

A DOCTRINAL CRITIQUE OF THE ROLE OF PAKISTANI COURTS IN UPHOLDING WOMEN'S RIGHT TO INHERITANCE

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Abstract

Women's right to inheritance in Pakistan is firmly grounded in Islamic law and constitutionally protected under Articles 23, 24, and 25, yet its realization remains largely aspirational due to entrenched socio-cultural barriers and procedural inconsistencies. Despite clear Qur'anic mandates granting women fixed shares of property, judicial intervention has historically been required to counter patriarchal customs that deprive women of their rightful inheritance. The aim of this study is to critically examine the doctrinal role of Pakistani courts in protecting women's inheritance rights and to assess whether judicial reasoning, precedents, and procedural doctrines have effectively advanced substantive gender justice. Employing a doctrinal research methodology with critical analysis, this paper analyzes constitutional provisions, Islamic legal sources, inheritance statutes, and landmark case law from the superior judiciary, supplemented by peer-reviewed scholarly literature. The findings reveal that while the Supreme Court and High Courts have delivered progressive judgments, particularly on limitation, fraudulent mutations, and coercive family settlements, systemic flaws persist at the procedural and enforcement stages, where revenue practices, evidentiary burdens, and weak execution mechanisms continue to undermine women's claims. The study concludes that a harmonized judicial doctrine, gender-sensitive evidentiary standards, and stronger enforcement measures are necessary to translate legal rights into lived realities. General suggestions include stricter oversight of mutation processes, mandatory legal awareness for women at the time of inheritance, capacity-building of lower judiciary, and effective implementation of the Enforcement of Women's Property Rights legislation to ensure uniform compliance across provinces.

INTRODUCTION

The formal entitlement of women to inherit under Islamic law is clear and specific: the Qur'an prescribes defined shares for daughters, sons and other heirs and enjoins the just distribution of estates (Qur'an, 4:7, 4:11). In Pakistan, those scriptural allocations operate within a constitutional and statutory framework that recognises property rights for all citizens and applies Muslim personal law to succession among Muslims.

Yet despite the textual clarity of entitlement, a persistent and well-documented gap remains between legal rights on paper and women's effective access to inheritance in practice. Sociocultural pressures, intra-family coercion, collusive transfers, and administrative practices (notably revenue mutations) have combined to deprive many women of their rightful shares (Khaleel, 2023; Abbas, 2025).

This article adopts a doctrinal approach to examine how Pakistani courts principally the superior courts and, where relevant, specialised fora created under statute have interpreted and applied the law on women's inheritance. The central question is doctrinal: do courts construct legal rules (on limitation, evidentiary weight of revenue records, standards for proving forgery or collusion, and the nature of remedies) that facilitate the realisation of Qur'anic and statutory entitlements, or do judicial choices inadvertently perpetuate dispossession? The Enforcement of Women's Property Rights Act, 2020, is a pivotal statutory development that expressly aims to address common modes of dispossession (forged documents, collusive mutations, etc.), but its practical efficacy turns on judicial interpretation and enforcement practice (Enforcement Act, 2020). Recent scholarship and case law show both promising judicial interventions and continuing doctrinal ambiguities that impede consistent relief (Nisar, 2025; Shaheen, 2024).

A doctrinal critique requires first identifying the legal and scriptural norms (the "black letter" rules), then evaluating how judges have handled evidentiary and procedural issues that commonly arise in inheritance disputes. Landmark precedent such as *Ghulam Ali v. Mst. Ghulam Sarwar Naqvi* (PLD 1990 SC 1) remains foundational on questions of relinquishment, adverse possession and the probative value of revenue records, but subsequent lower-court practice and newer superior-court pronouncements (2020–2025) reveal uneven doctrinal application (*Ghulam Ali v. Mst. Ghulam Sarwar Naqvi*, PLD 1990 SC 1; recent SC/H.C. entries 2024–2025). This introduction therefore sets out the Islamic and legal provisions that form the baseline entitlements, and then surveys the principal strands of scholarly literature that critique the gap between law and practice in Pakistan. The Qur'an prescribes fixed shares for heirs and establishes that both men and women have a share in parental and close-relative estates (Qur'an, 4:7; 4:11). These verses supply the primary normative basis for female inheritance rights and are the touchstone for classical and modern fiqh rules on succession. Judicial and legislative texts in Pakistan treat these Qur'anic prescriptions as authoritative in determining heirs' shares among Muslims. The Constitution of the Islamic Republic of Pakistan protects the right to

property (Art. 23) and contains provisions promoting women's participation and protection (e.g., Arts. 25, 34), creating a constitutional backdrop for enforcing women's property rights (Constitution of Pakistan, 1973). Courts regularly invoke constitutional norms when addressing discriminatory practices that frustrate women's inheritance claims.

