies, which mean those members of paternal kin among whom the property is going to be distributed [7]. This study is an attempt to discover whether legal law regarding division of property work as determinant of feuds settlement among close kin at family level. This study proceed with the following objectives;

1. To find out perception of respondents about legal laws of inheritance share
2. To explore the nature of conflict among legal hairs over the family inheritance
3. To measure the association between legal practices and inheritance feuds
4. To suggest recommendations.

II. MATERIALS AND METHODS

The current study was conducted in District, Mardan-Pakistan to determine the level of associate between legal practices of inheritance and family feud settlement. The most important reason for selecting Tehsil Mardan was the accessibility of largeportion of agriculture land with respect to possession of local people. However, only those people were selected who had not less than Ten acre (10 acres) of land and the owners must had at least one or two brother s or sisters .Thus make the criterion perfect for the practice of inheritance in family level. A sample size of 181 sample size with the aforementioned characteristics was randomly selected for data collection through the criteria lay down by Sekaran (2003) from a Total population of 319. The conceptual frame work was developed with an independent variable (Legal Practices of Inheritance) and dependent Variable (family feud settlement).

Conceptual Frame Work

Independent variable	Dependent variable
Legal Practices of Inheritance	Family Feud Settlement

A detail and comprehensive structured interview on likert scale was planned while keeping into mind the aforesaid objectives of the study. Collected data was entered on to SPSS, 20 versions.

The data was explained in frequency and percentages. While, to know about the association between independent variable (Legal Practices of Inheritance), and dependent Variable (family feud settlement) Chi-Square test was used at bi-variate level. The formula for this statistics is as below;

$$x^2 = \sum_{i=1}^r \sum_{j=1}^c \frac{(O_{ij} - e_{ij})^2}{e_{ij}}, \text{ with } (r-1) (c-1) \text{ degree}$$

of freedom

r = the number of rows

c = the number of columns

Where

O_{ij} and e_{ij} is the observed and expected frequencies y of cell in i^{th} row and j^{th} column, [17]

III. RESULT AND DISCUSSION

Legal Practices of Inheritance and Family Feud Settlement

The data presented in Table.1 showed the perception of respondents towards legal practices in connection with inheritance rights. Two third i.e. 130(71.4%) of the respondents opined that Pakistani constitution guaranty equal rights to all heirs in the property cases and legally both male and female have equal rights in inheritance as it was clearly shows in the second paragraph of the introduction . On the perception of law favor male, some of 180(98.9%) of the respondents shows their agreement. However, two third i.e. 126(69.2%) respondents believed that law generally favors male in property division cases. Reference [1] had also explored such like results. Moreover, the Constitution of Pakistan (1973) also protects the women'sright of inheritance but there are so many difficulties involving in the procedural and coda requirements for the procurement of land as well as other properties this making little chances for the women to get into their rights, even high qualified women can't understand the technicalities (legal language & requirementsto fulfill) documents they are also unaware of judicial recourse available to them. Similarly, Reference [4] also found that due to high fee and difficulties in access to legal laws, making it impossible for people, especially for women despite of having a legal succession of property as legal heirs.

Moreover, the same table also discloses that most of the respondent's i.e.145 (79.7%) answered that transformation of inheritance property is obligatory in our families and feud over inheritance are resolved through legal system. Similarly, 85(46.7%) respondents believed that feuds set through traditional and local mechanism. Because Legal system takes very long time in deciding inheritance cases answered by 118(64.8%) of the respondents. This clearly indicating towards the failure and

