Social Enterprise Development Centre

Policy Brief

WOMEN AND LAND IN PAKISTAN

Iswa Wasif

Photo: UN Women/Faria Salman

Executive Summary

Women have largely been excluded from the ownership and control of land in Pakistan, which is the single most important source of income and status in the agricultural economy. This systematic exclusion stems from multiple factors at both the policy and societal level, which include multiple and contradictory sources of law that fail to resolve the issue of women's right to property as well as cultural bias and discriminatory practices that arise from the prevalent male-dominant mindset in rural areas. This exclusion impedes the empowerment and financial independence of women and needs to be addressed by correcting current failure of law and policy alongside introducing wide-scale reformative initiatives to address the cultural aspect of the issue.

Context and Importance of the Problem

In a country where agriculture accounts for 42 percent of full-time employment and 23 percent of GDP, land is unarguably the most vital resource that distinguishes between income groups. Land ownership in Pakistan remains highly concentrated: based on the Household Integrated Economic Survey (HIES)

2001-02 data, approximately 10.36 percent of the rural population is landless; 32.67 percent owns under one hectare of land; 0.046 percent owns between one and two hectares of land; only 0.0309 percent owns 2-3 hectares of land, while only 0.0293 percent owns five or more hectares of land. Based on these statistics it is not difficult to infer the impact of landlessness on poverty and in particular, the feminization of poverty. Women, who continue to constitute the poorest groups in society, remain largely excluded from both ownership and control of land in Pakistan's male-dominated society which has drastic repercussions for their empowerment, economic security and independence. Ownership of land in Pakistan represents economic security in the form of income from arable land or rent, as well as status in society.

Exclusion from land entitlement contributes to the marginalization of women by ensuring their dependence on males for sustenance and creates a cycle of poverty that continues for generation. This pattern of excluding women from land ownership has given rise to other discriminatory practices such as '*haq bakhshwana*', where women are either never married or married to the Quran to retain property within the family. Similarly, cousin marriages and '*watta satta*' marriages, whereby one set of a brother and sister are married to another set, are also used to prevent break up of property (Gender and Land Rights Database). While most rural peasants are landless, the most pressing problem as far as women are concerned is not only their lack of ownership of land but the reasons behind it. A study on livelihoods in rural Pakistan demonstrates the impact of land ownership in women. The study found that in a village in Chakwal district, 4 percent of women owned land and that the ownership of land correlated positively with the voting patterns and mobility of women (Mohmand & Gazdar, 2007). The table below summarizes parental attitudes towards female inheritance in district Lakki Marwat, KP.

Table 1: Respondents' Attitudes towards Women's Property Rights

Respondents' Attitudes Towards Women's Property Rights

Question	Recorded Responses Yes	No	Total
Will you give your daughters their legal share in property?	66 (13.02%)	441 (86.98%)	507
Should women be given their legal share of inheritance?	313 (61.74%)	194 (38.26%)	507
Should women own property in their name?	239 (47.14%)	268 (52.86%)	507
Should women be given authority to manage their property?	34 (6.71%)	473 (93.29%)	507

Source: "Attitudes toward Women's Inheritance Rights in District Lakki Marwat" (Eatzaz, 2012)

Causes:

A landmark study by SDPI found that an overwhelming majority of males (89.3 percent) accepted women's right to own and inherit land (Khattak, 2010). However these results were not seen in practice. Furthermore, women expressed the desire to hold land but rarely took any legal action to obtain it. These discrepancies can be attributed to the following causes:

- <u>Lack of access to legal facilities:</u> Women, particularly from rural areas, have limited knowledge of the land rights granted to them by law and can rarely afford to seek legal help due to a lack of resources and inaccessible legal facilities. A 40-year review of superior court cases related to women's inheritance

reflected that courts have mostly been sympathetic but the cases were few and far between (Arif & Ali, 1998).

- Actual and perceived incompetence of women: Women are perceived as subordinate, unskilled and incompetent as far as the control of land is concerned. Their lack of knowledge in managing landholdings is attributed as one of the key factors behind their landlessness. While part of this belief stems from a patriarchal male dominant mindset, women's low level of literacy and education does contribute to their inability to manage agricultural landholdings.
- Restrictions on social mobility: Most women in rural areas practice seclusion (purdah), which restricts their ability to interact with males and impedes their management of landholdings. This was cited by most studies as one of the main causes behind lack of ownership of land among females.
- Compensation in dowry and maintenance: The practice of dowry is most commonly attributed as the justification for depriving women of their share of inherited land. As in most South Asian countries, women are perceived as not being a part of the natal family once they are married and hence not entitled to inheritance, as per custom. The study noted that the exchange of dowry remains between male members of the household and the female has little or no control over these assets, particularly when related to immovable property.
- Patriarchal bargain: Often, women who are granted inheritance are made to relinquish it to their male family members as part of the 'patriarchal bargain' in exchange for the security and protection of male family members (Khattak, 2010).
- Impact of marriage practices: A report by the Rural Development Institute on the issue analyses the impact of polygamy on the land share of women: 'with each additional wife and child the possible share that each potential heir can take from the deceased's estate is reduced' (Scalise, 2009). Furthermore, in the event of divorce, a woman is rarely given her share of any property acquired during the marriage or provided maintenance in the long term. A widow who remarries outside the immediate family is also made to relinquish her claim over any property she may have ownership of.
- Legal pluralism: The issue of inheritance falls at the intersection of both formal and personal law which creates contradictory interpretations and ultimately results in policy failure as far as granting women property rights is concerned. While both the Shariah and Constitution recognize women's right to own property these are superseded by customary and tribal law whereby communal forms of decision-making bodies such as the *Jirga* and *Panchayat* address matters of inheritance and ultimately retain

male-dominant patterns of property ownership.

