

# Empowering Women: Analyzing Perspectives on the Property Rights (Amendment) Bill 2021

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## Abstract

This paper examines the Women Property Rights (Amendment) Bill 2021 to examine the ideological basis, implementation process, and the effect on property rights against women in Pakistan. Although the bill was dedicated to provide equitable property distribution and empower women economically, the long-term cultural, social and procedural obstacles have continued to defeat the success of the bill. The qualitative data were gathered using the in-depth interview as a method of study, and Fairclough Critical Discourse Analysis (CDA) as a theoretical framework to study the data obtained with the help of five family lawyers working at the Lahore High Court. The results indicate that although the bill is intended to empower women because it grants them their rights to inheritance, the practical aspect of the same has not been fully implemented. The legal professionals underlined that the structural corruption, ignorance, patriarchal traditions, and the lack of the law enforcement are the impediments to the actual development. Such practices as HaqBakhswai, coercive Hiba transfers and social pressures tend to induce women to give up their rights. The amendment is often minimized to the symbolic application, despite being a positive move in legislation, which is not very protective even in practical cases. The study highlights that the actual empowerment lies not only in the legal reforms but also in the socio-cultural change and legal awareness of the people. The gap between law and practice can also be reduced by the strengthening of institutional mechanisms and the spread of awareness on women legal rights. Finally, the paper is of use to the study of the way in which critical analysis of legislative discourse can serve as a manifestation of the greater experiences of gender equality and social justice in Pakistan.

**Keywords:** Women's Property Rights, Inheritance Law, Gender Equality, Critical Discourse Analysis (CDA), Legal Reform

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## Introduction

Women in Pakistan have significant barriers in terms of property inheritance, which are aggravated by systemic inequalities, legal ambiguities, and culture. Ignorance of legal laws is a significant hindrance to the legitimate claim of property rights (Hassan et al., 2021). The previous property rights bill was designed to give women their due their portion of inheritance but this was not entirely enforced and only slight changes were applied on inheritance practices. The old law was not completely abolished and not well implemented and thus had little effect. The Women Property Rights (Amendment) Bill (Asad, 2021) was passed by the National Assembly of Pakistan to remove discrimination and give women the right to inheritance and equalize gender differences in inheritance practices. Although the amendment bill is a legislative advancement, concerns about its practical effects still exist. The proposed study will investigate and explore the context, content, and possible implications of the Women's Property Rights (Amendment) Bill, 2021 to make sense of its usage in Pakistani inheritance cases.

The findings presented by understanding the interpretation of the Property Rights (Amendment) Bill 2021 by legal professionals help to understand the legal effect of the Bill on the inheritance laws. Through the analysis of how the Bill successfully tackled the issue of gender inequality in the inherited right, we are able to gauge how the Bill has been successful in achieving gender equality as well as empower women economically. Not only does this research make the policymakers aware of the reception and usage of the Bill, but also shapes the way the legislative reforms should be implemented in the future, so as to increase the rights of women. Empowerment of women economically can also be triggered by strengthening property rights, which will give women more power over their assets and resources. Moreover, the research will provide legal professionals and lobbyists with the information required to address legal complications and assist women to benefit from their inheritance rights.

## Review of the Literature

As a Muslim country Pakistan administers inheritance matters in accordance with Sharia law. While the state and Islamic law mandate a share for women in inherited property, cultural factors often prevent women from asserting their rights, as they may hesitate to request their share from male relatives such as brothers, fathers, or husbands due to familial affection and societal norms (Attaullah & Saqib, 2020).

Butt et al. (2019) claimed in their study that in religious view, Islam provides gender-based equality in economic issues. It gives provisions to empower women by providing rights to property. She does not have any economic responsibility for the family, still she is given the right to inherit property from parents and husband. Some people considered that it is not forbidden in Islam that women own property and take part in economic scenario, but the main issue seen is socio-cultural limitations which do not allow women to own and manage property in Pakistan.

