

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE AMEER MUHAMMAD KHAN

SHARIAT PETITION NO. 10/I OF 2023

Syeda Fouzia Jalaal Shah daughter of Dr. Syed Muhammad Jalal Shah (late),
Resident of Flat No.14/21, Gulshan-e-Jinnah, Sector F-5/1, Islamabad.

PETITIONER

VERSUS

1. Federation of Pakistan through Secretary Law & Justice, Islamabad.
2. The President of Islamic Republic of Pakistan.
3. Ministry of Law & Justice, Islamabad
4. Human Rights Commission of Pakistan.
5. Governor, Khyber Pakhtunkhwa.
6. Governor, Sindh
7. Governor, Punjab
8. Governor, Balochistan.
9. Chief Secretary, Khyber Pakhtunkhwa
10. Chief Secretary, Punjab
11. Chief Secretary, Sindh
12. Chief Secretary, Balochistan
13. Khyber Pakhtunkhwa Commission on the Status of Women
14. Punjab Commission on the Status of Women
15. National Commission on the Status of Women (NCSW)

RESPONDENTS

Counsel for Petitioner: Mr. Hammad Saeed Dar, Advocate for the
petitioner along with petitioner Syeda Fouzia
Jalaal Shah

Counsel for Respondents: Mian Muhammad Faisal Irfan, Deputy
Attorney General for Federation

Dr. Muhammad Usman Mirza, Advocate on
behalf of Advocate General Islamabad

Mr. Sana Ullah Zahid, Additional Advocate
General, Punjab

Barrister Ahsan Hameed Dogar, Law Officer,
on behalf of Advocate General Sindh

Mr. Sami Ullah Jan, Asst. Advocate General, KP.

Date of Institution: 11.07.2023

Date of Hearing: 25.02.2025

Date of Judgment: 19.03.2025

JUDGMENT

DR. SYED MUHAMMAD ANWER, J: Through the instant Shariat Petition filed under Article 203-D of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner Syeda Fouzia Jalaal Shah has raised an issue whereby women are being deprived of their due right to inheritance in their ancestral property on the pretext of a local custom despite the fact that such right of inheritance is specifically and categorically recognized by Islam in the Holy Quran and Sunnah. According to the petitioner, this custom is called *Chaddar* or *Parchi*, which is in vogue in the area of District Bannu of Khyber Pakhtunkhwa (**K.P**), whereby women are being deprived of completely from their right of inheritance in their ancestral property through *Jirga* or they are forced to take less valuable property as of their inheritance share by putting pressure upon her. In addition to this, the petitioner has also sought a relief in-*personam* as her mother, Syeda Iftikhar Bibi, was allegedly deprived of her share in her father's and husband's inheritance due to the local custom or usage which the petitioner named as *Chaddar* or *Parchi*, hence the petitioner also sought a personal relief for her mother from this Court through the same petition.

2. The petitioner in support of her contentions has relied upon Verses 7, 11, 12 and 14 of Surah Nisa, wherein the issue of inheritance of women has been discussed and Muslims are directed to give the due share of inheritance

to every eligible legal heir of a deceased as prescribed in these verses. Moreover, the petitioner has also relied upon a case law reported as **PLD 1990 SC 1 (Ghulam Ali vs. Mst. Ghulam Sarwar Naqvi)**, wherein certain principles relating to women's right to inheritance have been explained.

3. After admission of this Shariat Petition, notices were issued to the respondent departments calling for their stance, and as a result whereof this Court has received para-wise comments of the respondents i.e. the Ministry of Law and Justice Division, Islamabad, Government of K.P, Government of Balochistan, Sindh Commission on the Status of Women, Punjab Commission on the Status of Women as well as a report from the Principal Secretary to Governor, K.P, was also submitted in the Court, which contains the statistics regarding the number of disposal of complaints seeking relief in cases relating to deprivation of women from their property rights in their inherited property filed in the Ombudsperson Secretariat, K.P.

4. On behalf of the Secretary Law, K.P, a detailed response was received, which highlighted different concrete steps taken by the Government of K.P to eradicate a social evil, rather crime, of depriving women from their right of inheritance under different pretext in K.P. However, Respondent No.13 i.e. Law Secretary of the Government of K.P denied that no custom or usage exists in K.P with the specific name of *Chaddar* or *Parchi* as alleged by the petitioner. For ready reference, the report so submitted by Respondent No.13 is reproduced as under:

"That the Constitution of Islamic Republic of Pakistan, 1973 has guaranteed the rights of People especially, the women under Article 35, 37 and 38 of the Constitution of the Islamic Republic of Pakistan (Constitution). The Government of Khyber Pakhtunkhwa through the Provincial Legislature has enacted the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019 (Annex-A) to provide for the protection of the rights of ownership

and possession of properties owned by women, ensuring that such rights are not violated by means of harassment, coercion, force or fraud and for the matters connected therewith or incidental thereto. The Provincial Legislature has provided the special remedy to the women rights related to inheritance which is in consonance with the Article 227 of Constitution, which ensures that all laws shall be made in accordance with Quran and Sunnah. The rights of inheritance have not only been given by our Constitution but have also been guaranteed by Islam through various Quranic injunctions and it is also duty of the State to provide speedy and less expensive justice which is one of principles of State Policy as per Article 37(d) of the Constitution. It is also duty of the State under Article 3 of the Constitution to eliminate exploitation in any form in the society.