Current Approach

International Conventions:

Pakistan is a signatory on a number of conventions and declarations that address the right of women to own property. The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) ratified by Pakistan in 1996 under Article 16 (h) states that Parties shall provide "the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property whether free of charge or for a valuable consideration". Under Article 14 (g), States Parties are required to take steps to ensure that women have access to "agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes." However, no concrete steps have been taken to formulate policy measures based on this Article. A further clause reserves the right to not take any steps which would be a violation to the law of the land, which ultimately devolves land rights to Personal and Customary Law and leaves women out of the picture.

Islamic Laws of Inheritance:

According to the West Pakistan Muslim Personal Law (Shariat Application) Act 1962, the matter of inheritance is to be dealt with under the principles of the Shariah which grant women a share of the property equal to half of the male's share. The law, while unequal, does recognize the right of women to own property but this is rarely seen in practice as cases of male relatives using coercion, violence and the right of Tanazul (relinquishment) to reclaim the inherited property from women are widespread. The 'compensatory principle' is also used to override this law with the view that dowry and gifts compensate for property. These cases have rarely been challenged in Court and continue to set an unfavorable precedent (Khattak 2010, Mumtaz 2013).

Inheritance Laws for Minority Women:

While the current legislature on inheritance rights is based on Islamic principles, the law recognizes the rights of minorities to follow 'personal laws' based on their religious beliefs. Currently no codified legislature regarding succession and inheritance rights of religious minorities exists, which leaves them at a disadvantage in pursuing matters of inheritance disputes in courts. These problems are compounded by the absence of marriage registration Acts for religious minorities such as Hindus, which makes it difficult for them to claim their right to land in the event of death or divorce. The absence of separate legislature makes it difficult for minority women, who are already at a disadvantage in matters of inheritance rights, to seek legal help.

Land Reforms:

Various governments have implemented land reforms and redistribution schemes but these have been gender-blind and have done little to address the disparity in land ownership by gender. Establishment of ceilings on land ownership has in some instances unintentionally caused women to gain ownership of land as their families attempt to escape their land being taken, but these transfers have remained in name only as the cultural barriers to female ownership of land remain firmly in place. As 2008 initiative by

the Sindh government to redistribute land specifically to landless women was successful due to its gender-sensitive policy base. Aurat Foundation report cites the results as 70.6 percent of land being redistributed to women (Saigol, 2011). A similar scheme by the federal government provides houses to homeless individuals with the land title given to the female.

Legal Reforms:

The AWP Act of 2011 criminalizes depriving women from inheriting property both directly through deception and indirectly, through customary practices such as *haq bakshwana*. Deeming these actions as illegal, this Act prescribes punishments ranging from fines to imprisonment for up to 7 years. While this legal amendment is a progressive step forward towards granting women inheritance rights, its implementation remains a challenge due to several reasons. The vague definition of what may be considered 'illegal' within the predominantly patriarchal context of Pakistan impedes the implementation of these laws. In a country where women are expected to give away their property as gifts to male relatives out of fear of losing familial support, vaguely defined rights on paper cannot be expected to serve as an impetus for empowerment. The provisions under this Act fail to address the underlying problem of cultural bias against women; hence it is limited in terms of its effectiveness.

Women's empowerment initiatives:

NGOs and government institutions alike have implemented programs in order to empower women through employment opportunities and skill-based education. Micro-finance programs that provide uncollaterized debt to women have received particular attention of policy-makers in recent years. However a concentrated focus on addressing the land issue remains absent from these initiatives which creates an impediment to progressing the movement to empower these women. Despite the efforts of these organizations there is very little progress that can be made if women continue to remain marginalized as far as property ownership is concerned, since employment and loans alone are not sufficient to ensure financial independence. Furthermore, a focus on addressing the lack of agricultural and technological skills needed to manage and control land is also absent from education campaigns which creates a barrier to women's control of land for income-generating activities.

Policy Recommendations

Specific policy measures need to be implemented at both the government as well as structural level. There is a need to address the legal pluralism that stems from multiple systems of law in order to align the policy stance on women's inheritance issues. Along with this, there is a need for change at the structural level that attempts to alleviate the barriers faced by women in control and ownership of property. The following policy measures are recommended:

Legal Reforms:

- Since the Islamic law forms the basis of the Constitution and acknowledges women's share of inherited property, it should be implemented as the sole law on the matter of inheritance. This requires wide-scale reform in order to ensure this law is not superseded by customary or tribal laws. In order to ensure implementation, support from religious authorities might be

required. This could be the first step towards creating gender-neutral property laws since the Islamic law provides recommended shares and does not determine the ceiling on the allotted share for each gender.