In Pakistan, it is considered as a matter of dishonoring the parental family when daughters start claiming their inheritance right from their father's property. There are some socio-cultural limitations of the society due to these women being kept as burdened and deprived from their rights. Therefore, women are denied their inherit property rights in Pakistan. There is a large number of women who never get any share of inheritance from their parents or husband's property. Fear of separation from their family, restricts women to ask for them to inherit property share. 50.6% of women are not getting their share in Pakistan; the highest ratio is in Balochistan (100%) and the main reason is lack of knowledge about their legal rights, followed by Punjab (97%), KPK/FATA (55%), and Gilgit (50%) (Choudhry et al., 2019).

Pashtun women had no control over land and did not get their share from inherited property left by their father, husband or sons. Bibi and Bangash (2018) in their study found that socio-cultural values and customary practices in addition to a profound lack of awareness of legal rights of inheritance limit the women's ability to get their share. While in their study, Butt and Asad (2016) found that women are deprived of their property rights in the guise of HaqBakhswai, Marriage to Quran and dowry. They observed that even if women own property, the male members of the family have full control over it. Another factor they observed in their study is that women frequently gift or transfer their inherited property to the brother, relinquish their property rights for the sake of informal exchange of gifts like dowry.

The state of women's inheritance rights in Pakistan's rural districts was examined by Ahmed et al. (2016), who discovered that women in these areas either did not receive their fair share of inherited property or were denied their inheritance rights. Families that were illiterate, underqualified, or unaware of the actual Islamic teachings regarding the division of inheritance among women were more likely to experience this unfair distribution of inherited property. They also emphasized how the swap marriage system was occasionally used to deny women their right to

inherit. The parents compare the inheritance of the swap bride with that of their daughter.

According to Butt and Asad's (2016) report on women's inheritance rights in Pakistan, women are denied their inheritance rights by their parents because they claim that they gave them a dowry when they were married. In addition, the in-laws also refuse to give them the inherited property after the husband passes away. Another example of denial is "HaqBakhswai," a custom where daughters receive their inherited property just prior to marriage and are prohibited from marrying anyone by their parents (NCSW, 2005). In this way, the property stays in the family. A study on unlawful practices, procedures, and methods used to deny women their rightful share of family inheritance was carried out by Jadoon and Khan (2015). They found that customary laws applied in both rural and urban areas of District Peshawar when it came to the division of inherited property, depriving women of their legal rights. If a woman receives her share in a patriarchal society, then the male family member—such as the father, husband, or son—is the only one with authority. They said that women found it very difficult to assert or acquire their legal inheritance rights as a result of these unlawful practices. Ullah et al. (2016) also carried out a case study on customs in the KPK region and found that women's legal property rights are denied in Pakhtun culture because of the strong influence of tradition.

In a study on the situation regarding women's land rights in Swat, Pakistan, Khalid et al. (2015) reported that there are many complex issues that make it difficult for women to get control over land and claim ownership. Patwaries hold the reins of power and alter the records to suit the wishes of the male family members. Due to cultural norms, women in Pakistan's rural areas do not visit offices; men register their own names in legal documents to retain land ownership. They also note that the majority of women in Swat lack literacy and rely on their husbands, brothers, or sons for legal assistance.

## Methodology

### ❖ Overall Research Design

The qualitative research approach was used to analyze the data since it is essential for delving deeply into human behavior, social interactions, and lived experiences in their natural settings (Dahal, 2023).

### ❖ **Sample**

The purposively selected sample for the study consisted of 5 family lawyers of the Lahore High Court who were interviewed to identify the ideology and discursive structure of the 'Women's Property Rights (Amendment) Bill, 2021' as well as to understand their point of view know about the value of the Bill. Because most attorneys were unaware of or did not fully comprehend the bill, only lawyers who were aware of the "Women's Property Rights (Amendment) Bill, 2021" were chosen for the interviews. This was the rationale behind the use of a purposively selected sample.