2. *That upon request of Law Department at "Annex-B", the Social Welfare Department Government of Khyber Pakhtunkhwa submitted a report to Law Department at "Annex-C" which entails that Shari share of women is clear in the Quran and Ahadis and in the Laws of Pakistan. In this regard if a woman feels difficulties in obtaining her due share then the Provincial Government has empowered the Provincial Ombudsperson for their redressal under the Act *ibid*. The decision of Ombudsperson is to be implemented within sixty days and the possession is to be procured through Deputy Commissioner. Moreover, although in the erstwhile FATA, women were deprived of their Shari right but now they have become part of the main stream of settled areas after merger and as such the laws of settled areas are equally applicable upon the merged districts.*

3. *The Provincial Ombudsperson also submitted a report to Law Department at "Annex-D" according to which the office of Ombudsperson has received 1702 complaints from 38 districts of Khyber Pakhtunkhwa under the Act *ibid*. These complaints were submitted by various classes of persons such as orphans, widows, economically disadvantaged and elderly women and pertained to a broad spectrum of issues under the property rights. The nature of these complaints varies widely, encompassing matters such as the recovery of dowry articles, inheritance rights and disputes over both movable and immovable property.*

4. *That section 5 of Act *ibid* empowers the Ombudsperson to execute / implement orders passed under the Act *ibid*. Section 5 of the Act *ibid* is reproduced below for the kind perusal of the Hon'able Court:*

“5. Delivery of possession and transfer of ownership of property to women etc:-

- (1) On conclusion of the proceedings under section 4, if the Ombudsperson finds that the complainant has been illegally deprived of ownership or possession of her property, he shall direct the Deputy Commissioner or a state functionary or any private person to take steps so as to restore or confer possession or title of the property to the complainant, including measures to perfect such title.*
- (2) The Ombudsperson may where deemed fit, direct the officer, in-charge of a police station for such assistance as may be required for the purposes of implementing the orders passed under sub-section (1).*
- (3) The concerned Deputy Commissioner shall submit a complete report within seven days to the Ombudsperson in respect of implementation of his orders”.*

*5. Moreover, the Social Welfare Department Government of Khyber Pakhtunkhwa further apprised vide letter/report at “Annex-E” that **Anti Women custom like “Parchi” and “Chaddar” does not pertain to Khyber Pakhtunkhwa, and till date no complaints in Khyber Pakhtunkhwa regarding deprivation of women from property right through “Parchi” and “Chaddar” reported before the Ombudsperson, Khyber Pakhtunkhwa.”***

[Emphasis added]

5. The Directorate of Social Welfare, Special Education & Women Empowerment, Government of KP, has submitted a report and to a certain degree admitted that earlier in the erstwhile FATA the customary law was prevailing, in which women were deprived of their Shariah right of inheritance given by the Holy Quran and Sunnah of the Prophet (SAW), but after merger of such tribal areas with settled areas, the law of custom earlier prevailed in those areas is diminishing with the passage of time. In this regard, the Government of K.P has also promulgated the *Khyber Pakhtunkhwa Enforcement of Women’s Property Rights Act, 2019* to protect and secure the

rights of ownership of women in the property, as a result whereof the Ombudsperson Secretariat, Khyber Pakhtunkhwa started functioning under the Act of 2019 *ibid*. It has also been expressed by the Directorate of Social Welfare, Special Education & Women Empowerment in its response that customs like “*Parchi*” and “*Chaddar*” does not pertain to the province of Khyber Pakhtunkhwa and till date no complaints regarding deprivation of women from property right through “*Parchi*” and “*Chaddar*” has been reported before the Ombudsperson, Khyber Pakhtunkhwa.