- There is a clear need to create a secure and easily accessible legal system that addresses cases of property theft and coercion. Implementing awareness programs to educate women about their rights as far as property matters are concerned could be a vital first step towards encouraging women to seek legal help in granting them their share of property.
- Cases of women being deprived of their property are predominantly an occurrence in rural areas there is a need to decentralize authority and delegate these concerns to local bodies that are educated on both the law and matters of women's rights. The KP government recently set such a precedent with the establishment of a helpline that provides legal guidance to women in need. Similar measures could be adopted by other provinces as well.
- Prompt resolution of cases pertaining to land disputes pursued by women, particularly in the case of divorces, are imperative to establish a precedent for approaching courts in order to seek protection from discriminatory practices. This could be achieved by working alongside organizations such as Shirkat Gah and the Aurat Foundation to provide pro bono legal representation to women who lack the resources to contest land-related issues.
- While some provinces such as the KP have introduced a ban on dowry, the effectiveness of it remains questionable. A more practical approach to ensure women actually have access to their dowry could be achieved by providing access to legal advice before the marriage contract is signed, along with requiring any immovable property to be transferred in the woman's name.

Land reforms:

- In addressing the problem of landless peasants in rural areas, the government needs to take steps to ensure the policies implemented are gender-sensitive and do not contribute to a worsening of the gender gap in land ownership.
- This will require enforcing the policy measure and closely monitoring its effects in order to ensure there are no loopholes that can be taken advantage of by the landed masses or particularly, the land-owning males. The 2008 Sindh initiative could serve as a guideline in creating similar land redistribution schemes. Research by Mumtaz and Noshirwani (2013) recommends joint ownership of land in redistributive schemes and half-titles for women to recognize their rights in co-ownership of property.

Structural reforms:

- One of the main impediments to women's control over land despite ownership is their lack of knowledge

in managing agricultural landholdings. This requires targeted educational programs that can teach women the skills necessary to efficiently manage and generate income from landholdings.

- The relevant authorities may also increase access to credit and technological assistance for women who manage agricultural holdings in order to reduce their dependence on males and increase mobility.
- Improve social protection systems to ensure women are protected from property-related violence. By providing alternate forms of security and social support women may become less dependent on their families and less likely to be coerced into relinquishing their property.
- The work of organizations such as The Aga Khan Foundation in Bangladesh can serve as a policy guideline for championing women's rights in Pakistan. Their work includes providing skills training to 400 locally elected women so that they would be able to help promote awareness and action on issues and laws pertaining to property and inheritance rights (Scalise, 2009). Since both countries share a similar religious and cultural context, successful initiatives from such South Asian countries can be implemented in Pakistan as well.

Works Cited

Ahmad, Eatzaz. "Attitudes toward Women's Inheritance Rights in District Lakki Marwat" *Pakistan Development Review*. 2012.

Ahmad, Nausheen. "Land Rights for Pakistani Muslim Women: Law and Policy". *Sustainable Development Policy Institute*. 2010.

Arif, K. Ali, S. "The Law of Inheritance and Reported Case Law". *Shaping Women's Lives. Laws, Practices and Strategies in Pakistan*. 1998.

Convention on the Elimination of All Forms of Discrimination against Women. *United Nations Office of the Higher Commissioner*. 1979.

Gender and Land Rights Database. *Food and Agricultural Organization of the United Nations*.

Khattak, Saba Gul. "Women's Land Rights: Research Findings from Pakistan". *Sustainable Development Policy Institute*. 2010.

Mohmand, S. K., & Gazdar, H. Social Structures in Rural Pakistan. Islamabad: Asian Development Bank. Pakistan Resident Mission. 2007.

Mumtaz, Khawar. "Women's Land Rights and Inheritance Rights in Pakistan". *Shirkat Gah*. 2013.

Household Integrated Economic Survey. *Pakistan Bureau of Statistics*. 2003.

Salman, Faria. "Landless Women Receives Land". *Asia and the Pacific, UN Women*. 28 Jan. 2017.

Scalise, Elisa. "Women's Inheritance Rights to Land and Property in South Asia". *Rural Development Institute, World Justice Report*. Dec. 2009.

Saigol, Rubina. "Women's Empowerment in Pakistan: A Scoping Study". *Gender Equity Program, Aurat Foundation*. January 2011.

The Prevention of Anti-Women Practices Act. 2011.

West Pakistan Muslim Personal Law (Shariat) Act. 1962.

Zaman, Sarah. "Forced Marriages and Inheritance Deprivation in Pakistan". *Gender Based Violence Policy Research, Aurat Foundation*. October 2014.

Zia, Maliha. Butt, Riffat. "Pakistan NGO Alternative Report on CEDAW'. *Aurat Foundation*. 2012.

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