

Women's Right to Inheritance in Sharī'ah: Flaws lie in the Society and Judicial System of Pakistan, not in Law on the Subject (A Realistic Jurisprudential Approach)

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Abstract

Women's right to inheritance, indeed, remains an inconclusive debate almost in all legal systems. Sharī'ah has given extraordinary standing to women's rights. While having an unperceptive study of the work of classical Muslim fuqahā, one can easily derive this fact which is widely accepted by the jurists and legal experts of other legal domains. Moreover, no other prevailing legal system or its jurisprudence can cup-tie Sharī'ah in this connection, both at theoretical and practical levels. Among these rights, the right to inheritance is the most central one. Being an Islamic state, Pakistan follows Sharī'ah for giving up and protecting such rights. However, due to some informal flaws in the society and formal flaws in the judicial system, the implementation of such right becomes frail at ground level, which cannot be a professed failure of Sharī'ah under any stretch of explanation. The present research endeavor outlines, with a solid argument, that the failure lies in the society and prevailing judicial system, of course, not in the law on the subject (i.e. Sharī'ah). The work of the Muslim fuqahā', both classical and contemporary, has extensively used for certifying this undeniable hypothesis. The historical Islamic jurisprudence, however, is predominantly resorted, herein, for the same purpose. The Pakistani society's norms and judicial system are profoundly discussed for further clearing-up of the issue. The discourse analysis technique has been followed for the investigation of the issue.

Keywords: Women, History, Inheritance, Fuqahā, Sharī'ah, Law, Judicial System, Share, Islamic Law

Introduction:

The Constitutional history of the Islamic Republic of Pakistan has, indeed, its roots in the famous Objectives Resolution¹; passed by the first Constituent Assembly in March 1949. This Assembly is formed under the directives of Qaid-e-Azam; having the sole purpose to draw an effective outline that can frame a constitution for the newly born country. Till then, a temporary arrangement, the affairs of the State were run under *the Government of India Act 1935*. The Objectives Resolution, inter alia, primarily, provided for equality, fundamental rights, and social justice, enunciated by *Shari'ah* (Islamic Law).

Of course, the Resolution was not given, unfortunately, a statutory status until 1985; nevertheless, its impact could be seen, evidently, almost in all three constitutions of Pakistan of 1956, 1962, Interim Constitution 1972, and 1973.² It was made a substantive part of the Constitution of 1973³ by insertion of Article 2(A) with an overriding effect. This amendment further strengthened the objectives to a great extent, provided for in the Resolution. The recent judgment of the Supreme Court of Pakistan in twenty-first constitutional amendment cases has reaffirmed the controlling status of Article 2A. It is pertinent to mention, herein, that all other Islamic provisions of the constitution have also been discussed in this judgment.

Moreover, it has been concluded (with the majority of thirteen to four) that there has always been a basic structure of the Pakistani Constitution and that its *grand* norm is the Objectives Resolution itself.⁴ To give women their rights is in line with the basic principles of *Shari'ah*⁵ and such rights, certainly, have confirmed by the generic mechanism of Objective Resolution; as the later firmly recommends that sovereignty belongs to Allah (and, therefore, any type of legislation should comply with His commands). The Constitution of 1973, also went a step ahead and protected women's rights in an exceptionally implicit way in various articles therein.⁶ It also categorically prohibited, with the same force, the discrimination based on sex.⁷

Literature Review

Besides the points mentioned above, numerous laws in the country provide for recognition and enforcement of women's rights, especially, those of their financial empowerment. *Muhammadan Law*, for instance, applies to all sorts of cases; including claims of inheritance, for which several laws are, off and on, enacted under the common nomenclature i.e. "The Muslim Personal Law (Shari'ah) Application Act, 1937", which remained in force till 1962. Meanwhile, other laws of the same nature, are enacted in some local/specified areas and Provinces, such as the Punjab Muslim Personal Law (Shariat) Application Act, 1948, the Muslim Personal Law (Shariat) Application (Sind Amendment) Act, 1950, the Bahawalpur State Shariat (Muslim Personal Law)

Application Act, 1951, and, the last but not the least in this regard, Khairpur State Muslim Female Inheritance (Removal of Customs) Act, 1952. In the Northwest Frontier Province (now renamed in the 18th Amendment to Pakistan's Constitution, as *Khyber Pakhtunkhwa*), the *Northwest Frontier Province Muslim Personal Law (Shariat) Application Act 1935* has remained in the field for a substantive period. Later on, the *West Pakistan Muslim Personal Law (Shariat) Act, 1962* has repealed all the above statutes; owing to the fact of its generic nature and jurisdiction. Interestingly, the Act has nullified all customs and usages, predominantly, those detrimental to the benefits of females; including intestate succession, special properties, etc.⁸

In 1991, another law has promulgated, having a short title "The Enforcement of Sharī'ah Act, 1991" extended to all parts of the country with immediate effect. The Act has bounded all Muslim citizens, including Government functionaries, to observe Sharī'ah in all their acts and steps.⁹ The Act gave protection to women's rights as they have been enshrined in the Constitution of Pakistan, 1973.¹⁰ The Act is still in force with letter and spirit. In addition to the above, Shara'ī Nizām Adl Regulation 2009 is in force in all seven districts of Provincially Administered Tribal Areas (PATA) and Kohistan District of Khyber Pakhtunkhwa. These regulations also protect a variety of women's rights.

Pakistan has to fulfill its obligations as a member of the international community, and, subject to the provisions of its Constitution, acceded to the basic international instrument on the subject i.e. the Elimination of All Forms of Discrimination against Women (CEDAW). Moreover, Women's Welfare Departments and Ministries for women empowerment are established at Federal and Provincial levels. Furthermore, the Constitution declares Islam as the religion of the State. The State of Pakistan itself is the outcome of famous Two-Nations Theory¹¹; meaning thereby 'separation of nations based on faith'. This approach, later on, has given birth to the Ideology of Pakistan. The protection of the geographical boundaries of this country is always associated rather dependent on its ideological existence. Ninety-five (95%) to ninety-seven percent (97%) of its population is Muslims. A research report reveals that over thirty-five thousand (35,000) *madrassas* (religious schools) are operating in Pakistan; where the number of enrolled students is 3.5 million.¹² If the average number of passing out students from each madrassa is presumed to be only five (05) per annum, it would mean that they collectively provide one hundred and seventy-five thousand (175000) religious scholars to the Pakistani society each year. The graduates of Departments of Islamic Studies of Pakistani Universities, on the other hand, further increase this number. All these facts confirm the availability of that environment where women's rights are legally, socially, and politically protected in a colossal genius way. Having such a suitable environment, it cannot be expected, even

to a minor level, that a minor right of women can be infringed. However, ironically, the situation at the ground is entirely different; as the majority of women's rights are denied owing to the fact of many reasons - the social one is predominant in this regard.