The aim of this research is to critically examine the doctrinal role of Pakistani courts in upholding and enforcing women's right to inheritance, with a view to assessing whether judicial reasoning, precedents, and procedural interpretations have effectively safeguarded the rights guaranteed under Islamic law, constitutional mandates, and statutory provisions. By analyzing landmark case law, legislative frameworks, and scholarly literature, the study seeks to evaluate the extent to which the superior judiciary has advanced substantive gender justice, removed procedural barriers such as limitation and fraudulent mutations, and addressed socio-cultural practices that deprive women of their rightful shares. Ultimately, the research aims to identify doctrinal gaps in judicial enforcement and propose reforms that can strengthen the protection of women's inheritance rights through a more consistent, gender-sensitive, and justice-oriented judicial approach.

STATUTORY FRAMEWORK

The statutory framework governing women's inheritance rights in Pakistan operates through a multi-layered legal structure that integrates Islamic principles with constitutional guarantees and legislative enforcement mechanisms. At its foundation, the West Pakistan Muslim Personal Law (Shariat) Application Act, 1962 establishes that in all matters of succession involving Muslims, the decisive rule is Islamic law, notwithstanding any contrary custom or usage. Section 2 of the Act explicitly provides that Muslim Personal Law (Shari'ah) shall govern succession, thereby abolishing the authority of patriarchal customs that historically restricted female inheritance (The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962). The statute also nullifies customary life estates and similar feudal devices and ensures that upon their termination, property devolves according to Islamic succession principles (The West Pakistan Muslim Personal Law (Shariat) Application Act, 1962). By giving overriding

effect to Shari'ah rules, the Act doctrinally anchors women's inheritance claims in mandatory Qur'anic shares, prohibiting familial or local practices that seek to deny or dilute those rights.

To reinforce these protections, the Constitution of the Islamic Republic of Pakistan provides the broader normative foundation for gender-equal property rights. Article 23 guarantees every citizen's right to acquire, hold and dispose of property, while Article 24 safeguards citizens from unlawful deprivation of property. Simultaneously, Articles 25 and 34 impose a constitutional commitment to gender equality and the full participation of women in national life. Accordingly, when women seek enforcement of inheritance claims, courts are required to interpret statutory and procedural rules in harmony with these constitutional guarantees, particularly where customary practices or procedural technicalities are used to obstruct their access to substantive justice (Constitution of Pakistan, 1973).

Despite these formal guarantees, Parliament recognised that women continued to face systemic dispossession through forged mutations, familial coercion, and collusive use of revenue records. In response, the Enforcement of Women's Property Rights Act, 2020 was enacted as a remedial statute to provide administrative and judicial mechanisms for restoration of women's property rights. The Act empowers the Federal Ombudsperson to order cancellation of fabricated entries, restore title and possession, prevent harassment, and direct revenue officials to implement corrective measures without delay (Enforcement of Women's Property Rights Act, 2020; Enforcement of Women's Property Rights (Amendment) Act, 2021). The legislation reflects a legislative shift from mere declaratory rights to enforceable remedies, signalling that procedural hurdles, evidentiary rigidity and revenue-record technicalities cannot be used to defeat women's inheritance. In addition, provinces, most notably Punjab through the Punjab Enforcement of Women's Property Rights Act, 2021, have replicated this enforcement model, thereby expanding institutional avenues through which women can seek restitution of their inheritance (Punjab Enforcement of Women's Property Rights Act, 2021).

Collectively, these statutory instruments impose a doctrinal duty on courts to: (a) apply Shari'ah as the

exclusive rule of decision in succession disputes; (b) reject custom as a defence against women's inheritance; (c) harmonise adjudication with constitutional guarantees of equality; and (d) give purposive, rights-oriented effect to the 2020 enforcement regime to ensure that judgments result not only in declarations of entitlement but in actual possession. Thus, the statutory framework not only recognises women's inheritance as a legal right but also mandates judicial intervention to dismantle structural barriers that have historically obstructed its realisation.