inability of the legal system in delivered in time. Moreover, majority of respondents i.e. 112(61.5) believed that Court's decision in inheritance cases are based on justice while one third i.e.51 (28.0%) were against with this statement. Moreover, majority 120(65.9%) of the respondents assumed that in transformation of property dysfunctional legal system is major hurdle but on other side some of the respondent 44(24.2) were not agreed with this statement. Thus a speedy disposition of cases is essential as justice delayed is justice denied. Besides i.e.86 (47.3%) mistrust in the law of inheritance i.e. it is incapable of capitulating on the rights to the heirs but one third i.e. 77(42.3%) negated this idea. Furthermore, most of the respondents 156(85.7%) believed that if law of inheritance is owned, could lead to peace, harmony at family integration, however, some of the respondent negated it. These findings are in close matching to the Reference [1] that land related feuds can only be resolved if courts ensured early disposal of the cases giving no chance to the elite people to continue occupying land. It further explained that innocent people have been deprived of their land. There is corruption in lower courts, district administration and in their police department due to which people either not received justice in time or denied of the justice [5].

Table-1 Frequency Distribution of Responses towards Legal Practices of Inheritance and Family Feud Settlement

S. no	Attribute	Agree	Disagree	Don't know	Total
1	Pakistani constitution guarantee equal rights to all heirs in the property cases	130(71.4)	43(23.6)	9(4.9)	182(100)
2	Legally both male and female have equal rights in inheritance	180(98.9)	2(1.1)	0(0)	182(100)
3	Law generally favors male in property division cases	126(69.2)	45(24.7)	11(6.0)	182(100)
4	Transformation of inheritance property obligatory in your family	145(79.7)	31(17.0)	6(3.3)	182(100)
5	Feuds over the inheritance in your family are resolved through	86(47.3)	85(46.7)	11(6.0)	182(100)

	legal system				
6	legal system resolved inheritance in short duration of time	51(28.0)	118(64.8)	13(7.1)	182(100)
7	Legal system takes very long time in decide inheritance cases	118(64.8)	51(28.0)	13(7.1)	182(100)
8	Court's decision on inheritance cases are based on justice	112(61.5)	51(28.0)	19(10.4)	182(100)
9	unctional system is a e in the formation of rty	120(65.9)	44(24.2)	18(9.9)	182(100)
10	Law of inheritance is incapable of capitulating it's rights	86(47.3)	77(42.3)	19(10.4)	182(100)
11	Law of inheritance If owned , could lead to peace ,harmony at family level	156(85.7)	14(7.7)	12(6.6)	182(100)

Family dispute over the inheritance

Feuds over the agriculture and non-agriculture are common phenomena and consider the major detriment of disputes as referred by Reference [3] that In Pakhtoon society land is one of the grounds reason of feud between intra and inter-tribal composition. In Pakhtoon society even sons and cousins of the same family fight over the family land [13].

Table 2 shows the respondent's attitude towards family feuds with relation to family out of 182 (100%), 112(61.5%) stated that in our family there is no conflict over the prenatal property while some of the respondents i.e. 70(39.5%) negate the said statement. The same table also reveals that two third of the sample size 129 (70.9%) stated that inheritance has been divided peacefully but some of the respondents 47(25.8%) shows disagreement with the said questions. While, 6(3.3) of the total sample size were found uncertain regarding this question. In addition, some of the respondents i.e. 47(28.8%) disclosed that inheritance is split inequitably in our family but the same questions was cancel out by two third 129(70.9%) of the sample size, however 6(3.3%)

of the respondents did not show their concern. Moreover, majority 125(68.7%) of the total population stated that that to non-transformation non provision family land are steady besides, 44(24.2%) shows disagreement with statement while rejection of giving inheritance share destabilizes family relation answered by majority i.e. 134(73.6%) of the respondents however the same statement was negate by 35(19.2%) of the respondents while, 13(7.1%) of the total sample size found uncertain. in addition, large sample size had opined that the key cause of family dispute was the non-transformation of family inheritance share to their legal hairs. But another hand large sample size i.e. 100(54.9%) said that conflict arise after the division of family inheritance. Moreover, all most all the respondent i.e.175 (96.2%) opined that timely distributions of inheritance is good way of avoiding inheritance share complication. Similarly, most 168(92.3%) of the respondent had opined that smooth transformation help in making good relation among family members. The table 2 further shows that some of the respondents stated that that local culture has no remedy to settle disputes over land However, large size 165(90.7%) of the respondent had opined that judicial laws need to be changed for just provision of remedy besides it 14(7.7%) of the total sample size shows disagreement with the said statement. The above results are also supported by Reference [11; 8; 2].

