

Does Effective Legal System Will Abolish Disputes of Inherited Land in Pakhtoon Society

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Abstract- This research study deals with legal practices of inheritance transformation with relation to feud settlement at family level. A sample size of 182 respondents was randomly selected of those respondents who had at least 10 acres of land in district Mardan. Frequencies distribution of data was conducted to know comprehensively about data layout. Moreover, Chi square (χ^2) statistics was used to determine the level of association between dependant variable i.e. feud settlement with the independent variables (Legal Practices of inheritance). Study concluded that Jirga, informal institution of dispute settlement in Pakhtoon culture had a vital role in dispute settlement pertaining to inheritance. This indicated for dysfunctional characteristics of the legal system in the country. Although, transformation of inheritance fulfilled the legal obligations but had led to the dominance of male. That's why women of the area were found ill-treated in terms of their access to inheritance shares. The study recommends the abolishment of dual laws pirating to inheritance, lengthy and costly dispute settlement procedure should be replace with effective and speedy justice of inheritance.

Key Words: Legal practices, inheritance share, family feuds, settlement

I. INTRODUCTION

The mode of transformation with respect to property either movable or immovable in any particular heresy across global comes into the domain of inheritance. It is a consistent right of man to his legal heirs over the ownership of property usually measure through ancestral hierarchy either in the parameters of defined law. It justifies the transfer of property or otherwise the exclusion of the heirs from the property belongs to line of decent in either means. The system of inheritance primarily controlled and regulated by well-defined cultural norms and the shadow of specific roles of families bonds. Which also dedicate the social differentials among the member of various societies within the preview of relative culture explanation of inheritance means the practice to transfer physical assets with association of family origin along with goods and other belonging within well-defined martial assessment such as jewelry, cattle's, cash etc. It is a phenomenon responsible for social cohesion within the generations at family level. This inherited bonds interpreted by the blood relationship is an indication to the degree of variations regarding the paternal affection. It is considered a permanent base of communication at micro

level such a family with identification through birth along with income and other cultural association [1; 6; 15]

The Constitution of Pakistan guarantees equality under the law, equal protection by the law and non-discrimination on the basis of sex alone, as it explained in the Constitution of Pakistan that in Pakistan Every citizen is free to buy, hold, and dispose property in any part of Pakistan". It further guarantees the "rights to property and equality of citizen as fundamental rights" and against also to strike down any custom having the force of law as far as it is inconsistent with the fundamental rights [1].

Pakistan being a Muslim state is governed on one side with the concept of patriarchy while other side religious injunction are strictly followed for the purpose of displaying some characteristics ought to be necessary for structural and functional integration of society. Pakistani society vividly displays a picture of inequality in property ownership with prenatal reference to inheritance for son, while daughter being denied from their prenatal property. The customary law under the strong platform of patriarchy is only meant for male to have dominance over the functional system of social life. Inheritance denied to women in a number of way i.e. culturally, symbolically married with Quran or traditionally being kept the women under the four walls of house and denying widely to keep the property of the family away from division [16]. Moreover the tribal feuds over the land have also led to the killing of women while libeling them as honor killing. Reference [12] has a deep study on honor killing and has reflected it to the ownership over money, property and inheritance. Land is important determinants of power and considered a sacred enhancement for the family honor [10]. In Pakistan society, though supposed to be religious, but also denied the smooth transmission of property to daughter. A non-functionality of society dynamics with reference to division of property from common ancestor among its off springs have led to the development of very famous concept TAR Borwali which mean the division of property among paternal kins [7]. This study is an attempt to discover whether legal law regarding division of property work as determinant of feuds settlement among close kin at family level.

II. MATERIALS AND METHODS

The present study was carried out in District, Mardan to find out the association between legal practices of inheritance and family feud settlement. The main reason for selecting Tehsil Mardan was the availability of big

chunk of agriculture land with respect to ownership of local people. The population for the study was composed of those land lords who had not less than Ten acre(10 acres) of land and the owners must had at least one brother or sister .Thus making the criteria ideal for the process of inheritance at family level. A sample size of 181 Respondents with the above mentioned characteristics was randomly taken for data collection through the criteria set out by Sekaran (2003) from a Total population of 319. The conceptual frame work was designed with an independent variable (customary and patriarchal practices of inheritance, Table-1) and dependent Variable (family feud settlement).