JUDICIAL ROLE: KEY PRECEDENTS AND RECENT TRENDS

The Pakistani judiciary has shaped doctrinal contours of women's inheritance rights through both long-standing precedent and a growing number of recent, enforcement-oriented decisions. The Supreme Court's decision in *Ghulam Ali v. Mst. Ghulam Sarwar Naqvi* remains a foundational authority: the Court held that succession vests immediately on death, that revenue mutations are not conclusive of civil title where fraud or relinquishment is shown, and that courts must scrutinize purported relinquishments or settlements to ensure they were free and voluntary.

Ghulam Ali thus established the principle that administrative entries (mutations) cannot be allowed to defeat a legal heir's Quranic share absent compelling proof. (*Ghulam Ali v. Mst. Ghulam Sarwar Naqvi*, PLD 1990 SC 1).

Subsequent Supreme Court precedent has reinforced and elaborated that principle. For example, the Court's jurisprudence in the 1990s and 2000s – including decisions such as *Muhammad Qasim Khan & ors v. Mst. Mehbooba & ors* (1991 SCMR 515) and *Muhammad Anwar & ors v. Khuda Yar & 25 ors* (2008 SCMR 905) – has repeatedly addressed limitation and the non-conclusive probative value of revenue records in inheritance disputes, emphasising that co-sharers cannot typically defeat a co-heir's rights by relying solely on revenue mutations or dilatory procedural tactics (*Muhammad Qasim Khan*, 1991 SCMR 515; *Muhammad Anwar*, 2008 SCMR 905). These decisions are frequently relied upon by High Courts when rejecting attempts to dispossess women through administrative manipulation.

A pattern of post-2018 jurisprudence and notably in 2024–2025, shows a more explicit rights-based posture. Superior courts have begun to condemn mendacious litigation tactics by male heirs and to deploy costs, fines and stronger remedial orders (including cancellation of mutations and directions to revenue officials) where evidence of collusion exists. A prominent recent entry (reported as 2025 SCLR 14 / 2025 SCMR 98) emphasised that courts must guard against abusive tactics aimed at depriving sisters of their inheritance and imposed monetary penalties while upholding the sisters' shares (2025 SCLR 14 / 2025 SCMR 98). Contemporary judgments also stress that a woman's marriage does not negate her status as a child of her parents or her independent inheritance rights, a principle recently restated by the Supreme Court in March 2025 (Dawn, 2025). These developments reflect greater judicial willingness to combine declaratory relief with practical remedial steps.

Yet enduring doctrinal gaps persist. Courts still vary in applying limitation law: while some benches treat limitation as beginning only on an overt act of denial or transfer, others have dismissed suits on strict limitation grounds where the factual record did not capture covert dispossession (see doctrinal discussion in Peshawar High Court and other provincial rulings).

Moreover, trial courts occasionally accord excessive weight to revenue mutations, treating them as determinative absent robust judicial inquiry, contrary to apex precedent. Execution remains a chronic problem: even where superior courts cancel fraudulent entries, practical effect is sometimes delayed by administrative inertia or lack of follow-through. Consequently, while the superior courts' tone has shifted towards enforcing women's property rights more robustly, doctrinal consolidation is still required on limitation triggers, evidentiary standards for forgery/collusion, and routine inclusion of executable relief in decrees.

In sum, the judicial role today is mixed but improving: the apex court and several High Courts have reiterated the principles that protect women's Quranic shares and have, more recently, adopted enforcement-oriented remedies. For doctrinal completeness, however, the Supreme Court should articulate clearer rules on accrual of cause of action in inheritance suits, standardise the rebuttable treatment of revenue records, and direct courts to include precise execution measures (e.g., cancellation of mutation, directions to revenue authorities, costs and receivership where necessary) to ensure that declaratory wins are converted into possession in practice.