Table 2 Frequency distribution of responses towards Family dispute over the inheritance.

S. no	Attribute	Agree	Disagree	Don't know	Total
1	There is no feud in the family	112(61.5%)	70(39.5%)	0(0.0%)	182(100%)
2	Inheritance has been transferred very peacefully	129(70.9%)	47(25.8%)	6(3.3%)	182(100%)
3	Inheritance is divide unequally in your family	47(28.8%)	129(70.9%)	6(3.3%)	182(100%)
4	Family lands are always at stable due to non-practices of inheritance	125(68.7%)	44(24.2%)	13(7.1%)	182(100%)
5	Denial to inheritance, instable family structure co-exist together	134(73.6%)	35(19.2%)	13(7.1%)	182(100%)

6	Non transformation of property right are the main cause of conflict	169(92.9%)	11(6.0%)	2(1.1%)	182(100%)
7	Strong conflict refaced within the family after distribution after inheritance	100(54.9%)	74(40.7%)	8(4.4%)	182(100%)
8	Timely distribution of inheritance is the suitable way of avoiding inheritance	175(96.2%)	6(3.3%)	1(0.5%)	182(100%)
9	Smooth transformation of inheritance brought good relation among family member	168(92.3%)	12(6.6%)	2(1.1%)	182(100%)
10	Local cultural has no remedy to settle dispute over land	57(31.3%)	92(50.5%)	33(18.1%)	182(100%)
11	Judiciary laws need to be amended for just provision of remedy	165(90.7%)	14(7.7%)	3(1.6%)	182(100%)

Legal practice of inheritance & family feud settlement

Table 3 while describing the association between family feud settlements through legal practices of inheritance indicated a significant association between family feuds settlement with independent variable equal rights given by Pakistani constitution ($p = 0.00$). Furthermore, law of inheritance and equal transformation of inheritance was found highly significant ($p = 0.00$). It could be attributed to the appropriate inclusion of relevant laws, established in the constitution of Pakistan. This law has all the strength to be explained from religious interpretation, as was elaborated while taking inputs from religious institutions. These findings had in support from Reference [8] that addressing the issue of inheritance in a man's well, a

religious endowments, bestowed upon the wealthy person in Muslim society, for deciding the share of assets amongst his successor, often leads to eradicating the chance of conflicts among the co-sharing members. Generally, if inheritance is dividing through legal system found highly significant ($p = 0.00$) with dependent variable. Table 2 also indicated a significant association between drawbacks of legal system included system takes very long time in deciding inheritance cases ($p = 0.00$) was found highly significant with dependent variable. A dysfunctional system is hurdle in inheritance cases ($p = 0.02$) as indicted a significant association with dependent variable. The main aim of revenue court is to provide justice and rapid resolution of land disputes but due to complexity as well as dysfunctional and corruption, it's became time-consuming and cases may take years to resolve [1]. However, a non-significant association between family feud settlement with male and female have equal rights of inheritance ($p = 0.903$), along with law favors male in inheritance cases ($p = 0.903$), and legal system resolved inheritance cases in short time found non-significant ($p = 0.404$) with dependent variable. In addition, law of inheritance is incapable of capitulating its rights ($p = 0.070$) with dependent variable (family feud settlement). These findings clearly indicated as shown through non-significant outcomes that the legal system is faulty and incapable of meeting out the required results towards in-time disposition of cases. As Reference [14] also found that land related feuds can only be resolved if courts ensured early disposal of the cases giving no chance to the elite people to continue occupying land, further more corruption in lower courts, district and administration due to which affected people never get justice. Women rights in inheritance have also been addressed in 1973 Constitution of Pakistan [1].