### **Theoretical Framework**

The current study was underpinned by Fairclough's (2003; 2013) Critical Discourse Analysis (CDA), as the theoretical framework to analyze the 'Women's Property Rights (Amendment) Bill, 2021'. The purpose of engaging in CDA is not just to analyze but to critically view what is happenings through the discourse and its ultimate goal should be to bring changes in the society (Fairclough, 2015).

The CDA (Fairclough, 2003) model is built on three dimensions of text, discursive practices and social-cultural practices. The first dimension is 'Text' which includes genre (particular way of framing and manipulating the discourses) and style. In this study discourse was the data of interviews and women's property rights (amendment) bill, 2021. Discursive practice is the second dimension that focuses on intertextual linguistics analysis. Discursive practice includes text production and consumption. In this study the discourse was produced by women's property rights (amendment) bill 2021 and consumed by the society. The third dimension of CDA is sociocultural practices, social practices expands beyond texts and examine the discourse on a wider social level. It includes social events and society. In this study all three dimensions were used to analyze the 'Women's Property Rights (Amendment) Bill, 2021'. It is not important to carry out analysis at all level but only that which is more relevant to the study.

### ❖ **Data Collection Tool and Procedure**

The data for the analysis of 'Women's Property Rights (Amendment) Bill, 2021' were collected from the:

- Interviews

- Women's Property Rights (Amendment) Bill, 2021 (Documentary evidence)

#### ❖ Interview protocol

In order to explore the ideology and discursive structure of the 'Women's Property Rights (Amendment) Bill, 2021 interview were conducted from the purposively selective sample. The interview protocol was developed based on the theoretical framework including ideology of the law; reasons for the amendments and situation of women inheritance in Pakistan (see Appendix 1). The participants for the interviews were five family lawyers, selected purposively from the Lahore High Court. Interviews were digitally recorded, and lasted an approximate thirty minutes' duration for each participant in which all the questions were addressed in detail. The interviews focused on the need of the act; ideology of the bill as well as the present situation of women inheritance in Pakistan.

#### ❖ Ethical Considerations

During interviews no personal question were asked and the lawyers had a chance to review their interviews to ensure no words were taken out of context. Information of the respondents was kept confidential. Moreover, the research ethics are kept in mind throughout the research and nothing is copied from any previously written work on the research topic. All the gathered results were factual and unbiased.

## Findings

The study aimed to critically analyze the 'Women Property Rights (Amendment) Bill, 2021 in order to examine the discourses and ideologies embedded within the law. This chapter focuses on the results and analysis of the collected data.

#### ❖ Interviews

The interviews were conducted by legal experts to analyse the ideologies and discursive structure of the 'Women Property Rights (Amendment) Bill, 2021. In addition to describing the present situation of the inheritance rights in Pakistan. The interview protocol consisted of five questions and it was conducted from High court family legal experts. The interviews were recorded, transcribed, and analyzed qualitatively.

In response to the first question on the present situation of women when it comes to their property/ inheritance rights, most of the legal experts interviewed were positively inclined toward the current situation for women with respect to property rights.

As a legal expert said that “ the present situation of women inheritance is not according to the Islamic as well as legal laws because Islam and our constitution give a right to women to get fair share to her inherited property but they faced denial”, (legal expert- A) indicating that women were not treated fairly when getting their share of the inherited property as proclaimed by not just the constitutional laws but Islamic as well, suggesting that the basic rights for women with regards to inheritance were largely ignored. On the other hand, legal expert - C and legal expert - D depicted the same point of view as Legal expert-A. Furthermore, a legal expert said that “when it comes to property, brothers do not focus on their sister’s low economic status and how this piece of the property helped them to get stable, instead of that they only focus on their wealth” (Legal expert- B) indicating that inherited property supports the economic empowerment of women not just for herself but for the betterment of her children as well but this is also ignored by male family members. One of them mentioned that “women faced so many difficulties while filing a case” (Legal expert- E) because the legal procedure is difficult to understand for common people if women do not know the legal procedure and laws then it will cause problems because in some cases legal experts also do not know where to file a case, suggesting that without the support of male family member or the one knowing legal procedure it becomes trouble for them to file suit.