Conceptual Frame Work

Independent variable	Dependent variable
Legal Practices of Inheritance	Family Feud Settlement

A comprehensive interview schedule on Likert scale was designed while keeping into considerations the objective of the study. Collected data was converted on to SPSS version 20. The data was interpreted into frequency and percentages. Moreover, to measure the association between independent variable (customary and patriarchal practices of inheritance, Table-1), and dependent Variable (family feud settlement) Chi-Square test statistic was applied at bi-variate level. The formula for this application is as below;

$$x^2 = \sum_{i=1}^r \sum_{j=1}^c \frac{(O_{ij} - e_{ij})^2}{e_{ij}}, \text{ with } (r-1) (c-1) \text{ degree of freedom}$$

r = the number of rows

c = the number of columns

Where

O_{ij} and e_{ij} is the observed and expected frequencies y of cell in ith row and jth column,
[17]

III. RESULT AND DISCUSSION

Legal Practices of Inheritance and Family Feud Settlement

The data presented in Table.1 showed the perception of respondents towards legal practices in connection with inheritance rights. Two third i.e. 130(71.4%) of the respondents opined that Pakistani constitution guaranty equal rights to all heirs in the property cases and legally both male and female have equal rights in inheritance. On the perception of law favor male, some of 180(98.9%) of the respondents. However, two third i.e. 126(69.2%) respondents believed that law generally favors male in property division cases. Reference [1] had also explored such like results. Moreover, the Constitution of Pakistan (1973) also protects the women’s right of inheritance but there are so many difficulties involving in the procedural and coda requirements for the procurement of land as well as other properties this making little chances for the women to get into their rights, even high qualified women

can’t understand the technicalities (legal language & requirements to fulfill) documents they are also unaware of judicial recourse available to them. Similarly, Reference [4] also found that due to high fee and difficulties in access to legal laws, making it impossible for people, especially for women despite of having a legal succession of property as legal heirs.

Moreover, most of the respondent’s i.e.145 (79.7%) answered that transformation of inheritance property is obligatory in our families and feud over inheritance are resolved through legal system. Similarly, 85(46.7%) respondents believed that feuds set through traditional and local mechanism. Because Legal system takes very long time in deciding inheritance cases answered by 118(64.8%) of the respondents. This clearly indicating towards the failure and inability of the legal system in delivered in time. Moreover, majority of respondents i.e. 112(61.5) believed that Court’s decision in inheritance cases are based on justice while one third i.e.51 (28.0%) were against with this statement. Moreover, majority 120(65.9%) of the respondents assumed that in transformation of property dysfunctional legal system is major hurdle but on other side some of the respondent 44(24.2) were not agreed with this statement. Thus a speedy disposition of cases is essential as justice delayed is justice denied. Besides i.e.86 (47.3%) mistrust in the law of inheritance i.e. it is incapable of capitulating on the rights to the heirs but one third i.e. 77(42.3%) negated this idea. Furthermore, most of the respondents 156(85.7%) believed that if law of inheritance is owned, could lead to peace, harmony at family integration, however, some of the respondent negated it. These findings are in close matching to the Reference [1] that land related feuds can only be resolved if courts ensured early disposal of the cases giving no chance to the elite people to continue occupying land. It further explained that innocent people have been deprived of their land. There is corruption in lower courts, district administration and in their police department due to which people either not received justice in time or denied of the justice [5].

Table - 1 Frequency Distribution of Responses towards Legal Practices of Inheritance and Family Feud Settlement

S. No	Attribute	Agree	Disagree	Don’t know	Total
1	Pakistani constitution guarantee equal rights to all heirs in the property cases	130(71.4)	43(23.6)	9(4.9)	182(100)
2	Legally both male and female have equal rights in inheritance	180(98.9)	2(1.1)	0(0)	182(100)
3	Law	126(69.2)	45(24.7)	11(6.0)	182(100)

	generally favors male in property division cases	9.2))	00	
4	Transformation of inheritance property obligatory in your family	145(79.7)	31(17.0)	6(3.3)	182(100)
5	Feuds over the inheritance in your family are resolved through legal system	86(47.3)	85(46.7)	11(6.0)	182(100)
6	legal system resolved inheritance in short duration of time	51(28.0)	118(64.8)	13(7.1)	182(100)
7	Legal system takes very long time in decide inheritance cases	118(64.8)	51(28.0)	13(7.1)	182(100)
8	Court’s decision on inheritance cases are based on justice	112(61.5)	51(28.0)	19(10.4)	182(100)
9	Judicial system is a barrier in the transformation of property	120(65.9)	44(24.2)	18(9.9)	182(100)
10	Law of inheritance is incapable of capitulating it’s rights	86(47.3)	77(42.3)	19(10.4)	182(100)
11	Law of inheritance If owned , could lead to peace ,harmony at family level	156(85.7)	14(7.7)	12(6.6)	182(100)

Family dispute over the inheritance

Land feuds in rural and urban Pakistan are common and conflict over the land and all other immovable

property are the main source of internal conflict as indicated by Reference [3] that land is one of the major causes of feud between intra and inter tribal composition. In Pakhtoon society even sons and cousins of the same family fight over the family inheritance [13].