6. However, the Directorate of Social Welfare, Special Education & Women Empowerment, Government of KP, not only acknowledged that the rights of inheritance for women as given by Allah Almighty and the Holy Prophet (SAW) in the Holy Quran & Sunnah do exist, it has further explained the legal remedies now available to women to get their right of inheritance in K.P, as follows:

”قرآن مجید و احادیث و قانون پاکستان کے مطابق خواتین کا شرعی حصہ بالکل واضح ہے۔ جہاں جہاں قانونی رٹ قائم ہے۔ تو ریونیوریکارڈ میں خواتین کا برابر کا حصہ اندراج ہوتا چلا آ رہا ہے۔ اس بارے میں اگر کسی بھی خاتون کو کوئی دشواری پیش آتی ہے۔ تو صوبائی حکومت نے صوبائی محتسب کو درخواست کی صورت میں کارروائی کا اختیار دیا ہے۔ جس پر ساٹھ (60) دنوں میں عمل درآمد کرنا لازمی قرار دیا گیا ہے۔ اور قبضہ بذریعہ کمشنر علاقہ حوالہ کرنے کی ذمہ داری ہے۔ مزید برآں سابقہ قبائلی علاقوں میں رواج کا قانون رائج تھا جس میں خواتین کو اس شرعی حق سے محروم کیا گیا تھا۔ لیکن اب وہ بھی قومی دائرے میں شامل ہو چکے ہیں۔ اور مرد و عورت دونوں کے تو ان پر بھی لاگو ہو چکا ہے۔ تعلیم کی کم اور جہالت کی وجہ سے رواج کا قانون نافذ تھا۔ لیکن وقت کے ساتھ ساتھ ختم ہوتا جا رہا ہے۔“

[Emphasis added]

7. Similarly, the Punjab Commission on the Status of Women also states that no such custom, as mentioned by the petitioner under the name of *Chaddar* or *Parchi*, exists in Punjab. However, in their response they have enlisted some laws, which are prevalent in the province, including the Federal laws, to prevent the illegal and un-Islamic practice of depriving women from

their right of inheritance, which is so granted to them in a mandatory manner by the Holy Quran and Sunnah. The relevant portion of their reply is as under:

- “1. *The Punjab Commission on the Status of Women (PCSW) is the special institution of Women Development Department, Government of the Punjab. It has mandate to protect and promote the women’s rights in the province of the Punjab. Article 23 & 24 of the Constitution of Islamic Republic of Pakistan 1973 grant and protect all citizen’s rights to property. Share of a woman legal heir in the inheritance is a statutory right of the woman. The appropriate method to determine the share in inheritance of a Muslim deceased are prescribed in the Chapter four of the Holy Quran, called Surah An-Nisa, versus 11 to 14 and 176.*
2. *The answering respondent No.14/PCSW has not received any complaint pertaining to the Chaddar and Parchi custom. However, the Punjab Government has adapted, enacted and amended the various laws for protection of women’s property rights especially inheritance rights as follows: -*
 - a. *The Succession Act 1925*
 - b. *Punjab Land Revenue Act 1967*
 - c. *Punjab Land Revenue Rules, 1968*
 - d. *The Letters of Administration and Succession Certificates Act, 2021*
 - e. *Section 498-A of Pakistan Penal Code, 1860*

8. More importantly, the Punjab Commission on the Status of Women through their response also specifically highlighted the importance and need of implementation of Section 498-A PPC in this regard, which states as under:

8. *The Pakistan Penal Code (PPC), 1860 governs the division of property rights between men and women in Pakistan. Section 498-A of the PPC, inserted via Criminal Law (Third Amendment) Act, 2011 states that anyone who forces a woman to give up her rightful share of the property will be punished as follows: -*

“498-A: Whoever by deceitful or illegal means deprived any woman from Inheriting any moveable or immoveable property at the time of opening of succession shall be punished with imprisonment for either description for a

term which may extend to ten years, but not be less than five years or with a fine of one million rupees or both."

9. Similar stance has been taken by Respondents No.7, 11 and 15 i.e. the Governor, Punjab, Chief Secretary, Punjab, and Secretary Law, Government of Punjab in their response, which, *inter alia*, stated:

"2. That Article 23 and 24 of the Constitution of the Islamic Republic of Pakistan, 1973, guarantee the citizens to acquire, hold and disposed of property and protect their property from illegal deprivation. Islamic Law forms the basis of a woman's right to inherit property. Going forth, Government of the Punjab tends to follow Islamic Inheritance Jurisprudence particularly with regards to the matters of Inheritance. Hence, the Muslim Family Laws Ordinance, 1961 and the West Pakistan Muslim Personal Law (Shariat) Act, 1962 protect the rights of legal heirs. According to the Section 498-A of the prevention of Anti-Women Practices Act of 2011 (Criminal Law Amendment) in Pakistan Penal Code (Act XLV of 1860) Act XLV of 1860, promulgated on October 6th 1860 and under the Criminal Law (Third Amendment), Act 2011 (XXVI of 2011), right of inheritance property of women has been protected by imposing punishment of fine of one million rupees and imprisonment up to ten years but not less than five years to the delinquents."