In response to the second question on the ideology of the “Women’s Property Rights (Amendment) Bill, 2021” all of them mentioned the same notion. As a legal expert said that the ideology behind the Bill is “to empower women and it happens when the women are financially strong” (Legal expert- B) indicating that this bill helps in the economic empowerment of women because when women get their fair share of the inherited property they become economically strong, suggesting that it only happen when the women get her fair of property according to Islamic and legal laws. Another legal expert mentioned that “class discrimination is the main issue because, in today’s society, everyone listens to those who are financially strong” (Legal expert- A). Furthermore, Legal expert- A explained that in their time children of CSP officers and labour went to the same school but nowadays parents choose school according to their financial status which increases class discrimination and poor people do not

have links with officers. This communication gap becomes “Zahar -e-Qaatil” for the socio-economic situation of Pakistan, suggesting that depriving women of their inherited property cause class discrimination and it is also seen in legal procedure because legal person listens to those who have power.

Two of the legal experts interviewed said that the ideology behind this bill is “to secure the legal property rights of women and ensure that these rights are not violated” (Legal expert- C & Legal expert- D). As the women’s property rights are frequently violated by the means of harassment, force, or fraud indicating that the ‘Women’s Property Right (Amendment) Bill, 2021 protect their legal right and enable women to claim their inherited property right with the help of right that is given to them by this bill. One legal expert mentioned that “brothers forced their sisters to not get their share” (Legal expert- E) and sometimes they denied giving a share of inherited property to their sisters by saying that their father gifted that property to them or they pay money to their father and bought this land, suggesting that brother not have any legal document on which father mentioned about giving property to son but they forced women to not claim their share in the property.

In response to the third question about the need for amendments in the “Women’s Property Rights (Amendment) Bill, 2021”, all legal experts said that make it practical instead of just written on paper. A legal expert said that “they have to mention that in name of Hiba or denial they must have written documentation. If they do not have any written document then the transaction will be null and wide” (Legal expert- A). In addition, they mentioned that practically nothing happened, just in written form, they made it by combining previous bills indicating that practically in presence of the bill women are not getting their legal inherited property rights, previous and recent law are some when it comes to the practical implementation as well as they mentioned that hundreds of cases still not listen. Other legal experts have a slightly different view, they said that “practically it worked but for full implementation, the bill needs time because changes happened gradually” (Legal expert- B). As change happens step by step, so the bill takes time to show results but the amendments are much needed because it enables women to claim their legal right and support the economic empowerment of women as well, suggesting that over time there is a ray of hope that the bill helps women to get their fair legal property share.

The other three legal experts had mixed notions. They mentioned that the Bill needed this type of amendment because this bill helps women to claim their property rights but others suggested that the system needs some changes as well for better results.

In response to question four about the difference between “Women’s Property Rights (Amendment) Bill, 2021” and earlier laws legal experts hold mixed views. As a legal expert said that “it is just a game of words, by picking up last 2-3 laws and add or deduct some points into those laws to make new law” (Legal expert-A). They further mentioned the results of the ‘women practice act’, in which if someone deprived women of their property then they have to pay 10 lacs as well as a punishment of 10 years but till now no FIR registered against it. Indicating that practical law does nothing to the protection of women’s legal property share. One other respondent was of the same view and stated that “practical implementation is nil” (Legal expert- E) indicating that the bill is not securing women’s inherited property rights and they faced denial in presence of legal laws.

On the other hand, other legal experts have opposite views and according to the ‘women’s property rights (amendment) bill, 2021 is different from earlier laws. Earlier laws took much time but according to this bill “in 40-60 days court announced the final decision”. Moreover, they mentioned that this bill worked the same as “The women’s Protection Act, 2015”. One of them mentioned that the “Women’s Protection Act gives you the power to sit here because you know this act protects you like this Women’s Property Rights (Amendments) Bill, 2021 empowers women to claim their legal property rights” (Legal expert- B), indicating that this bill gives strength to women to stand and fight for their legal rights.