Despite all the above, majority of the women in Pakistan are living an excessively miserable life. This miserable life is because of the social settings of the country's norms and the influence of other cultures.¹³ They even cannot think about modern facilities and luxurious comfortable life - for one reason or another. To them, all good is meant for men (as it is a slogan of every male dominant society). This is the extent they are deprived of basic human liberties and birthrights. Practically speaking, they are not let to own any property. - a right which is given to them both by *Shari'ah*¹⁴, as well as, by the constitution^{15,16} The classical Muslim jurists also confirm this right in their scholarly work. These jurists include, not exhaustively, Imām al-Shawkānī¹⁷, Imām al-Kāsānī¹⁸, Ibn Qudāmah al-Maqdisī¹⁹, Abu al-Walīd Muhammad ibn Ahmad ibn Rushd²⁰, Imām Muhammad ibn Ahmad ibn Abī Sahal al-Sarkhasī²¹, and Ibn 'Ābidīn²². Among these jurists, the work of Imām al-Sarkhasī is very remarkable, as it discussed the women's right to ownership with minute details. Even educated husbands grab the salaries of their serving wives. In the far-flung, rural, and backward areas, they are subjected to heavy labor in the fields, and farmhouses without any wages. Under the pretext of customs, they are deprived, by one way or another, from their shares in inheritance - an explicit right is given to them by *Shari'ah*.

The possession of the jointly inherited property, traditionally, passes to the male members of the family, the property remains undivided for tens of years, therefore, a cultural phenomenon cannot be changed easily. The female sharers are not given any share in agricultural produce, even to married ones, and the burden of their maintenance has gone shifted to the extended family for years ago. As compared to the quantum of this deprivation, the number of cases in the courts is extremely small for whatever reason maybe.

Astonishingly, in most of the pending lawsuits, the reason for filing is usually not that what is stated. When the relations between the families (original and extended) become strained, a lawsuit is filed for a share in the inheritance. One wonders that how is this happening in a society where laws on the issue are available and are in force too, where the state religion is Islam,²³ where the Constitution is quite clear on the subject,²⁴ where courts are functioning, and more surprisingly, where an overwhelming majority of citizens are the believers.²⁵ This situation, of course, has exposed the country to domestic and global criticism on one hand, and has, by creating misconception, defamed Islamic law and its Jurisprudence on the other, and, hence, this kind of research endeavors and many others. The present work,

therefore, digs out the places where the shoe pinches – minutely or tensely. It, primarily, investigates the inheritance law of *Sharī'ah* with a focus on women's shares. Then, it moves, in the second phase, to the role of Pakistani society, followed by that of Pakistani legal and judicial system in the implementation of the relevant laws on the subject.

Women and Law of Inheritance – Glimpse from Islamic Jurisprudence:

Several discussions have been there on the subject, maybe for long. A great deal of research, at the same time, has also been conducted. Unfortunately, most of the efforts aim to ridicule *Sharī'ah* based on false deductions, baseless presumptions, and, therefore, studies carried out with pre-perceived results. In the view of Asifa Quraishi-Landes, a renowned professor of law, some went on saying (wrongly) that Islamic law is inherently hostile to women.²⁶ This is being done in respect of several disciplines of *Sharī'ah*, such as Evidence,²⁷ Criminal Laws (*Fiqh-ul-Jināyāt*), Family Laws (*Fiqh-ul-Ussrah*), war and peace issues, and many more. The inheritance law of *Sharī'ah* has been a comparatively softer target for such unhealthy criticism, particularly, under the nice-looking slogan of Women Empowerment.

Before entering the details of the subject, three principles should be believed of; firstly: Woman, in the context of law, above all, the law governing the inheritance (typically called *fiqh-ul-mirāth*), means the opposite of male. It is, therefore, should not be confined to wife or daughter. Secondly, entitlement to legacy, as per the settled principles of Islamic law of inheritance, depends on the level of degree of relationship with the deceased, not based on the poverty of some relative of the deceased.²⁸ Thirdly, the objective of the law of inheritance is the provision of a procedure that answers the question of how to deal with the belongings of the deceased. Financial advantaging of the heirs can be possibly a by-product or side effect of this procedure, but it has never been the objective of this law itself by any spin of interpretation. Owing to these facts, when this law is interpreted in the parameters of these three principles, no room remains for questions like, why the share of a female is half of the share of the male? Why a grandson is deprived of inheritance? Why the law of inheritance should not be used as a tool for the financial empowerment of women? Despite this, there are quite convincing answers to these questions, some of which are discussed below.

On women, the Islamic law of inheritance is, indeed, quite clear and plain. It classifies the relatives of the deceased into three classes; the Sharers (*Zawilfurūdh*), the Residuary (*Aṣābah*), and the Distant Kindred (*Zawilārḥām*). The first one is very important, for its members to take the pre-stated shares. This class never remains deprived – for any reason whatever may be. The total number of the members of the class is eleven (11) wherein the number of

female members is, significantly, two-third (2/3) or even more.²⁹ Abdullah bin Mahmūd al Mūsiliā Baldahī, a renowned scholar of the Hanafī School, has the same opinion.³⁰ No doubt the majority members of the 'Aṣabah classes are males, but this class can receive only the portion left by the sharers. It may be noted that the total number of the members of the 'Aṣabah class is eighteen (18) wherein seven (7) are females. It would mean that more than one third (1/3) of the total number of 'Aṣabah is females. One may argue that the total number of the male heirs (*Zawilfurūd* + 'Asabah) is fifteen (15) whereas the total number of the female heirs is eleven (11) (*Zawilfurūd* + 'Aṣabah), and, as such, the number of male heirs exceeds the number of female heirs by four (4) i.e. 15:11. This strong argument may be rebutted in the same coin; explaining that despite this difference, if all the fifteen (15) male heirs are available at the same time, only three (3) of them (i.e. father, son, and husband of the deceased) will inherit. On the other hand, if all the eleven (11) female heirs are available at the same time, five (5) of them (mother, daughter, son's daughter, wife, and real sister) will inherit.³¹ Hence, the ratio between males and females remains as 3: 5 which is greater than 15: 11 above.

