

**Summary**  
**Land Rights for Muslim Women:**  
**Review of Law and Policy**

**Sustainable Development Policy Institute**

## Summary

# Land Rights for Muslim Women: Review of Law and Policy

### Review of Law

1. The Law and the Constitution of Pakistan under Article 23, allow the citizens of Pakistan equal rights to acquire, hold, own and dispose of property but reserve the right to intervene in the property rights if the ownership or disposal of property clash with what is perceived to be the broader public interest. The State is also responsible for providing protection to its citizens. Thus the State, under Article 24 of the Constitution of Pakistan could interfere in an individual's property rights to protect the rights of those who are disadvantaged in the areas of ownership and devolution i.e., women and children. However there is no instance of the State having done this.
2. The applicable Civil Laws governing property transactions in Pakistan accord women equal rights to those of men to hold, acquire, transfer, sell, dispose of and mortgage property.
3. The Law of inheritance in Pakistan is governed by the Muslim Personal Law, which assigns women a differential status. The general principle of the Muslim Personal Law with regard to allocation of shares in both Hanafi and Shia law is that the women sharers receive half the share of a male sharer.
4. The Constitution of Pakistan under Article 227 declares that religion is to dictate all the laws of the State. Thus, the provisions of law that discriminate against women regarding inheritance of property have not been challenged legally or constitutionally, nor has any reform been proposed.
5. The courts enforce the Personal Law in favor of women and in order to protect women have passed some principles to ascertain that the other legal heirs cannot deprive women of their religious rights of inheritance.
6. However, at the same time the courts accept the concept of Tanazul, whereby a woman would have the right to relinquish her share of inheritance. The courts usually do not question the surrender of inheritance or dower by a woman on the suspicion of family pressure, which falls short of coercion but simultaneously sabotages independence in decision-making.
7. The differential inheritance rights for women have often been justified by the formal legal system and religious scholars on the basis of arguments like 'the compensatory property regime' provided by Islam for women, whereby women are said to be entitled to obtain property through alternate avenues like gifts, will, dower and maintenance in marriage. An oral gift made to a wife and to a daughter has been declared permissible by the courts. A gift however can be challenged on the basis of *Marz ul Maut*, which means a gift, was made under the pressure of the imminence of death. Wills are only allowed by the Courts to the extent of 1/3 of the Testator's total estate and they are open to challenge by the legal heirs after the death of the Testator.

Dower is mostly specified in terms of a sum of money rather than property, and that too in most cases is deferred. Hence the compensatory property regime does not deliver equitable access to land.

8. Customary laws that have been considered valid by courts to decide issues related to the inheritance of agricultural land also discriminate against women and allow limited rights of ownership for a woman during her lifetime. Due to these limited rights, a woman cannot gift or alienate the land, nor can she easily obtain rights related to land ownership like demanding access to water and having her name on the revenue record etc.
9. The Pakistani law does not recognize the rights of women to property acquired during marriage. However if a women is able to prove that she contributed cash for the purchase of that property, she may be able to claim the property under the principle of “Benaami” transactions. But this is an extremely difficult principle to prove. In case of divorce, she cannot claim a share in her husband’s property, neither is she entitled to maintenance in the long term. If a woman initiates the process of divorce, she has to forfeit her right of dower. In the agricultural context, she would lose her right to work on any common land, which might be in the use of her husband’s family.
10. The inaccessibility of the formal expensive, complex and slow court system also reinforces the vulnerability of women. Even when women are given a share in inheritance it is denied in practice. Very few women actually exercise control over their property. The few instances where the courts have taken supportive decisions towards women are not based on the perception of women being equal citizens. Women are perceived to be weak, illiterate, and dependent, in need of protection and ill equipped to handle property matters. Thus any decisions favoring them seem to be based on condescension rather than an acknowledgement of equal citizenship of women.

## **Review of Policy**

1. The strong link between ownership and access to land and poverty has led to a number of international conferences and Declarations on this matter, including the Universal Declaration of Human Rights, The Convention on the Elimination of all Forms of Discrimination Against Women, The Cairo Conference and the 4<sup>th</sup> World Conference on Women in Beijing in 1995. Each Conference highlighted the link between access to land and poverty, and emphasized every woman’s right to economic opportunity.
2. It seemed as if the Pakistan government was taking a step towards equality when it ratified the CEDAW treaty. However this hope could not be realized as the term was subject to Article 2 of the Constitution of Pakistan which stated that Islamic Law provisions are supreme. Therefore the laws of succession and inheritance continue to be governed by the Personal Law of each citizen.
3. Most Conventions emphasize ‘an equal right to inheritance’ for men and women, which is interpreted as an equal ability of women to claim or assert rights of inheritance, but does not necessarily mean equal share or proportion in inheritance as that of men. This is in accordance with the principles of Islamic Law on Inheritance which provides for smaller Quranic Shares for women.

4. National Plan of Action for the Advancement of Women under the Beijing Platform 1998 dealt with some issues related to land rights but these were omitted in the revision of the National Policy 2002.
5. The National Policy Development and Empowerment of Women 2002 highlights the need for removing inequalities and imbalances in all sectors of socio-economic development through measures like ensuring access of poor and rural women to land, agricultural and livestock extension services and micro-credit etc. However, women's access to inheritance rights or issues created by customary laws have not been mentioned.
6. The Pakistan government is working towards the Millennium Development Goals. Goal 3 focuses on promoting gender equality and women's employment. However government programs do not seem to address women's access to land or their property rights in any way even though these are critical to achieving gender equality.

### **Recommendations**

1. The most important change would be to bring inheritance and other family laws under a secular Civil Code which would enable the State to enact gender neutral laws. Even keeping within the confines of Muslim Personal Law, the State could ensure that men and women get equal shares in inheritance as in the case of Turkey and Somalia where male and female children inherit equally from the father's estate.
2. Women should have the right to immovable property as dower (if the parties can afford it) and the property should be transferred to the woman at the time of Nikah. Any property acquired during marriage should be jointly owned.
3. In the event of a divorce maintenance should be provided for a minimum period of five years and there should be equal division of immovable property acquired during the validity of the marriage.
4. Even if the woman applies for Khula she should retain her dower as it was consideration for entering into the marriage contract and should have been given to her at that time.
5. Inheritance and ownership of family property matters should be decided by Special Courts so that delay is minimized.
6. The Courts should monitor whether their decisions are being implemented and whether based on their decisions in inheritance disputes the property is then in fact transferred to the female heir.
7. Rights awareness campaigns should focus on educating women that securing title to property requires formal registration.
8. Birth Certificates should be enforced as this later impacts on the woman's rights of inheritance.

9. The Government can encourage registration by charging concessional rates of stamp duty and registration fee for women.
10. If a woman provides land as security for a loan she should be given concessional credit. This would encourage transfer of property to the Woman's name.
11. Women should be encouraged to take control of their land and land owners should recognize the rights of a woman who is working on the land so that she does not lose that right in the event of a divorce.