In response to the fifth question on the law that the bill helps women to secure their legal rights more effectively, the majority of legal experts did not hold positive views. One of the legal experts said that “no because the case goes to the ambushed person, ambushed person do not have right to impose than the cases forwarded to DC or AC, they have already a lot of work to do which cause delay” (Legal expert- A) indicating that ambushed person (who registered the case) do not have the power to do investigation, DC/AC investigate the case and confirm after that the legal procedure starts, suggesting that without power or direct approach to AC/DC otherwise case take much time. In addition, mentioned that “if a woman talked about her right, brothers warned to kill her children if she again asked for her share”.

This indicates that after this law women were still deprived of their legal property share. One of them said that “women are refused to give her share till the system not worked according to the Islamic laws” (Legal expert-C) indicating that the legal system is not according to the Islamic laws, as mentioned earlier that system only listens to those who hold power and in Islam gives equal rights to all.

On the contrary, there was a legal expert who claimed that this law is more effective than earlier laws and said that “nowadays in news, you must go through this statement that “DC ny ik aurat ko us ka property ma haq dilwaya”, that was the result of this bill” (Legal expert- B) and mentioned many more cases of property they are dealing with indicating that to some extent the bill work properly and women get their fair share from the inherited property.

### **Discussion and Conclusion**

The present study analyzed the discursive structure of ideologies embedded within the ‘Women’s Property Rights (Amendment) Bill, 2021. The findings from the study, indicated that the ideology of the bill is to secure women’s inherited property rights and empower them to claim their legal property rights. Lawyers in their interview mentioned that nowadays because of this bill women can easily claim their rights and the procedure took less time that mentioned in the bill. Findings also revealed that no bill can help women to get their inherited property rights because in practice the bill showed no results; this is contrary to the above statement.

Based on the results, the present situation of women’s inheritance in Pakistan is not satisfactory. Women are deprived of their legal inherited property. According to the legal experts, the brother denied giving a share to their sisters by saying that their father gifted the property to them, and in some cases, they refused and said that they bought this piece of property from their father.

Another frequent aspect in Pakistani society is the ‘Hiba or gift.’ According to the findings, women deny their portion in the guise of Hiba or gift and offer it to their brother. In general, and according to Islamic law as well, it is legal to give a property to a family member or someone else without exchanging money, but the gift cannot be lawful if it is made under duress, deception, or threats. According to a legal expert, there is no standard gift deed format in Pakistan. It is vital to have a written document because in Pakistan, sisters often gift their inherited portion to brothers,

or brothers may obtain that share through fraud or force, and then claim that sisters gifted it to them without any official evidence.

Furthermore, legal expert also stated that forcefully brothers get their sister's share of property by threatening her to kill her children if she files a case against them or again talked about share from the inherited property.

According to the legal expert interviewed, if laws are for the sake of formality only then their practical application is meaningless. Legislative bodies frequently take previous legislations and combine them to create a new law that they believe will work better, but they only think about it because they do nothing to protect women's inheritance in practice.

### **Perception of 'Women's Property Rights (Amendment) Bill, 2021**

Results of legal experts on awareness of women's legal rights showed that lack of knowledge about their legal rights restricts women from claiming their inherited rights. If they know the laws then it would become easy for them legally to stand for their right. As mentioned by the legal expert that awareness about legal rights does not depend upon the qualification, only those people who know legal rights, who studied law or any other means of knowing about legal rights laws actually have a proper knowledge about women rights.

Findings indicated another major factor in depriving women of their inheritance right is the local and traditional practices. Socio-cultural values and customs impact women's access to their rightful share of the inheritance. In society, the swap marriage system is used to deprive women of their inherited property. Parents make a comparison of their daughter's inherited property to the swap bride's inheritance and like this the property remains in the hands of male member of the family.