It is also worth mentioning that the rule of Exclusion (*Hujab*) runs only in the 'Aṣabah class. Hence, a nearer heir of the 'Aṣabah class will exclude the distant one. No heir of *Zawilfurūd* class can exclude the other member for the reason of remoteness. Furthermore, the exclusion in the 'Asabah class occurs in male members more than that it occurs in the female members. Imām Abū Bakar Muhammad ibn Abī Sahal Sarakhsī, a classical Muslim jurist, has discussed this issue profoundly.³²

Attention and consideration of *Shari'ah* for the female are also evident from the fact that it has kept the uterine brothers and sisters, on one hand, in *Zawilfurūd* class whereas it has kept, on the other hand, the consanguine brothers and sister in the 'Asabah class; indicating the preference of affiliation with mother over the affiliation with father. This approach may be an ample answer for the opponents of Islamic law. As per analogy, the wife of the deceased should not inherit him, for the reason that marital ties (marriage contract) terminate with the death of the husband, though this end becomes effective after the expiry of the *iddat* period. Moreover, all the members of the Sharers class have been listed by *Allah*, the Al-Mighty in the Holy *Qur'an*, the only member that has been added to the above list by *Sunnah* is the female; the grandmother.³³ Interestingly, the relevant verses of the Holy *Qur'an* have revealed to the Prophet Muhammad (SAW) in the background of women's entitlement to inheritance. It has been reported that the widow of Saa'd bin Al-Rabi' along with her two daughters has come to the Prophet Muhammad (SAW) with a complaint:

"O Messenger of Allah! They are the daughters of Saa'd. Their father, on

the occasion of battle Uhud, got martyred while fighting under your command. Their uncle has grabbed the property and has left nothing for them. No one would marry them unless they possess some property”.

The prophet informed that *Allah*, the Al-Mighty, would send verdict in the issue. Consequent to this, the relevant verses of inheritance have sent down.³⁴

Of course, administrative supervision of males (husbands) upon females (wives) has been recognized by *Sharī'ah*, it should not be, however, construed as action short of reason. The rationale behind this precedence has been explained in the Holy *Qur'ān*. The relevant verse contemplates that entrusting the male with a supervisory role upon the female is for two reasons; firstly, the absolute authority cannot be questioned on exercising His discretion, and secondly, males are held responsible for all financial liabilities.³⁵

Difference between the Number of Males and Females' Share - Possible Answers from Islamic Jurisprudence:

Gender equality should not be understood in the sense of sameness; *as Sharī'ah* rulings do not operate on the principles of the number game, rather these rulings carry philosophical rationales and effective causes behind it - a phenomenon technically called jurisprudential rationale. In the case of inheritance shares, while following the previous principle, the main consideration is to the liability of financial expenses. A female, particularly, wife, for instance, bears no responsibility for household expenditure, and even her own basic needs are, too, borne by her husband in the shape of maintenance; irrespective of the poor financial status of the husband. Abū Ishāq Ibrāhīm ibn 'Alī ibn Yūsuf al-Shīrāzī, a renowned scholar of the Shafī School, has discussed the husband's responsibility for the maintenance of wife comprehensively.³⁶ In case, the husband becomes incapable to provide maintenance, the loan is taken by the wife for basic needs shall be paid by the husband on his recovery from incapability.³⁷ If the wife is well off and spends her own money for family expenses, it shall be considered as a loan against the husband. In case of any hardship, the wife may sue the husband for the recovery of such money. The right goes to the extent where a divorcee mother can recover money from her previous husband if her child still suckles her. If her milk is insufficient or happens to be injurious to the child, and she arranges wet-nurse, the wages shall be paid by the father.³⁸ The jurists are at concurrence that a divorcee mother can recover wages from her previous husband against three heads; maintenance of the child, bringing up of the child, and milk-feeding.³⁹ It should also be noted that on one hand, her half share remains safe from any sort of expense and, on the other hand, she receives an additional amount in the shape of dower- the best example of

going happy lucky situation. Amusingly, according to the majority of schools, her dower is also exempted from poor-rate (*Zakāt*).⁴⁰ In the concept of “*Aaqilah*”⁴¹, women are also exempted from payment of “*Diyat*” (blood-money).⁴² What a wonderful exemption she enjoys in the case of *Hajj*! the costly financial worship. Notwithstanding her high financial status, she remains exempted from its performance, if she cannot find a “*Muḥram*”⁴³ to accompany her in the journey.⁴⁴ If the factor of expenses is considered, it becomes highly probable that the male may become empty-handed despite his double share, and the female would become more wealthy for the said exemptions.⁴⁵

The financial responsibility of the male is not confined to his wife and children only; he is rather liable for the maintenance of so many other poor relatives, coming within blood relationship.⁴⁶ A son, for instance, is responsible to maintain his needy parents but a daughter is not. A brother (real or uterine) is supposed to provide maintenance to needy sisters, but no sister is required to give maintenances to the brother, howsoever poor he may be. The phrase “*Dhū Rahim Muḥrim*” includes almost all near relatives such as maternal and paternal aunts, brothers, sisters, maternal paternal grandfathers, grandmothers, and many more.⁴⁷

The wisdom of *Sharī’ah* keeps appropriateness in the devolution of the estate of the deceased. If a deceased, for example, leaves behind a daughter, wife, and mother. Here, all the heirs are female. The daughter, herein, has to take half of the estate, the widow has to take one fourth, and the mother has to inherit one-sixth. Can the mother be allowed to claim a lion share or at least an equal share? Whether she can be allowed to say that she is the nearest one to the deceased because she has begotten him? Whether she may be left to claim that the widow should be excluded because of the termination of her marriage contract? It would, indeed, lead to absurdity if the estate is distributed equally between them. Their shares are proportionate to their needs. The higher one’s needs, the bigger is his share.

In short, there can be only four (4) situations wherein a male takes double of the female share and that is, too, due to some substantial reasons. Similarly, there are fourteen (14) situations wherein females take more than males. Further, there are eleven (11) situations wherein women may take equal shares with men. Again, there are five (5) situations where the females take shares and males do not. This brief would mean that, in more than thirty (30) cases, the women would take equal or greater share than men.⁴⁸

Making a Comparison between Male and Female is itself a Wrong Phenomenon – A Logical Approach from the Perspective of Islamic Law:

Comparing man and woman in respect of their various functions is, logically, a wrong and, at the same time, futile phenomenon. A woman has

been created with some characteristics which a man does not possess and vice versa. The legal provisions of *Sharī'ah* are based on the variation of these characteristics, not based on sex. Natural factors have always been worthy of consideration and, as such, they cannot be ignored in all sorts of activities and actions. While having this natural phenomenon, legislation is no exception to it. So, consideration of such factors in the process of framing of laws or implementation of such laws should not be clothed, under any stretch of explanation, with the meaning of gender discrimination- a phrase the use of which has become a fashion and a symbol to be progressive and enlightened. This approach reminds the true meaning of the verb, "*stretching the truth*".⁴⁹ Going further with the discussion, it can be witnessed that a mother possesses patience and tolerance more than a father. She rarely, for instance, becomes angry with the disturbing children, feeling unwell, particularly, at night times and sleeping hours. The situation would be quite different in the case of a father. A proposition that a mother loves her children more than they are loved by their father based on the above characteristic would be certainly unwise. There is no justification for comparison. One should not fight with nature. It is natural that a mother, being female, has more inclinations towards her male issue as compared to daughters. Naturally, every married lady wishes to become the mother of a son (rather sons) and not of a daughter. Naturally, a mother of sons and daughters is more ambitious to become a paternal grandmother as against becoming a maternal grandmother. One astonishes why a grandmother loves the children of her son more than the children of her daughter, and even she loves the male issue of her son as against his female issue? What to say of human beings, the rules of nature govern the whole visible animal kingdom, and males and females follow the natural standards of their rights, privileges, and liabilities. In the above instances, it is the nature which matters and governs neither the rulings of *Sharī'ah* nor the dominancy of male. Verse of the Holy *Qur'ān*, too, confirms this natural phenomenon.⁵⁰

The Pakistani Society and Women Right to Inheritance:

Of course, legal provisions alone cannot turn the people abide by the law. It requires the engraving of principles of equity in their minds. These principles mostly pertain to moral values; meaning thereby that a code of law, if not accompanied by a code of conduct, would not serve the purpose. Conduct has, therefore, been a complementary partner of law. A car driver, short of these principles, shall violate all the traffic rules if he sees that none of the traffic officials is there to watch him. Similar is the case in *Sharī'ah* It has placed legal obligations under the title of *Qada* (juristically known as *qadhā'an*), as it has put moral obligations under the title of *diyānah* (juristically known as *diyānathan*).⁵¹ For example, the fulfillment of contractual liabilities comes under the first category, whereas, keeping the promise pertains to the

second category. In case of violation in the first category, the violator may be sued or prosecuted; as the nature of violation would require. The violation, in the latter category, would, though, render the person sinful and would adversely affect his dignity, but it would not subject him to be proceeded against. Similarly, the gift of property by a father to one of his sons is legally (*qadhā'an*) valid but is morally (*diyānatan*) bad.

Interestingly, *Shari'ah* has gone a step ahead of the law and has added the third element of belief on accountability in the Eternity and that's why the jurists have divided the *Shari'ah* into three branches; the law (*Fiqh*), the Ethics (*aklāqiyāt*), and the beliefs (*'aqāyad*).⁵² In a Muslim society, the *Fiqh*/Islamic law would not properly work in the absence or weakness of the other two complementary elements. Unfortunately, the Pakistani Muslims do not possess the required standard of morality and belief on the accountability in the *Day of Judgment*. They do not bother, for one reason or another, for the actions coming under the category of *Diyanah*. Moreover, they do not observe practical fear of accountability in the life after death. Resultantly, they do not hesitate to devour the rights of their fellows. The deprivation of women from their right to inherit is nothing else but the worst form of this transgression. In this society, the male members of the family, under one excuse or the other, try to withhold the shares of the females. *The ordinary excuse is their statement that female heirs have not yet made a demand*. Sometimes, the males prepare fake gift deeds, bogus sale deeds, false wills, and codicil, claiming that the deceased, during his life, has transferred the title to them. In a considerable number of cases, the males, by a deceitful manner, succeed to record the statements of the females before the revenue officials and, thus, cause false mutations in the revenue record. In several cases, the male, during the lifetime, hands over his whole property to his male issue. On some occasions, a written agreement between a father and daughter is made wherein she agrees that if her father purchases a dwelling house for her husband and children, she will not claim her share in the estate left by her father. On many occasions, the men claim that they have provided costly dowry articles (*Jahyz*) to females instead of their shares in the estate.⁵³ It has also been observed that the aged death-apprehending husband divorces his issueless wife, particularly, the one married within a belated stage after the death of the first issue-having wife, to deprive her of her share which might, on her death, possibly devolve on her relatives. Injurious wills and harmful codicil, as mentioned afore, are also made. Such will have also been seen wherein its maker has stated that his second alive issueless wife shall receive the usufruct of a portion of the property and, on her death, that portion shall devolve on his sons from the previous wife – can be rightly called a civilized way of cheating. The men always remain ready to bear heavy expenses of litigation but are not willing to hand over to the women their due share.

The above attitude could not be counted, by any means of interpretation, as a defect in the Islamic law of inheritance. The causes behind this are, of course, greediness, intolerance, discontentment, and above all, the absence of discrimination between *halāl* (permitted) and *harām* (taboo). They keep on preaching the saying of the Prophet Muhammad (SAW) that *Allah* the Al-Mighty shall not approve any worship if a single taboo morsel exists in the trunk of a worshiper, they, however, do not implement it. They do not mean what they preach – an approach that is discouraged by the Holy *Qur'ān*.⁵⁴ In a society, where the belief of Accountability in the life after death is not deep-rooted, moral norms are not valued, and, more importantly, ethical standards are not observed, the dominant members of it would never be mentally prepared to follow *Sharī'ah* in its letter and spirit. Hence, when two-third of the *Sharī'ah* (Morality and beliefs) remain unpracticed, how its third component (the laws) would work properly? Considering the gravity of this situation, the participants of the 02-day Conference on women's right to inheritance, arranged by the Khyber Pakhtunkhwa Judicial Academy, unanimously recommended; "The religious scholarship should be encouraged for enlightening the general masses on the significance of the issue and its fragile nature under *Sharī'ah*. The issue should be, off and on, discussed with the required zeal in various religious ceremonies and addresses."⁵⁵

To what extent mental obedience is necessary for rule of law, is to be guessed from the history of *Sharī'ah* itself. It has spent thirteen years to educate the people on mental obedience; where the emphasis remains on belief and morality. Having said that, no law has revealed to the Prophet Muhammad (SAW) during this period. Almost all laws are revealed to him after migration to *Madinah* and that's why a major difference between *Makki* and *Madani* chapters of the Holy *Qur'ān* can be seen i.e. the presence of legal provisions in the latter and its absence in the former. Therefore, the members of the Muslim society can never be ready to abide by the Madinite legislation without the required digestion of Makkiate ordinances. Pointing to such a situation, Imam Malik, a renowned Muslim jurist, said, "The latter of this *ummah*/nation could not be restructured by any other way except the way through which the primary of it had been restructured".⁵⁶

The Pakistani Legal and Judicial System and Women Right to Inheritance: An Analytical Approach:

For a better understanding of the issue, it is indispensable to discuss the courts established by the Civil Courts Ordinance 1962, with special focus on the court presided over by a civil judge, also known as '*Ilāqa Qāḍī*' in some parts of the country. For a Judge or *Qāḍī*, two traits are decidedly necessary; the efficiency and the effectiveness. The efficiency comes with the required level of knowledge (theory & skills), whereas, effectiveness can be obtained by

observing high standards the ethical values. The first trait ensures arriving at the right conclusion of the case, whereas, the given trait builds the confidence of the public upon the court. For these two traits, judicial academies, not only in Pakistan but across the world, prepare manuals and conduct training for actors of justice sectors, particularly, the judges and lawyers.