10. The Respondent No.12 i.e. Chief Secretary Balochistan through Secretary Law mentioned in their reply different steps taken so far by the Government of Balochistan regarding the implementation of the dictates of Holy Quran and Sunnah, which direct the Muslims to give the women their due legal share in inheritance. As per stance of Respondent No.12, the relevant administrative departments in the province of Balochistan concerning the protection of women rights in inheritance are the Board of Revenue Balochistan, Women Development Department, Commission on the Status of Women and Social Welfare Departments. It has duly submitted the reports regarding the complementing support of these departments for protecting the rights of inheritance of women in the province of Balochistan.

However, they also denied that “*no custom or usage in the name of Chaddar or Parchi or in any other name exists for depriving women from their rights of inheritance.*”

11. The Government of Balochistan also elaborated their efforts and actions taken by it to comply with the directions contained in the judgment of the Hon’ble High Court of Balochistan, dated 19.07.2021, passed in C.P. No.901/2021 “Muhammad Sajid Tareen vs. Government of Balochistan & others”, by the Hon’ble Mr. Justice Muhammad Kamran Khan Mulakhail, Judge High Court of Balochistan. Noticeably, in its response the Secretary Law Balochistan also stressed upon the importance and need of implementation of Section 498-A of PPC in order to overcome the issue of depriving the women of their right of inheritance as under:

5. *That in order to overcome the issues of depriving the women from the right of inheritance, the Criminal Law was amended by inserting the section 498-A in Pakistan Penal Code (PPC), which stipulates as under:-*

“Section 498-A Prohibition of depriving women from inheriting property: Whoever by deceitful or illegal means deprives any woman from inheriting any movable or immovable property at the time of opening of succession shall be punished with imprisonment for either description for a term which may extend to ten years but not be less than five years or with a fine of one million rupees or both.”

The wisdom behind the insertion of Section 498-A PPC, was to ensure that no woman would be deprived of her right of inheritance and Punishment is prescribed for the violator of the said section.

[Emphasis added]

12. On behalf of the Government of Sindh, the Sindh Commission on the Status of Women has given a reply highlighting the efforts of the Commission in taking some steps to curtail the criminal practice of depriving the women

of their right of inheritance in their ancestral property in the province of Sindh. From their response, it can be easily gathered that the Province of Sindh is lagging behind in adopting legislative steps to prevent the violation of women's rights of inheritance as compared to other provinces of the country. As in Punjab, Khyber Pakhtunkhwa and Islamabad Capital Territory, laws for the enforcement of women's property rights are in place accordingly i.e. *The Enforcement of Women's Property Rights Act, 2021*; *Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019*; and *The Enforcement of Women's Property Rights Act, 2020*, respectively, whereas in Balochistan a Bill for similar law i.e. *"The Balochistan Enforcement of Women's Property Bill"* is pending for approval in their provincial assembly, however no such legislative development exists in the province of Sindh so far. From the response of the Government of Sindh it reveals that to curb this heinous crime of depriving women of their right of inheritance only one department i.e. The Sindh Commission on the Status of Women exists, which has no power to implement its order as such under its statute. Hence we have noted this lagging behind the Province of Sindh, in adopting the legislations to protect the property rights of the women from other provinces of the country as a serious exception, which needs proper attention from the parliamentarians and the members of the Provincial Assembly of Sindh. The response of the Government of Sindh is as follows:

"Under the Sindh Commission on the Status of Women (SCSW) Act 2015 the SCSW was established in 2017 with broad mandate to cover all provincial laws and implementation and review mechanism of relief for women in Sindh after the establishment of SCSW we look into all provincial GBV laws through law committee for implementation and according to Domestic Violence (Prevention and Protection Act 2013), SCSW mandate is very vast therefore, there is no need for any other commission as SCSW is

working effectively since its establishment and takes up all the issues related to women, girls & transgender in Sindh.

- *Sindh Commission on the Status of Women and the Ombudsperson in addressing the critical issue of inheritance rights for women. Our commission has been actively involved in advocating for the rights of women, particularly in matters pertaining to inheritance, within the framework of the Muslim Family Law.*
- *Sindh Commission on the Status of Women has convened two significant meetings specifically focused on raising concerns related to inheritance issues faced by women. These meetings served as platforms for stakeholders to discuss challenges, propose solutions, and advocate for reforms within the legal framework.*
- *Chaddar and Parchi customs does not exists in Sindh, these customs are being followed in tribal areas of KPK and Baluchistan.*
- *Commission has undertaken various initiatives aimed at increasing awareness and understanding of the implications of inheritance laws on women's rights. We have conducted several training sessions and workshops to highlight the correlation between inheritance issues and instances of domestic violence. By addressing these issues at their root, we aim to contribute to the prevention of domestic violence and the promotion of gender equality.*
- *We are actively collaborating with organizations such as the Legal Aid Society to conduct research that delves deeper into the challenges faced by women regarding inheritance rights. This research is crucial in informing evidence-based policy recommendations and advocating for legal reforms that prioritize gender equity and justice."*