Table-3 Relationship between legal practices of inheritance and family feud settlement

S. N	Statement	Response	Family Feud settlement		Total	Statistic
			Agree	Disagree		
1	Pakistani constitution guarantee equal rights to all heirs in the property cases	Agree	125(72.3%)	5(5.6%)	130(71.4%)	$\chi^2 = 32.44^a$ $p = 0.00$
		Disagree	43(100%)	0(0%)	(100%)	
		Don't know	5(2.9%)	4(4.4%)	9(4.9%)	

2	Legally both male and female have equal rights in inheritance	Agree	171(98.8%)	9(100%)	(98.9%)	$\chi^2 = .105^a$ $p = 0.903$
		Disagree	2(1.2%)	0(0.0%)	2(1.1%)	
		Don't know	0(0.0%)	0(0.0%)	0(0.0%)	
3	Law generally favors male in property division cases	Agree	118(68.2%)	8(4.4%)	126(69.2%)	$\chi^2 = 1.811^a$ $p = 0.404$
		Disagree	44(25.4%)	1(0.5%)	45(24.5%)	
		Don't know	11(6.4%)	0(0.0%)	11(6.0%)	
4	Transformation of inheritance property obligatory in your family	Agree	138(79.8%)	7(7.8%)	145(79.7%)	$\chi^2 = 11.904^a$ $p = 0.003$
		Disagree	31(17.9%)	0(0.0%)	31(17%)	
		Don't know	4(2.3%)	2(2.2%)	6(3.3%)	
5	Feuds over the inheritance in your family are resolved through legal system	Agree	85(49.1%)	1(1.1%)	86(47.3%)	$\chi^2 = 25.728^a$ $p = 0.00$
		Disagree	81(46.8%)	4(4.4%)	85(46.7%)	
		Don't know	7(4.0%)	4(4.4%)	11(6.0%)	
6	legal system resolved inheritance in short duration of time	Agree	85(49.1%)	6(6.7%)	91(50.0%)	$\chi^2 = 2.126^a$ $p = 0.345$
		Disagree	79(45.7%)	2(2.2%)	81(44.5%)	
		Don't know	9(5.2%)	1(1.1%)	10(5.5%)	
7	Legal system takes very long time in decide inheritance cases	Agree	116(67.1%)	2(2.2%)	118(64.8%)	$\chi^2 = 11.693^a$ $p = 0.003$
		Disagree	44(25.4%)	7(7.8%)	51(28.0%)	
		Don't know	13(7.5%)	0(0.0%)	13(7.1%)	
8	Court's decision on inheritance	Agree	109(59.9%)	3(1.6%)	112(61.5%)	$\chi^2 = 32.5$
		Disagree	51(29.5%)	0(0.0%)	51(28.0%)	

	e cases are based on justice	ee	(%)	(%)	(%)	50 ^a
		Don't know	13(7.5%)	6(6.7%)	19(10.4%)	$P=0.00$
9	Dysfunctional legal system is a hurdle in the transformation of property	Agree	117(67.6%)	3(3.3%)	120(65.9%)	$\chi^2=12.972^a$
		Disagree	42(24.3%)	2(2.2%)	44(24.2%)	$P=0.002$
		Don't know	14(8.1%)	4(4.4%)	18(9.9%)	
10	Law of inheritance is incapable of capitulating its rights	Agree	83(48.0%)	3(3.3%)	86(47.3%)	$\chi^2=5.322^a$
		Disagreed	74(42.8%)	3(3.3%)	77(42.3%)	$P=0.070$
		Don't know	16(42.8%)	3(3.3%)	19(10.4%)	
11	Law of inheritance If owned, could lead to peace, harmony at family level	agree	152(87.9%)	4(4.4%)	156(85.7%)	$\chi^2=22.599^a$
		Disagree	13(7.5%)	1(1.1%)	14(7.7%)	$P=0.00$
		Don't know	8(2.6%)	4(4.4%)	12(6.6%)	