As far as other laws concerned, the efficiency and effectiveness of the judges may, in a few cases, be satisfactory, but the overall situation is good. In inheritance laws, the situation is not, however, so commendable. The literacy of the trial judges on the subject, except a few of them, is not as it ought to be. The situation has made the judges completely dependent on the non-judicial experts while dealing with inheritance-related cases. One may argue that after the arrival of the online inheritance calculator, no scope remains for the study of literature on the subject. He may be asked whether the user of the device understands the explanations and reasons given by it for the resulted calculations. If any time in the future, the software is developed for calculation relating to court fee and suit valuation, would it exempt the judges from understanding the jurisprudence of these laws? The same situation and the same question may also arise in respect of the Limitation Act. If the answers to these questions are negative, and the judges become fully dependent on the devices, then what difference remains between an ordinary user of the modern gadgets and a person presiding over a court, deciding the fortunes of the people? And if such a special person does not know the jurisprudence of the law, how poor his application of that law to the facts would be? Why he could not be found reluctant and hesitant while dealing with cases coming under such law? How proper and efficient application of the law could be expected from a person whose own conceptual clarity on the relevant law is in question?

The above absence of self-sufficiency in judges trace back to several factors. Firstly, it can be linked to the institutions they have graduated from therein. It has been observed that the entrants, during their pre-service training in the judicial academies, keep on complaining about the toughness of the law on the subject. Here, the academies necessarily turn into the level of law schools and law colleges, where many lectures on the theory of inheritance are arranged. The question, but, remains that how a work of at least a full semester can be completed in a few classes? There seems an obvious defect in the syllabi of law schools. Principally, the law of inheritance should be taught from its source; the relevant portions of *Surah al-Nisā*, the related *ahadīth* (*Sunnah*), the pertinent decisions of the companions, particularly, those of *Caliphs*, and the inheritance maxims developed by the jurists. The textbooks of law colleges and schools do not include, ironically, the above subjects with the above sequence. If someone cannot recall the relevant verse or *hadīth* or maxim when they are needed, he will not be able to

ascertain the status and share of an inheritor. Second, the non-orientation of judges with the Arabic language; the language of *Shari'ah*, is quite fatal. Admittedly, the language of law plays a vital role in comprehending and construing the provisions of that law, and that's why a plethora of books has been written on "*Law and language*". Laws are clothed in a language and transmitted through a language. It has rightly been prepositioned that "*Law is a profession of words.*"⁵⁷ In this scenario, 'Arabic is as important for Islamic laws as English is for Anglo-Saxon laws. For the law students are, usually, not familiar with 'Arabic, they depend on various translations which cannot serve the purpose. They, thus, remain incapable to benefit from the sources, even after becoming judges. Resultantly, what to say of the minute details of inheritance law, the very basic terms and phrases, such as *Kalalah*, *Hujb*, 'Awl, *Radd*, *Akhyafi*, 'Allati, 'Ayni and many others seem alien to them. One may argue that these terms and phrases have been translated into English. This may be rebutted by saying that phrases specific to a particular subject should be used as it is, otherwise, it would lose its utility. It is because of this reason, the Anglo-Saxon laws have housed the alien phrases, such as *res judicata*, *primogeniture*, *men's rea*, *ratio decidendi*, *bonafide*, *mandamus*, *certiorari*, *thug*, *lathi charge*, *Dastak* and hundreds more. Thirdly, in the recent past, two years of bar experience has been kept a pre-requisite for appearing in the examination of recruitment. The cream of fresh law graduates including the distinction and position holders, on their success in competitive examinations, join the other government departments. This inland brain-drain has caused considerable harm to the human resource branch of the judiciary. Though there is the relevance between the advocacy and the judgeship, they should not, however, be equalized in all respects. There is a substantial difference in their jobs. An experience of persuasion cannot be considered as an experience of evaluation. Resultantly, a persuader (lawyer) may not be a good evaluator (judge) and vice versa. The conditionality of two years of bar experience seems unnecessary. Its harm is more than its advantage. If no escape is possible from it, or if the escape is hard, then, it should be kept as an element for reference only. Fourthly, one important factor is the consideration of zonal and special quota policies in the recruitment process. Had there been an open merit policy, the judiciary would have received genius, sharp and smart entrants. Under the zonal policy, and, above all, under special quota, academically weak candidates succeed to enter into judicial service, and the judicial academies, here, find it hard to fill the gap even by extensive training. It, of course, results in poor performance at the workstations.

It would not be correct to leave the performance of the judicial academies uncommented. Not at all but to a considerable extent, the training system of the judicial academies suffers from substantial shortcomings. Firstly, most often, they do not possess any course module, and the training

schedules are, therefore, prepared merely based on the job description. This practice not only adds to the confusion of the trainees, it rather perturbs the mental faculty of the resource persons, leaving them in a dilemma, not knowing from where they should start, where they should place emphasis or focus on, and how they should sum up. So, directionless persons, whatsoever of high caliber or rank they may be, fail to put the trainees in the desired direction. Secondly, some academies have, no doubt several course modules, but they are, nevertheless, short of the requisite material. The basic requirement is preciseness and conciseness which they lack. One can observe the inclusion of unnecessary and even, sometimes, unwanted subjects and topics. Similarly, one may also feel the omission of necessary topics; inheritance law on its top. As such, the modules, at some places, carry injurious brevity, and monotonous length at some other places. The main cause behind this improperness is the non-conducting of proper TNA (Training Need Assessment). Thirdly, the training of the faculty members, both house and guest, is highly essential. The academies seldom arrange ToT (Training of the Trainers). For the reason that most of the resource persons have not undergone such training, they have no concept of the troika (knowledge, skills, conduct) of the training regime, they do not possess the necessary presentation skills, and, as such, their delivery becomes deadly poor. Fourthly, the duration of the training, particularly, of the prescribed training, is highly short. The period of training, for instance, for District & Sessions Judges, Additional District & Sessions Judges, Senior Civil Judges, and Civil Judges is two (2) weeks, three (3) weeks, two (2) weeks, and four to six (4-6) weeks, respectively. The academies, by hook or crook, try to complete the courses in the given time, and it results in a harmful disorder. Besides, discontinuation of policies, frequent transfer in and transfer out of the officers/trainers, absence of incentives and encouragement, and the shortage of human resources further add to the problem. In the field, the litigators, lawyers, and many others make an exception to the competence of the presiding officers of the court.

