

Brothers Continue to Gobble up Sister's Inheritance

A common practice has developed in Pakistan where a brother will deny his sister her share in the estate of their deceased father. Simply because it is his opinion that she does not want, need or deserve it.

Apparently, this opinion is based on the unwarranted belief that a sister is given her fair share at the time of her marriage and, of course, will also inherit from her husband. This being so, it is considered to be in the 'interest' of the family that the entire estate of the deceased remain with the male heirs. Thus women in Pakistan remain deprived of their lawful Islamic share in inheritable property.

In response to this unfortunate practice, Jurists and courts have compared women's right of inheritance under Islam and under other religions. And they've concluded that Islam provides the most effective protection of the right of inheritance for women. Yet Pakistani society fails to appreciate and recognize this protection, and allows its social dictates to be the dominant force against Muslim women of Pakistan.

Under Islamic law, as soon as a person dies, succession to his estate opens in favour of his legal heirs. The estate devolves upon the heirs immediately in definite shares laid down by the Holy Quran. A person cannot disinherit or debar his legal heirs from their inheritance. Nor can he reduce the fractions falling to each heir's share through a will. At the same time, an heir cannot prevent the coming to him of inheritance, once succession has opened. This means that the heir must inherit his determined share and it cannot be abandoned or transferred by the heir prior to the opening of succession.

The heir becomes entitled to his share only upon the opening of succession. It does not matter whether he rejects it or voluntarily wishes to relinquish it. The moment succession opens in favour of an heir, it becomes an inseparable part of his relationship with the estate of the deceased. The right vested in a Quranic heir lies upon the opening of succession and therefore can only be alienated in a lawful manner after succession. The Courts have repeatedly affirmed this position.

In recognition and enforcement of this law vis-à-vis female heirs, the Courts have taken judicial notice of the fact that women are deprived of their inheritance, more particularly in rural areas where the male relatives, in connivance with revenue officers, commonly deprive the women of their lawful rights (1989 CLC 407). The extent of such deprivation may be measured from the fact that 80% of the female population of the country lives in rural areas. Being totally dependent on their men folk, these women have accepted this deprivation as a way of life.

Courts have become increasingly skeptical of the plea that the female heirs have voluntarily relinquished their rights in favour of the male heirs. It has been held by the Superior Courts that it would be incorrect for a Court to accept this claim and declare title of the property in favour of the male heir on the basis of adverse possession and ouster of the female heir. This means that the Court will not accept a brother's claim to title of the property at the exclusion of his sister, simply because he was in possession of the property for a long period of time, making use of it and enjoying its profits

Through judicial interpretation of Islamic law vis-à-vis public policy, the Superior Courts have tried to transcend the limitation of providing relief specifically geared to individual cases. Instead, having identified the patterns and practices out of which the cases arise, the Courts have aimed to make the law more responsive to social needs. Hence, in cases of inheritance, the Superior Courts have endorsed a more practical interpretation of the Quranic Injunction in Sura Nisa, verse 34. This calls upon men to be the "protectors and maintainers" of women. The orthodox interpretation of this Quranic Injunction has created a misguided impression that men are superior to women as they are naturally and physically more able to protect and maintain. Such an interpretation has obviously resulted in subjecting women to the control of men.

It needs to be stated that neither is this interpretation the 'established' view, nor can it be taken seriously. Sura Nisa does not aim to condition an environment where woman should be constantly relegated to an inferior position, or be denied her participation in society, in the name of religion. Instead, it makes it men's duty to protect women's rights and to maintain women in an environment conducive to their wellbeing.

This does not suggest that women cannot protect or maintain themselves. Instead, it reflects a right given to them whereby their status, treatment and rights are required to be given State protection through laws which would make unlawful all acts which contravene the Quranic Injunction of “protection and maintenance.”

It has been held by the Superior Courts of Pakistan that relinquishment of inherited property by a woman is against public policy and Islamic Law. Inheritance having accrued in her favour on her father’s death remains intact at all relevant times. In effect, she cannot be lawfully denied or deprived of her share in the estate of the deceased.

