

# Women and the law

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There is no specific provision in the constitution to protect inheritance rights. The rights of legal heirs are, however, protected under the West Pakistan Muslim Personal Law (Shariat Act, 1962) and the Muslim Family Law Ordinance, 1961.

Family laws in Pakistan are drawn from the fundamental tenets of the 1961 ordinance through an elaborate framework. However, there are serious lacunae in terms of their applicability to our changing realities. The laws that govern family matters, property relations and the material causes of the disintegration of the family stop short of providing a pragmatic and forward-looking legal roadmap to adapt to the changing socioeconomic conditions.

As the primary institution of cultural cohesion, the family has been of particular concern to moralists. They view this socially-evolved institution as a means of leading a moral and ethical life. There is no scientific and historical explanation to the disintegration of families in the urban areas of the country in particular. Even in rural and tribal areas, the extended family is losing its cultural moorings in favour of nuclear families with increased exposure to modern life. There have always been conflicts and feuds in joint families on the distribution of property and division of labour.

A legal framework must essentially be informed by objective, logical and scientific reasoning to minimise the risk of individual and group discretion in dispensing justice. In the real world, justice can never be effectively dispensed off if the merit of a case isn't established without moral prejudice. The moral prejudice, even if well-intended, will always leave room for human discretion. Therefore, it will have negative bearing on the outcome of dispute resolution.

Moral narratives are shaped by material conditions such as socioeconomic, political and cultural life in the process of a society's historical evolution. Social morality is contextual and drives its public legitimacy through popular perceptions of good and evil, sacred and profane, and other such binary oppositions of public life.

The moral narratives, therefore, are founded on presumptions and stereotypes of other cultures, and are subjective in nature. At times, these moral narratives reinforce the status quo and tend to perpetuate the archaic and outmoded customs and traditions. For instance, in a patriarchal society like ours, the moral interpretation of the law may invite misogyny with a significant bearing on inheritance and the rights of women over property.

There is no legal system that provides universal principles across cultures and historical times. Legal systems always evolve as societies progress. This has always been the case with Islamic jurisprudence, which informs our legal framework. A legal system cannot be understood in isolation from politics, culture and the economy, and its best manifestation is the evolution of legal instruments with the transition of human societies from primitive life to a modern one.

Our family law hasn't been reviewed since it was enacted in 1961. It seems as if our legal framework has become a close corpus, which doesn't provide a practical solution to our contemporary family issues other than offering a moral interpretation of the socio-cultural issues faced by families.

In reality, women in Pakistan struggle to obtain their inheritance rights because there is no clear legal guidance on equal rights for women. Family law doesn't even resonate with the fundamentals of Islamic jurisprudence and its pluralistic dimensions in varying Muslim societies. What hasn't fully been appreciated by our gurus of legal reforms is the significance of devolving justice so as to allow citizens to access it equitably. For a poor person in Pakistan, legal protection against the exploitation and dispossession of inherited property is almost non-existent.

Women and children have always been victimised through a moral discourse on subjugation. Pluralistic applications of Muslim law could have helped evolve a responsive and inclusive justice system that can adapt to social evolution. But this hasn't happened over the years.

Family law outlines two types of properties that legal heirs have the right to inherit. The first is moveable property, which includes cash and stocks while the second is immovable property, which includes land and houses. The law specifies that three documents are necessary to obtain a share in a property: a death certificate issued by the municipal authorities, a succession certificate issued by a court, and a receipt issued by the local graveyard.

In most cases, this becomes a cumbersome exercise and people forgo it to settle their inheritance issues through informal means. The irony is that instead of adapting to the new realities our legal system allows a reversion to archaic and informal systems of customary laws.

In these informal arrangements, the will of a local jirga, an informal local arbitration council and, in the absence of both mechanisms, family elders prevails. Women are usually forced to relinquish their legal rights of inheritance because they aren't represented in these informal forums, and because these mechanisms are highly patriarchal in nature. The lack of awareness about legal rights and the constant recourse to informal dispute settlement perpetuates gender discrimination in inheritance matters. These arrangements also prevent the poor from having an adequate say in an informal process because of the discretion and influence of powerful parties in dispute resolution.

Therefore, the empowerment of women and the poor through an improved legal consciousness has gained a prominent role in the programmes of social development in recent years. There are some good examples in Pakistan, which could be replicated to address the challenges in the legal disempowerment of women and the poor. The Rural Support Program Network (RSPN) has piloted a legal empowerment programme in southern Punjab through a team of paralegals who are responsible for

facilitating the poor and marginalised families to access appropriate avenues of justice.

The RSPN initiated the programme through capacity-building in legal matters of focal persons from local communities to raise awareness among poor and marginalised communities about legal rights. Through this capacity-building initiative, a well-knit team of paralegals are deployed through a network of local organisations to help address legal matters involving inheritance, disputes over properties and other factors that debilitate empowerment.

Local, inclusive and representative community-based organisations, which are created through the social mobilisation investments of the RSPN, are the key institutions to provide self-expression platforms for the poor and marginalised groups like women and minorities in southern Punjab. The legal empowerment programme is being piloted in different union councils of Rajanpur and Bahawalpur districts, with remarkable achievements in terms of improving awareness about legal rights among women and the poor.

There is much to be learnt from the RSPN's initiative. Our policymakers, right activists and legal experts must replicate it to help regain the confidence of the people in the justice system. The incoming civilian government must support such initiatives that promote and protect the legal rights of the poor in Pakistan. The focus isn't just to have excellent legal frameworks drafted by ivory-tower experts, but to also ensure that people have awareness of their rights to help build a new Pakistan. Justice will prevail only when people know their legal rights and the concept of citizenship is promoted through the continuation of the democratic process. Can the incoming government achieve all this? We will know this in a matter of time.

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