The inheritance cases do not find a suitable consideration in the disposal policies. They are treated, often, as other ordinary civil suits that consume tens of years in getting finality. Disposal Policies, issued by the higher forums, focus on family issues. Practically, the phrase "*family issue*" covers the cases falling in the domain of family laws, such as the matters on conjugal rights, maintenance, dower, jactitation of marriage, *Khula'*, cancellation of a marriage contract, and *'Iddat*. It should be kept in mind that inheritance is the inseparable part of the family law. Family, in its ordinary sense, means a married couple with their children and include (if loosely applied) parents. The relevant two verses of the Holy *Qur'ān* describe the family members as children, parents, and spouses.⁵⁸ Only in the absence of

these three groups, other heirs may be counted as family members. So, all matters between family members, originating either from marriage (*sabab*) or from kinship (*qarābat*) are the subjects of family law. In all Islamic universities, across the world, inheritance is taught as a second and complementary part of the family course, usually, under the title of *family Law II*. In Pakistan where more than a hundred registered legal institutions are functioning,⁵⁹ only three of them; International Islamic University Islamabad, Islamia College University Peshawar, and the University of Swat follow the pattern of Islamic universities referred to above. Interestingly, a considerable number of family law books have been divided by its learned authors into two portions; portion one (i) discusses matters arising out of *Nikāh* and *Ṭalāq*, portion two (ii) deals inheritance issues.⁶⁰

The absence of a regular enactment has also harmed inheritance claims. In Pakistani courts, for instance, the cases that get highly sooner finality are the family cases. It is just because of the special enactment that requires the disposal of the family suit, instituted for dissolution of marriage, within four months.⁶¹ An appeal, if lies, is also be decided in four months.⁶² In the same way, the Act bans appeal and revision against the interim orders of the family court.⁶³ Hence, the Act has closed all the ways that may cause delays through abuse of procedure. Since there is no special enactment on inheritance issues, it gets no priority, no importance, and no attention.

The other important pillar of the Pakistani legal and judicial system is the Bar; lawyers and advocates. The number of licensee advocates in Punjab Bar Council exceeds 100,000. ⁶⁴ This number would become two times more if the number of lawyers of the remaining four-bar councils is added to. The role of bar members is, therefore, cannot be ignored. In inheritance claims, for instance, the performance of the defendant's counsel is always criticized. The basic cause of this criticism is the abuse of procedure. So many tactics cause a delay in the hearing of the case. If there are several defendants in a case, the defendants, mostly in consultation with their expected counsel, escape service of summonses and do not attend the court until the court exhausts all modes of service of process. When they are preceded ex parte, and evidence of the plaintiff get completion, some of them (intentionally not all) appear in the court, applying to cancellation of ex parte proceedings. The disposal of this application consumes considerable time. If the petition is allowed, the defendant's counsel is happy, and if the petition is rejected, he is again happy because he finds a chance for an appeal that would further prolong the case. Instead of submitting a written statement, the defendant's counsel files a petition for early dismissal of the suit. He knows that the civil courts rarely allow such petitions and that his petition will be dismissed, he, however, succeeds to delay the hearing for another lengthy pause. On the dismissal of such a petition, he once again takes the case to a higher forum for judicial

review that will further consume a lengthy period. When the case comes back to the trial court and fixed for submission of written statements, the remaining defendants appear and file a petition for the cancellation of ex parte proceedings against them. *As such, the previous stages begin once again.* Several adjournments, under various excuses, are sought for submission of written statements. It has almost passed a year when the written statements are submitted. Now the turn of miscellaneous petitions comes in. In short, a period of four or five years is consumed by the trial court in concluding the trial. Now, appellate courts are moved, and the decision of appeal takes another lengthy duration. Thereafter, running away from the requirements of the second appeal, revision is filed. Thus, an inheritance case gets finality in seven or eight years. As soon as the execution commences, several objection petitions are filed, and a series of fresh litigation begins. When all objections are disposed of, a petition under Section 12(2) comes in. That's why it is said that the miseries of an aggrieved person start when he succeeds in obtaining a decree of the court in his favor. When 12(2) is disposed of by the court, another Pandora box is opened. For example, if the first case was filed by the sisters against the brothers, a fresh case is brought on behalf of the paternal aunts. Thus, the practical execution of the first case stayed for an uncertain period. *Meanwhile, many judges get retirement, a considerable number of judges go on transfer, sometimes legal systems turn completely changed, ascertaining of a counsel becomes hard due to the bulk of wakalatnamas in the case-file, the brothers die, the sisters die, the aunts die, and the trouble of litigation is shifted to the next generation.*⁶⁵

Conclusion:

The law on the subject (of inheritance) is quite comprehensive and equitable. It bears no discrimination on gender basis. The issue that needs attention is not the quantity of share of the women; rather the real issue is why the male members of a family refuse to the women their due share. The reason behind this attitude has been found as a feeble belief of the people in the absolute authority of *Allah* (SWT), unconsciousness to the difference between *halāl* and *harām*, and no fear of accountability in the Eternity. This recalcitrant attitude has led to immoral traits; selfishness, greediness, and discontent. The mighty devour the rights of weaker with no fear of *Allah*, with no apprehension of legal consequences. There is a dire need for such training, ceremonies, and other programs that focus on, first, strengthening of beliefs of people on the basic organs of faith/*Īmān*, second, on character building.

There are numerous flaws in the judicial system that include abuse of procedural laws, borderline competence of trial courts both in terms of efficiency and effectiveness, deviation of lawyers from professional conduct, non-availability of a separate Act/statute on inheritance, and the ignoring of

inheritance law in the disposal and delay reduction policies. First, the Parliament should, on the line of family laws, frame a separate Act on inheritance. In this way, on one hand, inheritance claims may get an exemption from the strict application of procedural laws, and on the other hand, a time framework may become available, too, for disposal of inheritance cases. Thereafter, the academies should, off and on, arrange extensive training, both for judges and lawyers. For lawyers, training on professional conduct should also be conducted. There should be proper consideration of inheritance cases in the disposal and delay reduction policies. Incentivizes and other encouragement would be quite helpful for the improvement of the situation. Moreover, free legal aid should be provided to women in all cases bearing the element of inheritance. What has been stated above is sufficient to hold that flaws lie in the society and system, not in the law of inheritance, envisaged by *Shari'ah*. The authorities, therefore, should focus on the place where the shoe pinches. They should go for improvement where it is required. They should discourage the interference of the human intellect in the limits prescribed by *Allah* (SWT) exclusively. In this regard they should be guided by the following divine directives:

These are the bounds set by Allah. Allah will make the man who obeys Allah and His Messenger enter the Gardens beneath which rivers flow. He will abide there forever. That is the mighty triumph.⁶⁶ And he who disobeys Allah and His Messenger and transgresses the bounds set by Him - him shall Allah cause to enter the Fire. There he will abide. A humiliating chastisement awaits him.⁶⁷



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References

¹ Objective Resolution is always considered, by the historian, as one of the most important documents, predominantly, in the constitutional history of Pakistan. Under the leadership of Liaquat Ali Khan, the document was passed by the first Constituent Assembly on 12th March, 1949. It laid down the basic principles; which were supposed to be incorporated in all future constitutions. One could imagine the importance of such document from the fact that it was declared as a preamble for the constitutions of 1956, 1962 and 1973. After studying the document, profoundly, one could easily understand the very nature of it i.e. an amalgamation of Islamic and western political systems... Please see for further details <http://historypak.com>, accessed August 13, 2018

² Judgment of the Supreme Court of Pakistan in 31 constitutional petitions against 18th, 19th and 21st Amendments, p.856, available at www.supremecourt.gov.pk, accessed on April 16,2017.

³ Presidential Order 14 of 198, later affirmed by the Parliament through the Constitution (Eighth Amendment) Act, 1985.

⁴ PLD 2000 SC 225 (Shariat Appellate Jurisdiction). See also PLD 1990 Karachi 342, and 1990 CLC 1683 (The Constitution is the *grund* norm for other legislation, and the Objective Resolution made substantive part of the Constitution is the *grund* norm of the constitution itself)

⁵ The original text of the Holy *Qurān*, regarding the equal rights of women as that of men, flows as ... Divorced women shall wait concerning themselves for three monthly periods. See: *Sūrah Al Baqarah*, 228

⁶ See Articles, 32, 34, 35, 37, 55 and 106 of the Constitution,1973

⁷ See Article 25 of the Constitution,1973

⁸ *The West Pakistan Muslim Personal Law (Shariah) Act, 1962*, Section 2

⁹ *The Enforcement of Shariah Act, 1991*, Section 5

¹⁰ *the Enforcement of Shariah Act, 1991*,Section 20

¹¹ For details see: <https://storyofpakistan.com/two-nation-theory-the-myth-the-reality>, Accessed on August 13th, 2018

¹² Umair Khalil, "The Madrassa Conundrum" published by HIVE, details available at <https://www.dawn.com/news/1197466>, Accessed on September 6th, 2018

¹³ Qaysrānī, 'Ayesha, Sadaf Liaquat, and Elishma Noel Khokhar. "Socio-economic and Cultural Factors of Violence against Women in Pakistan." (2016), Working Paper, [https://www.sdpi.org/publications/files/Socio-economic&Cultural-Factors-of-Violence-against-Women-in-Pakistan\(W-158\).pdf](https://www.sdpi.org/publications/files/Socio-economic&Cultural-Factors-of-Violence-against-Women-in-Pakistan(W-158).pdf) (accessed December 13, 2018)

¹⁴ For instance, there are many verses of the Holy *Qurān* that confirm women's rights to own property i.e. (*Sūrah al Nisā'*,32, 33)

¹⁵ The Constitution of Pakistan, for instance, offers a generic right, for both man and woman, to have an ownership of property. Here, no discrimination is made on the basis of gender. The original text, mentioned in the Constitution, flows as , " No person shall be deprived of his property save in accordance with law" *The Constitution of Pakistan, 1973, Section.24*

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¹⁷Shawkānī, *Nayl al Awtār*, (Dār Iḥyā' al Turath al 'Arabī, 1st Edition, 2001

¹⁸ Al Kāsānī, Abū Bakr ibn Mas'ūd, *Bādā'i' al-Şanā'i'*, (Beirut: Dār al-Fikr, 1st Edition,

1996)

¹⁹Ibn Qudāmah al-Maqdisī, *Al Kafī*, (Beirut: Al Maktab al Islāmī, 5th Edition, 1988)

²⁰ Ibn Rushd, Muḥammad bin Aḥmad, *Bidāyṭ al Mujtahid wa Nihāyat al Muqtaṣid*, Vol. 2, (Beirut: Dār al-Fikr, 1st Edition, 2003)

²¹ Al Sarakhsī, Muhammad bin Abī Sahal, *Al Mabsūṭ*, (Beirut: Dār Iḥyā' al Turath al 'Arabī, 2002)

²²Ibn 'Ābidīn, *Radd al Muḥtār*, (Beirut: Dār al-Fikr, 2005), Vol. 6

²³ The original text of the concerned Article goes as "Islam shall be the State Religion of Pakistan".... *The Constitution of Pakistan, 1973, Article: 2*

²⁴ "Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the constitution and any reasonable restrictions imposed by law in the public interest" ... *The Constitution of Pakistan, 1973, Article: 23*

²⁵ <http://www.pbs.gov.pk>, Accessed on 25th December, 2018

²⁶ Asifa Quraishi-Landes, "Five Myths about Sharī'ah", *The Washington Post*, June 24, 2016, <https://www.washingtonpost.com>, Accessed on 1st January, 2019

²⁷ Ahmad Nehāl Uddīn, "Comment Women's Testimony in Islamic Law and Misconceptions: A Critical Analysis", *Religion & Human Rights* 6, no. 1 (2011): 13-23.

²⁸ Because of this, Imām Al Sarakhsī, while discussing various shares for the relatives, keep *qurbat* (relationship) with the deceased) as bench mark. For details see: Al Sarakhsī, Muhammad bin Abī Sahal, *Al-Mabsūṭ*, (Beirut: Dār Al Ma'rifah, 1993), 30: 23

²⁹ Al Ghamidī, Nāṣir bin Muḥammad, *Al Khulasah fī 'Ilm al Farā'id*, (Islamabad: Dar Al Ṣidq, n.d), p: 67-68

³⁰ 'Abdullah bin Mahmūd al Mūsiliāli Baldahī, *Al Ikhtiyār Li Ta'līl al Mukhtār*, (Beirut: Dār al Kutub al 'Ilmiyyah, 1937), 5: 86

³¹ Al Ghamidī, *Al Khulasah fī 'Ilm al Farā'id*, p: 67-68

³² Al Sarakhsī, *Al Mabsūṭ*, 29: 148

³³ Al Ghamidī, *Al Khulasah fī 'Ilm al Farā'id*, p: 82-83.