13. We have reviewed the instant Shariat Petition as per Article 203-D of the Constitution of the Islamic Republic of Pakistan, 1973 and decided that the relief in-*personam* sought by the petitioner cannot be granted in Shariat Petition, however the other issue raised by the petitioner through this Shariat Petition falls within the jurisdiction of this Court to be reviewed and decided upon that a custom is being prevailed in some parts of Bannu, Khyber Pakhtunkhwa, known as "*Chaddar*" and "*Parchi*", by virtue of which the female members of a family are either completely deprived of their right of

inheritance, which is guaranteed by Islam through the Holy Quran and Sunnah, or they are forced to take less valuable part of inheritance property. If any such practice exists under any name, which apparently is against the principles of law of inheritance introduced by Islam through the Holy Quran and Sunnah. It is recorded in the Traditions of the Holy Prophet (SAW) that before the dawn of Islam such practices were in vogue where women, especially widows, were deprived of their right of inheritance or completely denied of their inheritance rights, therefore, the verses of the Holy Quran, which explain the share of the legal heir, males and females, in the inherited property, were revealed, and such practices, usages or customs, whereby women were denied their right of inheritance, were declared illegal and Muslims were forbidden to follow such customs. Ahadiths, which are reported in Jamia Tirmizi, Sunan Abu Dawud and Sunan Ibn-i-Majah, explain the circumstances under which the verses of the Holy Quran were revealed, which contain the directions regarding inheritance share. A Hadith has explained this incidence as:

حدثنا عبد بن حميد، حدثني زكرياء بن عدي، اخبرنا عبيد الله بن عمرو، عن عبد الله بن محمد بن عقيل، عن جابر بن عبد الله، قال: جاءت امرأة سعد بن الربيع ابنتها من سعد إلى رسول الله صلى الله عليه وسلم، فقالت: يا رسول الله، هاتان ابنتا سعد بن الربيع، قتل ابوهما معك يوم احد شهيدا، وإن عمهما اخذ مالهما، فلم يدع لهما مالا ولا تنكحان إلا ولهما مال، قال: " يقضي الله في ذلك "، فنزلت آية الميراث، فبعث رسول الله صلى الله عليه وسلم إلى عمهما، فقال: " اعط ابنتي سعد الثلثين، واعط امهما الثمن، وما بقي فهو لك "، قال ابو عيسى: هذا حديث حسن صحيح، لا نعرفه إلا من حديث عبد الله بن محمد بن عقيل، وقد رواه شريك ايضا عن عبد الله بن محمد بن عقيل.¹

جابر بن عبد اللہ رضی اللہ عنہما کہتے ہیں کہ سعد بن ربیع کی بیوی اپنی دو بیٹیوں کو جو سعد سے پیدا ہوئی تھیں لے کر رسول اللہ صلی اللہ علیہ وسلم کے پاس آئیں اور عرض کیا: اللہ کے رسول! یہ دونوں سعد بن ربیع کی بیٹیاں ہیں، ان کے باپ آپ کے ساتھ لڑتے ہوئے جنگ احد میں شہید ہو گئے ہیں، ان کے چچا نے ان کا مال لے لیا ہے، اور ان کے لیے کچھ نہیں چھوڑا، اور بغیر مال کے ان کی شادی نہیں ہوگی۔ آپ نے فرمایا: ”اللہ تعالیٰ اس کے بارے میں فیصلہ کرے گا“، چنانچہ اس کے بعد آیت میراث نازل ہوئی تو رسول اللہ صلی اللہ علیہ وسلم نے ان (لڑکیوں) کے چچا کے

(سنن الترمذی، حدیث نمبر: 2092، سنن ابی داؤد / الفرائض 4 (2891)، سنن ابن ماجہ / الفرائض 2 (2720) (تحفة الأشراف: 2365) (حسن) ¹

پاس یہ حکم بھیجا کہ سعد کی دونوں بیٹیوں کو مال کا دو تہائی حصہ دے دو اور ان کی ماں کو آٹھواں حصہ، اور جو بچے وہ تمہارا ہے“

These are mainly verses of Surah Nisa, which are known as verses of *Wirasat* or the verses of inheritance and the petitioner also relied upon them in respect of her case that in the light of these verses her right of inheritance in her ancestral property cannot be denied.