Table -1- Key Precedents & Recent Official Actions

#	Case / Action (authoritative citation)	Year	Short holding (1 line)	Doctrinal significance	Verified source (link)
1	Ghulam Ali v. Mst. Ghulam Sarwar Naqvi, PLD 1990 SC 1	1990	Held revenue mutation not conclusive of title where fraud/forgery or collusion is shown; succession vests on death.	Foundational on probative value of revenue records and scrutiny of "relinquishment".	Case summary / PDF (WRCaselow) & LPR entry. (WRCaselow)
2	Muhammad Qasim Khan & ors v. Mst. Mehbooba & ors, 1991 SCMR 515	1991	Apex Court laid down principles on forum and limitation in inheritance: revenue mutation alone cannot defeat heir's claim.	Frequently cited for limitation/inheritance interplay; relied upon by PHC rulings.	Referenced in Peshawar High Court judgments (PHC PDF). (Peshawar High Court)

3	Muhammad Anwar & ors v. Khuda Yar & 25 ors, 2008 SCMR 905	2008	Addressed probativity of revenue record and co-sharer conduct in inheritance suits.	Used to support that title cannot be founded solely on revenue entries where collusion is proved.	Referenced in PHC judgment PDFs and caselaw summaries. (Peshawar High Court)
4	Peshawar High Court (e.g., 2012 CLC 360 / YLR 2012:2710) assorted inheritance rulings citing above precedents	2012 (example)	Applied apex ratios to hold suits within time; rejected mutation as conclusive.	Shows provincial application of apex doctrine; useful on limitation and forum questions.	PHC judgment PDF (2012 CLC 360 / 2012 YLR 2710). (Peshawar High Court)
5	Supreme Court rights/personhood rulings (reported 28 Mar 2025) press/legal reports (SC pronouncement)	2025	Supreme Court declared that a woman's legal rights and personhood are not erased by marriage; urged gender-sensitive language and remedies.	Recent rights-based posture that informs inheritance reasoning by rejecting dependency presumptions.	Dawn news report & LiveLaw coverage (March 2025). (Dawn)
6	Enforcement of Women's Property Rights Act (federal) implementation / Federal Ombudsperson orders & provincial Acts (Punjab 2021) (statute + administrative enforcement)	2020-2021	Statutory remedial framework to cancel fraudulent mutations, restore possession and provide speedy relief through Ombudspersons.	Shifts doctrinal focus from declaratory rights to enforceable remedies; courts must give purposive effect.	PakistanCode / FAOlex (Act text), Punjab Act page, Tribune reporting on enforcement outcomes. (pakistancode.gov.pk)

The table shows that Pakistan's courts, particularly the Supreme Court, have consistently protected women's inheritance rights by rejecting fraudulent mutations, coercive family settlements, and technical objections such as limitation. Key precedents emphasize that inheritance devolves immediately at the time of death and cannot be denied through revenue records or custom. High Court decisions further apply these principles to ensure access to inheritance, while recent statutory measures such as the Enforcement of Women's Property Rights Acts strengthen enforcement by providing faster remedies through Ombudspersons. Overall, the trend reflects growing

judicial activism and legislative support to secure women's rightful shares in inheritance.

DOCTRINAL CRITIQUE OF THE ROLE OF THE COURTS

Although Pakistani courts have repeatedly affirmed women's rights to inheritance, a deeper doctrinal analysis reveals that judicial reasoning still struggles to deliver full justice in practice. Despite progressive judgments, systemic gaps persist in the interpretation of limitation laws, the evidentiary weight of revenue records, the standard of proof for coercion or forgery, and the enforcement of decrees. This section critically

examines these gaps in light of statutory provisions, case law, and scholarly literature.

1. Limitation and Accrual of Cause of Action

The doctrine of limitation has often hindered women's access to justice. Courts have inconsistently determined when a cause of action arises whether at the time of the deceased's death or when a woman becomes aware of the denial of her right. Such inconsistency often disadvantages women who discover their deprivation years later due to patriarchal family structures.

Khaleel (2023) argues that rigid application of limitation periods ignores sociocultural realities, as women are often unaware of their disinheritance or lack resources to pursue claims promptly. Similarly, Abbas, Fazal, and Shafique (2025) note that procedural doctrines like limitation disproportionately burden women, as access to inheritance typically requires navigating male-dominated revenue departments. Courts have occasionally mitigated this issue—e.g., in *Mst. Sakina Bibi v. Muhammad Yar* (PLD 2018 SC 595), the Supreme Court held that limitation should begin from the date of refusal or denial of rights—but such reasoning is not consistently followed by lower courts.

2. Evidentiary Weight of Revenue Records and Administrative Mutations

Another doctrinal flaw lies in the overreliance on revenue records as proof of title. Despite clear precedents such as *Ghulam Ali v. Mst. Ghulam Sarwar Naqvi* (PLD 1990 SC 1), which established that inheritance devolves immediately at death and cannot be defeated by mutation entries, subordinate courts continue to treat such records as conclusive.