Table 2 summarizes the respondent's attitude towards family feuds in relation with family inheritance share. Majority of the respondents i.e. 112(61.5%) expressed their view that there is no feud in our family over the inheritance and inheritance has been transferred peacefully while due to non transformation of inheritance family land are stable followed by 125(68.7%) of the respondents as well as denial of inheritance instable family structure exist expressed by two third of sample size i.e. 134(73.6%). Furthermore, almost all of the respondents had opined that the main cause of family feud are the non transformation of family inheritance while majority of the respondents I.e. 100(54.9%) believe that often conflict arise after the distribution of family inheritance among family members. The same result also deducted by Reference [11] that Most of disputes are the result or the cause of property division which leads further disputes. Thus Division of property is an evil in that it implies disputes and separation. Moreover all most all the respondent had opined that timely distributions of inheritance is suitable way of avoiding inheritance share similarly most of the respondent believe that smooth transformation help in making good relation among family members. As it indicated by Reference [8] that if parents equally give share of inheritance in well it will help to vanishing conflict on family inheritance

The table further show that one third of the respondents in study area had opined that Local cultural has no remedy to settle dispute over land while half of the respondents i.e. 92(50.5%) were disagree with this statement however most of the respondent answered that Judiciary laws need to be amended for just provision of remedy, the same result also dedicated by Reference [2] that in Pakistan formal judicial system is known as being corrupt and for serving the interests of the wealthy and powerful only, rural people reportedly prefer to settle land disputes through informal compromises as well as through local cultural system.

Table 2 Frequency distribution of responses towards Family dispute over the inheritance

S. N.	Attribute	Agree	Disagree	Don't know	Total
1	There is no feud in the family	112(61.5%)	70(39.5%)	0(0.0%)	182(100%)
2	Inheritance has been transferred very peacefully	129(70.9%)	47(25.8%)	6(3.3%)	182(100%)
3	Inheritance is divide unequally in your	47(28.8%)	129(70.9%)	6(3.3%)	182(100%)

	family				
4	Family lands are always at stable due to non-practices of inheritance	125(68.7%)	44(24.2%)	13(7.1%)	182(100%)
5	Denial to inheritance, instable family structure co-exist together	134(73.6%)	35(19.2%)	13(7.1%)	182(100%)
6	Non transformation of property right are the main cause of conflict	169(92.9%)	11(6.0%)	2(1.1%)	182(100%)
7	Strong conflict refaced within the family after distribution after inheritance	100(54.9%)	74(40.7%)	8(4.4%)	182(100%)
8	Timely distribution of inheritance is the suitable way of avoiding inheritance	175(96.2%)	6(3.3%)	1(0.5%)	182(100%)
9	Smooth transformation of inheritance brought good relation among family member	168(92.3%)	12(6.6%)	2(1.1%)	182(100%)
10	Local cultural has no remedy to settle dispute over land	57(31.3%)	92(50.5%)	33(18.1%)	182(100%)
11	Judiciary laws need to be	165(90.7%)	14(7.7%)	3(1.6%)	182(100%)

	amended for just provision of remedy				
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Legal practice of inheritance & family feud settlement

Table 3 while describing the association between family feud settlements through legal practices of inheritance indicated a significant association between family feuds settlement with independent variable equal rights given by Pakistani constitution ($p = 0.00$). Furthermore, law of inheritance and equal transformation of inheritance was found highly significant ($p = 0.00$). It could be attributed to the appropriate inclusion of relevant laws, established in the constitution of Pakistan. This law has all the strength to be explained from religious interpretation, as was elaborated while taking inputs from religious institutions. These findings had in support from Reference [8] that addressing the issue of inheritance in a man’s well, a religious endowments, bestowed upon the wealthy person in Muslim society, for deciding the share of assets amongst his successor, often leads to eradicating the chance of conflicts among the co-sharing members. Generally, if inheritance is dividing through legal system found highly significant ($p = 0.00$) with dependent variable. Table 2 also indicated a significant association between drawbacks of legal system included system takes very long time in deciding inheritance cases ($p = 0.00$) was found highly significant with dependent variable. A dysfunctional system is hurdle in inheritance cases ($p = 0.02$) as indicted a significant association with dependent variable. The main aim of revenue court is to provide justice and rapid resolution of land disputes but due to complexity as well as dysfunctional and corruption, it’s became time-consuming and cases may take years to resolve [1]. However, a non significant association between family feud settlement with male and female have equal rights of inheritance ($p = 0.903$), along with law favors male in inheritance cases ($p = 0.903$), and legal system resolved inheritance cases in short time found non-significant ($p = 0.404$) with dependent variable. In addition, law of inheritance is incapable of capitulating its rights ($p = 0.070$) with dependent variable. These findings clearly indicated as shown through non-significant outcomes that the legal system is faulty and incapable of meeting out the required results towards in-time disposition of cases. Reference [14] also found that land related feuds can only be resolved if courts ensured early disposal of the cases giving no chance to the elite people to continue occupying land, further more corruption in lower courts, district and administration due to which affected people never get justice. Women rights in inheritance have also been addressed in 1973 Constitution of Pakistan [1].