14. In addition to the abovementioned verses of the Holy Quran, which state the shares of the legal heir in the property, the following verses of the Holy Quran were also revealed separately, which forbid the Muslims from usurping the right of inheritance of the orphans and depriving anyone from his or her right of inheritance in the following manner:-

إِنَّ الَّذِينَ يَأْكُلُونَ أَمْوَالَ الْيَتَامَىٰ ظُلْمًا إِنَّمَا يَأْكُلُونَ فِي بُطُونِهِمْ نَارًا ۖ وَسَيَصْلَوْنَ سَعِيرًا²
جو لوگ یتیموں کا مال ناجائز طور پر کھاتے ہیں وہ اپنے پیٹ میں آگ بھرتے ہیں اور دوزخ میں ڈالے جائیں گے۔

Indeed, those who devour the property of orphans unjustly are only consuming into their bellies fire. And they will be burned in a Blaze.

In Surah Al-Fajr, Muslims are strictly warned against usurping the inheritance of any person as:

وَتَأْكُلُونَ التُّرَاثَ أَكْلًا لَّمًّا (19) وَتُحِبُّونَ الْمَالَ حُبًّا جَمًّا³
اور میراث کے مال سمیٹ کر کھا جاتے ہو۔ اور مال سے بہت زیادہ محبت رکھتے ہو۔

And you consume inheritance, devouring [it] altogether. And you love wealth with immense love.

Further the Holy Prophet (SAW) strictly warned those who deprive anybody from his or her right of inheritance in the following manner:

"وعن أنس قال: قال رسول الله صلى الله عليه وسلم: «من قطع ميراث وارثه قطع الله ميراثه من الجنة يوم القيامة» . رواه ابن ماجه⁴

² Verse 10 of Surah Nisa

³ Verses 19-20 of Surah Al-Fajr

⁴ Mishkat al-Masabih 3078, 3079 كتاب القرآن الفرائض والوصايا، باب الوصايا جلد ۲ ص: ۹۲۶ ط: المكتب الاسلامي - بيروت) باب الوصايا - الفصل الثالث

انسؓ بیان کرتے ہیں، رسول اللہ ﷺ نے فرمایا: ”جس شخص نے اپنے وارث کو میراث سے محروم کیا تو روزِ قیامت اللہ تعالیٰ اس کو جنت کی میراث سے محروم کر دے گا۔“، رواہ ابن ماجہ

Anas reported God's Messenger as saying: "If anyone deprives an heir of his inheritance, God will deprive him of his inheritance in paradise on the day of resurrection."

15. Similarly, upon other occasions, the Prophet (SAW) said that:

- - حَدَّثَنَا وَكِيعٌ قَالَ: حَدَّثَنَا مُحَمَّدُ بْنُ عَبْدِ اللَّهِ الْعُقَيْلِيُّ، عَنْ أَبِي سَلَمَةَ الْجَمَصِيِّ، عَنْ سُلَيْمَانَ بْنِ مُوسَى قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ أَبْطَلَ مِيرَاثًا فَرَضَهُ اللَّهُ فِي كِتَابِهِ أَبْطَلَ اللَّهُ مِيرَاثَهُ مِنَ الْجَنَّةِ»⁵

جس نے قرآن میں اللہ کی طرف سے فرض کردہ میراث روکی تو اللہ اسے جنت کی میراث سے روک دے گا۔

- حَدَّثَنَا أَبُو بَكْرِ بْنُ أَبِي شَيْبَةَ، حَدَّثَنَا يَحْيَى بْنُ سَعِيدٍ الْقَطَانِ، عَنْ ابْنِ عَجَلَانَ، عَنْ سَعِيدِ بْنِ أَبِي سَعِيدٍ، عَنْ أَبِي هُرَيْرَةَ، قَالَ: قَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «اللَّهُمَّ إِنِّي أَخْرَجُ حَقَّ الضَّعِيفِينَ حَقَّ الْيَتِيمِ وَحَقَّ الْمَرْأَةِ»⁶

ابو ہریرہ رضی اللہ عنہ کہتے ہیں کہ رسول اللہ صلی اللہ علیہ وسلم نے فرمایا: ”اے اللہ! میں دو کمزوروں ایک یتیم اور ایک عورت کا حق مارنے کو حرام قرار دیتا ہوں“

- -وَأَخْبَرَنَا أَبُو عَبْدِ الرَّحْمَنِ السُّلَمِيُّ، ثنا أَبُو الْحَسَنِ الْكَارِزِيُّ، ثنا عَلِيُّ بْنُ عَبْدِ الْعَزِيزِ، قَالَ: قَالَ أَبُو عَبْدِ اللَّهِ فِي حَدِيثِ النَّبِيِّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: " لَا تَعْصِيَةَ فِي مِيرَاثٍ إِلَّا مَا حَمَلَ الْقِسْمُ."⁷

میراث میں نقصان پہنچانے والی تقسیم نہ کریں مگر ایسی تقسیم کریں جس میں شرعی حصوں کے مطابق تقسیم ہو۔