IV. CONCLUSION AND RECOMMENDATIONS

The study affirmed that Pakistani constitution guarantee equal rights to all heirs in the property related matters but Law generally favors male in property division cases because of male dominance in Pakistani society. This clearly indicated a dysfunctional characteristic of the legal system in the country. However, this has been commonly noticed that the customary law has been denying the women right to the property. Yet, this right has been substituted by the provision of dowry. The study further examined that the legal system had a number of drawbacks such as taking long time over settling disputes regarding the inheritance and property rights thus developing a mind of uncertainty amongst the sufferers regarding inheritance division. While, at bi-variate level a strong association was discovered between Pakistani constitution and family feuds. The study also observed that mostly women who give their property rights to men of their kin to have security at the time of divorce or being widowed. The study recommended that to resolve inheritance issue speedy court system should be established. It would work as catalyst in redressing the distress of issue. Moreover, this would also discourage all the cultural practices by replacing them with legal methodologies. As it is clear from the study findings

that patriarchal system had been the biggest disadvantage/hindrance for women to deny their access to property in inheritance so division of property should be declared as mandatory through legal reforms are some of the suggestion on the basis of study inferences.

REFERENCES

- [1]. Awaz Foundation, "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, 2010, Retrieved on 8 February 2014 from (<http://google.com>)
- [2]. Business Anti-Corruption Porta, "Pakistan Country Profile: Judicial System", .Retrieved on 8 February 2014 from <http://www.refworld.org/pdfid/4b8fcb1c27.pdf>
- [3]. Barth, F, "Political Leadership among Swat Pathans", (London Schools of Economics. Monographs on Social Anthropology, No. 19, 1959, London: Athlone.
- [4]. Broegaard, N, "Land Access and Titling in Nicaragua". Development and Change, 2009, 40(1):149–69.
- [5]. Chaudhary, A and L, Holden, "Daughters' inheritance, legal pluralism, and governance in Pakistan", The Journal of Legal Pluralism and Unofficial Law, 2013, 45:1, 104-123,
- [6]. Deere, C.D and C. Doss, "The Gender Asset Gap: What Do We Know and Why Does it Matter". Feminist Economics, 2006, 12(1–2): 1–50.
- [7]. Dupree and Louis, "Tribal Warfare in Afghanistan and Pakistan". A Reflection of the Segmentary Lineage System In, 1984, London: Routledge & Kegan. 266–286.
- [8]. Finch, J and T, Mason, "Filial Obligations and Kin Support for Elderly People," 10 Aging & Society, 1990, 15
- [9]. Mehdi, R."Family Law and Custom in Pakistan", 2002, the Gender Gap between Policy and Practice. Retrieved on 8 February 2014 from <http://pakistan.lead.org/media/report4jan04.htm>.
- [10]. Eglar, Z, "A Punjabi Village in Pakistan", New York and London: Columbia University Press, 1960.
- [11]. Nagata, "Kinship and Social Mobility among the Malays", 1976, Man 11-3:400-409.
- [12]. Shah. N, "Role of community in honor killings in Sindh", 'Engendering the nation-state, 1997, Vol-1 published by Simorgh publication Pakistan
- [13]. Tribal Analysis Center, "Pashtun tribal dynamics, tribal analysis center", 2009, 6610- Mooretown road, box 159. Williamsburg, va, 23188
- [14]. World Bank, "Bangladesh: strategies for enhancing the role of women in Economic development", 1990, A World Bank Country Study, World Bank, Washington
- [15]. Kosmann. M, "Wie Frauen erben - Geschlechterverhältnis and Erbprozess", 1998, .Opladen: Leske + Budrich

- [16]. Saeed. R, “ Women Status in Pakistan under Customs and Values & The Controversial Hudood Ordinance 1979”, 2004, Retrieved on 8 February 2014 from (<http://google.com>)
- [17]. Chaudhry. S, M, “*Introduction to Statistical Theory Part II*”, 2003, Lahore Ilmi Kitab Khana.
- [18]. Accurate Reliable dictionary, 2008