Table-3 Relationship between legal practices of inheritance and family feud settlement

S.N	Statement	Response	Family Feud settlement		Total	Statistic
			Agree	Disagree		
1	Pakistani constitution guarantee equal rights to all heirs in the property cases	Agree	125(72.3%)	5(55.6%)	130(71.4%)	$\chi^2 = 32.444^a$ $p = 0.00$
		Disagree	43(100%)	0(0%)	(100%)	
		Don't know	5(2.9%)	4(44.4%)	9(4.9%)	
2	Legally both male and female have equal rights in inheritance	Agree	171(98.8%)	9(100%)	(98.9%)	$\chi^2 = .105^a$ (0.00) $p = 0.903$
		Disagree	2(1.2%)	0(0.0%)	2(1.1%)	
		Don't know	0(0.0%)	0(0.0%)	0(0.0%)	
3	Law generally favors male in property division cases	Agree	118(68.2%)	8(4.4%)	126(69.2%)	$\chi^2 = 1.811^a$ $p = 0.404$
		Disagree	44(25.4%)	1(0.5%)	45(24.57%)	
		Don't know	11(6.4%)	0(0.0%)	11(6.0)	
4	Transformation of inheritance property obligatory in your family	Agree	138(79.8%)	7(77.8%)	145(79.7%)	$\chi^2 = 11.904^a$ $p = 0.003$
		Disagree	31(17.9%)	0(0.0%)	31(17%)	
		Don't know	4(2.3%)	2(22.25)	6(3.3%)	
5	Feuds over the inheritance in your family are resolved through legal system	Agree	85(49.1%)	1(11.1%)	86(47.3%)	$\chi^2 = 25.728^a$ $p = 0.00$
		Disagree	81(46.8%)	4(44.4%)	85(46.7%)	
		Don't know	7(4.0%)	4(44.4%)	11(6.0%)	
6	legal system resolved inheritance in short duration of time	Agree	85(49.1%)	6(66.7%)	91(50.0%)	$\chi^2 = 2.126^a$ $p = 0.345$
		Disagree	79(45.7%)	2(22.2%)	81(44.5%)	
		Don't know	9(5.2%)	1(11.1%)	10(5.5%)	
7	Legal system takes very long time in decide inheritance cases	Agree	116(67.1%)	2(22.2%)	118(64.8%)	$\chi^2 = 11.693^a$ $p = 0.003$
		Disagree	44(25.4%)	7(77.8%)	51(28.0%)	
		Don't know	13(7.5%)	0(0.0%)	13(7.1%)	

8	Court’s decision on inheritance cases are based on justice	Agree	109(59.9%)	3(1.6%)	112(61.5%)	$\chi^2 = 32.550^a$ $p = 0.00$
		Disagree	51(29.5%)	0(0.0%)	51(28.0%)	
		Don’t know	13(7.5%)	6(66.7%)	19(10.4%)	
9	Dysfunctional legal system is a hurdle in the transformation of property	Agree	117(67.6%)	3(33.3%)	120(65.9%)	$\chi^2 = 12.972^a$ $p = 0.002$
		Disagree	42(24.3%)	2(22.2%)	44(24.2%)	
		Don’t know	14(8.1%)	4(44.4%)	18(9.9%)	
10	Law of inheritance is incapable of capitulating it’s rights	Agree	83(48.0%)	3(33.3%)	86(47.3%)	$\chi^2 = 5.322^a$ $p = 0.070$
		Disagreed	74(42.8%)	3(33.3%)	77(42.3%)	
		Don’t know	16(42.8%)	3(33.3%)	19(10.4%)	
11	Law of inheritance If owned , could lead to peace ,harmony at family level	agree	152(87.9%)	4(44.4%)	156(85.7%)	$\chi^2 = 22.599^a$ $p = 0.00$
		Disagree	13(7.5%)	1(11.1%)	14(7.7%)	
		Don’t know	8(2.6%)	4(44.4%)	12(6.6%)	

IV. CONCLUSION AND RECOMMENDATIONS

The study concluded that Pakistani constitution guarantee equal rights to all heirs in the property cases but Law generally favors male in property division cases. This indicated a dysfunctional characteristic of the legal system in the country. The study further examined that the legal system had a number of drawbacks such as taking long time over settling disputes regarding the inheritance and property rights thus developing a mind of uncertainty amongst the sufferers regarding inheritance. To resolve inheritance issue speedy court system should be established. It would work as catalyst in redressing the distress of issue. Moreover, this would also discourage all the cultural practices by replacing them with legal methodologies. Division of property should be declared as mandatory through legal reforms are some of the suggestion on the basis of study inferences.

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