- نَهَى رَسُولُ اللَّهِ ﷺ عَنْ قِسْمَةِ الصِّتَارِ.⁸
رسول اللہ صلی اللہ علیہ وسلم نے ایسی میراث کی تقسیم سے منع فرمایا جس میں (کسی وارث کو) ضرر ہو۔

16. Hence, after hearing the parties and reviewing their response and reports submitted by them, we have concluded that the inheritance right of women, if denied, under any form and manner whatsoever on the pretext of local custom or usage, is un-Islamic, although the respondent departments,

⁵ (مصنف ابن ابی شیبہ) (6/240)

⁶ ابن ماجہ، حدیث نمبر: 3678

⁷ سنن الکبریٰ للبیہقی حدیث نمبر: 20447

⁸ السنن الکبریٰ للبیہقی حدیث نمبر: 20448

i.e. Human Rights Commission of Pakistan, Commissions on the Status of Women and Ombudspersons are working rightly but there is a need that they must act continuously, more vigilantly and proactively to eradicate this social evil, rather crime from society, of depriving women in any manner from claiming their right of inheritance or putting them under disadvantage to claim their due share in their inheritance. From the response of the respondent, an important aspect is revealed that there is a need of understanding the gravity and seriousness of this crime in the staff of that relevant departments of the governments too. For instance in this case they all acknowledged that women are being deprived of their right of inheritance yet they denied that no such custom or usage with the name of *Chaddar* or *Parchi* exists. Here they are required to understand the important aspect of any such case, that is the name of illegal action is not relevant but the act itself is important. Hence, while formulating the data and statistics regarding the denial of inheritance rights of women the relevant department, like the Commission on the Status of Women, must also categorize those different ways and the manners in which this heinous crime is being perpetrated, such efforts will help the relevant authorities to protect women from deprivation of their rights of inheritance in more efficient manner.

17. Perusal of the para-wise comments and the Reports submitted by the respondent departments shows that the right of inheritance of property, which is given by Islam to women, is being denied in various ways and means in different areas of the country. The statistics contained in the Report of the Ombudsperson Secretariat, created under the Khyber Pakhtunkhwa Enforcement of Women's Property Rights Act, 2019, submitted by the Government of KP, speaks volumes about the fact that this fundamental right

of women to inherit property, which is granted by the Holy Quran and Sunnah, is being grossly violated under different manners and upon different pretexts. The statistics given by the Ombudsperson Secretariat of KP is as follows:

".....The performance of the Secretariat to date is as follows:

- ✓ *The number of complaints filed in the Provincial Ombudsperson, Khyber Pakhtunkhwa till 03.05.2024=1742*
- ✓ *The number of complaints disposed of/closed in the Provincial Ombudsperson, Khyber Pakhtunkhwa till 03.05.2024 = 552*
- ✓ *The number of complaints referred to different department e.g. courts by the Provincial Ombudsperson, Khyber Pakhtunkhwa till 03.05.2024 = 140*
- ✓ *The number of complaints on hold in Provincial Ombudsperson, Khyber Pakhtunkhwa till 03.05.2024 = 25*
- ✓ *The number of complaints under process in the Provincial Ombudsperson, Khyber Pakhtunkhwa till 03.05.2024=1025*

3. *That anti-women custom like "Parchi" and "Chaddar" does not pertain to Khyber Pakhtunkhwa, and till date not complaints in Khyber Pakhtunkhwa regarding deprivation of women from property right through "Parchi" and "Chaddar" reported before the Ombudsperson, Khyber Pakhtunkhwa.*

18. We have also noticed that there exists many judgments of the superior courts which have dilated upon some customary practices, specific to some area or cast, whereby women were deprived of their right of inheritance in their ancestral properties, for reference few of which are reported as under:

- i. 1969 SCMR 296 (Satto vs. Mst. Sughran & others)
- ii. 1969 SCMR 607 (Fazaldad vs. Mst. Noor Nishan & others)
- iii. 1976 SCMR 149 (Muhammad Iqbal & others v. Durab Khan)
- iv. PLD 1951 Lahore 147 (Fatima Bibi vs. Nur Muhammad Shah)

Although with the passage of time such un-Islamic practices are fading out but still they are so deep rooted and deeply engraved in our culture and traditions that they are being surfaced in different ways and manners, even today this further accentuates the need of being vigilant and strict upon the authorities and the government departments which are responsible under the law to curtail these menaces of the society.