Rana, Zia, and Zia (2023) emphasize that male heirs frequently exploit the mutation process to exclude women, with courts seldom questioning the authenticity of these entries. Gul, Zeb, and Kainat (2024) similarly criticize the judicial trend of granting “near-absolute evidentiary weight” to administrative documents, even when obtained through fraud or misrepresentation. This undermines both statutory law and Qur’anic principles guaranteeing women’s shares. A sound doctrinal approach would treat revenue records as *rebuttable evidence*, not conclusive

proof, aligning procedural practice with substantive justice.

3. Proof Standards in Forgery, Collusion, or Coercion Scenarios

Courts have also failed to develop gender-sensitive standards of proof in cases where women allege coercion, forgery, or fraudulent relinquishment. The current evidentiary doctrine requires a high level of documentary proof often impossible for rural women lacking education or access to lawyers. Nisar (2025) critiques this rigidity, asserting that “formalistic evidentiary burdens in inheritance litigation perpetuate systemic exclusion.”

Bibi and Khan (2022) further reveal how patriarchal family dynamics pressure women to sign away property under coercion, while courts treat these cases under ordinary civil standards rather than adopting a protective doctrinal stance. Polok (2022) adds that this reflects a deeper influence of patriarchal norms on judicial reasoning, where “the courts, while citing Islamic principles, often reproduce customary biases.” To counter this, courts should recognize oral testimony, contextual evidence, and circumstantial corroboration as valid proof of coercion or fraud, especially where the imbalance of power is evident (Shaheen, Shehzadi, & Sajjad, 2024).

4. Execution and Remedial Doctrine

A persistent doctrinal weakness lies in enforcement. Even when courts declare women as rightful heirs, judgments often stop at declaratory relief without ordering execution steps such as correction of revenue records or possession transfers. This renders many favourable decisions practically ineffective.

Abbas et al. (2025) identify this as the “implementation gap,” where women formally win inheritance suits but remain dispossessed due to weak procedural follow-up. Shaheen et al. (2024) likewise argue that Pakistani courts have not evolved a remedial doctrine to ensure that decrees are implemented through administrative accountability. Moreover, Saeed (2023) empirically demonstrates that secure land ownership for women directly improves family welfare, showing that ineffective enforcement harms not only gender justice but also broader socioeconomic well-being.

5. Emerging Jurisprudence and Continuing Gaps

Recent judicial developments show gradual improvement. In *Mst. Sakeena Bibi v. Muhammad Aslam* (PLD 2021 SC 544), the Supreme Court reiterated that no woman can be deprived of her inheritance through custom or family settlement without free consent. Similarly, in *Naseem Akhtar v. Muhammad Iqbal* (2023 YLR 1324 Lahore), the High Court annulled a fraudulent mutation, emphasizing that denial of inheritance constitutes continuing wrong. Yet, as Gul et al. (2024) observe, “progressive dicta often remain isolated islands of justice” without consistent doctrinal integration across the judicial hierarchy.

CONCLUSION AND RECOMMENDATIONS

The doctrinal trajectory of Pakistani inheritance law demonstrates both progress and persistence of structural inequities. Courts have advanced the rhetoric of equality, yet doctrinal inconsistencies, especially in limitation, evidentiary standards, and execution, still impede justice. For meaningful change, Pakistani courts must evolve a cohesive doctrine that prioritizes substantive justice over procedural rigidity, guided by both Islamic imperatives of fairness and constitutional mandates of gender equality. Based on the critique above, the following doctrinal enhancements are proposed:

Unified doctrine on limitation: The Supreme Court should articulate a clear rule that limitation in women-inheritance suits begins only on receipt or discoverable denial of the right (rather than at death or lapse of time).

Rebuttable-evidence doctrine for revenue records: Courts should treat mutations as presumptive not conclusive, and articulate the circumstances under which they may be accepted or displaced.

Context-sensitive proof standards: Given women’s systemic disadvantage, courts should adopt a flexible approach to proof of collusion, undue influence or forgery, recognising oral corroboration, credible witness statements and circumstantial evidence as valid.

Execution-oriented judgments: Judgments should routinely include orders for mutation cancellation, direction to revenue officers, monitoring by court registries, award of costs and contempt options, thereby making decrees genuinely enforceable.

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