³⁴ Al Tirmidhī, Muḥammad bin 'Esa, *Al Sunnan*, (Beirut: Mo'assasah al Risālah, 2013) p: 790-791

³⁵ Sūrah al Nisā', 34

³⁶ The issue of maintenance of wife, as a responsibility, has been thoroughly discussed by Al Shīrāzī, Ibrāhīm bin 'Alī, *Al Muhadhab fī Fiqh al Imām al Shāfā'ī*, (Beirut: Dār al Kutub al 'Ilmiyyah, 1993), 3: 148

³⁷ Muhammad Muhyuddin Abdul Hamid, *Al Aḥwāl al Shakhṣiyyah*, (Beirut: Al Maktabah al 'Ilmiyyah, 2003), p: 307-308

- ³⁸ Muftī Muḥammad Shafī', *Ma'ārif-ul-Qur'ān*, (Karachi: Idarah al Ma'ārif, 1975), 1:582-583
- ³⁹ Muhammad Amin Afandi, *Majmu'ah Rasā'il Ibn 'Ābidīn*, (Lahore: Sohail Academy Ever Green Press, 1980) 1: 272. Muftī 'Aziz-ur-Raḥmān, *Fatawa Dārul 'Ulūm Deoband* (Karachi: Dār al Ishā'at, 1986), 11: 154-155.
- ⁴⁰ Wahbah Al Zuhailī, *Al Fiqh al Islāmī wa Adillatuhu*, (Beirut: Dar Al Fikr, 1989) 2:766
- ⁴¹ Aaqilah mans and includes the relatives of the offender who could be held liable for payment of diyat, if the offender cannot himself pay it. (Muhammad Rawas Qala Jee and Hamid Sadiq Qanib, *Mujam Lughat ul fuqahā* (Karachi: Idarat ul Quran wal ulum al islamiyyah, n.d) 301.
- ⁴² Wahbah Al Zuhailī, *Al Fiqh al Islāmī wa Adillatuhu*, 6: 323-325
- ⁴³ Muhrim of a woman is the person who cannot, legally, enter into a marriage contract with her. They are also called persons of the prohibited degree. Examples are father, uncle both fraternal and paternal, son, nephew and many others. Taking it the other way round, marriage with mother, sister, daughters, fraternal and maternal aunts and niece is void. (Tanzil-ur-Raḥmān, *Majmu'ah Qawānīn-i-Islām*, (Islamabad: Islamic Research Institute Press, 2007), 1: 155-156
- ⁴⁴ Wahbah Al Zuhailī, *Al Tafṣīr Al Munīr*, (Damascus: Dar al Fikr, 1998), 4:18
- ⁴⁵ See for further details Yusuf Al-Qaradawi, *The Status of Women in Islam*, available at <http://www.iupui.edu>, Accessed on October 4th, 2018
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- ⁴⁷ *Al Aḥwāl al Shakṣiyyah*, pp: 193, 224-229. *Fatawa Dārul 'Ulūm Deoband*, 11: 155-156
- ⁴⁸ Sheikh Ali Gomaa, *Responding from the Tradition* (Louisville: Fons Vitae, 2011) p: 46. <http://eng.dar-alifta.org>, Accessed on October 4th, 2018
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- ⁵⁰ Sūrah al Rūm, 30
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- ⁵³ Sūrah al Nisā', 7
- ⁵⁴ Sūrah al Baqarah, 61
- ⁵⁵ Qāḍī 'Ataullah, Report on 02-Day Conference on Women's Right to Inheritance

October 28-29, 2016, p. 66. <https://drive.google.com>, Accessed on October 7, 2018

⁵⁶ Muhammad bin Abd -ur- Rahman Al-khumays, *The Creed of Four Imams*, referring to Qazi Iyadh; the author of *Ai-Shifa bi tariff Huquq al-Mustafa*, the book is available at <https://www.missionislam.com>, Accessed on October 8th, 2018

⁵⁷ David Mellinkoff, "The Language of the Law", *Michigan Law Review*, Vol. 63, No. 1 (Nov., 1964). 180-186

⁵⁸ Sūrah al Nisā', 12-13

⁵⁹ Details available at <https://en.wikipedia.org>, Accessed on October 9th, 2018

⁶⁰ The best example is the book *Mukhtaṣar Sharḥ al Aḥkām al Shar'īyyah fī al Aḥwāl al Shakhṣīyyah*, by Muhammad Zaid Al Abyāni Bic, (Beirut: Al Maktabah Al 'Aṣariyyah, 2014)

⁶¹ See Section 12 (A) of the Family Courts Act 1964

⁶² Ibid

⁶³ See section 14(3) of the Family Courts Act 1964

⁶⁴ https://en.wikipedia.org/wiki/Punjab_Bar_Council, Accessed on October 12th, 2018

⁶⁵ An inheritance case titled *kunzah v Sahib ji* was instituted in the Chitral State Court in 1962. The court was then known as *Meezan-e-Shariah*. Probably, due the death of the parties and misplacing of the original plaint, the title of the case turned as *Muhammad zahir shah v Hassina*. After enforcement of *PATA Regulation 1976*, the Mizan-e-Shariah court remained intact, functioning under the supervision of Deputy Commissioner Chitral (the State of Chitral was converted into regular district by then). During this era, the case also went through appellate forums of that time; the Additional Commissioner Malakand, and the Additional Home Secretary Peshawar. Thereafter, the case remained unnoticed for a lengthy duration of ten years i-e from 1985 to 1995. After promulgation of *Nifaz-e-Nizam-e- Shariat Regulation 1994* in the whole Malakand Division, the case was retraced and restored by the order of the Zilla Qazi/District Judge, and was entrusted to the court of *Allaqa Qazi/civil judge*. Here too, the case went to appellate forums, the District Judge, the High Court (*Dar-ul-Qaza*), and the Supreme Court of Pakistan. Final decree was granted near about 2005. Afterwards, the plaintiff filed a petition for execution. During the pendency of this petition, a fresh petition under section 12(2) of the Code of Civil Procedure was filed by a newcomer, claiming that he, as owner by purchase, was intentionally not made a party to the case. The judgment (decree), was, thus, obtained through fraud and misrepresentation, and is, therefore, liable to cancellation. Resultantly, he succeeded in staying the execution proceedings. Now, Allah knows better that when this subsequent petition would get finality? Up till now, fifty six years have passed to the institution of the case. The primary parties have died, judicial systems of the area has changed thrice, the judges/Qazis have either retired or have passed away, and even due to the length of the time, original plaint has become rotten and hence

decomposed.(the data has been taken from the concerned lawyers Mr Shafqat hussain Advocate and Mr. Fazal Maula Advocate)

⁶⁶ Sūrah al Nisā', 13

⁶⁷ Sūrah al Nisā', 14