In cases where a sister was found to have relinquished her share in inheritance in favour of her brother (and accordingly mutation was sanctioned in favour of the brother) and had failed to challenge this for a long period of time, the Supreme Court held that:

1. In the matter of mutation (change in revenue records) depriving a female heir of her share in inheritance conferred no right in the property for the brother. Mutation would not bless such a transaction with sanctity as it was, at best, an arrangement made on the fiscal side for ensuring the realization of land revenue (1983 SCMR 626).

2. Brothers were required to protect the property rights of their sisters, even if they came into the possession of the property in any capacity. One who is enjoined with the protection of other’s property, cannot claim and possess the interests and rights of the person for whom he holds the property, especially in the light of Sura Nisa verse 34. Hence the brother would be in constructive possession of the property on behalf of his sister, so that the brother’s possession would be deemed as the sister’s possession. As there can be no claim of adverse possession on behalf of the brother, the claim of ouster is untenable. Islamic Law will not allow the claim of inheritors, when they are male and female, that the former establish a better right on the basis of enjoying exclusive possession and exclusion against the latter (PLD 1990 SC 1).

3. A suit filed to challenge the denial of the rights of the co-sharer (female) would not be barred by time and revenue authorities on the success of such suits were required to correct the wrong mutation entries (PLD 1982 SC 187).

In a landmark decision, PLD 1990 SC 1, the Supreme Court held that relinquishment by a female of her inheritance is also opposed to Section 25 of the Contract Act. Section 25 declares all those agreements void, which are without consideration, except for the exceptions created by law. One such exception is where the parties standing in near relation to one another make a contract on account of natural love and affection. Hence a brother could claim that the sister had voluntarily relinquished her share by way of a written agreement on account of natural love and affection. The court observed that it is very rare that a male co-heir would relinquish his right in favour of a female heir on account of this natural love and affection. Experience has shown always the reverse. It was further observed that the flow of love cannot be so unnatural that always the sister (who inherits only half of that the brother does) relinquished her share in favour of the brother. It was therefore concluded that it was not on account of natural love but on account of social constraints that a female heir relinquishes her share of the inheritance in favour of a male heir.

In the same judgment it was held that a contract of relinquishment by a female heir of her inheritance was void under section 23 of the Contract Act. Section 23 provides what considerations and objects are lawful and what are not lawful. Section 23 of the Contract Act provides that the consideration or object of an agreement is unlawful if the court regards it as immoral or against public policy. Therefore, where the plea was taken that relinquishment was in favour of the brothers in consideration of the money they spent on the sister’s marriage and also for her maintenance, the Court held that it was the duty of the brothers to protect the property of the sister and to maintain her. In fact, the rights of a sister, in cases where the sister was maintained and married by the brother after the father’s death, should be equated to that of a daughter. This being so, relinquishment by a female of her inheritance was held to be opposed to public policy. And an

agreement giving effect to such relinquishment was regarded as being immoral and, as such, void.

It is, therefore, well settled that the relinquishment of inheritance by a woman is against the Islamic Law of Inheritance and public policy. The Constitution of the Islamic Republic of Pakistan, 1973, enables the three pillars of the state to evolve and create a public philosophy which reflects the socio-economic aspirations of Pakistani society today. The Superior Courts are playing a positive role in interpreting existing laws and legal concepts with reference to Islamic jurisprudence and the social conditions prevailing in society, thereby making the law more responsive to the needs of Pakistani society today. There is nothing to be afraid of about this trend. In fact, it must be welcomed as it will, slowly but surely, help change the existing social conditions in which women are the losers. In such an environment, it is necessary that the legislature also play its role by enacting effective laws which will prohibit the exploitation of a female heir and her share in the heritable property.

Women need to have the courage to understand what their rights are and also need to be willing to defend such rights. Men should recognize these rights and secure them. Only then can the social atrocities that plague our society be eradicated.