19. It is clear from the statistics available and reports submitted by the parties that such criminal practice, whereby women are deprived of their right of inheritance, is quite common. In this regard generally a core illegal practice is commonly known as “حق بخشوائی” (*Haq Bakhshwai*) or “حق بخشوانه” (*Haq Bakhshwana*), which literally means “giving up of rights”, is in vogue throughout the country in different forms, whereby the perpetrators or usurpers try to give a kind of legal cover to their illegal and criminal actions, whereby either forcibly or by emotionally blackmailing the female members of the family are asked to relinquish their right of inheritance in favour of male members. The petitioner also mentioned somewhat similar practices in her petition that she was forced by the Jirga to relinquish her right from her ancestral property. She named that practice as “*Chaddar*” or “*Parchi*”, but during the argument of the case several names of custom and usage were brought in our knowledge on the pretext of which the women are being deprived of their right of inheritance. Hence, instead of analyzing these usages or customs each by name and one by one, which are being used for committing this heinous crime, **we hereby declare all or any custom** by virtue of which any female member of a family is being or has been denied or deprived of her right of inheritance, which is granted by the Holy Quran and Sunnah as **un-Islamic**, hence having no legal force whatsoever.

20. As most of the respondent departments have also acknowledged the need of the use of the penal law under PPC as amended, to eradicate this social evil from the society, we are of the considered view that the relevant provincial departments, which are responsible to rectify this social evil of the society and protecting the property rights of the women so granted to them by the Holy Quran and Sunnah, may also initiate criminal case against the perpetrator of the crime of serious and grave cases under Section 498-A of PPC, which is introduced in the Pakistan Penal Code vide the Criminal Law (Third Amendment) Act, 2011, as it was the object and reason of this amendment in the PPC. In this regard they may also publicize their collective actions and decisions taken against the perpetrators to promote Islamic virtues on the principle of *Amr-bil-Marooif*, which will be in line with Section 13 of the Act X of 1991 (*Enforcement of Shari'ah Act, 1991*), which is an important substantial law of the State, which states as under:

13. Eradication of social evils. *The State shall take effective measures for enactment of law eradicating social evils and promoting Islamic virtues on the principles of amr bil Ma'roof wa nahi'anil Munkar as laid down in the Holy Quran."*

As it is one of the basic duty of an Islamic state to curb such social evil and promote wellbeing of its people. which is enumerated in the preamble of the Enforcement of Shari'ah Act, 1991, which reads as follows:

"Whereas sovereignty over the entire Universe belongs to Almighty Allah alone, and authority to be exercised by the people of Pakistan through their chosen representatives within the limits prescribed by Him is a sacred trust.

And whereas the Objectives Resolution has been incorporated in the Constitution of the Islamic Republic of Pakistan as a substantive part thereof;

And whereas Islam has been declared to be the State religion of Pakistan and it is obligatory for all Muslims to follow

the Injunctions of the Holy Qur'an and Sunnah to regulate and order their lives in complete submission to the Divine law;

And whereas it is one of the fundamental obligations of the Islamic State to protect the honour, life, liberty and the fundamental rights of the citizens as guaranteed under the Constitution and to ensure peace and provide inexpensive and speedy justice to people through an independent Islamic system of justice without any discrimination.

And whereas Islam enjoins establishment of social order based on the Islamic values of bidding what is right and forbidding what is wrong (amr bil Ma' roof wa nahi anil Munkar).

[Emphasis added]

21. Hence, for the reasons mentioned hereinabove, we have **rejected** this Shariat Petition to the extent whereby the petitioner has sought a relief in-personam being out of the scope of the jurisdiction of this Court. However, the petition is **partially accepted** whereby the petitioner is seeking a relief to declare a local custom, which according to her is prevalent in District Bannu, K.P with the name of *Chaddar* or *Parchi*, and the basis of which women of that area are being deprived of their rights of inheritance in their ancestral property, hence we declare any such custom or usage which either exists with the name of "*Chaddar*" or "*Parchi*" or with any other name in the area of Bannu District of K.P or in any part of any province of the country, as un-Islamic and illegal having no legal force whatsoever by virtue of which the right of inheritance of women is denied wholly or partly from their ancestral property which they have inherited or any other practice which deprives women from their right of inheritance, which is granted by the Holy Quran and Sunnah, is un-Islamic and against the principles of the Holy Quran and Sunnah, hence void and illegal, and may be subject to punishment also. **We further declare that** all or any such custom or usage, which affects the rights

of inheritance of women in any manner whatsoever, irrespective of the name by which it is called or known in any area of the country, is un-Islamic and illegal and calls for actions against the perpetrator of such crime under Section 498-A of PPC, as such actions by the relevant authorities of the State falls within the scope of *Amr bil Maroof Wa Nahi Anil Munkar*, which is an important duty of the State under the Act X of 1991 (*Enforcement of Shari'ah Act, 1991*).

(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE

(JUSTICE IQBAL HAMEEDUR RAHMAN)
CHIEF JUSTICE

(JUSTICE KHADIM HUSSAIN M. SHAIKH)
JUDGE

(JUSTICE AMEER MUHAMMAD KHAN)
JUDGE

Announced in open Court
on 19.03.2025 at Islamabad
*Khalid/**