On the other hand, findings of the study on demands for women share of the inherited property revealed that the demand for her share from inheritance leads to the conflict in the family. According to legal experts it happened in many cases even families murdered their sisters just to save their inherited property from division. In Pakistan, it is considered a matter of dishonoring the parental family when daughters start claiming their inheritance right from their father's property. There are some socio-cultural limitations of the society due to these women being kept

burdened and deprived of their rights. Therefore, women are denied their inherent property rights in Pakistan. There are a large number of women who never get any share of inheritance from their parents or husband's property. Fear of separation from their family restricts women to ask for them to inherit property shares. Sometimes, women feel shy and just because of respect women do not demand their share, they think their parents and brothers have already done a lot for them. In the majority of cases, women refuse their share of inherited property and give it to their brothers.

It is worth mentioning that, less education, minimum exposure to outside world, lack of job opportunities creates discrimination. Not just on the ground of inheritance women face inequality but also on the education, access to resources, no freedom of choice, no decision-making power, lack of knowledge, male dominance considered as major factors that affecting on women inherited property right as proved by findings.

## **Conclusion**

This research aimed to analyze 'The women's Property Rights (Amendment) Bill, 2021. The data was gathered through interviews and was analyzed through CDA by following qualitative research approach. The results of the study reveal various aspects related to women's inheritance rights in Pakistan. This includes the ideology of the bill, the present situation of women's inheritance, and factors affecting women's inheritance rights.

The results indicated that the ideology of the 'Women's Property Right (Amendment) Bill, 2021' is to help women to protect their inherited property rights and empower them by giving their fair share of the inheritance. No one can violate it by means of harassment, force, or fraud. Women have no control over property and in some cases refuse to get their share and give it to their brothers.

Additionally, the predominantly patriarchal society also plays a crucial role in limiting women's rights and depriving them of their inherited property rights. It is considered inappropriate for women to own land and property. A major hindrance that puts women in a weakened position and at a marked disadvantage due to lack of awareness about legal rights and restrictions placed on them to claim their inheritance.

Women's inheritance rights are further hampered by the Pakistani socio-cultural system's predominant patriarchal attitudes. Women have little or no autonomy in making decisions or discussing their legal rights. Furthermore, traditional practices of 'Jirga', 'panchayat' 'dowry', 'Hiba/gift' and several outdated cultural laws such as HaqBakshwai and Ghak also deprive women of their inherited property. Demands of share in inherited property almost always lead to family conflicts with death threats for them and the children as well. In some areas of Pakistan, cases against brothers who killed their sisters for demanding their rights or seeking the court's help in getting her share, have been reported. Additionally, although women are able to inherit land, it frequently does not result in a title in their name or ownership of the land. This fact appears to be especially evident for women who are illiterate. The new legislation is aimed at rectifying the inequalities women face in retaining inherited land.

Ultimately, goal of this research was to explore the present situation of Pakistani women, inheritance laws and support provided to them in addition to awareness about women's legal rights. In Pakistan, the most common way for women to gain land is through inheritance. Unfortunately, this is a right that is inextricably linked to kinship relationships and does not operate independently of the family. Without knowledge about legal rights and removing any existing misconceptions, women may not be able to get their fair share of property. Moreover, results showed that the amendment of property law has facilitated women in a number of cases to claim their inheritance, broadening the scope of women's inheritance rights, as well as their ability to purchase and hold property in their own names.

## **Implications**

Understanding the 'Women's Property Rights (Amendment) Bill, 2021' and the current state of women's inheritance rights in Pakistan are among the practical consequences and recommendations discovered by this study. This research is beneficial in raising legal rights awareness. This study can assist in the development of new legislation by identifying the issues that obstruct the deprivation of women's inherited property.

## **Recommendations for Further Research**

Based on the findings of the study recommendations for further research include:

- Analysis of law from other dimensions for example forensic analysis that may provide information into the more violent crimes against women in the name of property.
- A comparative analysis of earlier laws and recent law such as MFLO and 'Women's Property Rights (Amendment) Bill, 2021.
- Investigating the law using different theories such as feminist theory in order to explore gender inequality.

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- The authors agree to take responsibility for every facet of the work, making sure that any concerns about its integrity or veracity are thoroughly examined and addressed

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